

R380. Health, Administration.

R380-411. Administrative Hearing Procedures.

R380-411-1. Introduction and Authority.

- (1) This rule establishes the administrative hearing procedures for the Center for Medical Cannabis.
- (2) This rule is authorized by Section 26-1-24 and Section 63G-4-102.

R380-411-2. Definitions.

- (1) The definitions in Section R380-400-2 and Section 63G-4-103 apply to this rule.
- (2) The following definitions also apply:
 - (a) "Action" means a denial, termination, suspension, or reduction of a license, or card, or issued, pursuant to Title 26, Chapter 61a, Utah Medical Cannabis Act; or the imposition of a penalty, or fine, authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act. An action does not include an issuance of a license to operate a medical cannabis pharmacy, pursuant to Title 63G, Chapter 6a, Utah Procurement Code.
 - (b) "Agency" means the Center for Medical Cannabis within the Utah Department of Health.
 - (c) "Aggrieved person" means any person affected by the agency's action.
 - (d) "Applicant" means any person who has applied for a medical cannabis card or a registration, or license, other than a medical cannabis pharmacy license, pursuant to Title 26, Chapter 61a, Utah Medical Cannabis Act.
 - (e) "Ex Parte" communication means direct or indirect communication in connection with an issue of fact, or law, between the hearing officer and one party only.
 - (f) "Presiding Officer" means the agency head, or designee, as approved by the Executive Director; to conduct administrative a hearing pursuant to this rule.
 - (g) "Medical record" means a record that contains medical data submitted by an applicant.
 - (h) "Order" means a ruling by a hearing officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

R380-411-3. Administrative Adjudicative Procedures.

- (1) Except as provided in this rule, or as otherwise designated by rule, or statute, or converted, pursuant to Subsection 63G-4-202(3), all adjudicative proceedings conducted pursuant to this rule are informal proceedings.
- (2) The agency head shall serve as the presiding officer for an informal hearing, except that the agency head may designate a presiding officer, as approved by the executive director.
- (3) Closure of an application submitted to the agency, due to the applicant's failure to complete the application, or to provide required information, is not an action under this rule.
- (4) Any provision of this rule does not apply to an action that is governed by another statute that conflicts with the procedures in this rule.

R380-411-4. Commencement of Proceedings, Response.

- (1) If a person is aggrieved by an action of the agency, the person may file a request for agency action and hearing within the shortest of 30 calendar days, of either receiving the initial agency determination, or the agency's mailing, or electronic notification via email, of the initial agency determination. The person shall request an agency action, and hearing, by submitting the request on a form created by the Center.
- (2) If the informal adjudicative proceeding is commenced by a notice of agency action, each party in the action, except the Center, shall file a response to the allegations contained in the notice of agency action, and state whether a hearing is requested.
- (3) Pursuant to this rule and Section 63G-4-201, if the informal adjudicative proceeding is commenced by a request for agency action, the Agency must consider the request, and grant or deny it, or set the request for further proceedings.
- (4) If a medical issue is in dispute, each request shall include supporting medical documentation. The Agency shall schedule a hearing only when it receives sufficient medical records, and may dismiss a request for agency action, or strike the party's response, to a notice of agency action if it does not receive supporting medical documentation in a timely manner.
- (5) Notice of Agency Action:
 - (a) An agency shall provide a written notice of action to each aggrieved person. Such action includes, but is not limited to:
 - (i) denial of an application for a medical cannabis card, or a QMP, PMP, pharmacy agent, or courier agent registration card;
 - (ii) suspension, or revocation, of a medical cannabis card or a QMP, PMP, pharmacy agent, or courier agent registration card;
 - (iii) suspension, or revocation, of a medical cannabis pharmacy license, or a home delivery medical cannabis pharmacy license; and
 - (iv) imposition of a penalty, or fine, authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act.
 - (b) The notice must include:
 - (i) a statement of the action the agency intends to take;
 - (ii) the date the intended action becomes effective;
 - (iii) the reason for the intended action;
 - (iv) the specific regulation that support the action, or the change in federal law, state law, or Department rule which requires the action;
 - (v) the right to submit a response, and request an administrative hearing;
 - (vi) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and

(vii) if applicable, an explanation of the circumstance under which the license, or card, will continue, or may be reinstated, pursuant to this rule.

(c) The agency shall mail the notice, or electronically notify the person at the email address on file with the EVS; at least 10 calendar days before the date of the intended action.

(6) The agency may issue an order on an emergency basis pursuant to Section 63G-4-502. The aggrieved party may request an administrative hearing, pursuant to this rule.

R380-411-5. Hearing and a Request for a Hearing.

(1) The Center shall conduct an informal hearing for all issues, except those specifically designated as a formal hearing pursuant to this rule. The presiding officer may convert the proceeding to a formal hearing, if an aggrieved person requests a hearing that meets the criteria pursuant to Section 63G-4-202. If a hearing under this rule is converted to a formal hearing, pursuant to Section 63G-4-202, the formal hearing shall be conducted pursuant to these rules; except as otherwise provided in Sections 63G-4-204 through 63G-4-208, or other applicable statutes.

(2) An aggrieved person shall request a hearing by submitting the request on a Center "Request for Hearing/Agency Action" form and mailing it to the Center. The request must explain why the aggrieved person is seeking agency relief.

(3) A Request for Hearing/Agency Action, or a Response, and Request for Hearing that response, which an aggrieved person sends via mail is deemed filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the request is deemed filed on the date that the agency receives it; unless the sender can demonstrate through competent evidence of the mailing date.

(4) Failure to submit a timely response, and request for a hearing, constitutes a waiver of an individual's due process rights.

(5) The Agency shall conduct a hearing in connection with an agency action, if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing, and issue a recommended decision without a hearing, based on the record. There is no disputed issue of fact, if the aggrieved person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief. In the recommended decision, the presiding officer shall specifically set out all material, and relevant facts, that are not in dispute.

(6) The Agency may dismiss a request for a hearing, if the aggrieved person:

(a) withdraws the request in writing;

(b) verbally withdraws the hearing request at a settlement conference, or prehearing conference;

(c) fails to appear, or participate, in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located, or agency mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the presiding officer, or fails to provide medical records that the agency requests.

(7) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief, in a request for reconsideration.

R380-411-6. Notice of Hearing.

(1) The Agency shall notify the aggrieved person, or representative, in writing of the date, time, and place of the hearing, at least 10 calendar days before the date of the hearing; unless each party agrees to an alternative time frame. Any aggrieved person must inform the Agency of a current address, email address, and telephone number.

R380-411-7. Prehearing Procedures.

(1) The Agency shall conduct a Settlement Conference between the Agency, and the aggrieved party, within 30 calendar days from the date it receives a request for a hearing, or agency action. If a settlement cannot be reached, including a withdrawal, dismissal or granting of the request for action, the Agency shall notify the presiding officer to set a date for the administrative hearing.

(2) The presiding officer may elect to conduct a preliminary conference to:

(a) formulate or simplify the issues;

(b) obtain admissions of fact, and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) outline procedures for the hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(3) The presiding officer may require each party to submit a prehearing position statement setting forth the position of the party.

(4) The party may enter into a written stipulation resolving all, or part, of the adjudicative action during the preliminary conference, or at any time during the process.

(5) Ex parte communication with the presiding officer are prohibited. If a party attempts ex parte communication, the presiding officer shall inform the offender that any communication that the hearing officer receives off the record, will become part of the record, and furnished to each party. Ex parte communication does not apply to communication on the status of the hearing, and uncontested procedural matters.

(6) The Agency shall allow the aggrieved person, or a representative, to examine each document and record relevant to the adjudicative proceeding; at least three days before the hearing.

(7) The presiding officer may require each party to file a signed prehearing disclosure form, at least 10 calendar days before the scheduled hearing that identifies:

- (a) any fact witness;
- (b) any expert witness;
- (c) any exhibit and report that each party intends to offer into evidence at the hearing.
- (8) Each party shall supplement the disclosure form with information that shall become available after filing the original form.

R380-411-8. Conduct of Hearing.

- (1) The Agency shall conduct a hearing pursuant to Section 63G-4-203 for an informal adjudicative proceeding.
- (2) The agency head shall appoint an impartial presiding officer to conduct a hearing. Previous involvement in the initial determination of the action precludes an officer from appointment.
- (3) A telephonic hearing will be held at the discretion of the presiding officer.
- (4) The presiding officer shall take testimony under oath or affirmation.
- (5) Each party has the right to:
 - (a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;
 - (b) introduce exhibits;
 - (c) impeach any witness, regardless of which party first called the witness to testify; and
 - (d) rebut the evidence against the party.
- (6) Each party may admit any relevant evidence and use hearsay evidence to supplement, or explain other evidence, as may be required for full disclosure of each fact relevant to the disposition of the hearing. Hearsay, however, is not sufficient by itself to support a finding, unless admissible over objection in civil actions. The presiding officer shall give effect to the rules of privilege recognized by law, and may exclude irrelevant, immaterial, and unduly repetitious evidence.
- (7) The presiding officer shall control the evidence, to obtain full disclosure of the relevant facts, and to safeguard the rights of each party. The presiding officer may determine the order in which he receives the evidence.
- (8) The presiding officer shall maintain order, and may recess the hearing to regain order if a person engages in disrespectful, disorderly, or disruptive conduct. The presiding officer may remove any person, including a participant, from the hearing to maintain order. If a person shows persistent disregard for order and procedure, the presiding officer may:
 - (a) restrict the person's participation in the hearing;
 - (b) strike pleadings or evidence; or
 - (c) issue an order of default.
- (9) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the hearing officer, at no cost to the agency.
- (10) The party who initiates the hearing process through a request for agency action, has the burden of proof as the moving party.
- (11) When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.
- (12) The presiding officer may issue an order of default against any party that fails to obey an order entered by the hearing officer.

R380-411-9. Record.

- (1) The presiding officer shall make a complete record of each hearing. A hearing record is the sole property of the Center.
- (2) Any proceedings other than a hearing may be recorded at the discretion of the hearing officer.
- (3) If a party requests a copy of the recording of a hearing, that party may transcribe the recording at the party's sole cost.

R380-411-10. Proposed Decision and Final Agency Review.

- (1) At the conclusion of the hearing, the presiding officer shall take the matter under advisement, and submit a recommended decision to the Agency Head. The recommended decision is based on the testimony and evidence entered at the hearing, Agency policy and procedure, and legal precedent.
- (2) The recommended decision must contain findings of fact and conclusions of law.
- (3) The Agency or the director's designee may:
 - (a) adopt the recommended decision, or any portion of the decision;
 - (b) reject the recommended decision, or any portion of the decision, and make an independent determination based upon the record; or
 - (c) remand the matter to the presiding officer to take additional evidence; and the presiding officer thereafter shall submit to the Agency director or the director's designee, a new recommended decision.
- (4) The agency head or their designee's decision constitutes final administrative action, and is subject to judicial review.
- (5) The Agency shall send a copy of the final administrative action to each party, or representative, and notify them of their right to judicial review.
- (6) Each party shall comply with a final decision from the director reversing the agency's decision, within 10 calendar days.

R380-411-11 Amending Administrative Orders.

- (1) The Agency may amend an order if the presiding officer determines that the order contains a clerical error.
- (2) The Agency shall notify each party its intent to amend the order by serving a notice of agency action signed by the hearing officer.

(3) The Agency Director shall review the amended order and the Agency Director or the Agency Director's designee shall issue a final agency amended order.

(4) The Agency shall provide a copy of the final amended order to each party.

R380-411-12. Reconsideration.

A party to the proceeding may move for reconsideration of the final administrative order pursuant to Section 63G-4-301.

R380-411-13. Judicial Review.

A party to the proceeding may obtain judicial review pursuant to Section 63G-4-102, and Sections 63G-4-400 through 63G-4-400.

R380-411-14. Declaratory Orders.

(1) The Agency may issue a declaratory order pursuant to Rule R380-1.

(2) If the Agency does not issue a declaratory order within 60 days after receipt of the request, the petition is denied.

(3) The Agency may not issue a declaratory order if an adjudicative proceeding that involves the each party and the same issue is pending before the agency, or a federal, or state court.

KEY: medical cannabis, medical cannabis hearing, marijuana

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