

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF ADOPTION OF  
Emergency Rules I through III, ) EMERGENCY RULES  
pertaining to the Montana medical )  
marijuana program )

TO: All Concerned Persons

1. The Department of Public Health and Human Services (department) is adopting the following emergency rules in response to the decision of the Office of Fair Hearings in: In the Matter of the Fair Hearing of Ranger Leischner, Claimant Case No. 19-2353, dated April 15, 2019 (Leischner decision). The purpose of these emergency rules is to ensure enforcement of the Montana Medical Marijuana Act, 50-46-301, et seq., MCA, by the Medical Marijuana Bureau (bureau) of the department. Enforcement of the Act through these rules is necessary to prevent imminent peril to public health, safety, and welfare.

Pursuant to the Montana Medical Marijuana Act, the bureau licenses and regulates individuals and entities that provide medical marijuana to registered cardholders. Licensing and regulating providers are necessary to ensure that the marijuana and marijuana-infused product provided to qualifying patients is safe and that it is not diverted to non-cardholders. See, e.g., MCA §§ 50-46-303; 50-46-307; 50-46-311; 50-46-312; 50-46-330.

Pursuant to the Montana Medical Marijuana Act, the bureau also regulates cardholders who may legally access medical marijuana pursuant to 50-46-301, et seq., MCA. Regulation of cardholders is necessary to ensure that they have a bona fide medical need for medical marijuana and that they do not divert their medical marijuana to non-cardholders.

The bureau may deny or revoke a card or license to protect the public health, safety, or welfare. See, e.g., MCA §§ 2-4-631(3); 50-46-303; 50-46-308 through 50-46-312; 50-46-317; 50-46-320; 50-46-326; 50-46-330; ARM 37.107.127; ARM 37.107.130.

On April 15, 2019, the Office of Fair Hearings (OFH) held in the Leischner decision that the existing medical marijuana statute and rules do not vest the OFH with jurisdiction to hear contested cases concerning license denials or revocations. Further, the OFH held that the decision of the Montana district court in Steven Palmer, dba Montana Organic Medical Supply (M.O.M.S.) v. Mont. Dep't of Public Health and Human Services, DV 18-1418, does not vest it with jurisdiction to hear contested cases concerning license denial or revocations.

The department finds that an administrative process is necessary to enforce the Montana Medical Marijuana Act. The department further finds that enforcement through card or license denial or revocation is necessary to protect the public health, safety, and welfare. Public health, safety, and welfare will be imperiled if the department is unable to enforce the Act.

For the foregoing reasons, the department enacts these emergency rules. These rules shall remain in effect no longer than 120 days after the date of enactment, after which permanent rules shall have been adopted pursuant to existing statute or to statutory requirements duly enacted during the 2019 state legislative session.

2. New Rule I makes applicable to the Montana Medical Marijuana Program specified existing administrative rules setting out contested case hearing procedures for programs administered by the department. New Rule II sets out additional procedures for the revocation of provider licenses. New Rule III specifies administrative rules for contested case hearings with regard to medical marijuana card revocations.

3. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on May 6, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, P.O. Box 4210, Helena, Montana, 59604; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

4. These temporary emergency rules are effective April 19, 2019.

5. The text of the temporary emergency rules provides as follows:

NEW RULE I ADVERSE BUREAU ACTIONS CONCERNING MEDICAL MARIJUANA PROVIDER LICENSES: APPLICABLE HEARING PROCEDURES

(1) Hearings to contest bureau denials of provider license applications, or bureau revocations of existing provider licenses, shall be conducted pursuant to the following administrative procedures: ARM 37.5.101, 37.5.117, 37.5.131, 37.5.301, 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 50-46-329, 50-46-344, MCA

IMP: 50-46-308, 50-46-312, 50-46-320, 50-46-329, 50-46-330, 50-46-331, MCA

NEW RULE II ADDITIONAL PROCEDURES FOR LICENSE

REVOICATIONS (1) Except as provided in (2), providers may continue to serve existing cardholders at existing registered premises during the pendency of a contested case hearing, until a final agency decision is rendered. No new

cardholders may designate a licensee in a contested case proceeding as their provider. No new registered premises may be licensed to a provider in a contested case proceeding.

(2) Upon a written finding by the bureau that public health, safety, or welfare imperatively requires emergency action, the bureau may summarily suspend a license and all operations of a provider pending the completion of a revocation proceeding. Emergency action may be taken when the public health, safety, or welfare is imperiled:

(a) by unsafe, contaminated, or adulterated marijuana or marijuana-infused product; or

(b) when credible evidence exists of deliberate provider diversion of marijuana or marijuana-infused product to individuals or parties not authorized under statute or rule to possess the marijuana or marijuana-infused product.

AUTH: 50-46-329, 50-46-344, MCA

IMP: 50-46-308, 50-46-312, 50-46-320, 50-46-329, 50-46-330, 50-46-331, MCA

NEW RULE III ADVERSE BUREAU ACTIONS CONCERNING  
CARDHOLDERS: APPLICABLE HEARING PROCEDURES (1) Hearings to contest card application denials or revocations by the bureau shall be conducted pursuant to the following administrative procedures: ARM 37.5.101, 37.5.117, 37.5.131, 37.5.301, 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 50-46-344, MCA

IMP: 50-46-320, 50-46-330, 50-46-331, MCA

6. The rationale for the temporary emergency rules is set forth in paragraph 1.
7. A standard rulemaking procedure will be undertaken prior to the expiration of these temporary emergency rules.
8. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Gwen Knight at the Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).
9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or

delivered to the contact person in 8 above or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail on April 19, 2019.

/s/ Nicholas Domitrovich  
Nicholas Domitrovich  
Rule Reviewer

/s/ Sheila Hogan  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State April 19, 2019.