

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA.CODE CH. 1230]

Medical Marijuana; Practice and Procedure; Temporary Regulations

[48 Pa.B. 2814]

[Saturday, May 12, 2018]

The Department of Health (Department) is publishing temporary regulations in Chapter 1230 (relating to practice and procedure temporary regulations) to read as set forth in Annex A. These temporary regulations are published under the Medical Marijuana Act (act) (35 P.S. 10231.10110231.2110). Section 1107 of the act (35 P.S. 10231.1107) specifically provides that, to facilitate the prompt implementation of the act, the Department may promulgate temporary regulations that are not subject to sections 201205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. 12011205), known as the Commonwealth Documents Law, the Regulatory Review Act (71 P.S. 745.1745.14) and sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P.S. 732-204(b) and 732-301(10)).

To implement the Medical Marijuana Program, the Department periodically published temporary regulations regarding various sections of the act. The temporary regulations for practice and procedure will expire on May 12, 2020.

Chapter 1230 pertains to growers/processors, dispensaries, laboratories, disappointed medical marijuana organization permit applicants and any other person choosing to challenge an action taken by the Office of Medical Marijuana under the act.

Interested persons are invited to submit written comments, suggestions or objections regarding these temporary regulations to John J. Collins, Office of Medical Marijuana, Department of Health, Room 628, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120, (717) 547-3047, RA-DHMedMarijuana@pa.gov.

Persons with a disability who wish to submit comments, suggestions or objections regarding these temporary regulations or who require an alternative format of these temporary regulations (for example, large print, audiotope, Braille) may do so by using the previous contact information, or for speech and/or hearing impaired persons, call the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

RACHEL L. LEVINE, MD, Secretary

(Editor's Note: Title 28 of the Pennsylvania Code is amended by adding temporary regulations in 1230.21, 1230.24, 1230.25, 1230.26, 1230.38, 1230.39 and 1230.43, 1230.46 to read as set forth in Annex A.)

Fiscal Note: 10-207. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 18-731. Filed for public inspection May 11, 2018, 9:00 a.m.]

Annex A

TITLE 28. HEALTH AND SAFETY

PART IX. MEDICAL MARIJUANA

CHAPTER 1230. PRACTICE AND PROCEDURE —

TEMPORARY REGULATIONS

Subchap.

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Subchapter A. PRELIMINARY PROVISIONS

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GENERAL

1230.21.Scope.

(a)This chapter governs practice and procedure before the Department in medical marijuana appeals and in any action taken by the Office under the act.

(b)This chapter is not applicable to a proceeding to the extent that the applicable statute governing or authorizing the proceeding sets forth inconsistent practice or procedure.

(c)Except when inconsistent with this chapter, 1 Pa.Code Part II (relating to General Rules of Administrative Practice and Procedure) is applicable insofar as it relates to adjudicatory proceedings.

(d)Subsections (a)(c) supplement 1 Pa.Code 31.1 (relating to scope of part).

1230.22.Definitions.

(a)The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ActThe Medical Marijuana Act (35 P.S. 10231.101 10231.2110).

ClerkThe Department's Docket Clerk in the Office of Legal Counsel.

DepartmentThe Department of Health.

OfficeThe Department's Office of Medical Marijuana.

PersonAn individual, partnership, association, corporation, political subdivision, municipal authority or other entity.

(b)Subsection (a) supplements 1 Pa.Code 31.3 (relating to definitions).

1230.23.Docket.

(a)The Clerk has the following duties:

(1)Provide information as to practice and procedure before the Department, under this chapter.

(2)Receive and docket pleadings and other documents required by the Department to be filed with the Clerk.

(b)A filing shall be directed to the Clerk at the following address, by first class mail, postage prepaid:

Department of Health

Office of Legal Counsel

ATTN: Docket Clerk

Room 825, Health and Welfare Building

625 Forster Street

Harrisburg, Pennsylvania 17120-0701

(c)Pleadings, submittals or other documents required or permitted to be filed under this chapter, the regulations of the Department or any other provision of law shall be received for filing by the Clerk within the time limits, if any, for the filing. The date of receipt by the Clerk and not the date of deposit in the mail is determinative. Electronic submissions will not be accepted by the Clerk for filing, unless the electronic filing is specifically permitted by the Department.

(d)The Clerk shall maintain a docket of proceedings. Each proceeding as initiated will be assigned a docket number.

(e)The docket will be available for inspection and copying by the public, at the requestor's expense, during the office hours of the Department insofar as consistent with the proper discharge of the duties of the Department.

(f)Subsections (a)(e) supersede 1 Pa.Code 33.11 and 33.51 (relating to execution; and docket).

1230.24.Filing generally.

(a)Pleadings and other documents filed with the Clerk must clearly designate the docket number, if one has been assigned, the application or permit number, if one has been assigned, and a short title identifying the pleading or other document. The identity of the individual or person filing the pleading or other document, including the name, mailing address and status (for example, party or attorney for a party) must appear on the pleading or other document being filed.

(b)If a pleading or other document tendered for filing does not comply with this chapter, does not sufficiently set forth required material or is otherwise deficient, the Department may decline to accept the pleading or other document for filing and may return it without filing, or the Department may accept the pleading or other document for filing and advise the individual or person tendering it of the deficiency and require that the deficiency be corrected within a reasonable period of time.

(c)The Department may require redundant, immaterial, obscene or otherwise inappropriate comments stricken from a pleading or other document before accepting it for filing.

TIME

1230.25.Effective date of adjudication, actions or order.

(a)An adjudication, action or order will be effective as of the date of mailing unless otherwise specifically provided.

(b)Subsection (a) supersedes 1 Pa.Code 31.14 (relating to effective dates of agency orders).

1230.26.Representation.

(a)A party, except an individual appearing on his own behalf, shall be represented by an attorney at all stages of the proceedings subsequent to the filing of the Notice of Appeal or Order to Show Cause.

(b)A corporation shall be represented by an attorney of record admitted to practice before the Supreme Court of Pennsylvania. A corporation may also be represented by an attorney in good standing and admitted to practice before the highest court of another state on a motion pro hac vice filed by the Pennsylvania attorney of record.

(c)A group of individuals acting in concert, whether formally or informally, shall be represented by an attorney admitted to practice law before the Supreme Court of Pennsylvania or by an attorney in good standing admitted to practice before the highest court of another state who has made a motion to appear pro hoc vice and has agreed in that motion to abide by the rules and regulations of the Department and the Pennsylvania Rules of Professional Conduct.

(d)An individual may appear in person on his own behalf. The individual is encouraged to appear through counsel. If the Department determines that the individual is acting in concert with or as a representative of a group of individuals, the individual may be required to appear through counsel under subsection (c).

(e)Subsections (a)(d) supersede 1 Pa.Code 31.21 31.23 (relating to appearance in person; appearance by attorney; and other representation prohibited at hearings).

Subchapter B.FORMAL PROCEEDINGS

APPEALS

Sec.

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1230.45. Verifications and affidavits.

1230.46. Entry of default judgment.

APPEALS

1230.38.Commencement, form and content of Notice of Appeal.

(a)An appeal from an action of the Office shall start with the filing of a Notice of Appeal with the Department.

(b)The caption of a Notice of Appeal must be in the following form:

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF HEALTH

Name of Appellant Docket No.: _____

Address of Appellant

Telephone Number of Appellant, Appellant/Petitioner,

v.

The Pennsylvania Department of Health,

Office of Medical Marijuana, Appellee/Respondent

NOTICE OF APPEAL

(c)The Notice of Appeal must set forth the name, mailing address, e-mail address, permit number or application number, if one has been assigned, and telephone number of the appellant. If the appellant is represented by an attorney, the Notice of Appeal shall be signed by at least one attorney of record in the attorney's individual name.

(d)If the appellant has received written notification of an action of the Office, a copy of the action must be attached to the Notice of Appeal.

(e)The Notice of Appeal must set forth in separate numbered paragraphs the specific objections to the action of the Office. The objections may be factual or legal.

(f)The Notice of Appeal must be typewritten on letter-size paper (approximately 8 to 8 1/2 inches by 10 1/2 to 11 inches) and pages after the first must be numbered. Photocopies will be accepted as typewritten, provided that the copies are legible. Failure to comply with these requirements will not result in rejection or dismissal of the Notice of Appeal. The Department may request that the appellant file an amended version of the Notice of Appeal in proper form.

(g)The appellant shall, concurrent with or prior to the filing of a Notice of Appeal, serve two copies on the Department's Office of Legal Counsel in the same manner in which the Notice of Appeal is filed with the Department.

(h)Subsections (a)(g) supersede 1 Pa.Code 35.535.7 and 35.20 (relating to informal complaints; and appeals from actions of the staff).

1230.39.Timeliness of Notice of Appeal.

(a)Jurisdiction of the Department will not attach to an appeal from an action of the Office unless the Notice of Appeal is in writing and is timely filed with the Department within 30 days after the individual or person to whom the action of the Office is directed or issued has received written notice of the action, unless a different time is provided by statute.

(b)Failure to file a timely Notice of Appeal may be deemed an admission or may be dismissed with prejudice by the Department.

(c)The Office may file an answer and new matter to the Notice of Appeal within 30 days of its service on the Office, but is not required to do so.

(d)Subsection (a) supersedes 1 Pa.Code 35.535.7, 35.20 and 35.35 (relating to informal complaints; appeals from actions of the staff; and answers to complaints and petitions).

SPECIAL ACTIONS

1230.43.Orders to Show Cause, orders or petitions filed by the Office.

(a)The Office may start an action by filing an Order to Show Cause, order or other petition filed by the Office and a notice of a right to respond or defend. The action is begun when the Order to Show Cause, order or other petition of the Office is filed with the Clerk.

(b)Service of the Order to Show Cause, order or other petition filed by the Office shall be by personal service or by United States first class mail, postage prepaid. In the instance of mail, service will be deemed complete 3 days after the date of mailing by the Office.

(c)An Order to Show Cause must set forth the authority under which the Department is authorized to act and must set forth in separate numbered paragraphs the specific facts and circumstances upon which the request for action is based.

(d)The notice of a right to respond or defend shall conform substantially to the following:

[Case Caption]

NOTICE

If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this Order to Show Cause and notice are served by entering a written appearance personally or by attorney and filing in writing with the Clerk in accordance with 1230.23 your answers, defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Department without further notice for any claim or relief requested by the Office. You should take this paper to your lawyer at once.

(e)Subsections (a)(d) supersede 1 Pa.Code 35.14 (relating to orders to show cause).

1230.44.Answers to Orders to Show Cause, orders or other petitions filed by the Office.

(a)Answers to Orders to Show Cause, orders or other petitions filed by the Office shall be filed with the Clerk within 30 days after the date of service of the Order to Show Cause, order or other petition filed by the Office, unless, for cause, the Department, with or without motion, prescribes a different time.

(b) Answers to Orders to Show Cause, orders or other petitions filed by the Office must set forth legal objections and any denial of facts in a single pleading.

(c)Answers must be in writing and drafted as to fully and completely advise the parties and the Department as to the nature of the defense, including affirmative defenses. Answers must admit or deny specifically and in detail each material allegation of the Order to Show Cause, order or petition filed by the Office, and state clearly and concisely the facts and matters of law relied upon.

(d)A Respondent failing to file an answer within the prescribed time will be deemed in default and, upon motion made as set forth in 1230.46 (relating to entry of default judgment), all relevant facts in the Order to Show Cause, order or other petition filed by the Office may be deemed admitted, and default judgment may be entered.

(e) New matter or preliminary objections may not be filed. To the extent that new matter or preliminary objections are filed, new matter or preliminary objections will be deemed stricken.

(f) Subsections (a)(e) supersede 1 Pa. Code 35.37 (relating to answers to orders to show cause).

1230.45. Verifications and affidavits.

(a) Pleadings or other documents containing an averment of fact not appearing of record in the action or containing a denial of fact shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or other business entity. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa. C.S. 4904 (relating to unsworn falsification to authorities). If verification is required, notarization is not necessary.

(b) The verification form must comply substantially with the following:

VERIFICATION

I, _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief). I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. 4904 (relating to unsworn falsification to authorities).

Date

Signature

Printed Name

(c)When an affidavit is used, the form should comply substantially with the following:

AFFIDAVIT

I, _____ (Affiant), being duly sworn (affirmed) according to law, depose and say that (I am authorized to make this affidavit on behalf of _____ corporation/business entity, being the holder of the office of _____ with that corporation/business entity,) and that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief).

(Signature of affiant)

Sworn and subscribed before me this _____ day of _____, 20____.

(Signature of official administering oath)

1230.46.Entry of default judgment.

(a)The Department, on motion of the Office, may enter default judgment against the Respondent for failure to file within the required time an answer to an Order to Show Cause, order or other petition allowed for under these regulations that contains a notice of a right to respond or defend.

(b)The Respondent may answer the motion for default judgment and request a hearing. If a request for a hearing on the default judgment is made, the Department may not grant default judgment prior to a hearing and the filing of an answer.