

**BEFORE THE STATE OF OREGON
for the
OREGON HEALTH AUTHORITY**

IN THE MATTER OF)
)
) **FINAL ORDER OF**
) **REVOCATION**
)
TRACK TOWN COLLECTIVE)
MMD #21112)

HISTORY OF THE CASE

On June 21, 2015, the Oregon Health Authority (“OHA”) issued a Notice of Proposed Revocation (“Notice”) to Track Town Collective (“Track Town”), proposing to revoke the entity’s registration as a medical marijuana dispensary.¹ On July 15, 2015, PRF² Samuel Elkington requested a hearing on Track Town’s behalf. On July 29, 2015 OHA referred the case to the Office of Administrative Hearings (“OAH”). The OAH assigned the case to Administrative Law Judge (ALJ Alison Greene Webster.

On September 23, 2015, ALJ Webster convened a prehearing conference with the parties. Senior Assistant Attorney General Deanna Laidler, representing OHA, participated in the conference, as did Track Town’s attorney, John Lucy IV. The parties scheduled the hearing for December 15, 2015, and set dates for the filing of motions for summary determination.

On October 16, 2015, in accordance with the schedule set during the prehearing conference, Ms. Laidler, on behalf of OHA, filed OHA’s Motion for Summary Determination and supporting documentation. Track Town did not file a response by the October 30, 2015 deadline. ALJ Webster closed the record on November 3, 2015 and took the matter under advisement.

On November 10, 2015, ALJ Webster issued a Ruling on Motion for Summary Determination, granting the motion in part and denying in part. The Ruling found that OHA was entitled to a favorable ruling on 17 of the 20 violations alleged in the Notice, and was not entitled to a favorable ruling on the three remaining alleged violations.

On November 13, 2015, OHA requested a postponement of the hearing scheduled for December 15, 2015 to allow for the filing of an amended notice. On November 20, 2015, ALJ Webster presided over a status conference. AAG Laidler appeared for OHA, and Mr. Lucy appeared for Track Town. During the conference, AAG Laidler advised that OHA would be issuing an amended notice, and filing an amended motion for

¹ The registration had been granted by OHA on February 6, 2015.

² PRF is the acronym for Person Responsible for the Facility.

summary determination based on the amended notice. ALJ Webster granted OHA's request to postpone the hearing, and rescheduled the hearing for February 9, 2016, if the amended motion for summary determination was not determinative of the remaining issues.

On December 4, 2015, OHA issued an amended Notice of Revocation (December 4, 2015 Notice). On January 5, 2016, OHA filed its Amended Motion for Summary Determination. Track Town did not file a response to the Amended Motion and, on January 19, 2015, ALJ Webster took the Amended Motion under consideration. On January 21, 2016, ALJ Webster granted OHA's Amended Motion for Summary Determination and issued a Proposed Order, incorporated by reference, recommending that OHA revoke Track Town's registration.

ISSUES

1. Whether, pursuant to OAR 137-003-0580, OHA is entitled to a favorable ruling on the 17 violations of OAR chapter 333, division 008 alleged against Track Town in the December 4, 2015 Notice.

2. If so, whether OHA may revoke Track Town's medical marijuana facility registration under ORS 475.314(10).

FINDINGS OF FACT

1. At all times pertinent to this matter, Track Town was registered with OHA as a medical marijuana dispensary. Samuel Elkington served as person responsible for the Track Town medical marijuana dispensary. (Ex. A at 1.) Track Town's facility is physically located at 3675 Franklin Blvd., Eugene, Oregon. (Ex. C at 1.)

2. On June 15, 2015, Astri G. Cooper, a Compliance Specialist with OHA's MMDP, conducted an unannounced inspection of Track Town in response to a complaint received by the MMDP. (Ex. C at 1.)

3. During the inspection, Cooper observed the following with respect to Track Town's security system:

(a) The facility's bathroom window and back exterior door lacked active motion sensors; and

(b) The facility lacked security cameras covering entry to and exit from the side exterior door.

(Ex. C at 1.)

4. In reviewing Track Town's records during the inspection, Cooper noted the following with respect to the transfers of useable marijuana and/or immature plants to

the facility:

- (a) A random sampling of Authorization to Transfer forms disclosed forms that did not include the patient's name, Oregon Medical Marijuana Program (OMMP) card number, card expiration date and/or patient contact information;
- (b) On at least one Authorization to Transfer form, a grower misidentified him or herself as a patient;
- (c) A random sampling of documentation for received product disclosed transfer forms that did not include: (i) the identity of the entity or individual who transferred the usable marijuana or immature plants to Track Town; (ii) the OMMP card number and expiration date of the individual authorized to transfer the marijuana; (iii) a copy of the individual's photo identification; (iv) the date the usable marijuana or immature plant was received; and (v) the name of the patient who authorized the transfer.

(Ex. C at 1-2.)

5. In reviewing Track Town's records during the inspection, Cooper also noted the following with respect to Track Town's transfers of useable marijuana and/or immature plants to patients/caregivers: a random sampling of documentation disclosed that employees failed to document the name, OMMP card number and expiration date of each cardholder, and failed to view the OMMP card and photo identification of each cardholder to make sure the two matched. The failure to verify the recipients' identity resulted in at least one instance in which Track Town transferred usable marijuana or immature plants to an individual who was not an OMMP cardholder. (Ex. C at 2.)

6. During the inspection, Cooper discovered that, on at least one occasion, Track Town accepted the transfer of usable marijuana or immature plants from a patient with an expired OMMP card. (Ex. C at 2.)

7. During the inspection, Cooper noted the following with respect to Track Town's testing of immature plants:

- (a) The facility's records did not contain documentation establishing that all immature plants were tested for mold, mildew and pesticides before transfer to patients/caregivers;
- (b) The facility's records did not contain documentation that testing for mold and mildew was done at least every 30 days;
- (c) The facility's records contained outdated tests conducted by a non-qualified person.

(Ex. C at 2.)

8. During the inspection, Cooper noted the following with respect to Track Town's general operations:

(a) Employees failed to keep usable product locked up and accessible only to authorized personnel. Cooper observed an open cabinet containing unmarked marijuana products accessible to the public.

(b) Employees or the person responsible for the facility failed to supervise the transfer areas whenever a cardholder is present. Cooper reviewed security videos and photos of minors (two females between the ages of 18 and 21) consuming marijuana on the premises.

(c) In a random sampling of security video footage from the previous 30 days, Cooper saw inappropriate consumption of marijuana on the premises of the facility, including consumption by vendors, the person responsible for the facility, non-OMMP cardholders and others who were not employees of the facility.

(Ex. C at 2-3.)

OPINION AND RULING

In the December 4, 2015 Notice, OHA alleged that Track Town committed 17 violations of the administrative rules pertaining to registered medical marijuana facilities. Based on these alleged violations, OHA proposed revocation of Track Town's registration pursuant to ORS 475.314(10).

ORS 475.314 sets out OHA's authority with regard to the regulation of medical marijuana facilities. As pertinent here, the statute provides as follows:

- (1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:
 - (a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or
 - (b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

* * * * *

- (3) To qualify for registration under this section, a medical marijuana

facility:

* * * * *

- (e) Must comport with rules adopted by the authority related to:
 - (A) Installing a minimum security system, including a video surveillance system, alarm system and safe; and
 - (B) Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.

* * * * *

- (6)(a) A registered medical marijuana facility may receive usable marijuana or immature marijuana plants only from a registry identification cardholder, designated primary caregiver or person responsible for a marijuana grow site if the registered medical marijuana facility obtains authorization, on a form prescribed by the authority by rule and signed by a registry identification cardholder, to receive the usable marijuana or immature marijuana plants.
- (b) A registered medical marijuana facility shall maintain:
 - (A) A copy of each authorization form described in paragraph (a) of this subsection; and
 - (B) Documentation of each transfer of usable marijuana or immature marijuana plants.

* * * * *

- (8) The authority may inspect:
 - (a) The premises of an applicant for a medical marijuana facility or a registered medical marijuana facility to ensure compliance with the qualifications for a medical marijuana facility described in subsection (3) of this section; and

- (b) The records of a registered medical marijuana facility to ensure compliance with subsection (6)(b) of this section.

* * * * *

- (10) The authority may revoke the registration of a medical marijuana facility registered under this section for failure to comply with ORS 475.300 to 475.346 or rules adopted under ORS 475.300 to 475.346. The authority may release to the public a final order revoking a medical marijuana facility registration.

To implement the above law, OHA adopted rules for registered medical marijuana facilities, OAR 333-008-1000 to OAR 333-008-1257. The pertinent rules, and their application to the 17 violations alleged in the December 4, 2015 Notice, are discussed in the Proposed Order.

To summarize the findings in the Proposed Order, ALJ Webster concluded that the Cooper Affidavit submitted with OHA's Amended Motion was uncontroverted and was sufficient to establish the 17 violations alleged in the December 4, 2015 Notice. ALJ Webster further concluded that OHA demonstrated that Track Town failed to comply with OAR 333-008-1150(2)(a) (alarm system); OAR 333-008-1180(1) (video recording requirements); OAR 333-008-1170(1)(d) and (2)(a) (camera coverage and placement); OAR 333-008-1230(1)(a), (2) and (7)(f) (transfers to a registered facility); OAR 333-008-1245(2)(b), (3)(a) and (3)(b) (transfers from the facility to patients/caregivers); OAR 333-008-1190 (2), (5)(a) (testing); 333-008-1140 (4)(a) and (4)(c)(B) (security for registered facilities); and OAR 333-008-1200 (1)(a), (1)(b) and (3) (operation of registered facilities).

Pursuant to ORS 475.314(10), OHA may revoke the registration of a registered medical marijuana facility for failing to comply with ORS 475.300 to 475.346 or the rules adopted under these statutory provisions. Given the extent and severity of the violations established herein – violations pertaining to security of the facility, transfers of product, inventory storage and accountability and general operations, including failing to prevent consumption by minors on the premises – the proposed revocation of Track Town registration is warranted and appropriate.

Exceptions

Track Town filed exceptions to the Proposed Order on February 18, 2016. Track Town asserted that their former counsel failed to provide evidence and information in support of Track Town's position, including Track Town's efforts to correct the violations set forth in the Notice and the December 4, 2015 Notice. There is nothing in the exceptions filed by Track Town that necessitate issuing a final order that is contrary to the Proposed Order issued by the ALJ in this case.

ORDER

Based on the violations cited in both the Notice and the December 4, 2015 Notice, which are incorporated by reference, the registration of Track Town IS HEREBY REVOKED, effective on the date of issuance of this Final Order.

Pursuant to OAR 333-008-1275(9), if Track Town has usable marijuana or immature plants on the premises of the dispensary, the PRF must make arrangements to return the usable marijuana and immature plants to the person who transferred the usable marijuana or immature plants and document the same.

The registration of Track Town must be returned to OHA within thirty (30) days.

Dated this 15th day of March, 2016

By: 
André Ourso
Oregon Health Authority

DATE OF SERVICE: March 16, 2016

Appeal Rights: You are entitled to judicial review of this order in accordance with ORS 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, within sixty (60) days from the service of the Final Order.