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TEXAS SENATE PRESIDENT PRO TEMPORE

STATE SENATOR • DISTRICT 5

COMMITTEES: BUSINESS AND COMMERCE, CHAIR • FINANCE • STATE AFFAIRS

12-15-23

Office of the Attorney General

Attn: Opinion Committee

Via Email: opinion.committee@oag.texas.gov

Re: Whether Low-THC Cannabis Inventory May Be Transported Between Department-Approved Locations by a Licensed Dispensing Organization Before a Prescription is Issued and Filled under the Compassionate Use Act

Dear Attorney General Paxton:

I write seeking an opinion whether dispensing organizations licensed to cultivate, process, and dispense low-THC cannabis may transport and store their low-THC cannabis inventory between Texas Department of Public Safety (the "Department") approved locations before a prescription is issued and filled under the Compassionate Use Act (the "Act") and its governing regulations, 37 Texas Administrative Code Chapter 12 (the "Regulations").

a. The Act contemplates that licensed organizations may operate out of multiple premises.

The Compassionate Use Act contemplates that licensed dispensing organizations will operate out of multiple *premises*. TEX. HEALTH & SAFETY CODE § 487.102(1)(B)(ii) (emphasis added). Pursuant to 37 TEX. ADMIN. CODE § 12.2(a), a licensed dispensing organization "may only perform regulated functions at a department approved location." Both the Act and the Regulations contemplate a licensed organization operating out of multiple premises, not a single premise. "All licensees, registrants, or applicants shall at all times maintain on file with the department a current electronic mail address, physical mailing address, facsimile number, and the physical address of *each location* at which low-THC cannabis is cultivated, processed, or dispensed." *Id.* at § 12.5(a) (emphasis added).

The Regulations further specify that "[a]ll facilities must be inspected and approved for their use by a local fire code official," and "[a]ll regulated premises shall be located at least 1000 feet from any private or public school or daycare." *Id.* at § 12.7(d), (n).

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b. The Act requires licensed organizations ensure reasonable statewide access to low-THC cannabis.

The Compassionate Use Act was enacted to ensure eligible patients across the state can have access to low-THC cannabis. Any dispensing organization, therefore, may only obtain a license if it facilitates that statewide access. TEX. HEALTH & SAFETY CODE § 487.104(a)(2). Specifically, to be eligible for a license to operate as a dispensing organization, an entity must have “premises reasonably located to allow patients listed on the compassionate-use registry access to the organization through existing infrastructure,” and the license must “ensure reasonable statewide access to, and the availability of, low-THC cannabis.” TEX. HEALTH & SAFETY CODE §§ 487.102(1)(B)(ii), 487.104(a)(2). It is therefore in furtherance of the goal of the Compassionate Use Act for licensed dispensing organizations to have premises located across the state, as contemplated by the Act. When the Legislature enacted the Act, it intended that “if the [TCUP] program is going to operate, that it operates in a way that people can access the medical cannabis that this program affords them.” See Journal of the Texas House, 87th Legislature, 2021 Reg. Sess. No. 36: p. 1778 (2021).

c. The Regulations refer to the general transportation of cannabis.

The Regulations refer to intrastate transportation of the dispensing organization’s low-THC cannabis. Under the Act, licensees must retain:

Shipping invoices, log books, records of duty status if applicable, delivery records and manifests reflecting the recipient's acknowledgment and establishing the chain of custody, relating to the transportation of:

- (A) Low-THC cannabis and any cannabis sativa plants intended for use in the processing of low-THC cannabis;
- (B) Raw materials used in or by-products created by the production or cultivation of low-THC cannabis;
- (C) Drug paraphernalia used in the production, cultivation or delivery of low-THC cannabis; or
- (D) Waste material resulting from cultivation, processing, or dispensing of low-THC cannabis.

37 TEX. ADMIN. CODE § 12.4(3). Further, the Regulations provides:

A licensed dispensing organization shall use a perpetual inventory control system that identifies and tracks the licensee's stock of low-THC cannabis from the time it is propagated from seed or cutting, *to the time it is delivered to either another licensee or patient or legal guardian.*

37 TEX. ADMIN. CODE § 12.8(a) (emphasis added). Finally, licensees must ensure “[s]torage and transportation of product is under conditions that protect against physical, chemical, and microbial contamination.” 37 TEX. ADMIN. CODE § 12.9(a)(7). The Regulations permit transportation of low-THC cannabis through multiple provisions.

Conclusion

I am not aware of any provision in the Compassionate Use Act that explicitly provides for or prohibits the transportation of low-THC cannabis inventory from one facility to another within the state of Texas. The plain language of the Act indicates that the Legislature contemplated multiple premises. The Regulations contemplate a licensed dispensing organization operating out of multiple facilities within the State, require licensees ensure reasonable statewide access to low-THC cannabis, and provide rules regarding transportation of low-THC cannabis inventory.

Based on the foregoing, and to ensure all eligible Texans that choose to participate in this program have equal access to the program, I ask whether a dispensing organization licensed by the Texas Department of Public Safety under the Act may transport and store its low-THC cannabis inventory between department-approved locations before a prescription is issued and filled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Schwertner". The signature is written in a cursive, somewhat stylized font.

Senator Charles Schwertner
Chair Senate Business and Commerce