STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, R.I. 02920

IN RE:	:	
DBR Medical Marijuana Enforcement.	:	**DBR No. 18MM001**

ORDER TO CEASE AND DESIST

I. Introduction

This matter arose from an Order to Show Cause why an Order to Cease and Desist Unlicensed Marijuana Cultivation Activity Should not Issue, Notice of Pre-Hearing Conference and Appointment of Hearing Officer ("Order to Show Cause") issued on May 11, 2018 by the Department of Business Regulation ("Department") to Thad Luzzi, Tyler Losacano, and Eric Sobaczewski ("Respondents"). On April 25, 2019, the undersigned entered an order denying the Respondents' motion to dismiss and granting the Department's first motion to amend the Order to Show Cause. On August 13, 2019, the undersigned entered an order granting the Department's second motion to Amend the Order to Show Cause and ordering the Respondents to comply with discovery requests within 14 days of said order ("Discovery Order").

On January 16, 2020, the Department moved for a default cease and desist order ("Default Motion") to enter against the Respondents for failure to comply with discovery including their failure to comply with the Discovery Order. Section 2.11 of the Department's *Rules of Procedure for Administrative Hearings*, 230-RICR-100-002 ("Hearing Regulation") provides that any objection to a motion shall be filed within ten (10) days of the filing of the written motion. The

Respondents did not file an objection to the Department's Default Motion within ten (10) days and to date, they have not filed an objection.

II. Jurisdiction

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 21-28.6-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and the Hearing Regulation.

III. Discussion

The Department requested that pursuant to § 2.21 of the Hearing Regulation,[1] the undersigned make findings of facts on the basis of the Order to Show Cause and enter a cease and desist order as requested.[2]

Based on the foregoing, the undersigned makes the following findings of fact:

1. Pursuant to § 2.21 of the Hearing Regulation, the Respondents are declared to be in default for their overall failure to respond to discovery, failure to respond to the Default Motion, failure to comply with the Discovery Order within 14 days, and their failure to defend themselves from the Department's action.

2. The following are attached and incorporated by reference into this order:

   a. The Order to Show Cause dated May 18, 2018.

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[1] 2.21 of the Hearing Regulation provides as follows:

> Default
> If any Party to a proceeding fails to answer a complaint, plead, appear at a prehearing conference or hearing or otherwise fails to prosecute or defend an action as provided by these Rules, the Hearing Officer may enter a default judgment against the defaulting Party, take such action based on the pleadings and/or other evidence submitted by the nondefaulting Party as the Hearing Officer deems appropriate in his/her sole discretion or take such other action as the Hearing Officer deems appropriate in his/her sole discretion. Challenge to such an order shall be made as a motion for reconsideration per § 2.19 of this Part, above.

[2] Section 2.11 of the Hearing Regulation allows for any types of motions permissible under the Hearing Regulation and Super. R. Civ. P. Section 2.12 of the Hearing Regulation allows discovery as set forth in Super R. Civ. P. The Department also relied Super. R. Civ. P. 37(b)(2)(C) in its request for a default judgment.

b. First motion by Department to amend the Order to Show Cause dated December 10, 2018.

c. The undersigned's order granting the first motion to amend the Order to Show Cause dated April 25, 2019.

d. Second motion by Department amend the Order to Show Cause dated July 16, 2019.

e. Discovery Order granting second motion by Department to amend Order to Show Cause dated August 13, 2019.

3. Pursuant to § 2.21 of the Hearing Regulation, the allegations in the Order to Show Cause as amended twice are found to be true.

Based on the foregoing, the undersigned makes the following conclusions of law:

The Respondents violated R.I. Gen. Laws § 21-28.6-1 *et seq.* and R.I. Gen. Laws § 21-28.6-14(a)(1) by engaging in unlicensed cooperation cultivation and marijuana cultivation.

On the basis of the foregoing, the undersigned makes the following recommendation:

The Respondents shall cease and desist from any and all Unauthorized Marijuana Cultivation Activity at the Westerly Premises and/or any other location in Rhode Island. For purposes of this order Unauthorized Marijuana Cultivation Activity refers to engaging in any of the following without requisite licensure and/or medical marijuana plant tags from the Department: (i) cultivating marijuana by propagating, growing and harvesting marijuana plants, manufacturing (producing marijuana products), processing/packaging, distributing/delivering/transferring/transporting, selling or otherwise receiving money, remuneration or other consideration for marijuana, or acquiring/possessing marijuana; (ii) actively

controlling, managing, operating, participating in, or facilitating the cultivation of marijuana such as by providing common area, equipment, utilities or other services in connection with the cultivation of marijuana.

Dated: February 26, 2020

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Order and Recommendation in this matter, and I hereby take the following action with regard to the Order and Recommendation:

_____ ADOPT
_____ REJECT
_____ MODIFY

Dated: 2/28/2020

Elizabeth M. Tanner, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 28th day of February, 2020 that a copy of the within Order was sent by first class mail, postage prepaid and certified mail to -

Thad Luzzi
80 Weir Street
Glastonbury, CT 06033

Thad Luzzi
43 Spring Lane
West Hartford, CT 06107

Eric Sobaczewski
48 Lawton Avenue
Westerly, R.I. 02981

Tyler Losacano
141 High Street
Westerly, R.I. 02891

and by electronic delivery to tluz1@yahoo.com; tystaa123@aim.com; esobez@yahoo.com and by electronic delivery to Jenna Giguere, Esquire, and Sara Tindall-Woodman, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

ATTACHMENTS

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDG. 68-1
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

IN RE: DBR MEDICAL MARIJUANA ENFORCEMENT
DBR No. 18MM001

ORDER TO SHOW CAUSE WHY ORDER TO CEASE AND DESIST UNLICENSED MARIJUANA CULTIVATION ACTIVITY SHOULD NOT ISSUE, NOTICE OF PRE- HEARING CONFERENCE AND APPOINTMENT OF HEARING OFFICER

The Director of the Department of Business Regulation ("Department") hereby issues this Order to Show Cause Why Order to Cease and Desist Unlicensed Marijuana Cultivation Activity Should Not Issue, Notice of Pre-Hearing Conference and Appointment of Hearing Officer ("Order") to Respondents Thad Luzzi, Tyler Losacano and Eric Sobaczewski (collectively the "Respondents"). This Order is issued pursuant to the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, R.I. Gen. Laws §§ 21-28.6-1 *et seq.* (the "Act") and the *Rules and Regulations Related to the Medical Marijuana Program Administered by the Rhode Island Department of Business Regulation* 230-RICR-80-05-1 (the "Regulations") (collectively the "Applicable Marijuana Laws") governing the Medical Marijuana Program administered by the Department (the "Program"); and in accordance with the Rhode Island Administrative Procedures Act ("APA"), R.I. Gen. Laws § 42-35-1 *et seq.* and the *Rules of Procedures for Administrative Hearings* 230-RICR-100-00-2 (the "Rules") (collectively the "Applicable Procedural Laws").

The Director issues this Order for the following reasons:

I. Parties

1. Respondent Thad Luzzi ("Luzzi") is an individual residing in Glastonbury, Connecticut.

2. Luzzi is not registered as a medical marijuana cardholder with the Rhode Island Department of Health ("RIDOH"). Luzzi is not licensed by, or a key person, employee or authorized agent of any person or entity that is licensed by, the Department as a medical marijuana cooperative cultivation, medical marijuana cultivator, or compassion center.

3. Respondent Tyler Losacano ("Losacano") is an individual residing in Glastonbury, Connecticut.

4. Losacano is not registered as a medical marijuana cardholder with RIDOH. Losacano is not licensed by, or a key person, employee or authorized agent of any person or entity that is licensed by, the Department as a medical marijuana cooperative cultivation, medical marijuana cultivator, or compassion center.

5. Respondent Eric Sobaczewski ("Sobaczewski") is an individual residing in Westerly, Rhode Island.

6. Sobaczewski is not registered as a medical marijuana cardholder with the RIDOH. Sobaczewski is not licensed by, or a key person, employee or authorized agent of any person or entity that is licensed by, the Department as a medical marijuana cooperative cultivation, medical marijuana cultivator, or compassion center.

7. A Rhode Island Secretary of State records search for Luzzi shows that he is listed as the Resident Agent of "ET Consulting, LLC," a business entity refereneed by Losacano to the Westerly Police in the below described law enforcement investigation. The Secretary of State records further show that ET Consulting, LLC lists as its Principal Office 83 Tom Harvey Road in Westerly; and the address for the Registered Agent is listed as 48 Lawton Avenue in Westerly.

8. Westerly Tax Assessor Records for the 48 Lawton Avenue address noted above reveal that the property is owned by Sobaczewski.

9. In an Affidavit of Eric Sobaczewski filed on behalf of Thad J. Luzzi in the matter of *Thad Luzzi v. BPF Realty, LLC* (Case Number 4CA-2018-00233), Sobaczewski identifies himself as an "employee of Plaintiff Thad J. Luzzi" in connection with the Bradford Premises (defined below).

II. Criminal Information

10. Westerly Police Report 17-1056-AR documents that on October 12, 2017, Losacano was pulled over in a vehicle that was registered to Luzzi in the immediate vicinity of 460 Bradford Road, Westerly, Rhode Island, a building also known in the area to be the former Bradford Dying Association ("BDA") building (hereinafter the "Bradford Premises").

11. Law enforcement records indicate that Losacano was found to be transporting 19.48 kilograms of a substance that tested positive as marijuana.

12. According to law enforcement records, Losacano stated that he was transporting marijuana for "trimming" from Luzzi's "grow off Tom Harvey Rd in Westerly" to Luzzi's "other grow in the old BDA building in Bradford." The route of transport was confirmed by cell phone data analysis. Losacano also referenced Luzzi's "family business" and "ET Consulting."

13. As a result of this activity reported by law enforcement, Losacano was criminally charged with felony drug convictions under R.I. Gen. Laws §§ 21-28-4.01.2(a) and 21-28-4.01(a)(4) (Case No. W2-2017-0349A).

III. Complaints Received by the Program

14. On or about April 2, 2018, the Department received a complaint from Complainant A reporting a "serious skunk smelling odor throughout the whole industrial complex" with a "negative impact on surrounding businesses," allegedly emanating from 83 Tom Harvey Road, Building C, in Westerly, Rhode Island (referred to herein as the "Westerly Premises"). Complainant A reported that he knocked on the door to the Westerly Premises and spoke to Luzzi with regard to the Complainant's odor concerns; during this interaction, Complainant A reported observing through the open door what appeared to be "10 to 15 people trimming marijuana" and "several plastic bins of cut up marijuana."

IV. Westerly Premises Information

15. According to the Westerly Tax Assessor records, Runway Park, LLC is the owner of the Westerly Premises and other buildings at 83 Tom Harvey Road.

16. Louis I. Misto, III identifies himself as the principal of Runway Park, LLC and is listed in the Rhode Island Secretary of State corporate filing.

17. Mr. Misto leases the Westerly Premises to Respondent Luzzi.

18. Mr. Misto operates his own separate and distinct business in Building A across the shared parking lot relative to the Westerly Premises (hereinafter the "Misto Business").

V. Westerly Tag Orders and Inquiry Notices

19. Program records show that on dates ranging between 4/8/2017 and 10/26/2017, seven (7) medical marijuana program cardholders each placed orders for the maximum number of tag sets which orders list the Westerly Premises as the grow address (the "Westerly Tag Orders").

20. As noted above, the Respondents do not hold medical marijuana patient or caregiver cards. Accordingly, they did not and could not place orders for medical marijuana plant tags.

21. On April 2, 2018, the Department prepared "Notices of DBR Medical Marijuana Program Inquiry" (hereinafter "Inquiry Notices") to the individual cardholders who had placed the Westerly Tag Orders (hereinafter the individuals are referred to as the "Westerly Tagholders").

VI. **Westerly Premises Walkthrough with Luzzi**

22. On April 2, 2018, Norman Birenbaum, the Department's Principal Economic and Policy Analyst (the "Principal") and two Program inspectors (collectively the "Program Representatives") travelled to hand deliver the Inquiry Notices to the Westerly Tagholders.

23. Upon their arrival at the Westerly Premises at approximately 2:00 p.m. to make said delivery, the Program Representatives knocked on the door of the Westerly Premises. Initially, a female (hereinafter "Individual #1") answered the door and stated she was going to get her "boss" and locked the door behind her. Then, 8-10 minutes later, a man came to the door and identified himself as Thad Luzzi, the "landlord" of the property. Upon the Principal's request, Luzzi agreed to provide a walkthrough of the facility (the "4-2 Walkthrough").

24. During the 4-2 Walkthrough, the Program Representatives continued to speak with Luzzi and also spoke to Individual #1 and another individual male appearing to be in his late 20's or early 30's (hereinafter "Individual #2"). Individual #2 identified himself to the Program Representatives as the boyfriend of Luzzi's daughter.

25. During the 4-2 Walkthrough, the Program Representatives observed within the Westerly Premises five (5) rooms which had letter labels "A" through "E" posted on each door. With the exception of Room "A," a framed copy of a medical marijuana patient or caregiver card was posted above the door frames of each of those rooms. In addition to these "Rooms," there were several Shared Areas, identified below.

26. During the 4-2 Walkthrough, the Program Representatives delivered the Inquiry Notices to the Westerly Tagholders by taping the Inquiry Notices to the door of the room corresponding to each tagholder's posted medical marijuana card. As the Program Representatives were delivering these Inquiry Notices, Luzzi also confirmed which Rooms he associated with which persons and provided the tape to post the Inquiry Notices.

27. During the 4-2 Walkthrough, the Program Representatives were able to observe within the Westerly Premises a large area that included a large table approximately 10 feet by 5 feet which was covered in plastic sheeting ("Shared Area # 1"). Respondent Luzzi confirmed to the Program Representatives that, in addition to Respondents Luzzi, Individual #1, Individual #2, and all Westerly Tagholders had access to Shared Area #1.

28. Based on their experience, the Program Representatives recognized Shared Area # 1 to be a set-up commonly used by people collectively trimming harvested marijuana plants.

29. The Program Representatives observed a double door in Shared Area #1. Luzzi stated that the double door led to a "mechanical room." Upon request, Luzzi agreed to provide the Program Representatives access into that area ("Shared Area #2"). Luzzi confirmed to the Program Representatives that, in addition to Respondents Luzzi, Individual #1, and Individual #2, all Westerly Tagholders had access to Shared Area #2.

30. From the 4-2 Walkthrough of Shared Area #2 with Respondent Luzzi, the Program Representatives were able to observe the following: The area was being used to store bottles labeled as plant nutrients. Three (3) large reservoirs with connected tubing were identified by the Program Representatives and recognized, based upon their experience, to be a set-up commonly used as an irrigation system for supplying water and nutrients to multiple marijuana grow rooms. Shared Area #2 also contained tables and equipment including a scale, a vacuum sealer, and various clippers, which the Program Representatives identified as materials known from their experience to be commonly used for trimming, weighing, and packing marijuana.

31. During the 4-2 Walkthrough of Shared Area #2 with Respondent Luzzi, the Program Representatives also observed plant material on the tables and floors which the Program Representatives identified from their experience to be bud, leaves, stems, and trim residue of marijuana.

32. During the 4-2 Walkthrough with Respondent Luzzi, the Program Representatives observed that the areas behind Rooms C, D, and E were open to each other and through to Shared Area #2.

33. Based upon the above information from the Westerly Police Report and Individual #2's corresponding self-identification during the 4-2 Walkthrough, the Program determined that Individual #2 was Respondent Losacano.

VII. Information Obtained from Westerly Tagholders on April 16 and 19, 2018

34. On April 16, 2018, the Principal, with attendance of counsel, contacted the Westerly Tagholder whose medical marijuana card was posted above Room C (hereinafter referred to as "JD"). JD reported that while JD and his wife, also a Westerly Tagholder

(hereinafter referred to as "ED") had previously grown medical marijuana at the Westerly Premises using their plant tags, ED and JD had vacated the Westerly Premises around September 2017. JD reported that while JD and ED were growing at the Westerly Premises, Luzzi and Sobaczewski handled the day to day plant cultivation and that Luzzi did not bill ED or JD for any utilities, overhead, or infrastructure associated with the plant cultivation. JD reported that Luzzi and Sobaczewki provided JD and ED with instruction on how to grow marijuana. JD reported that Losacano had his own grow room at the Westerly Premises.

35. On April 16, 2018, the Principal and a program inspector contacted another Westerly Tagholder (hereinafter referred to as "RL"). RL reported that RL had vacated the Westerly Premises prior to Christmas of 2017. RL reported that while RL had grown medical marijuana at the Westerly Premises in 2017 using his medical marijuana plant tags, Luzzi did not bill RL for any utilities, overhead, or infrastructure associated with the plant cultivation.

36. On April 19, 2018, the Principal, with attendance of counsel, contacted the Westerly Tagholder whose medical marijuana card was posted above Room E (hereinafter referred to as "JB"). JB reported that he never grew marijuana at the Westerly Premises. JB reported that he was involved with construction at the Westerly Premises in the summer and fall of 2017. JB reported that during that time, he observed as many as twenty (20) different people accessing the Westerly Premises during harvest. While not specifically identifying those people, JB did report his observation that most of the people appeared to arrive in vehicles with Connecticut plates.

VIII. Discussions and Westerly Premises Walkthrough with R.G.

37. On April 16, 2018, the Principal and a program inspector contacted the Westerly Tagholder whose medical marijuana card was posted above Room B (hereinafter referred to as "RG"). RG reported that RG's medical marijuana plant tags are still in use at the Westerly Premises. During this conversation, RG agreed to take the Program Representative(s) on a walkthrough of his grow room at the Westerly Premises.

38. On April 20, 2018, Program Representatives (the Principal and a program inspector) arrived at the Westerly Premises at approximately 9:00 a.m. to meet with RG as discussed on April 16, 2018 and RG provided a walkthrough of areas where RG reported to grow and of common access areas (hereinafter this walkthrough is referred to as the 4-20 Walkthrough).

39. RG showed the Program Representatives inside Room B, a "flowering room," housing and maintaining approximately twenty-four (24) marijuana plants that were mature in the flowering phase of the marijuana plant growth cycle.

40. RG also showed the Program Representatives inside an additional room, a narrow room located between Room B and Room A but not otherwise labeled (hereinafter referred to as the "Unlabeled Room"). The Unlabeled Room was used as a "vegetative room," housing and maintaining approximately twenty-four (24) marijuana plants that were immature/seedlings in the vegetative phase of the marijuana plant growth cycle.

41. RG showed the Program Representatives inside of another area connected by a door through Room B. RG reported that this area (hereinafter "Shared Area #3") was used by him and other growers in the Westerly Premises and accessible to them via an outside door in the rear of the building. Shared Area #3 contained bottles labeled as plant nutrients.

42. Shared Area #3 also contained four (4) large reservoirs with connected tubing which was identified by the Program Representatives and recognized, based upon their experience, to be a set-up commonly used as an irrigation system for supplying water and nutrients to multiple marijuana grow rooms. RG reported that these water reservoirs were in fact connected to supply Room B as well as the other grow rooms at the Westerly Premises.

43. RG stated that Luzzi asked RG to show the Program Representatives into Room D as a follow-up to a letter Luzzi had sent in response to the Notice of Inquiry on behalf of G.C. whose card was posted above Room D. RG explained that Room D was empty because GC is not actively growing.

44. During the 4-20 Walkthrough, the Program Representatives observed that JB's medical marijuana card above Room E had been removed but that JD's medical marijuana card remained posted above Room C.

45. In discussions with Program Representatives at the 4-20 Walkthrough, RG reported that Room A was operational as a marijuana grow room. As a means of confirming this statement, Program Representatives were able to observe that the sound of air circulation and operating equipment were audible through the door to Room A.

46. During the 4-20 Walkthrough, Program Representatives were also able to observe from sounds along the exterior of the building that the air conditioning condenser units corresponding to Room A and B were actively operating.

47. During the 4-20 Walkthrough, it was apparent to the Program Representatives that the Unlabeled Room and Rooms B and D each had the same set-up of system infrastructure for irrigation, light, ventilation (fan and air conditioner), electric, and other improvements such as benches that hold marijuana plants. Such systems are known from the Program

Representatives' experience to be systems commonly used in the cultivation of marijuana and are hereinafter referred to as the "Cultivation Systems."

48. In discussions with Program Representatives at the 4-20 Walkthrough, RG confirmed the Program Representatives' above noted observations that all of the Rooms have the same "Cultivation Systems."

49. In discussions with Program Representatives at the 4-20 Walkthrough, RG reported that Luzzi takes responsibility for repairs and updates throughout the entire Westerly Premises, including repairs and updates to the "Cultivation Systems."

50. In discussions with Program Representatives at the 4-20 Walkthrough, RG reported that RG provided electrical work for Luzzi at the Westerly Premises and other property. RG reported that his arrangement with Luzzi was to use Room B with virtually all of his costs covered by Luzzi, reportedly because of money Luzzi owed to RG for electrical work.

IX. Additional Information from Property Owner

51. In the course of the Department's investigation, the property owner principal, Mr. Misto, provided the following information: As the landlord and due to his presence at the Misto Business, Mr. Misto frequently monitors activity in the parking lot that serves the buildings both in person and through a video surveillance system which Mr. Misto remotely accesses at his home. In the course of this monitoring, Mr. Misto has routinely observed that there are two (2) vehicles parked in front of the Westerly Premises. Mr. Misto recognizes these two vehicles as one belonging to Luzzi and the other belonging to Luzzi's "partner" named "Eric." It is Mr. Misto's observation that approximately once per month, there are additional vehicles parked at the Westerly Premises, up to a total of 5- 6 vehicles.

X. **Communication between Luzzi and Department Representative(s)**

52. In his communications with the Program Representatives, Luzzi demonstrated his control over the entirety of the cultivation operations at the Westerly Premises. Specifically:

53. By letter dated April 5, 2018, Luzzi's counsel has identified Luzzi as "one of the two owners" of the Westerly Premises.

54. By letters dated April 8, 2018, Luzzi also purported to respond to two of the Inquiry Notices on behalf of two of the Westerly Tagholders, the above "JB" Westerly Tagholder and another Westerly Tagholder, "GC."

55. Luzzi contacted the Program Principal on April 23, 2018. In a conversation witnessed by a program inspector, Luzzi inquired about the 4-20 Walkthrough that the Program Representatives had with RG. Luzzi asked about the requirements and procedures for marijuana disposal and waste for licensed entities. Luzzi stated that the only rooms with marijuana plants in them were Rooms B and C.

XI. **Count 1 - Unlicensed Cooperative Cultivation Operation**

56. Pursuant to R.I. Gen. Laws § 21-28.6-14(a)(1), effective January 1, 2017, cooperative cultivations shall apply to the Department for a license to operate.

57. Section 1.8(B)(1) of the Regulations defines "cooperative cultivation" as two (2) or more qualifying patient or primary caregiver cardholders that elect to cooperatively cultivate marijuana in the same dwelling unit or commercial unit within the limits and subject to the requirements of a cooperative cultivation license under the Act and the regulations.[1]

[1] As previously stated, there is no Cooperative Cultivation license issued for the Westerly Premises. However, even if proper licensing was obtained, participation by the Respondents would be prohibited. Section 1.8(C)(2) of the Regulations provides that no person other than a "member" may participate in the operations of a non-residential cooperative cultivation. Section 1.8(C)(2) defines "member" as "any qualifying patient or primary caregiver with a registry identification card in good standing with the Rhode Island Department of Health who has elected to grow cooperatively with the other members at the cooperative cultivation premises." As previously stated, none of Respondents have been issued medical marijuana cards or medical marijuana plant tags.

58. Respondents have been and are operating a "cooperative cultivation" at the Westerly Premises without the requisite licensure from the Department (hereinafter the "Westerly Unlicensed Cooperative") as evidenced by (a) the configuration, equipment, and conditions of the Westerly Premises observed during the walkthroughs, including both the similar marijuana cultivation setups of the observed individual Rooms and the collective use of the Shared Areas for marijuana cultivation activities; (b) information about operations, management, and control of marijuana cultivation at the Westerly Premises obtained from communications with the Respondents and the Westerly Tagholders; (c) the number of Westerly Tag Orders for marijuana cultivation at the Westerly Premises; (d) Losacano's characterization of his transportation of marijuana being at the direction of Luzzi for Luzzi's "family business."

59. Respondent Luzzi participates in, operates, and exercises control over the Westerly Unlicensed Cooperative as evidenced by the following non-exhaustive list of factors: (a) representation(s) by Westerly Tagholder(s) that Luzzi, along with Sobaczewski, has managed the day to day cultivation of the marijuana plants on the Westerly Premises; (b) Luzzi's access and control throughout the Westerly Premises; (c) Luzzi's payment of the utilities, overhead, and infrastructure of marijuana cultivation operation; (d) Luzzi's observed frequency at the Westerly Premises relative to the frequency of others; and (e) Losacano's characterization of his transportation of marijuana being at the direction of Luzzi for Luzzi's "family business."

60. Respondent Sobaczewski participates in, operates, and exercises control over the Westerly Unlicensed Cooperative as evidenced by the following non-exhaustive list of factors: (a) representation(s) by Westerly Tagholder(s) that Sobaczewski, along with Luzzi, has

managed the day to day cultivation of the marijuana plants on the Westerly Premises; (b) Sobaczewski's observed frequency at the Westerly Premises relative to the frequency of others; and (c) Sobaczewski's status as Luzzi's employee with respect to operations at the Bradford Premises, which Losacano identified as the other grow in the "family business."

61. Respondent Losacano participates in, operates, and exercises control over the Westerly Unlicensed Cooperative as evidenced by the following non-exhaustive list of factors: (a) Losacano's access throughout the Westerly Premises; (b) Losacano's characterization of his transportation of marijuana being at the direction of Luzzi for Luzzi's "family business" (and specifically from the Westerly Premises to the Bradford Premises); and (c) representation(s) by Westerly Tagholder(s) that Losacano also tended to his own marijuana grow room at the Westerly Premises.

62. As stated above, none of the Respondents is a medical marijuana program licensee or cardholder and none of the Respondents has or is authorized to order medical marijuana tags or to grow medical marijuana under the program.

XII. Cease and Desist Relief Requested

Based on the foregoing recitation of facts and law, the Department respectfully requests that the Hearing Officer recommend and that the Director issue an order commanding the Respondents to cease and desist from any and all Unlicensed Marijuana Cultivation Activity at the Westerly Premises and/or any other location in Rhode Island. For purposes of this Order to Show Cause, Unlicensed Marijuana Cultivation Activity refers to engaging in any of the following without requisite licensure from the Department: (i) cultivating marijuana by growing marijuana plants, manufacturing (producing marijuana products), processing/packaging, distributing/delivering/transferring/transporting, or acquiring/possessing marijuana; (ii) actively

controlling, operating participating in, or facilitating the cultivation of marijuana such as by providing common area, equipment, utilities or other services in connection with the cultivation of marijuana.

THEREFORE, the Director hereby orders the Respondents to appear before a Hearing Officer to show cause why an Order to Cease and Desist Order Unlicensed Activity should not issue.

In accordance with the Department's *Rules of Procedures for Administrative Hearings* 230-RICR-100-00-2 (the "Rules"), Section 2.6, a **Pre-Hearing Conference** shall be held on **May 29, 2018 at 1:30 p.m.** at the Department's offices located at **1511 Pontiac Avenue, Bldg. 68,** Cranston, Rhode Island 02920.

Pursuant to R.I. Gen. Laws § 42-6-8, the Director hereby appoints Catherine Warren, Esq., as Hearing Officer for the purpose of conducting the hearing and rendering a recommended decision in this matter.

The proceedings shall be conducted in conformity with the APA and the Rules. Section 2.5 of the Rules provides that it shall be the Respondent's sole responsibility to present the Respondent's defense to the Hearing Officer. Pursuant to Section 2.7 of the Rules, the Respondent may be represented by legal counsel admitted in the State of Rhode Island. Individuals, and partners of partnerships, may appear *pro se* if they choose. However, corporations may not appear *pro se*. If the Respondent fails to appear at the Pre-Hearing Conference, and has not otherwise notified the Department of the Respondent's inability to attend, the Hearing Officer may enter a default judgment against the Respondent pursuant to Section 2.21 of the Rules.

Dated this 11th day of May, 2018.

Elizabeth Tanner
Director

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email DBR.dirofficeinq@dbr.ri.gov at least three (3) business days prior to the hearing.

DELIVERY CERTIFICATION

I hereby certify that on this 11 day of May 2018 a copy of this Order was delivered as indicated below. _____ (Signature).

1. By first class mail, postage prepaid, to:

   Thad Luzzi
   80 Weir Street
   Glastonbury, CT 06033

   Thad Luzzi
   83 Tom Harvey Road, Building C
   Westerly, RI 02891

   Eric Sobaczewski
   48 Lawton Ave
   Westerly, RI 02891

   Tyler Losacano
   24 Stony Brook Drive
   Glastonbury, CT 06033

   Joseph Voccola, Esq.
   454 Broadway
   Providence, RI 02909

2. By certified mail, return receipt requested, to:

   Thad Luzzi
   80 Weir Street
   Glastonbury, CT 06033

   Thad Luzzi
   83 Tom Harvey Road, Building C
   Westerly, RI 02891

   Eric Sobaczewski
   48 Lawton Ave
   Westerly, RI 02891

   Tyler Losacano
   24 Stony Brook Drive
   Glastonbury, CT 06033

3. By e-mail to Catherine Warren, Esq. Hearing Officer (catherine.warren@doa.ri.gov); Joseph Voccola, Esq. (haddasha@joevoccolalawoffices.com); Jenna Giguere, Esq. (jenna.giguere@dbr.ri.gov), and Sara K. Tindall-Woodman, Esq. (sara.k.tindallwoodman@dbr.ri.gov).

4. By e-mail to Norman Birenbaum, Principal Economic and Policy Analyst (norman.birenbaum@dbr.ri.gov) and Pamela J. Toro, Esq., Chief of Legal Services (pamela.toro@dbr.ri.gov).

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDG. 68-1
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

IN RE: DBR MEDICAL MARIJUANA ENFORCEMENT
DBR No. 18MM001

REQUEST TO AMEND ORDER TO SHOW CAUSE

The Department of Business Regulation ("Department") hereby requests to update the May 11, 2018 Order to Show Cause Why Cease and Desist Order Should Not Issue by submitting the attached Amended Order to Show Cause, which modifies and adds to the original Order to Show Cause. The material modifications and additions are summarized below.

a. ¶ 13 corrects a drafting error.
b. ¶ 19 adds a date reference.
c. Section XI (¶ 56-57) is a new section adding information obtained from Respondent Luzzi in the course of discovery.
d. Section XII (¶ 58) is a new section with updated tag information in follow-up to ¶ 19.
e. Section XIII provides for a modified Count 1 for Unlicensed Cooperative Cultivation Operations (¶ 60 is new; ¶ 62-65 are reformatted for ease of reading/reference; ¶ 59, 62, 63, and 64 are modified from paragraphs in the original Order to Show Cause).
f. Section XIV (¶ 67-71) is a new section for Count 2 for Marijuana Cultivation in Violation of the Act.
g. Section XV is a modification of the Cease and Desist Relief Requested.

Respectfully Submitted,
Department of Business Regulation
By its Attorneys,

Jenna R. Giguere, Esq.
Sara Tindall-Woodman, Esq.
Department of Business Regulation
1511 Pontiac Avenue, Bldg 68-1
Cranston, Rhode Island 02920

Dated: December 10, 2018

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDG. 68-1
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

IN RE: DBR MEDICAL MARIJUANA ENFORCEMENT
DBR No. 18MM001

AMENDED ORDER TO SHOW CAUSE WHY ORDER TO CEASE AND DESIST UNLICENSED MARIJUANA CULTIVATION ACTIVITY SHOULD NOT ISSUE, NOTICE OF PRE- HEARING CONFERENCE AND APPOINTMENT OF HEARING OFFICER

The Director of the Department of Business Regulation ("Department" or "DBR") hereby issues this Amended Order to Show Cause Why Order to Cease and Desist Unlicensed Marijuana Cultivation Activity Should Not Issue, Notice of Pre-Hearing Conference and Appointment of Hearing Officer ("Order") to Respondents Thad Luzzi, Tyler Losacano and Eric Sobaczewski (collectively the "Respondents").This Order is issued pursuant to the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, R.I. Gen. Laws §§ 21-28.6-1 *et seq.* (the "Act") and the *Rules and Regulations Related to the Medical Marijuana Program Administered by the Rhode Island Department of Business Regulation* 230-RICR-80-05-1 (the "Regulations") (collectively the "Applicable Marijuana Laws") governing the Medical Marijuana Program administered by the Department (the "Program"); and in accordance with the Rhode Island Administrative Procedures Act ("APA"), R.I. Gen. Laws § 42-35-1 *et seq.* and the *Rules of Procedures for Administrative Hearings* 230-RICR-100-00-2 (the "Rules") (collectively the "Applicable Procedural Laws").

The Director issues this Order for the following reasons:

I. Parties

1. Respondent Thad Luzzi ("Luzzi") is an individual residing in Glastonbury, Connecticut.

2. Luzzi is not registered as a medical marijuana cardholder with the Rhode Island Department of Health ("RIDOH"). Luzzi is not licensed by, or a key person, employee or authorized agent of any person or entity that is licensed by, the Department as a medical marijuana cooperative cultivation, medical marijuana cultivator, or compassion center.

3. Respondent Tyler Losacano ("Losacano") is an individual residing in Glastonbury, Connecticut.

4. Losacano is not registered as a medical marijuana cardholder with RIDOH. Losacano is not licensed by, or a key person, employee or authorized agent of any person or entity that is licensed by, the Department as a medical marijuana cooperative cultivation, medical marijuana cultivator, or compassion center.

5. Respondent Eric Sobaczewski ("Sobaczewski") is an individual residing in Westerly, Rhode Island.

6. Sobaczewski is not registered as a medical marijuana cardholder with the RIDOH. Sobaczewski is not licensed by, or a key person, employee or authorized agent of any person or entity that is licensed by, the Department as a medical marijuana cooperative cultivation, medical marijuana cultivator, or compassion center.

7. A Rhode Island Secretary of State records search for Luzzi shows that he is listed as the Resident Agent of "ET Consulting, LLC," a business entity referenced by Losacano to the Westerly Police in the below described law enforcement investigation. The Secretary of State records further show that ET Consulting, LLC lists as its Principal Office 83 Tom Harvey Road in Westerly; and the address for the Registered Agent is listed as 48 Lawton Avenue in Westerly.

8. Westerly Tax Assessor Records for the 48 Lawton Avenue address noted above reveal that the property is owned by Sobaczewski.

9. In an Affidavit of Eric Sobaczewski filed on behalf of Thad J. Luzzi in the matter of *Thad Luzzi v. BPF Realty, LLC* (Case Number 4CA-2018-00233), Sobaczewski identifies himself as an "employee of Plaintiff Thad J. Luzzi" in connection with the Bradford Premises (defined below).

II. Criminal Information

10. Westerly Police Report 17-1056-AR documents that on October 12, 2017, Losacano was pulled over in a vehicle that was registered to Luzzi in the immediate vicinity of 460 Bradford Road, Westerly, Rhode Island, a building also known in the area to be the former Bradford Dying Association ("BDA") building (hereinafter the "Bradford Premises").

11. Law enforcement records indicate that Losacano was found to be transporting 19.48 kilograms of a substance that tested positive as marijuana.

12. According to law enforcement records, Losacano stated that he was transporting marijuana for "trimming" from Luzzi's "grow off Tom Harvey Rd in Westerly" to Luzzi's "other grow in the old BDA building in Bradford." The route of transport was confirmed by cell phone data analysis. Losacano also referenced Luzzi's "family business" and "ET Consulting."

13. As a result of this activity reported by law enforcement, Losacano was criminally charged with felony drug offenses under R.I. Gen. Laws §§ 21-28-4.01.2(a) and 21-28-4.01(a)(4) (Case No. W2-2017-0349A).

III. Complaints Received by the Program

14. On or about April 2, 2018, the Department received a complaint from Complainant A reporting a "serious skunk smelling odor throughout the whole industrial complex" with a "negative impact on surrounding businesses," allegedly emanating from 83 Tom Harvey Road, Building C, in Westerly, Rhode Island (referred to herein as the "Westerly Premises"). Complainant A reported that he knocked on the door to the Westerly Premises and spoke to Luzzi with regard to the Complainant's odor concerns; during this interaction, Complainant A reported observing through the open door what appeared to be "10 to 15 people trimming marijuana" and "several plastic bins of cut up marijuana."

IV. Westerly Premises Information

15. According to the Westerly Tax Assessor records, Runway Park, LLC is the owner of the Westerly Premises and other buildings at 83 Tom Harvey Road.

16. Louis I. Misto, III identifies himself as the principal of Runway Park, LLC and is listed in the Rhode Island Secretary of State corporate filing.

17. Mr. Misto leases the Westerly Premises to Respondent Luzzi.

18. Mr. Misto operates his own separate and distinct business in Building A across the shared parking lot relative to the Westerly Premises (hereinafter the "Misto Business").

V. Westerly Tag Orders and Inquiry Notices

19. As of April 2, 2018, Program records showed that on dates ranging between 4/8/2017 and 10/26/2017, seven (7) medical marijuana program cardholders each placed orders for the maximum number of tag sets which orders list the Westerly Premises as the grow address (the "Westerly Tag Orders").

20. As noted above, the Respondents do not hold medical marijuana patient or caregiver cards. Accordingly, they did not and could not place orders for medical marijuana plant tags.

21. On April 2, 2018, the Department prepared "Notices of DBR Medical Marijuana Program Inquiry" (hereinafter "Inquiry Notices") to the individual cardholders who had placed the Westerly Tag Orders (hereinafter the individuals are referred to as the "Westerly Tagholders").

VI. Westerly Premises Walkthrough with Luzzi

22. On April 2, 2018, Norman Birenbaum, the Department's Principal Economic and Policy Analyst (the "Principal") and two Program inspectors (collectively the "Program Representatives") travelled to hand deliver the Inquiry Notices to the Westerly Tagholders.

23. Upon their arrival at the Westerly Premises at approximately 2:00 p.m. to make said delivery, the Program Representatives knocked on the door of the Westerly Premises. Initially, a female (hereinafter "Individual #1") answered the door and stated she was going to get her "boss" and locked the door behind her. Then, 8-10 minutes later, a man came to the door and identified himself as Thad Luzzi, the "landlord" of the property. Upon the Principal's request, Luzzi agreed to provide a walkthrough of the facility (the "4-2 Walkthrough").

24. During the 4-2 Walkthrough, the Program Representatives continued to speak with Luzzi and also spoke to Individual #1 and another individual male appearing to be in his late 20's or early 30's (hereinafter "Individual #2"). Individual #2 identified himself to the Program Representativesas the boyfriend of Luzzi's daughter.

25. During the 4-2 Walkthrough, the Program Representatives observed within the Westerly Premises five (5) rooms which had letter labels "A" through "E" posted on each door. With the exception of Room "A," a framed copy of a medical marijuana patient or caregiver card

was posted above the door frames of each of those rooms. In addition to these "Rooms," there were several Shared Areas, identified below.

26. During the 4-2 Walkthrough, the Program Representatives delivered the Inquiry Notices to the Westerly Tagholders by taping the Inquiry Notices to the door of the room corresponding to each tagholder's posted medical marijuana card. As the Program Representatives were delivering these Inquiry Notices, Luzzi also confirmed which Rooms he associated with which persons and provided the tape to post the Inquiry Notices.

27. During the 4-2 Walkthrough, the Program Representatives were able to observe within the Westerly Premises a large area that included a large table approximately 10 feet by 5 feet which was covered in plastic sheeting ("Shared Area # 1"). Respondent Luzzi confirmed to the Program Representatives that, in addition to Respondents Luzzi, Individual #1, Individual #2, and all Westerly Tagholders had access to Shared Area #1.

28. Based on their experience, the Program Representatives recognized Shared Area # 1 to be a set-up commonly used by people collectively trimming harvested marijuana plants.

29. The Program Representatives observed a double door in Shared Area #1. Luzzi stated that the double door led to a "mechanical room." Upon request, Luzzi agreed to provide the Program Representatives access into that area ("Shared Area #2"). Luzzi confirmed to the Program Representatives that, in addition to Respondents Luzzi, Individual #1, and Individual #2, all Westerly Tagholders had access to Shared Area #2.

30. From the 4-2 Walkthrough of Shared Area #2 with Respondent Luzzi, the Program Representatives were able to observe the following: The area was being used to store bottles labeled as plant nutrients. Three (3) large reservoirs with connected tubing were identified by the Program Representatives and recognized, based upon their experience, to

be a set-up commonly used as an irrigation system for supplying water and nutrients to multiple marijuana grow rooms. Shared Area #2 also contained tables and equipment including a scale, a vacuum sealer, and various clippers, which the Program Representatives identified as materials known from their experience to be commonly used for trimming, weighing, and packing marijuana.

31. During the 4-2 Walkthrough of Shared Area #2 with Respondent Luzzi, the Program Representatives also observed plant material on the tables and floors which the Program Representatives identified from their experience to be bud, leaves, stems, and trim residue of marijuana.

32. During the 4-2 Walkthrough with Respondent Luzzi, the Program Representatives observed that the areas behind Rooms C, D, and E were open to each other and through to Shared Area #2.

33. Based upon the above information from the Westerly Police Report and Individual #2's corresponding self-identification during the 4-2 Walkthrough, the Program determined that Individual #2 was Respondent Losacano.

VII. Information Obtained from Westerly Tagholders on April 16 and 19, 2018

34. On April 16, 2018, the Principal, with attendance of counsel, contacted the Westerly Tagholder whose medical marijuana card was posted above Room C (hereinafter referred to as "JD"). JD reported that while JD and his wife, also a Westerly Tagholder (hereinafter referred to as "ED") had previously grown medical marijuana at the Westerly Premises using their plant tags, ED and JD had vacated the Westerly Premises around September 2017. JD reported that while JD and ED were growing at the Westerly Premises, Luzzi and Sobaczewski handled the day to day plant cultivation and that Luzzi did not bill ED or

JD for any utilities, overhead, or infrastructure associated with the plant cultivation. JD reported that Luzzi and Sobaczewki provided JD and ED with instruction on how to grow marijuana. JD reported that Losacano had his own grow room at the Westerly Premises.

35. On April 16, 2018, the Principal and a program inspector contacted another Westerly Tagholder (hereinafter referred to as "RL"). RL reported that RL had vacated the Westerly Premises prior to Christmas of 2017. RL reported that while RL had grown medical marijuana at the Westerly Premises in 2017 using his medical marijuana plant tags, Luzzi did not bill RL for any utilities, overhead, or infrastructure associated with the plant cultivation.

36. On April 19, 2018, the Principal, with attendance of counsel, contacted the Westerly Tagholder whose medical marijuana card was posted above Room E (hereinafter referred to as "JB"). JB reported that he never grew marijuana at the Westerly Premises. JB reported that he was involved with construction at the Westerly Premises in the summer and fall of 2017. JB reported that during that time, he observed as many as twenty (20) different people accessing the Westerly Premises during harvest. While not specifically identifying those people, JB did report his observation that most of the people appeared to arrive in vehicles with Connecticut plates.

VIII. Discussions and Westerly Premises Walkthrough with R.G.

37. On April 16, 2018, the Principal and a program inspector contacted the Westerly Tagholder whose medical marijuana card was posted above Room B (hereinafter referred to as "RG"). RG reported that RG's medical marijuana plant tags are still in use at the Westerly Premises. During this conversation, RG agreed to take the Program Representative(s) on a walkthrough of his grow room at the Westerly Premises.

38. On April 20, 2018, Program Representatives (the Principal and a program inspector) arrived at the Westerly Premises at approximately 9:00 a.m. to meet with RG as discussed on April 16, 2018 and RG provided a walkthrough of areas where RG reported to grow and of common access areas (hereinafter this walkthrough is referred to as the 4-20 Walkthrough).

39. RG showed the Program Representatives inside Room B, a "flowering room," housing and maintaining approximately twenty-four (24) marijuana plants that were mature in the flowering phase of the marijuana plant growth cycle.

40. RG also showed the Program Representatives inside an additional room, a narrow room located between Room B and Room A but not otherwise labeled (hereinafter referred to as the "Unlabeled Room"). The Unlabeled Room was used as a "vegetative room," housing and maintaining approximately twenty-four (24) marijuana plants that were immature/seedlings in the vegetative phase of the marijuana plant growth cycle.

41. RG showed the Program Representatives inside of another area connected by a door through Room B. RG reported that this area (hereinafter "Shared Area #3") was used by him and other growers in the Westerly Premises and accessible to them via an outside door in the rear of the building. Shared Area #3 contained bottles labeled as plant nutrients.

42. Shared Area #3 also contained four (4) large reservoirs with connected tubing which was identified by the Program Representatives and recognized, based upon their experience, to be a set-up commonly used as an irrigation system for supplying water and nutrients to multiple marijuana grow rooms. RG reported that these water reservoirs were in fact connected to supply Room B as well as the other grow rooms at the Westerly Premises.

43. RG stated that Luzzi asked RG to show the Program Representatives into Room D as a follow-up to a letter Luzzi had sent in response to the Notice of Inquiry on behalf of G.C. whose card was posted above Room D. RG explained that Room D was empty because GC is not actively growing.

44. During the 4-20 Walkthrough, the Program Representatives observed that JB's medical marijuana card above Room E had been removed but that JD's medical marijuana card remained posted above Room C.

45. In discussions with Program Representatives at the 4-20 Walkthrough, RG reported that Room A was operational as a marijuana grow room. As a means of confirming this statement, Program Representatives were able to observe that the sound of air circulation and operating equipment were audible through the door to Room A.

46. During the 4-20 Walkthrough, Program Representatives were also able to observe from sounds along the exterior of the building that the air conditioning condenser units corresponding to Room A and B were actively operating.

47. During the 4-20 Walkthrough, it was apparent to the Program Representatives that the Unlabeled Room and Rooms B and D each had the same set-up of system infrastructure for irrigation, light, ventilation (fan and air conditioner), electric, and other improvements such as benches that hold marijuana plants. Such systems are known from the Program Representatives' experience to be systems commonly used in the cultivation of marijuana and are hereinafter referred to as the "Cultivation Systems."

48. In discussions with Program Representatives at the 4-20 Walkthrough, RG confirmed the Program Representatives' above noted observations that all of the Rooms have the same "Cultivation Systems."

49. In discussions with Program Representatives at the 4-20 Walkthrough, RG reported that Luzzi takes responsibility for repairs and updates throughout the entire Westerly Premises, including repairs and updates to the "Cultivation Systems."

50. In discussions with Program Representatives at the 4-20 Walkthrough, RG reported that RG provided electrical work for Luzzi at the Westerly Premises and other property. RG reported that his arrangement with Luzzi was to use Room B with virtually all of his costs covered by Luzzi, reportedly because of money Luzzi owed to RG for electrical work.

IX. Additional Information from Property Owner

51. In the course of the Department's investigation, the property owner principal, Mr. Misto, provided the following information: As the landlord and due to his presence at the Misto Business, Mr. Misto frequently monitors activity in the parking lot that serves the buildings both in person and through a video surveillance system which Mr. Misto remotely accesses at his home. In the course of this monitoring, Mr. Misto has routinely observed that there are two (2) vehicles parked in front of the Westerly Premises. Mr. Misto recognizes these two vehicles as one belonging to Luzzi and the other belonging to Luzzi's "partner" named "Eric." It is Mr. Misto's observation that approximately once per month, there are additional vehicles parked at the Westerly Premises, up to a total of 5- 6 vehicles.

X. Communication between Luzzi and Department Representative(s)

52. In his communications with the Program Representatives, Luzzi demonstrated his control over the entirety of the cultivation operations at the Westerly Premises. Specifically:

53. By letter dated April 5, 2018, Luzzi's counsel has identified Luzzi as "one of the two owners" of the Westerly Premises.

54. By letters dated April 8, 2018, Luzzi also purported to respond to two of the Inquiry Notices on behalf of two of the Westerly Tagholders, the above "JB" Westerly Tagholder and another Westerly Tagholder, "GC."

55. Luzzi contacted the Program Principal on April 23, 2018. In a conversation witnessed by a program inspector, Luzzi inquired about the 4-20 Walkthrough that the Program Representatives had with RG. Luzzi asked about the requirements and procedures for marijuana disposal and waste for licensed entities. Luzzi stated that the only rooms with marijuana plants in them were Rooms B and C.

XI. Discovery Regarding Commercial Lease and Management/Operation of the Westerly Premises.

56. In the course of the discovery conducted to date by those certain Requests for Production ("RFPs") and Interrogatories ("ROGs") dated June 15, 2018, a copy of the Commercial Lease for the Westerly Premises was produced by Respondent Luzzi as Exhibit A to his responses to the RFPs.[1] The following provisions of the Commercial Lease are particularly relevant to this matter:

a. Thad Luzzi and Eric Sobaczewski are listed as joint lessees. (Ex. A, Pg. 1).
b. The Joint Lessees "use and occupy the premises for purposes of conducting business." (Ex. A #2).
c. The Joint Lessees are responsible for paying a $13,650 security deposit (Ex. A #18) and $6,060.00 per month for their lease of the Premises (Ex. A #1). The Joint Lessees are also required to maintain a $1,000,000 insurance policy for the Premises. (Ex. A #12).
d. Joint Lessees are required to receive "prior written consent of the Lessor" in order to "assign this lease or sublet any portion of the premises." (Ex. A #6).
e. No evidence of such consent or any subleases or assignment has been presented by Respondent Luzzi in his response to the RFPs or ROGs or otherwise by the any of the three Respondents.

[1] Respondents Losacano and Sobacsweski have yet to respond to the Department's discovery.

57. In the course of the discovery, Respondent Luzzi made the following material admissions that pertain to the Westerly Premises:

a. Respondents incurred $203,500 in up-front expenditures to build out and equip the Westerly Premises for Marijuana Activity. See Int. #56. Respondents reported that they have a continuing overhead expense of $6,060.00 per month for their commercial lease of the Westerly Premises. See Int. #55. Additionally, the Commercial Lease for the Westerly Premises confirms the same and provides for an expenditure by the Respondents of a $13,650 security deposit on the Westerly Premises. See Ex. A to RFP.

b. Despite these significant up-front investments and continuing overhead expenditures, the Respondents report that they have not collected any monetary compensation from room occupants. See Int. #49. Respondents state that occupants compensated the Respondent with "labor," with the exception of one occupant, who provided neither monetary consideration nor "labor." See Int. #49. None of these arrangements were documented in writing. See RFP #10.

c. Respondents designed and manage the Westerly Premises such that they give occupants collective access to the shared nutrient room. See Int. #9(a). Respondents designed and manage the Premises such that they give occupants collective access to vegetation room(s). See Int. #9(a).[2, 3] Because the Respondents designed and manage the Premises such that the vegetation rooms are shared, the Respondents manage the Premises such that the grow cycles and harvests for the Medical Marijuana Plants on the Westerly Premises are staggered. See Int. #15.

d. Respondents designed and manage the Westerly Premises such that the trimming room is a shared room. See Int. #19. The Respondents state that the Respondents manage and control access to the shared trimming room for trimming. See Int. #19.

e. The Respondents admit to performing a variety of services at the Westerly Premises including general maintenance to equipment, changing of failed light bulbs, failed lights, charging AC units, changing failed pumps, plumping leaks, changing of filters on AC air handlers, sweeping, cleaning, removal of garbage. See Int. #51. There is no formal written process by which an occupant reports any needs for repairs or requests for upgrades but rather such services are performed on any "notification to landlords." Int. #62. The specialized infrastructure and equipment for the cultivation of marijuana on the Westerly

[2] In a typical commercial marijuana grow, plants begin in a vegetative room, which is a room where the lighting, irrigation, and other environmental settings meet the unique needs of a vegetative (early stage) plant. When plants begin to reach a mature state, the lighting, irrigation, and other environmental setting needs change dramatically. At that point, a typical commercial marijuana operation will move the plants out of the vegetative room into flowering rooms where all non-vegetative plants continue to be cultivator until harvest.

[3] Int. #9(a) references two vegetation rooms. The Program Representatives observed one vegetation room. The vegetation room(s) is/was shared by occupants. The Respondents stated that there were five (5) occupants. Int. #4. seven (7) different persons placed tag orders on the Westerly Premises. The Respondents designed and maintained the Premises such that 5-7 persons were sharing 1-2 vegetation rooms.

Premises that the Respondents "service" is significant, including but not limited to the following in each of the five grow rooms: 23 lights per room (Int. #23(a)), wall mount fans (Int. #23(c)), irrigation tanks (Int. #23(e)), large commercial grade 10-15 ton output/capacity air-conditioning units (Int. #23(f)), specialized fixtures such as wood benches for plant pot placement (Int. #23(i)). The Respondents also installed Home Depot Nest Cameras on the Westerly Premises and are the ones who have access to the footage (not the occupants). See Int. #44.

f. Respondent Luzzi states that Respondent Losacano works on the Westerly Premises for 15-20 hours per week. See RFP # 38. Respondent Luzzi reports being on the Westerly Premises approximately one time per week. See Int. #50(b). It was further stated that between Respondent Luzzi, Sobaczewski, and Losacano, one of them is "on" the Westerly Premises all at all times. See Int. #50(a).

XII. Updated Medical Marijuana Tag and Licensing Information with Respect to the Westerly Premises.

58. There are currently no valid medical marijuana plant tags issued with respect to the Westerly Premises. There are currently no medical marijuana cooperative cultivation, cultivator or compassion center licenses issued with respect to the Westerly Premises. Accordingly, there is no authorization or legal protections to cultivate medical marijuana plants at the Westerly Premises whatsoever and such cultivation is in violation of the Act. Specifically:

a. The person whose medical marijuana card was posted above Room B placed a medical marijuana plant tag order but due to non-payment, tags were never issued. The mature medical marijuana plants found in Room B by Program Representatives during the 4-20 Walkthrough never had legally valid medical marijuana plant tags associated with them.
b. The medical marijuana plant tags previously issued to the person whose medical marijuana card was posted above Room C expired as of April 9, 2018.
c. The medical marijuana plant tags previously issued to the person whose medical marijuana card was posted above Room D expired as of October 26, 2018.
d. The medical marijuana plant tags previously issued to the person whose medical marijuana card was posted above Room E took affirmative action to cancel his tags on November 3, 2017.

XIII. Count 1 - Unlicensed Cooperative Cultivation Operation

59. Pursuant to R.I. Gen. Laws § 21-28.6-14(a)(1), effective January 1, 2017, cooperative cultivations shall apply to the Department for a license to operate. Pursuant to R.I. Gen. Laws § 21-28.6-14(a)(3) and Section 1.8(F)(1) of the Regulations, no single location may have more

than one cooperative cultivation; for purposes of this restriction, location means one structural building, not units within a structural building.

60. Pursuant to Section 1.8(C)(2) of the Regulations, no person other than a DBR-licensed cooperative cultivation "member" may participate in the management or operation of a cooperative cultivation or exert any direct or indirect authority over the management or operations of a cooperative cultivation.

61. Section 1.8(B)(1) of the Regulations defines "cooperative cultivation" as two (2) or more qualifying patient or primary caregiver cardholders that elect to cooperatively cultivate marijuana in the same dwelling unit or commercial unit within the limits and subject to the requirements of a cooperative cultivation license under the Act and the regulations.[4]

62. Respondents have been and are operating a "cooperative cultivation" at the Westerly Premises without the requisite licensure from the Department (hereinafter the "Westerly Unlicensed Cooperative") as evidenced by the following non-exhaustive list of factors:

    a. The configuration, equipment, and conditions of the Westerly Premises observed during the walkthroughs, including both the similar marijuana cultivation setups of the observed individual Rooms and the collective use of the Shared Areas for marijuana cultivation activities;
    b. Information about operations, management, and control of marijuana cultivation at the Westerly Premises obtained from communications with the Respondents and the Westerly Tagholders and provided by Respondent Luzzi in his responses to the RFPs and ROGs;
    c. The number of Westerly Tag Orders for marijuana cultivation at the Westerly Premises; and
    d. Losacano's characterization of his transportation of marijuana being at the direction of Luzzi for Luzzi's "family business."

[4] As previously stated, there is no Cooperative Cultivation license issued for the Westerly Premises. However, even if proper licensing was obtained, participation by the Respondents would be prohibited. Section 1.8(C)(2) of the Regulations provides that no person other than a "member" may participate in the operations of a non-residential cooperative cultivation. Section 1.8(C)(2) defines "member" as "any qualifying patient or primary caregiver with a registry identification card in good standing with the Rhode Island Department of Health who has elected to grow cooperatively with the other members at the cooperative cultivation premises." As previously stated, none of Respondents have been issued medical marijuana cards or medical marijuana plant tags.

63. Respondent Luzzi participates in, manages, operates, and exercises control over the Westerly Unlicensed Cooperative as evidenced by the following non-exhaustive list of factors:

a. Representation(s) by Westerly Tagholder(s) that Luzzi, along with Sobaczewski, has managed the day to day cultivation of the marijuana plants on the Westerly Premises;
b. Luzzi's access and control throughout the Westerly Premises;
c. Luzzi's payment of the utilities, overhead, and infrastructure of marijuana cultivation operation;
d. Luzzi's responses to discovery are devoid of any evidence of sublease to third parties and confirm that the sizeable investment and significant monthly overhead and other costs associated with the cultivation of marijuana at the Westerly Premises have been borne by Respondents with no pass through or reimbursement by any third-party occupants of the Premises;
e. Luzzi's observed frequency at the Westerly Premises relative to the frequency of others; and
f. Losacano's characterization of his transportation of marijuana being at the direction of Luzzi for Luzzi's "family business."

64. Respondent Sobaczewski participates in, manages, operates, and exercises control over the Westerly Unlicensed Cooperative as evidenced by the following non-exhaustive list of factors:

a. Representation(s) by Westerly Tagholder(s) that Sobaczewski, along with Luzzi, has managed the day to day cultivation of the marijuana plants on the Westerly Premises;
b. Luzzi's responses to discovery are devoid of any evidence of sublease to third parties and confirm that the sizeable investment and significant monthly overhead and other costs associated with the cultivation of marijuana at the Westerly Premises have been borne by Respondents with no pass through or reimbursement by any third party occupants of the Premises (and Sobacsweski failed to respond to discovery or produce anything that would demonstrate otherwise);
c. Sobaczewski's observed frequency at the Westerly Premises relative to the frequency of others; and
d. Sobaczewski's status as Luzzi's employee with respect to operations at the Bradford Premises, which Losacano identified as the other grow in the "family business."

65. Respondent Losacano participates in, operates, and exercises control over the Westerly Unlicensed Cooperative as evidenced by the following non-exhaustive list of factors:

a. Losacano's access throughout the Westerly Premises;
b. Losacano's characterization of his transportation of marijuana being at the direction of Luzzi for Luzzi's "family business" (and specifically from the Westerly Premises to the Bradford Premises); and
c. Representation(s) by Westerly Tagholder(s) that Losacano also tended to his own marijuana grow room at the Westerly Premises.

66. As stated above, none of the Respondents is a medical marijuana program licensee or cardholder and none of the Respondents has or is authorized to order medical marijuana tags or to grow medical marijuana under the program.

XIV. Count 2 – Marijuana Cultivation in Violation of the Act

67. Marijuana may only be cultivated lawfully in the State of Rhode Island by a registered patient or caregiver who holds valid DBR-issued plant tags, or by a cooperative cultivation, cultivator or compassion center that holds a valid DBR-issued license.

68. None of the Respondents holds a valid DOH-issued patient or caregiver registration card. None of Respondents holds valid DBR-issued medical marijuana plant tags. None of Respondents holds a DBR-issued license as a cooperative cultivation, cultivator or compassion center. As such, none of Respondents is authorized to cultivate marijuana at the Westerly Premises or elsewhere within the State of Rhode Island.

69. Furthermore, no third party holds a valid patient or caregiver registration, medical marijuana plant tags or any license authorizing the cultivation of marijuana at the Westerly Premises. As such, no person is authorized to cultivate marijuana at the Westerly Premises.

70. Respondents are in possession and control of the Westerly Premises and conducting, managing, operating and controlling the Unauthorized Marijuana Cultivation Activity (as defined below) without the required registration and/or licensure under, and in violation of, the Act.

71. Pursuant to R.I. Gen. Laws § 42-14-16.1, if the Director of the Department has reason to believe that any person is conducting any activities requiring licensure under any provisions of the Rhode Island General Laws within the jurisdiction of the Department without the

requisite license, the Department may issue its order to show cause why an order to that person to cease and desist should not issue.

XV. Cease and Desist Relief Requested

Based on the foregoing recitation of facts and law, the Department respectfully requests that the Hearing Officer recommend and that the Director issue an order commanding the Respondents to cease and desist from any and all Unauthorized Marijuana Cultivation Activity at the Westerly Premises and/or any other location in Rhode Island. For purposes of this Order to Show Cause, Unauthorized Marijuana Cultivation Activity refers to engaging in any of the following without requisite licensure and/or medical marijuana plant tags from the Department: (i) cultivating marijuana by propagating, growing and harvesting marijuana plants, manufacturing (producing marijuana products), processing/packaging, distributing/delivering/transferring/transporting, selling or otherwise receiving money, remuneration or other consideration for marijuana, or acquiring/possessing marijuana; (ii) actively controlling, managing, operating, participating in, or facilitating the cultivation of marijuana such as by providing common area, equipment, utilities or other services in connection with the cultivation of marijuana.

SERVICE CERTIFICATION

The undersigned hereby certifies that the below described document(s) was processed for delivery as listed below.

Document(s) Description
Request to Amend OSC

By U.S.P.S. First Class Mail to:

David Pellegrino, Esq.
John Ottaviani, Esq.
Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100
Providence, RI 02903

Print Name Amy J. Morales

Date of Processing 12/10/18

Signature

The same was also sent by e-mail by Jenna Giguere, Esq. to:
dpellegrino@psh.com
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/s/ Jenna Giguere

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, R.I. 02920

IN RE:	:	
DBR Medical Marijuana Enforcement.	:	DBR No. 18MM001

ORDER RE: MOTION TO AMEND AND MOTION TO DISMISS

I. Introduction

This matter arose from an Order to Show Cause why Order to Cease and Desist Unlicensed Marijuana Cultivation Activity Should not Issue, Notice of Pre-Hearing Conference and Appointment of Hearing Officer ("Order to Show Cause") issued on May 11, 2018 by the Department of Business Regulation ("DBR") to Thad Luzzi, Tyler Losacano, and Eric Sobaczewski ("Respondents"). Pre-hearing conferences were held on May 29 and November 15, 2018. On December 12, 2018, DBR moved to amend the Order to Show Cause. On January 7, 2019, the Respondents filed an objection to the motion to amend and filed a motion to dismiss and requested that certain cease and desist orders be issued against the Department. On February 27, 2019, the Department filed its objections to the Respondents' motions. A hearing was held on the various motions and objections on March 5, 2019. All parties were represented by counsel.

II. Jurisdiction

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 21-28.6-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearings* ("AHR").

III. Issue

Whether the motion to amend the Order to Show Cause should be granted or should the motion to dismiss be granted and should the cease and desist orders be issued.

IV. Arguments

The Respondents argued that DBR lacks jurisdiction over unlicensed marijuana activity and its authority is limited to licensing, revocation, and suspension. They requested a dismissal of the Order to Show Cause for failure to state a claim and objected to DBR's motion to amend. The Respondents seek a cease and desist order against DBR for exceeding its authority by contacting medical marijuana tagholders. DBR moved to amend the Order to Show Cause to which the Respondents objected, and DBR objected to the motion to dismiss and request for the issuance of cease and desist orders. The parties' arguments will be discussed more fully below.

V. Relevant Statutes and Regulation

Pursuant to R.I. Gen. Laws § 21-28-2.08, marijuana is classified as a Schedule I drug. However, R.I. Gen. Laws § 21-28.6-1 *et seq*. provides an exemption from this prohibition. The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act ("Act") regulates when and how the possession of medical marijuana is allowed. The Act initially only provided that the Department of Health ("DOH") regulated medical marijuana patients and caregivers and compassion centers.[1] In 2016, the Act was amended to allow the licensing of cultivators and the

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[1] R.I. Gen. Laws § 21-28.6-3 provides as follows:

> Definitions. For the purposes of this chapter:
> ***
> (2) "Cardholder" means a person who has been registered or licensed with the department of health or the department of business regulation pursuant to this chapter and possesses a valid registry identification card or license.
> ***
> (18) "Primary caregiver" means a natural person who is at least twenty-one (21) years old. A primary caregiver may assist no more than five (5) qualifying patients with their medical use of marijuana.

provision that all marijuana plants be tagged[2] and to move the licensing of compassion centers to DBR.[3] 2016 P.L. ch. 142 Art. 14. DBR and DOH now have regulatory and enforcement responsibilities over various parts of the medical marijuana statutory licensing scheme.

DBR is the regulatory agency for marijuana plants tags that are required by all growers whether patients, caregivers, or cultivators. DBR now regulates cultivators who supply the compassion centers (now regulated by DBR). Cardholders (patients, caregivers) who grow together now are to be licensed by DBR via the cooperative cultivator license. Thus, DBR is now responsible for the regulatory oversight of medical marijuana production.

R.I. Gen. Laws § 21-28.6-3(12) defines "licensed cultivator" as "means a person, as identified in § 43-3-6,[4] who has been licensed by the department of business regulation to cultivate marijuana pursuant to § 21-28.6-16." Licensed cultivators are only to sell marijuana to licensed compassion centers. R.I. Gen. Laws § 21-28.6-16 provides in part as follows:

> Licensed cultivators. (a) A licensed cultivator licensed under this section may acquire, possess, cultivate, deliver, or transfer marijuana to licensed compassion centers. A licensed cultivator shall not be a primary caregiver cardholder and shall not hold a cooperative cultivation license. Except as specifically provided to the contrary, all provisions of the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, §§ 21-28.6-1 – 21-28.6-15, apply to a licensed cultivator unless they conflict with a provision contained in § 21-28.6-16.
>
> (b) Licensing of cultivators - Department of business regulation authority. The department of business regulation shall promulgate regulations governing the manner

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> (19) "Qualifying patient" means a person who has been diagnosed by a practitioner as having a debilitating medical condition and is a resident of Rhode Island.
>
> (20) "Registry identification card" means a document issued by the department of health that identifies a person as a registered qualifying patient, a registered primary caregiver, or authorized purchaser, or a document issued by the department of business regulation that identifies a person as a registered principal officer, board member, employee, volunteer, or agent of a compassion center.

[2] R.I. Gen. Laws § 21-28.6-15 provides for the medical marijuana plant tags.

[3] R.I. Gen. Laws § 21-28.6-12(c)(5) provides for DBR to license compassion centers.

[4] R.I. Gen. Laws § 43-3-6 defines "person" as "extends to and includes co-partnerships and bodies corporate and politic."

in which it shall consider applications for the licensing of cultivators, including regulations governing:

(1) The form and content of licensing and renewal applications;

(2) Minimum oversight requirements for licensed cultivators;

(3) Minimum record-keeping requirements for cultivators;

(4) Minimum security requirements for cultivators; and

(5) Procedures for suspending, revoking, or terminating the license of cultivators that violate the provisions of this section or the regulations promulgated pursuant to this subsection.

(c) A licensed cultivator license issued by the department of business regulation shall expire one year after it was issued and the licensed cultivator may apply for renewal with the department in accordance with its regulations pertaining to licensed cultivators.

(d) The department of business regulation shall promulgate regulations that govern how many marijuana plants, how many marijuana seedlings, how much wet marijuana, and how much usable marijuana a licensed cultivator may possess. Every marijuana plant possessed by a licensed cultivator must be accompanied by valid medical marijuana tag issued by the department of business regulation pursuant to § 21-28.6-15. Each cultivator must purchase at least one medical marijuana tag in order to remain a licensed cultivator.

***

(f) Cultivators shall be subject to any regulations promulgated by the department of health or department of business regulation that specify how marijuana must be tested for items, including, but not limited to, potency, cannabinoid profile, and contaminants.

(g) Cultivators shall be subject to any product labeling requirements promulgated by the department of business regulation and the department of health.

***

(i) Cultivators shall only be licensed to grow marijuana at a single location, registered with the department of business regulation and the department of public safety. The department of business regulation may promulgate regulations governing where cultivators are allowed to grow. Cultivators must abide by all local ordinances, including zoning ordinances.

(j) Inspection. Cultivators shall be subject to reasonable inspection by the department of business regulation or the department of health for the purposes of enforcing regulations promulgated pursuant to this chapter and all applicable Rhode Island general laws.

(k) The cultivator applicant shall apply to the bureau of criminal identification of the department of attorney general, department of public safety division of state police, or local police department for a national criminal records check that shall include fingerprints submitted to the Federal Bureau of Investigation. ***

***

(l) Persons issued cultivator licenses shall be subject to the following:

***

(5) If a licensed cultivator violates any provision of this chapter or regulations promulgated hereunder as determined by the department of business regulation, his or her license may be suspended and/or revoked.

R.I. Gen. Laws § 21-28.6-14 provides in part as follows.

Cooperative cultivations. (a) Two (2) or more qualifying cardholders may cooperatively cultivate marijuana in residential or non-residential locations subject to the following restrictions:

(1) Effective January 1, 2017, cooperative cultivations shall apply to the department of business regulation for a license to operate;

(2) A registered patient or primary caregiver cardholder can only cultivate in one location, including participation in a cooperative cultivation;

(3) No single location may have more than one cooperative cultivation. For the purposes of this section, location means one structural building, not units within a structural building;

***

(6) Cooperative cultivations are restricted to the following possession limits:

(i) A non-residential, cooperative cultivation may have no more than ten (10) ounces of usable marijuana, or its equivalent, and an amount of wet marijuana set in regulations promulgated by the departments of health and business regulation, forty-eight (48) mature marijuana plants, and forty-eight (48) seedlings;

(ii) A residential, cooperative cultivation may have no more than ten (10) ounces of useable marijuana, or its equivalent, and an amount of wet marijuana set in regulations promulgated by the departments of health and business regulation, twenty-four (24) mature marijuana plants, and twenty-four (24) seedlings;

(iii) A non-residential or residential, cooperative cultivation must have displayed prominently on the premises its license issued by the department of business regulation;

(iv) Every marijuana plant possessed by a cooperative cultivation must be accompanied by a valid medical marijuana tag issued by the department of business regulation pursuant to § 21-28.6-15. Each cooperative cultivation must purchase at least one medical marijuana tag in order to remain a licensed cooperative cultivation; and

(v) Cooperative cultivations are subject to reasonable inspection by the department of business regulation for the purposes of enforcing regulations promulgated pursuant to this chapter and all applicable Rhode Island general laws.

***

(10) The department of business regulation shall promulgate regulations governing the licensing and operation of cooperative cultivations, and may promulgate regulations that set a fee for a cooperative cultivation license.

> (b) Any violation of any provision of this chapter or regulations promulgated hereunder as determined by the department of business regulation may result in the revocation/suspension of the cooperative cultivation license.

R.I. Gen. Laws § 21-28.6-13 provides that "[t]his chapter shall be liberally construed so as to effectuate the purposes thereof."

DBR and DOH promulgated regulations regarding their respective authority and responsibility over medical marijuana. DBR's regulation, 230-RICR-80-5-1, *Medical Marijuana* ("MM Regulation") provides further requirements regarding the licensing and enforcement for cultivators. Pursuant to the Act, § 1.1(C) of the MM Regulation provides that DBR is responsible for licensing, operational requirements, and enforcement for compassion centers, licensed cultivators, and cooperative cultivations. DBR and DOH also determined that DBR will primarily administer all aspects of the plant tag program to fulfill the state obligation to monitor and verify compliance with the statutory requirements for tagholders.

VI. Discussion

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain

ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Motion to Amend

Section 2.11 of the AHR provides that any party may file motions that are permissible under the AHR or the Super. R. Civ. Pro. Thus, the determination of whether to grant the DBR's motion to amend turns on the applicability of Super R. Civ. Pro. 15.[5] The motion to amend seeks to add certain items to the allegations and to add a second count. The Respondents argued that both counts fail to state a claim and are beyond DBR's authority so that the motion to amend should be denied.

DBR filed the Order to Show Cause in May, 2018 and now seeks to amend it. Discovery has not been completed. Delay is an insufficient reason to deny a motion to amend. Rather it is the objector's burden to show that granting the motion creates substantial prejudice to the opposing party. See *Wachsberger v. Pepper et al.*, 583 A.2d 77 (R.I. 1980).

Since the rules allow liberal amendments unless there is undue prejudice to the objector, the motion to amend is granted. The Respondents' arguments against amending the Order to Show Cause will be addressed below in terms of the motion to dismiss. For ease of reference, the amended order shall be referred to as the Amended Order.

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[5] Super. R. Civ. P 15(a) provides in part as follows:

> (a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend the pleading at any time within twenty (20) days after the pleading is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

C. **Motion to Dismiss**

In determining a motion to dismiss for failure to state claim, the allegations contained in the claimant's motion will be assumed to be true and all doubts viewed in the light most favorable to the claimant. The motion should not be granted unless it is clear beyond a reasonable doubt that the claimant would not be entitled to relief under any sets of facts that could be proven in support of claimant's claim. *Ho-Rath v. Rhode Island Hospital*, 115 A.3d 938 (R.I. 2015); *Ellis v. Rhode Island Pub. Transit Auth.*, 586 A.2d 1055 (R.I. 1991); and *Ryan v. Department of Transp.*, 420 A.2d 841 (R.I. 1980).

DBR's Amended Order alleges that the lessees of the Westerly property at issue ("Property"), Thad Luzzi and Eric Sobaczewski, and their employee, Tyler Losacano (the Respondents), are engaging in unlicensed cooperative marijuana cultivation and marijuana cultivation in violation of the Act. Count 1 of the Amended Order alleges that the Respondents are in violation of R.I. Gen. Laws § 21-28.6-14(1)(1) by operating a cooperative cultivation without a license. Count II of the Amended Order alleges that the Respondents are cultivating marijuana in violation of the Act.

All administrative agencies powers are derived from statute, and an agency cannot do what is not provided for in law. "An administrative agency is a product of the legislation that creates it, and it follows that '[a]gency action is only valid, therefore, when the agency acts within the parameters of the statutes that define [its] powers.'" *In re Advisory Opinion to the Governor*, 627 A.2d 1246, 1248 (R.I. 1993) (citation omitted). See also *Iselin v. Ret. Bd. of Employees' Ret. Sys. of Rhode Island*, 943 A.2d 1045 (R.I. 2008); and *F. Ronci Co. v. Narragansett Bay Water Quality Management District Commission*, 561 A.2d 874 (R.I. 1989).

The Respondents argued that DBR only has authority over licensees so that it only can regulate those who are licensed cooperative cultivators. The Respondents argued that DBR does not have authority over qualifying cardholders or primary caregiver cardholders (DOH does) who do not elect to grow together. The Respondents argued that DBR only has limited authority regarding medical marijuana with the other powers of enforcement to be exercised by DOH or law enforcement. The Respondents argued that neither the Act nor the MM Regulation grant DBR authority beyond those acts requiring licenses.

"It is only after the licensing authority has been delegated by the legislature 'either expressly or by necessary implication' that the local governing bodies can act." *Amico's Inc. v. Mattos*, 789 A.2d 899 (R.I. 2002) (citation omitted). In this case, the authority over cultivators and tagholders has been delegated to DBR to license. A license is a privilege entitling a person to engage in an activity or business or occupation that is otherwise prohibited by law. *Zannelli v. Di Sandro*, 121 A.2d 652 (R.I. 1956).

The Court will not interpret a licensing statute so that it is inconsistent with the purpose of the licensing statute. Thus, the Court rejected an interpretation of licensing exemptions that would have circumvented the purposes of such licensing exemptions in *Warwick v. Almac's*, 442 A.2d 1265 (R.I. 1982). In that case, while only one part of the statute included express prohibitory language, the Court found that when the legislature enacts a licensing statute and imposes certain conditions for the granting of such license, it would be unreasonable to interpret that statute as not requiring licensees to comply with those conditions. Finally, the Court found that injunctive relief was allowed for all violations and not just some since it would be unreasonable to limit the relief allowed. *Id.* See *Berkshire Cablevision v. Burke*, 488 A.2d 676 (R.I. 1985).

In the cultivator statute, DBR is authorized to license cultivators and cooperative cultivators. That authority includes considering applications for licensing and regulating the form and content of licensing and applications and procedures for suspending, revoking, or terminating cultivator licensees who violate said law. In order to be licensed as a cultivator or a cooperative cultivator, an application must be filed with DBR. If an application is denied by the DBR, it would be unreasonable that the applicant could then engage in the business for which its license application had been denied and that DBR would have no authority to seek enforcement against the failed applicant. Similarly, DBR in this action argued that the Respondents are engaging in activity that requires a DBR license but are not licensed for that activity so are violating the Act.

In *Thompson v. East Greenwich*, 512 A.2d 837 (R.I. 1986), the Court found that in order to effectuate the legislative intent behind R.I. Gen. Laws § 3-5-21 (revocation or suspension of liquor licenses) that the statute must be construed to allow municipalities to impose conditions upon the issuance of a liquor license. The Court found that R.I. Gen. Laws § 3-1-5's provision that the liquor licensing statute be construed liberally in aid of its purpose to provide reasonable control of the traffic in alcoholic beverage provided that the standard for the imposition of such conditions of licensing be reasonable.[6]

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[6] More fully, the Court found as follows:

> [W]e note that the power to regulate business through licensing is an attribute of sovereignty, and may be exercised by a municipality only upon an express or implied delegation of this power. (citation omitted). According to § 3-5-15, the General Assembly has delegated to "the town councils or license boards of the several towns" the full and plenary power to issue, inter alia, class-B liquor licenses. This authority to issue such licenses is logically and appropriately complemented by § 3-5-21, which legislatively empowers these same governing bodies to revoke or suspend a liquor license for breach of any conditions upon which it was issued. From a review of the language in § 3-5-21, it is our considered judgment that the Legislature intended in conferring the power to revoke or suspend to implicitly authorize municipalities to attach conditions to the issuance of liquor licenses. If such an implication is not read into the statute, the power to revoke or suspend becomes a nullity since there is no basis upon which it can be exercised. (citation omitted). This court has consistently stated that we shall not construe a statute in a way that would "'attribute to the Legislature an intent that would result in absurdities or would defeat the underlying purpose of legislation.'" *City of Warwick v. Aptt*, 497 A.2d 721, 724 (R.I. 1985). We also note that "statutory provisions are ordinarily broadened on the principle of necessary

Similar to *Thompson*, R.I. Gen. Laws § 21-28.6-13 provides, "[c]onstruction. This chapter shall be liberally construed so as to effectuate the purposes thereof." R.I. Gen. Laws § 21-28.6-2(8) provides as follows:

> Legislative findings . . . (8) The goal of the medical marijuana program is to create a system that is transparent, safe, and responsive to the needs of patients. Consequently, the medical marijuana program requires regulation and a comprehensive regulatory structure that allows for oversight over all suppliers of medical marijuana while ensuring both safety and patient access.

Thus, in order to fulfill the purposes of the Act, the program is to be regulated with oversight to ensure safety and patient access. Thus, reasonable regulatory oversight would support that action be taken against activity that could be found to be unlicensed activity.

However, DBR does not have to rely on its implicit authority to pursue enforcement against people that could be engaging in activity that is required to be licensed by DBR as DBR also has explicit authority to engage in such enforcement activity.

In *Liquori v. Aetna Casualty & Sur. Co.*, 384 A.2d 308 (R.I. 1978), the Court found that the State's Insurance Commissioner (the DBR director) did not have the authority to order an insurance company to reinstate coverage. The Court found that the commissioner had great

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implication only where the absence of some provision would render impossible the accomplishment of the clear purposes of the legislation." *New England Die Co. v. General Products Co.*, 92 R.I. 292, 298, 168 A.2d 150, 153 (1961). Accordingly, we find that in order to effectuate the legislative intent behind § 3-5-21, the statute must necessarily be construed to imply that municipalities have the authority to impose conditions upon the issuance of a liquor license.

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Apparently the trial judge expressed a great deal of concern over the prospect that licensing boards and towns would utilize their allegedly unbridled powers under § 3-5-21 to impose unfair and absurd conditions upon the holders of liquor licenses. Without digressing to any great length, we find the language in § 3-1-5 to be dispositive of this matter:

"Liberal construction of title. -- This title shall be construed liberally in aid of its declared purpose which declared purpose is the promotion of temperance and for the reasonable control of the traffic in alcoholic beverages."

Clearly the language of § 3-1-5 mandates that our construction of § 3-5-21 be in accordance with the declared purpose of title 3. In effect § 3-1-5 therefore restricts the power of the towns and licensing boards to impose conditions under § 3-5-21 to those which promote the "*reasonable control of * * * alcoholic beverages.*" (Emphasis added.) Succinctly stated, § 3-1-5 requires that any conditions that a municipality may choose to enforce upon the issuance of a liquor license *must be reasonable. Thompson*, at 841-842.

licensing power, but it did not permit him to automatically impose whatever lesser sanctions he deemed fit to remedy a given situation. However, the law had changed by the time of *Blue Cross & Blue Shield of R.I. v. McConaghy*, 2002 R.I. Super. LEXIS 25 so that the insurance commissioner had explicit authority under a law enacted after *Liquori* that provided that DBR could "require the [insurance] licensee to take such actions as are necessary to comply with Title 27 [insurance statute] or the regulations thereunder." Thus, under R.I. Gen. Laws § 42-14-16(a)(4) the insurance commissioner could order an insurance company to pay refunds for payments collected in violation of the law.

Blue Cross found that while *Liquori* and *Narragansett Electric Co. v. Burke*, 404 A.2d 821 (R.I. 1979) refused to expand the powers of regulatory agencies beyond those specifically enumerated in their enabling statutes, DBR now had the statutory authority to order refunds since it could take such actions that were necessary to ensure statutory compliance. Similarly, such authority is found in R.I. Gen. Laws § 42-14-16.1 which provides in part as follows:[7]

> Order to cease and desist. (a) If the director, or his or her designee, has reason to believe that any person, firm, corporation, or association is conducting any activities requiring licensure under title 27 or any other provisions of the general laws or public laws within the jurisdiction of the department without obtaining a license, or who after the denial, suspension, or revocation of a license conducts any activities requiring licensure under title 27 or any other provisions of the general laws or public laws within the jurisdiction of the department, the department may issue its order to that person, firm, corporation, or association commanding them to appear before the department at a hearing to be held no sooner than ten (10) days nor later than twenty (20) days after issuance of that order to show cause why the department should not issue an order to that person to cease and desist from the violation of the provisions of applicable law.

DBR has the authority to order a person, firm, corporation, or association to cease and desist from engaging in activities that require licensure under provisions of the general laws or public laws within the jurisdiction of DBR without obtaining a license, or who after the denial,

[7] Effective June 22, 2018, P.L. 2018, ch. 47, art. 3, § 8 amended this statute to include not just insurance but all provisions of the law within the jurisdiction of DBR.

suspension, or revocation of a license conducts any activities requiring licensure of any other provisions of the general laws or public laws within the jurisdiction of DBR. DBR argued that the Respondents' business plan is an unlicensed cooperative and they are cultivating marijuana without any kind of license, and DBR argued that the Respondents are trying to fall under the auspices of medical marijuana by renting premises to tagholders.

The Respondents argued that DBR is interfering with their rights as landlords. However, DBR is alleging that their activity is in violation of the Act. Such allegations are no different than ordering a property owner to clean up his or her property that had been leased to tenants engaged in unlicensed auto salvage activity.[8] DBR's allegations go to the Respondents' involvement with the Property and DBR has made various allegations about the Respondents' activities that DBR believes violates the Act.

The Respondents argued that since they are not patient or primary caregiver cardholders, they cannot be cooperatively cultivating pursuant to the statute, and that providing shared space is not prohibited by the Act or MM Regulation. The Respondents argued that DBR's various reasons given in the Amended Order for why DBR believes the Respondents are engaging in unlicensed cultivation are arbitrary and capricious and amount to a promulgation of a rule by hearing rather than regulation. DBR has the authority to pursue what it considers activity in violation of the Act and has listed that activity in the Amended Order. DBR's action is predicated on what and why it considers the Respondents' activities to be unlicensed cooperative cultivation. Based on the allegations in the Amended Order, it cannot be concluded that the Amended Order has failed to state a claim because the Respondents are not cardholders or landlords. Instead, the issue is whether given the facts at issue, the Respondents are in violation of the Act.

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[8] See *In the Matter of: Unlicensed Salvage Yard Activity on Providence Plat #30, Scott Morris d/b/a "Abby Road Properties" et al.*, DBR No. 18AS001 (1/29/19).

Similarly, Count II revolves around the issue of whether marijuana is being cultivated in violation of the Act; in other words, can the Respondents do what they are doing without a DBR license. The Respondents argued that DBR has engaged in rulemaking without the appropriate procedure since it has created a definition of cultivation of marijuana in violation of the Act without promulgating a regulation. DBR argued that the definition at issue is the requested cease and desist language that applies to this situation. In other words, DBR is requesting language for a cease and desist order that describes the actions being performed by the Respondents that it believes are in violation of the Act. The issue at hearing is whether the acts alleged constitute unlicensed cultivation and if so, should a cease and desist order issue.

D. Request to Issue Cease and Desist Order – Standing of Tagholders

The Respondents argued that DBR should be ordered to cease and desist from prohibiting primary caregivers and qualified patients from growing on the Property. This argument arises from letters that DBR sent to tagholders after the issuance of the Order to Show Cause informing tagholders that unauthorized cultivation was occurring on the Property so that DBR was refunding the recipients' tag orders and informing the recipients that they could place an order for tags for an acceptable grow location.

DBR argued that the Respondents do not have standing to assert challenges to said letters as it would be for tagholders to challenge them. The Respondents argued that this is not a standing issue since DBR brought the action so conferred standing on the Respondents to challenge the letters to tagholders. The Respondents argued that DBR acted beyond its authority and harmed them by interfering with their business model and contractual relations.

"A party acquires standing either by suffering an injury in fact or as the beneficiary of express statutory authority granting standing." *Tanner v. East Greenwich*, 880 A.2d 784, 792 (R.I.

2005). To determine whether a plaintiff has standing, the court must focus on the party who is advancing the claim rather than the issue sought to be adjudicated. An injury in fact is economic or otherwise and is defined as an invasion of a legally protected interest which is concrete and particularized and actual or imminent, not conjectural or hypothetical. The Court has recognized the injury must be of a personal nature and distinct from the community as a whole. *N&M Prop., LLC v. Town of W. Warwick*, 964 A.2d 1141 (R.I. 2009).

A tagholder could have challenged DBR's determination about an appropriate grow location. Here, the Respondents are challenging DBR's determination that the Property is the site of an unlicensed cultivation and cooperative cultivation. The current administrative hearing will decide whether that determination was correct or not. The Respondents argued that DBR should not have informed the tagholders about its determination until the administrative proceeding is over as DBR's determination is being appealed. There is nothing stopping the Respondents from informing their tenants of their appeal of DBR's determination. However, it is not in the scope of this administrative hearing for the Respondents to assert the tagholders' challenges. The Respondents may want to rent space to tagholders but the fact that DBR is challenging their business model does not mean they have suffered an economic injury that allows them to assert a challenge on behalf of the tagholders about not being able to use the grow location. The Respondents are already challenging DBR's actions against them regarding the activities at the Property. The Respondents are challenging DBR's determination of what the Respondents refer to as their business model, but that does not include asserting challenges on behalf of former tenants that the tenants could have challenged and chose not to.[9]

[9] As DBR pointed out, tagholders have substantial privacy protections in the Act. R.I. Gen. Laws § 21-28.6-6(k)(1). It would infringe on the tagholders' privacy rights to allow the Respondents to assert challenges to DBR on behalf of tagholders when the Respondents are not those tagholders. Indeed, in reviewing a town ordinance that would require registered medical marijuana cardholders to reveal their identity, the Superior Court found that "[t]his imminent

E. Inspection

The Respondents argued that DBR's hand-delivery of the notice of inspection to the tagholders and inspection on the same day violated the MM Regulation's inspection requirements for tagholders. Separate and apart from the fact that the Respondents do not have standing regarding the tagholders' claims (see above), Section 1.9(L) of the MM Regulation sets out a process whereby when DBR has reasonable grounds to believe a tagholder has not obtained or renewed tags and may be in violation of the Act and/or regulations that DBR may send a written notice and a second written notice and failing a response may try other methods of contact. Said regulation provides that if an alternative contact attempt has been unsuccessful then DBR may conduct reasonable inspections and shall make an effort to schedule inspections in advance. Said regulation provides that this process is discretionary (may)[10] but the Respondents argued that DBR's failure to follow this process for tagholders made its inspection "improper" and is being used to penalize the Respondents.

The United States Supreme Court has held that any expectation of privacy in commercial premises is less than a similar expectation in an individual's home. *New York v. Burger,* 482 U.S. 691, 700 (1987). Furthermore, certain "closely regulated" industries have such a history of government oversight that no reasonable expectation of privacy could exist for a proprietor. *Id.*

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invasion of privacy presents a concrete and particularized injury, leading this Court to find that the Does [anonymous tagholders] have standing to challenge the Ordinance." *R.I. Patient Advocacy Coalition Found. (RIPAC) v. Town of Smithfield,* 2017 R.I. Super. LEXIS 150, *5. In other words, allowing the Respondents to assert challenges on behalf of tagholders could cause the tagholders themselves an injury in fact.

[10] The Rhode Island Supreme Court has held that while the word "shall" generally indicates a mandatory requirement, the use of shall is only directory if not accompanied by a sanction for failure to comply with the mandatory language especially in statutes designed to secure order, system, and dispatch. See *Providence Teachers Union v. McGovern,* 319 A.2d 358 (R.I. 1974). The Court also held that statutes imposing apparently mandatory language on public officials are often directory in nature. See *New England Development, LLC v. Berg,* 913 A.2d 363 (R.I. 2007). Here the regulatory language is clearly discretionary in the use of "may," and "shall" refers to making an effort to schedule inspections in advance. However, there is no sanction attached to the failure to make an effort to schedule an inspection in advance. Indeed, as indicated in Court cases regarding inspections (see below), it would not always be prudent to schedule inspections in advance.

Essentially, administrative inspections without court orders are often necessary to further an important state regulatory scheme. *Id.* at 710. As the Court found, "[i]f an inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential." *Id.* at 710 (citation omitted).

Relying on *New York v. Burger*, the Rhode Island Supreme Court in *Keeney v. Vinagro*, 656 A.2d 973 (R.I. 1995) found that a warrantless search of a pervasively regulated business is reasonable if the following three (3) criteria are met:

1) "a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made."
2) "the warrantless inspections must be necessary to further the regulatory scheme."
3) "the statute's inspection program, in terms of the certainty and regularity of its application," must provide "a constitutionally adequate substitute for a warrant." *Keeney*, at 975. See also *Burger*, 482 U.S. at 702-03.[11]

DBR has statutory authority over medical marijuana tagholders.[12] While parts of the medical marijuana program are not commercial such as patients (e.g. patient cardholders), DBR

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[11] *Vinagro v. Reitsma*, 260 F.Supp.2d 425 (D. R.I. 2003) declined to extend this exemption from warrant requirements when a regulatory agency conducted an inspection in conjunction with a criminal investigation. There is no evidence that such facts would apply to this matter. While some states have declined to apply *Burger* to state matters, the *Burger* test has been adopted by this State. And indeed, the U.S. Supreme Court has favorable commented on *Burger* when discussing how administrative searches without particularized suspicions of misconduct do not require a warrant. The Court stated in *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000)

> We have also allowed searches for certain administrative purposes without particularized suspicion of misconduct, provided that those searches are appropriately limited. See, *e.g., New York v. Burger*, 482 U.S. 691, 702–704, 107 S.Ct. 2636, 96 L.Ed.2d 601 (1987) (warrantless administrative inspection of premises of "closely regulated" business); *Michigan v. Tyler*, 436 U.S. 499, 507–509, 511–512, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978) (administrative inspection of fire-damaged premises to determine cause of blaze); *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 534–539, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967) (administrative inspection to ensure compliance with city housing code).

[12] The statutory scheme for marijuana plant tags is found in R.I. Gen. Laws § 21-28.6-15. R.I. Gen. Laws § 21-28.6-15(b) provides as follows:

> (b) *Enforcement:*
> (1) If a patient cardholder, primary caregiver cardholder, or licensed cultivator violates any provision of this chapter or the regulations promulgated hereunder as determined by the departments of business regulation and health, his or her medical marijuana tags may be revoked. In addition, the

has statutory authority over the production of medical marijuana. Medical marijuana is a closely regulated industry not only by virtue of its licensing scheme[13] but also as an exception to a criminal drug statute.[14] Section 1.9(B) of the MM Regulation provides that DOH and DBR agreed that DBR would take the lead on enforcing the medical marijuana plant tag program.[15]

In receipt of a complaint, DBR inspected tagholders at a commercial building. There is a strong public interest in ensuring that marijuana that is grown and used/sold complies with the Act; otherwise, it is a criminal violation. There is a strong public safety interest in compliance with the Act. Thus, there is a strong government interest that informs the regulatory schemes pursuant to which inspections can be made (public safety, public health, access to medical marijuana).

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department that issued the cardholder's registration or the license may revoke the cardholder's registration or license pursuant to § 21-28.6-9.

(2) The department of business regulation may revoke and not reissue, pursuant to regulations, medical marijuana tags to any cardholder or licensee who is convicted of; placed on probation; whose case is filed pursuant to § 12-10-12 where the defendant pleads nolo contendere; or whose case is deferred pursuant to § 12-19-19 where the defendant pleads nolo contendere for any felony offense under chapter 28 of title 21 ("Rhode Island Controlled Substances Act") or a similar offense from any other jurisdiction.

(3) If a patient cardholder, primary caregiver cardholder, licensed cooperative cultivation, or licensed cultivator is found to have mature marijuana plants without valid medical marijuana tags, the department or health or department of business regulation shall impose an administrative penalty on the patient cardholder, primary caregiver cardholder, licensed cooperative cultivation, or licensed cultivator for each untagged mature marijuana plant not in excess of the limits set forth in § 21-28.6-4, § 21-28.6-14 and § 21-28.6-16 of no more than the total fee that would be paid by a cardholder or licensee who purchased medical marijuana tags for such plants in compliance with this chapter.

(4) If a patient cardholder, primary caregiver cardholder, or licensed cooperative cultivation is found to have mature marijuana plants exceeding the limits set forth in § 21-28.6-4, § 21-28.6-14, and § 21-28.6-16 in addition to any penalties that may be imposed pursuant to § 21-28.6-9, the department of health or department of business regulation may impose an administrative penalty on that cardholder or license holder for each mature marijuana plant in excess of the applicable statutory limit of no less than the total fee that would be paid by a cardholder who purchased medical marijuana tags for such plants in compliance with this chapter.

[13] The Act regulates the purchasers, users, growers, and sellers of medical marijuana and where and how it can be grown.

[14] In its brief, DBR pointed out that the federal government in its discretion would not prosecute those entities who are in compliance with state marijuana regulations that are enforced by the state.

[15] See also DOH's regulation, *Medical Marijuana Program*, 216-RICR-20-10-3.6.2(B)(1).

The Respondents argued that the inspection never corroborated the complaint that caused DBR's inspection of the tagholders and is only mentioned in the Order to Show Cause as the reason for the inspection. DBR has a right to inspect whether it receives a complaint or not. Indeed, it would render an administrative inspection statute of a closely regulated industry meaningless to interpret such a statute to only allow inspections and enforcement only on the topic of a complaint filed with an agency. Specifically, the statutory and regulatory requirements and potential violations by Department licensees would often not be within the knowledge of a complainant. A complaint might cause an inspection but such an inspection can also find other possible violations not included in the complaint. If not, DBR would be curtailed in enforcing the statutory and regulatory requirements for its licensees which would render the licensing requirements and enforcement provisions meaningless as DBR would be unable to enforce statutory and regulatory requirements. It is for those reasons that *Keeney* adopted *Burger* regarding warrantless inspections for closely regulated businesses. *Burger* found that for regulatory inspections to be effective and serve as a deterrent, unannounced, even frequent, inspections are essential.

Based on case law, DBR has the right to inspect its licensees without receiving a consumer complaint; otherwise, it would be unable to enforce all the statutory and regulatory requirements of its licensees. Therefore, the result of the inspection in reaction to a complaint is irrelevant in that DBR has the general right to inspect its licensee since warrantless inspections are necessary for the furtherance of the regulatory scheme. Nonetheless, in this matter, the complaint related to a marijuana order emanating from the Property – where DBR's tagholders were located - would reasonably require an unannounced inspection in person to see if such an odor was detected.

Cooperative cultivation is subject to "reasonable inspections" by DBR. R.I. Gen. Laws § 21-28.6-14(a)(6)(v). Cultivators are subject to "reasonable inspections" by DBR. R.I. Gen. Laws

§ 21-28.6-16(j). The MM regulation provides for "reasonable inspection" by DBR of tagholders. Section 1.9(L)(5). While the MM Regulation provides for written notice prior to inspection of tagholders, such provisions are not mandatory but rather are limited by reasonableness. See *Thompson* ("reasonable" is a permissible standard for a grant of authority to an agency).

DBR's reasonable inspection of tagholders at the Property led DBR to conclude that activities in violation of the Act were occurring at the Property. It may be in some situations, a notice sent either by hand or mail as detailed in the MM Regulation would be how the DBR would proceed with ensuring compliance, but it is not required for all situations. The inspection was not an issue of criminal law or a criminal search. Rather it was a regulatory inspection that resulted in DBR concluding that the Respondents are in violation of the Act. That conclusion by DBR is being challenged by the Respondents via the hearing process.

F. Motion to Strike

The Respondents moved to strike paragraphs ten (10) to 13 of Amended Order that recite information regarding criminal charges against Respondent Losacano as irrelevant to the issue of cooperative cultivation and because criminal charges are outside DBR's authority. DBR objected to the motion as untimely (241 days after the issuance of the Order to Show Cause rather than the 20 days allowed by Super R. Civ. Pro. 12(f)) and that this information is admissible under R.I. Gen. Laws § 42-35-10(1) (rules of evidence for administrative hearings). DBR is not seeking to prove its case on the fact that Losacano was criminally charged, but rather argued that the facts alleged that gave rise to the criminal charge also support DBR's contentions in its action. DBR seeks to show that Losacano was transporting marijuana as part of unlicensed cultivation of marijuana. The issue of the charges and alleged actions by Losacano should be addressed at hearing as to admissibility and/or relevance. There are no grounds to strike such allegations.

VII. Conclusion

Based on the foregoing, the undersigned grants the DBR's motion to amend and denies the Respondents' motion to dismiss and their motion to strike and their motion that DBR cease and desist from sending letters to tagholders.

Prior to a hearing, the parties may conduct and complete discovery. A status conference shall be scheduled for the purpose of setting a discovery schedule and to address any other relevant issues.[16]

Entered this 25th day of April, 2019.

Catherine R. Warren
Hearing Officer

NOTICE OF APPELLATE RIGHTS

THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(a) WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF A PETITION DOES NOT STAY ENFORCEMENT OF THIS ORDER.

CERTIFICATION

I hereby certify on this 25 day of April, 2019, that a copy of the within Order was sent by electronic delivery and first class mail, postage prepaid to David J. Pellegrino, Esquire, and John E. Ottaviani, Esquire, Partridge Snow & Hahn, 40 Westminster Street, Suite 1100, Providence, R.I. 02903 and by electronic delivery to Jenna Giguere, Esquire, and Sara Tindall-Woodman, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, Rhode Island.

[16] If the parties prefer to agree to a discovery schedule without a status conference, they shall inform the undersigned of their agreed to schedule.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDG. 68-1
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

IN RE: DBR MEDICAL MARIJUANA ENFORCEMENT
DBR No. 18MM001

SECOND REQUEST TO AMEND ORDER TO SHOW CAUSE

The Department of Business Regulation ("Department") hereby requests to update the Order to Show Cause Why Cease and Desist Order Should Not Issue (originally filed on May 11, 2018; first amended by motion filed on December 10, 2018 and granted on April 25, 2019) by submitting the attached "Order to Show Cause – Part II" document, which would add a new part to the existing Order to Show Cause. The reason for this Second Request to Amend Order to Show Cause is to provide updated statutory references in accordance with changes made to the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, R.I. Gen. Laws §§ 21-28.6-1 *et seq*. by Article 15 of An Act Relating to Making Appropriations in Support of FY 2020, 5151 SUB A as amended, signed into law by the Governor on July 5, 2019 and taking effect upon passage.

Respectfully Submitted,
Department of Business Regulation
By its Attorneys,

Jenna R. Giguere, Esq.
Sara Tindall-Woodman, Esq.
Department of Business Regulation
1511 Pontiac Avenue, Bldg 68-1
Cranston, Rhode Island 02920

Dated: July 16, 2019

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDG. 68-1
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

IN RE: DBR MEDICAL MARIJUANA ENFORCEMENT
DBR No. 18MM001

ORDER TO SHOW CAUSE – PART II

A. As of July 5, 2019, the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, R.I. Gen. Laws §§ 21-28.6-1 *et seq.* (the "Act"), as amended by Article 15 of An Act Relating to Making Appropriations in Support of FY 2020, 5151 SUB A as amended (hereinafter referred to as "the Act, as amended") includes the following statutory provisions which codify the Department's enforcement authority over this matter throughout this entire proceeding.[1]

1. R.I. Gen. Laws § 21-28.6-9(e)

> (1) Notwithstanding any other provision of this chapter, if the director of the department of business regulation or his or her designee has cause to believe that a violation of any provision of chapter 28.6 of title 21 or the regulations promulgated thereunder has occurred by a licensee or registrant under the department's jurisdiction, or that any person or entity is conducting any activities requiring licensure or registration by the department of business regulation under chapter 28.6 of title 21 or the regulations promulgated thereunder without such licensure or registration, or is otherwise violating any provisions of said chapter, the director or his or her designee may, in accordance with the requirements of the administrative procedures act, chapter 35 of title 42:
>
> > (i) With the exception of patient and authorized purchaser registrations, revoke or suspend any license or registration issued under chapters 26 of title 2 or 28.6 of title 21;

[1] The Hearing Officer previously ruled that the Department had enforcement authority over this matter in her Order Re: Motion to Amend and Motion to Dismiss of April 25, 2019. Thus, the cited statutory revisions codify a previously existing enforcement authority that has applied continuously throughout this proceeding, adding more specific options for the type of enforcement penalty or remedy that may be applied to this case. Specifically, the Hearing Officer's Order provides the following discussion of the Department's authority as it existed even prior to these statutory amendments cited in this Order to Show Cause – Part II: "[I]n order to fulfill the purposes of the Act, the program is to be regulated with oversight to ensure safety and patient access;" "reasonable regulatory oversight would support that action be taken against activity that could be found to be unlicensed activity." Pg. 11. "DBR also has explicit authority to engage in such enforcement activity." Citing R.I. Gen. Laws § 42-14-16.1, the Hearing Officer decided that "DBR has the authority to order a person, firm, corporation, or association to cease and desist from engaging in activities that require licensure under provisions of the general laws or public laws within the jurisdiction of DBR without obtaining a license." Pg. 12-13.

(ii) Levy an administrative penalty in an amount established pursuant to regulations promulgated by the department of business regulation;

(iii) Order the violator to cease and desist such actions;

(iv) Require a licensee or registrant or person or entity conducting any activities requiring licensure or registration under chapter 28.6 of title 21 to take such actions as are necessary to comply with such chapter and the regulations promulgated thereunder; or

(v) Any combination of the above penalties.

(2) If the director of the department of business regulation finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in his or her order, summary suspension of license or registration and/or cease and desist may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

B. As of July 5, 2019, the Act, as amended, includes the following statutory provisions which codify a key principle that has applied continuously throughout this entire proceeding that statutes establishing a license apply with the necessary corollary that activity without the requisite license is prohibited.[2]

1. R.I. Gen. Laws § 21-28.6-14(c)

   License required. No person or entity shall engage in activities described in § 21-28.6-14 without a cooperative cultivation license issued by the department of business regulation.[3]

2. R.I. Gen. Laws § 21-28.6-16(n)

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[2] In her Order Re: Motion to Amend and Motion to Dismiss of April 25, 2019, the Hearing Officer previously ruled that the Act, as it existed prior to the cited amendments, was to be interpreted as making marijuana activity without he requisite license unlawful under the Act. Thus, the cited statutory revisions codify a previously existing enforcement principle that has applied continuously throughout this proceeding, eliminating any remaining doubt. Specifically, the Hearing Officer's Order provides the following discussion of the licensing requirement as it existed even prior to these statutory amendments cited in this Order to Show Cause – Part II: Where by statute "DBR is authorized to license cultivators and cooperative cultivat[ions]," it would be "unreasonable" to conclude that "DBR would have no authority to seek enforcement" where it alleges "activity that requires a DBR license" by individuals "not licensed for that activity," thereby "violating the Act." Pg. 10. Stated another way, "[a] license is a privilege entitling a person to engage in an activity or business or occupation that is otherwise prohibited by law." Pg. 9.

[3] R.I. Gen. Laws § 21-28.6-14(d) provides:

Effective July 1, 2019, except as to cooperative cultivatION licenses issued by the department of business regulation before July 1, 2019, the department of business regulation shall no longer accept applications or renewals for licensed cooperative cultivations and cooperative cultivations shall no longer be permitted.

License required. No person or entity shall engage in activities described in § 21-28.6-16 without a medical marijuana cultivator license issued by the department of business regulation.[4, 5]

C. As of July 5, 2019, the Act, as amended, includes the following statutory provisions which apply to any continuing marijuana activity which the Respondents participated in, operated, and/or exercised control over on or after July 5, 2019:

1. R.I. Gen. Laws § 21-28.6-15(b)(3)

   If a patient cardholder, primary caregiver cardholder, licensed cooperative cultivation, compassion center, licensed medical marijuana cultivator or any other person or entity is found to have mature marijuana plants, or marijuana material without valid medical marijuana tags sets or which are not tracked in accordance with regulation, the department or health or department of business regulation shall impose an administrative penalty in accordance with regulations promulgated by the department on such patient cardholder, primary caregiver cardholder, licensed cooperative cultivation, compassion center, licensed medical marijuana cultivator or other person or entity for each untagged mature marijuana plant or unit of untracked marijuana material.

2. R.I. Gen. Laws § 21-28.6-14(e)

   "[N]ot more than one registered cardholder shall be permitted to grow marijuana in a dwelling unit or commercial unit,[6] except for two (2) or more qualifying patient or primary caregiver cardholder(s) who are primary residents of the same dwelling unit where the medical marijuana plants are grown and in all instances subject to the plant limits provided in § 21- 30 28.6-4(r).

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[4] R.I. Gen. Laws § 21-28.6-16(o) provides:

Effective July 1, 2019, the department of business regulation will not reopen the application period for new medical marijuana cultivator licenses.

[5] *See also* R.I. Gen. Laws § 21-28.6-12(k) ("License required. No person or entity shall engage in activities described in § 21-28.6-12 without a compassion center license issued by the department of business regulation.")

[6] R.I. Gen. Laws § 21-28.6-3(5) defines "commercial unit" as "a building or other space within a commercial or industrial building, for use by one business or person and is rented or owned by that business or person."

E-MAIL SERVICE CERTIFICATION

I, Jenna Giguere, sent this Second Request to Amend Order to Show Cause by e-mail to:

The Respondents: tluz1@yahoo.com; esobez@yahoo.com; tystaa123@aim.com
The Hearing Officer: catherine.warren@doa.ri.gov
CC DBR Counsel: jenna.giguere@dbr.ri.gov; Sara.K.TindallWoodman@dbr.ri.gov

/s/ Jenna Giguere, Esq.
Dated: 7/16/19

MAIL SERVICE CERTIFICATION

The undersigned hereby certifies that the below described document(s) was processed for delivery as listed below.

Document(s) Description Second Request to amend Order to Show Cause

By U.S.P.S. Certified Mail to:

Thad Luzzi 80 Weir Street Glastonbury, CT 06033 Thad Luzzi 43 Spring Lane West Hartford, CT 06107 Eric Sobaczewski 48 Lawton Ave Westerly, RI 02891	Tyler Losacano 24 Stony Brook Drive, Unit C-5 Glastonbury, CT 06033 Tyler Losacano 141 High St. Westerly, RI 02891 Tyler Losacano 63 Pleasant Street Westerly, RI 02891

Print Name Amy J. Morales

Date of Processing 7/16/19

Signature

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, R.I. 02920

IN RE:	:	
DBR Medical Marijuana Enforcement.	:	**DBR No. 18MM001**

ORDER TO COMPEL DISCOVERY AND GRANTING REQUEST TO AMEND ORDER TO SHOW CAUSE

This matter arose from an Order to Show Cause why an Order to Cease and Desist Unlicensed Marijuana Cultivation Activity Should not Issue, Notice of Pre-Hearing Conference and Appointment of Hearing Officer ("Order to Show Cause") issued on May 11, 2018 by the Department of Business Regulation ("Department") to Thad Luzzi, Tyler Losacano, and Eric Sobaczewski ("Respondents").[1]

On July 16, 2019, the Department filed a motion to compel discovery. Section 2.11 of the Department's *Rules of Procedure for Administrative Hearings*, 230-RICR-100-002 ("Rules of Procedure") provides that any objection to a motion shall be filed within ten (10) days of the filing of the written motion. The Respondents did not file an objection to the Department's motion to compel within ten (10) days and to date, they have not filed an objection.

On July 16, 2019, the Department filed a second request to amend the order to show cause. Section 2.11 of the Rules of Procedure provides that any objection to a motion shall be filed within ten (10) days of the filing of the written motion. The Respondents did not file an objection to the

[1] The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 21-28.6-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearings*.

Department's second request to amend order to show cause within ten (10) days and to date, they have not filed an objection.

By email to the undersigned dated May 16, 2019, the parties agreed to a discovery schedule which provided that the parties would respond to all outstanding discovery requests by June 24, 2019. By letter dated June 28, 2019, the Department attempted to confer with the Respondent pursuant to Super. R. Civ. P 37(a)(2) (as required by section 2.12 of the Rules of Procedure). The Department detailed in its motion to compel that Respondents Tyler Losacano and Eric Sobaczewski failed to respond to any of the Department's written interrogatories and requests for production of documents and that Respondent Thad Luzzi's responses to both written interrogatories and requests for production of documents were incomplete.

The Respondents did not dispute any of the Department's representations in the motion to compel discovery. The Respondents did not object to either the motion to compel or to the second request to amend the order to show cause.

Based on the foregoing, the Respondents are ordered comply with the Department's discovery requests within fourteen (14) days of this order and the Department's second request to amend order to show cause is granted.

Entered this 13th day of August, 2019.

Catherine R. Warren
Hearing Officer

CERTIFICATION

I hereby certify on this 13th day of August, 2019 that a copy of the within Order was sent by first class mail, postage prepaid and certified mail to –

Thad Luzzi 80 Weir Street Glastonbury, CT 06033	Tyler Losacano 24 Stony Brook Drive, Unit C-5 Glastonbury, CT 06033
Thad Luzzi 43 Spring Lane West Hartford, CT 06107	Tyler Losacano 141 High St. Westerly, RI 02891
Eric Sobaczewski 48 Lawton Ave Westerly, RI 02891	Tyler Losacano 63 Pleasant Street Westerly, RI 02891

and by electronic delivery to tluz1@yahoo.com; tystaa123@aim.com; esobez@yahoo.com and by electronic delivery to Jenna Giguere, Esquire, and Sara Tindall-Woodman, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, 02820