



# Washington State Liquor and Cannabis Board

**Topic:** Petition for Adoption, Amendment, or Repeal of a State Administrative Rule – (WAC 314-55-080 related to medical cannabis endorsements)

**Date:** March 29, 2023

**Presented by:** Daniel Jacobs, Policy and Rules Coordinator

## Background

On January 31, 2023, John Kingsbury submitted a petition for adoption, amendment, or repeal of a state administrative rule. The petition requests that the agency amend WAC 314-55-080, and as needed, WAC 314-55-020, to create a mechanism to discontinue medical endorsements from cannabis retailers who no longer comply with the laws and regulations.

In the rule petition, Mr. Kingsbury stated:

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: 314-55-020, 314-55-080

- I am requesting the following change: Currently, the following rules seem to offer no clear path for LCB to revoke a medical endorsement in the absence of voluntary and affirmative action by the licensee.
- This change is needed because: There are too many licensees holding medical endorsements they are not meeting the requirements for, and actually removing those endorsements is unduly burdensome.
- The effect of this rule change will be: To save everyone a lot of work. To make adherence to the standard more clear.
- The rule is not clearly or simply stated:

In the email containing the rule petition, Mr. Kingsbury further stated:

There seems to be no clear, specific path for LCB to remove a retail medical endorsement, absent a specific request and follow-up actions by the retailer. As you can imagine, this creates some barriers to legitimate removal, and demands an excess of labor and confusion when an endorsement should clearly be removed and licensee is simply not taking the affirmative actions to remove it.

The petition is offered to provide clarity and reduce agency (and my) work.

## Issue

Whether the Board should initiate the rulemaking process to consider amending WAC 314-55-080 to create a mechanism for cancellation of medical cannabis endorsements for retailers who no longer qualify for the endorsement.

## Authority

### *Laws*

[RCW 69.50.342\(2\)](#) provides that rules adopted on retail outlets holding medical cannabis endorsements must be adopted in coordination and consultation with the Washington State Department of Health.

[RCW 69.50.375\(1\)](#) establishes a medical cannabis endorsement to a cannabis retail license to permit a cannabis retailer to sell cannabis for medical use to qualifying patients and designated providers. The endorsement also permits such retailers to provide cannabis at no charge, at their discretion, to qualifying patients and designated providers.

[RCW 69.50.375\(3\)](#) provides that, to be issued an endorsement, a cannabis retailer must:

- (a) Not authorize the medical use of cannabis for qualifying patients at the retail outlet or permit health care professionals to authorize the medical use of cannabis for qualifying patients at the retail outlet;
- (b) Carry cannabis concentrates and cannabis-infused products identified by the Department of Health under subsection (4) of this section;
- (c) Not use labels or market cannabis concentrates, useable cannabis, or cannabis-infused products in a way that makes them intentionally attractive to minors;
- (d) Demonstrate the ability to enter qualifying patients and designated providers in the medical cannabis authorization database established in [RCW 69.51A.230](#) and issue recognition cards and agree to enter qualifying patients and designated providers into the database and issue recognition cards in compliance with Department of Health standards;
- (e) Keep copies of the qualifying patient's or designated provider's recognition card, or keep equivalent records as required by rule of the board or the department of revenue to document the validity of tax exempt sales; and
- (f) Meet other requirements as adopted by rule of the department or board.

[RCW 69.50.375\(4\)](#) provides that the Department, in conjunction with the Board, must adopt rules on requirements for cannabis concentrates, useable cannabis, and cannabis-infused products that may be sold, or provided at no charge, to qualifying patients or designated providers at a retail outlet holding a medical cannabis endorsement.

## Rules

[WAC 314-55-020\(6\)](#) provides that the Board may place licensing change applications made by a licensee on hold if the change application is reasonably related to an ongoing investigation.

[WAC 314-55-020\(6\)\(a\)](#) provides that the board may withdraw licensing change applications pending the results of an adjudicative proceeding regarding a violation of this chapter. Depending on the outcome of the adjudicative proceeding, the licensee may reapply for the withdrawn licensing change application(s).

[WAC 314-55-020\(6\)\(b\)\(ii\)](#) identifies the addition of a medical cannabis endorsement as the type of licensing subject to the requirements of subsection 6.

[WAC 314-55-080\(3\)](#) identifies several requirements for maintaining a medical cannabis endorsement in good standing, including:

- (a) Follow all rules adopted by the department of health regarding retail sales of medical cannabis;
- (b) Have a consultant on staff in accordance with department of health rules;
- (c) Prohibit the medical use of cannabis by anyone at the retail outlet at all times, including medical use by qualifying patients;
- (d) Maintain at all times, a representative assortment of cannabis products necessary to meet the needs of qualified patients and designated providers;
- (e) Not market cannabis concentrates, useable cannabis, or cannabis-infused products in a way that make them especially attractive to minors;
- (f) Demonstrate the ability to enter qualifying patients and designated providers in the medical cannabis authorization database established by the department of health;
- (g) Issue recognition cards and agree to enter qualifying patients and designated providers into the database in compliance with the department of health standards;
- (h) Keep records to document the validity of tax exempt sales as prescribed by the department of revenue for a minimum of five years. For the documentation requirements in RCW [69.50.375\(3\)\(e\)](#), licensees are not required to separately keep copies of the qualifying patient's or designated provider's recognition card because this information is stored in the medical cannabis authorization database;
- (i) Train employees on the following:
  - (i) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical cannabis authorization database;
  - (ii) Recognition of valid recognition cards; and
  - (iii) Recognition of strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of cannabis concentrates, useable

cannabis, and cannabis-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

[WAC 314-55-080\(6\)](#) states that failure to comply with subsection (3) [the requirements above] may result in suspension or revocation of the medical cannabis endorsement.

## **Analysis**

The Board has statutory authority under RCW 69.50.342 to create rules regarding cannabis retailers holding a medical cannabis endorsement. Endorsements are additions to licenses that change the circumstances under which regulated substances may be sold. While there are many endorsements of different kinds for liquor licenses, the medical cannabis endorsement is the only endorsement available to cannabis licensees.

WAC 314-55-020(6) provides a framework for licensees to apply for various changes to their existing license, including adding a medical cannabis endorsement. Currently, to maintain a medical cannabis endorsement, a cannabis retailer must comply with a variety of requirements described in RCW 69.50.375 and WAC 314-55-080. However, there is no mechanism specifically identified in rule or statute for a cannabis retailer to voluntarily cancel or surrender their medical cannabis endorsement. WAC 314-55-080(6) provides that failure to comply with the requirements of WAC 314-55-080(3) may result in suspension or revocation of the medical cannabis endorsement.

The Board's Cannabis Retail map currently marks retailers that have a medical cannabis endorsement with a green icon. Additionally, in the Frequently Requested Lists section of the Board's website, there is a list of retailers with medical endorsements that is available to review as an Excel sheet. This list is updated every Tuesday. To date, 235 licensed cannabis retailers have active medical cannabis endorsements.

Since October 2022, Mr. Kingsbury has contacted LCB's Enforcement and Education division expressing concern that several cannabis retailers with medical endorsements no longer met the requirements to maintain the endorsement. He offers that consideration of such a rule change may better achieve overarching goals of increased access to medically compliant product and consultative services by providing a more accurate representation of which cannabis retailers meet the requirements of the endorsement.

In subsequent communication, Mr. Kingsbury suggested verifying that cannabis retailers meet requirements prior to issuance of a medical endorsement. A current cannabis retailer can submit an Application for Added Medical Cannabis Endorsement with form LIQ 1276.

## **Divisional, Interagency, Intergovernmental, DEIB, Social Equity and Other Impacts**

### ***Divisional***

#### *Licensing*

In October 2022, Licensing contacted 289 cannabis medical endorsement holders to confirm they were still maintaining compliance to have the endorsement and if they were still interested in keeping the endorsement on their license. The following questions were asked:

1. Do you have the ability to enter qualifying patients and designated providers in the medical cannabis database administered by the Department of Health (DOH) under chapter [246-71 WAC](#)?
2. Do you have the ability to issue medical cannabis patient and designated provider recognition cards developed by the DOH under chapter 246-71 WAC?
3. Do you have at least one employee who holds an active medical cannabis consultant certificate under chapter 246-72 WAC?
4. Do you currently carry cannabis products that have been identified by the DOH in chapter [246-70 WAC](#) as beneficial for medical use?
5. Are you interested in keeping the medical endorsement?
  - a. **If no:** To remove the medical endorsement, they can email [cannabisendorsements@lcb.wa.gov](mailto:cannabisendorsements@lcb.wa.gov) requesting to remove it. They should include the license number and the location address and the request must come from a member on the license. Once received, a Customer Service Representative will assist with removing the endorsement.
  - b. **If yes and it appears they are not compliant:** What is your plan to become compliant?

As a result, 51 medical endorsements were discontinued and removed from the cannabis retail license.

In 2017, Licensing conducted a similar review of medical cannabis endorsements. At that time, 196 medical cannabis endorsements were discontinued and removed from the cannabis retail license.

As outlined above, WAC 314-55-080 outlines certain requirements to maintain a medical cannabis endorsement. The Licensing Division requires an application and copy of a Cannabis Consultant Certification prior to adding a medical cannabis endorsement to a license.

The current rule language does not specify a time period for a retailer to become compliant and does not provide specific measurements for maintaining compliance. For example, it is common for retailers to have staff changes, which may result to a lapse in time having a consultant on staff. Additionally, WAC 314-55-080 (3)(d) states the endorsement holder must “maintain at all times, a representative assortment of cannabis products necessary to meet the needs of qualified patients and designated providers”, which does not define the amount of products that must be available or take into consideration the availability of cannabis medical products.

Enforcement & Education – no specific concerns identified.

Finance – no specific concerns identified.

Information Technology/Infrastructure – no specific concerns identified.

Public Health/Prevention - no specific concerns identified.

## ***Interagency***

### ***Department of Health***

The Department of Health’s medical cannabis program is responsible for administration of the medical cannabis database, certifying medical cannabis consultants, and standards for medically compliant products. The Department of Health also maintains a [list](#) of medical cannabis endorsed stores. The list on the Department of Health’s website is connected to LCB’s list such that when one is updated, the other is automatically updated.

Labor & Industries – no specific concerns identified.

## ***Intergovernmental***

Tribes – no specific concerns identified.

## ***DEIB, Social Equity***

As this rule petition relates to medical cannabis endorsements, medical cannabis patients will likely be most impacted by the rule revisions contemplated by this petition. However, the total population of medical cannabis patients in Washington is unclear based on the frequent assertion that there are a number of consumers who identify as medical cannabis patients but do not register in the DOH database. Providing accurate and publicly available information on medically endorsed stores may positively impact these populations by increasing access to medically compliant products and consultative services. Such efforts may also assist in emphasizing health equity, rather than disparity, for those who rely on compliant product for treatment of medical conditions.

## **Options**

Option 1: Deny the petition and do nothing. Maintains status quo.

- Risk: Complaints will continue, requiring additional Enforcement & Education staff hours. Retailers that no longer qualify for the medical cannabis endorsement may benefit by continuing to be identified as holding a valid medical cannabis endorsement.
- Benefit: No identifiable benefits.

Option 2: Deny the petition and provide a public-facing message or guidance document to cannabis retailers regarding requirements described in rule for maintaining a medical cannabis endorsement. Such a message or guidance may provide contact information to relevant LCB staff and directions for how to cancel their medical cannabis endorsement if they no longer qualify.

- Risk: As with Option 1, complaints may continue. With any public facing messaging, risk of misinterpretation by readers.
- Benefit: Guidance may be more expeditious way to address concerns than rule-making but may not fully achieve satisfactory outcomes that fully address Petitioner’s concerns. May encourage non-compliant retailers to come into compliance to maintain the medical cannabis endorsement.

Option 3: Accept the petition, agree to initiate the rulemaking process regarding amending WAC 314-55-080 to create a mechanism for voluntary termination of medical cannabis endorsements.

- Risk: Retailers that do not currently qualify for the medical cannabis endorsement may retain endorsement during the rule development process.
- Benefit: May encourage non-compliant retailers to come into compliance to maintain the medical cannabis endorsement. Allows for collaborative stakeholder involvement and possible additional clarity in rule language.

**Board Action**

After considering the various options identified by Director’s Office staff, the Board accepts/denies the petition for rulemaking received from John Kingsbury on January 31, 2023.

<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny		<u>3.29.2023</u>
	David Postman, Chair	Date

<input type="checkbox"/> Accept <input type="checkbox"/> Deny	<i>Not Present</i>	<u>3.29.2023</u>
	Ollie Garrett, Board Member	Date

<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Deny		<u>3.29.2023</u>
	Jim Vollendroff, Board Member	Date

## **Attachments**

1. Email from John Kingsbury received January 31, 2023, containing rule petition.
2. Supplemental Email from John Kingsbury received February 18, 2023.