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April 19, 2022

VIA Email: adh.medicalmarijuana@arkansas.gov

Confirmed by U.S. Mail

Finley Hill, Jr.
Section Chief, Medical Marijuana
4815 W. Markham, Slot 50
Little Rock AR 72205

RE: Public Comment on the proposed revisions to the Rules Governing
Medical Marijuana

Mr. Hill:

I write on behalf of my clients, Good Day Farm Arkansas, LLC and Capitol City Medicinals, LLC, to submit the following comments on the proposed rule changes to the Rules Governing Medical Marijuana.

Section III(38)(3) of the proposed rules revises the previous definition of “written certification.” Specifically, the proposed rules remove the prohibition on issuance of a written certification based on “an assessment performed through telemedicine” and update that to state that that a physician may not issue a written certification based on an “initial assessment performed through telemedicine.”

However, these proposed revisions continue to conflict with the requirements of Act 1112 of 2021 (“Act 1112”) as codified in Ark. Code Ann. § 17-80-401, et seq. Act 1112 became effective on July 28, 2021, but its provisions are still not being followed by ADH, nor are they incorporated into these revised rules. As set out below, this refusal is contrary to Arkansas law and is presently causing harm to our client, as well as thousands of Arkansas residents who rely upon certifications from physicians for their medical use of cannabis.

Act 1112 provides for the issuance and renewal of written certifications.

Act 1112 expressly defined the term “telemedicine” to provide as follows:

April 19, 2022

Page 2

“Telemedicine’ does not include the use of audio-only electronic technology by a physician to renew a written certification that was previously issued to the same patient.”

Thus, it was the General Assembly’s clear directive that the renewal of a written certification through audio-only electronic technology is not prohibited by the §2, 19(C) of Amendment 98.

Act 1112 of 2021 additionally provides that the initial written certification for issuance of a registry identification card under Amendment 98 may be issued by a physician through a “telehealth certification” as that term is defined. Specifically, Act 1112 defines “telehealth certification” to mean “the electronic assessment of a patient by a practitioner in connection with an application for a registry identification card under §5 of Arkansas Constitution, Amendment 98, also known as the Arkansas Medical Marijuana Amendment of 2016.” Despite these clear directives from the General Assembly, these proposed rules continue to fail to fully incorporate the law as set out in Act 1112. Specifically, these proposed rules are contrary to Act 1112 in the following aspects:

- The proposed rule does not recognize or incorporate Act 1112’s authorization to obtain an initial assessment for a written certification through a telehealth certification. In fact, the proposed rule completely ignores that aspect of the Act.
- Act 1112 authorizes the use of audio-only technology for renewal of a written certification. These proposed rules also do not incorporate or acknowledge that method of certification.
- The proposed rule instead directs physicians to “comply with Arkansas State Medical Board rules specific to Medical Marijuana physician written certifications.” However, as of the date of this comment, no such rules have been written or promulgated by the Arkansas State Medical Board. This portion of the proposed rule therefore has the effect of prohibiting physicians from certifications that are in compliance with Act 1112 by specifically requiring adherence to non-existing rules.

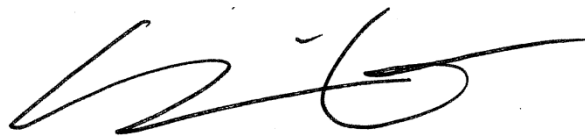
April 19, 2022

Page 3

In sum, these proposed rules do not incorporate or comply with the provisions of Act 1112 of 2021 and, as such, we object to their promulgation as proposed. We appreciate your consideration of these public comments.

Respectfully yours,

WRIGHT, LINDSEY & JENNINGS LLP

A handwritten signature in black ink, appearing to read "Erika Gee", with a long horizontal stroke extending to the right.

Erika Gee