DISTRICT OF COLUMBIA PATIENTS' COOPERATIVE
1858 Mintwood Place NW #4
Washington, D. C. 20009

September 17, 2010

By Hand Delivery

Arthur J. Parker, Esq.
Chief, Rulemaking Section
Office of the Attorney General—Legal Counsel Div.
District of Columbia
1350 Pennsylvania Ave., N.W.
Suite 409
Washington, D.C. 20004

Re: Notice of Proposed Rulemaking—57 DCR 7003 (August 6, 2010)-- Legalization of Marijuana for Medical Treatment Initiative— Implementation of Legalization of Marijuana for Medial Treatment Amendment Act of 2010

Dear Mr. Parker:

District of Columbia Patients' Cooperative, Inc., is pleased to submit these comments on the proposed rules set forth in the above-referenced notice, 57 DCR 7003 (August 6, 2010).

District of Columbia Patients' Cooperative, Inc. ("DCPC") is a District of Columbia non-profit corporation formed and managed by D.C. residents, for the purpose of advocating for the interests of and serving qualifying patients in the implementation of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, 2010 D.C. Laws 18-210 (the "Act"). DCPC intends to apply for registration of a cultivation center and a dispensary, pursuant to the Act and the regulations that are ultimately adopted by the District Council.

The directors and officers of DCPC have extensive experience with advocacy for medical marijuana patients, have been involved from the outset in advocating for the Initiative and the Act, and have carefully studied the experience of other states in which marijuana can lawfully be cultivated and distributed for approved medical purposes.

General Comments

DCPC applauds the careful, thoughtful and extensive effort that has been put into the development of the proposed rules. In many respects, the proposed rules will help accomplish the purposes of the Initiative and the Act in making marijuana available for medical purposes to those patients who legally qualify for its use, without undue burden, while preventing unlawful diversion. In three general areas, however, the overall basis for and structure of the proposed rules should be revisited.

First, we respectfully suggest that the Mayor should revisit his delegation to the Alcoholic Beverage Control Board, and thus to the Alcoholic Beverage Regulation Administration ("ABRA"), of registration and oversight of cultivation centers and dispensaries. Mayor's Order 2010-138, 57 DCR 7100 (Aug. 3, 2010) §III. The implementation of the Act involves the distribution of an otherwise controlled substance for medical purposes. Such implementation is a public health function. By contrast, the sale and distribution of alcoholic beverages is not such a function. The considerations for selection of entities and individuals to be involved in cultivating and dispensing marijuana for medical purposes are entirely different from those involved in determining the number and location of bars and restaurants authorized to sell alcoholic beverages. The oversight of cultivation centers and dispensaries dealing with distribution of medicine to individuals with very serious medical conditions requires expertise in public health facilities and operations—expertise that the ABRA simply does not possess.

In that regard, registration and oversight of cultivation centers and dispensaries is akin to the licensing and regulation of physicians and pharmacies. The licensing of physicians in the District, of course, is the responsibility of the Health Professional Licensing Administration ("HPLA"), an arm of the Department of Health. Likewise, authority for the licensing of pharmacies and pharmacists vests in the Board of Pharmacy, also part of the HPLA. Similarly, responsibility for the registration and oversight of cultivation centers and dispensaries should be delegated to the Department of Health.

Second, in a number of areas, the proposed rules do not distinguish between individual applicants for registration of cultivation centers and dispensaries, and applicants which are entities, such as for profit or non-profit corporations. The rules should be clarified to indicate when a particular requirement applies to the entity applying for a registration as opposed to particular individuals who serve in specified capacities with the entity—directors, officers, etc. We have identified below specific provisions of the proposed rules that should be clarified in this way.

Third, the proposed rules would limit the number of dispensary registrations to five and the number of cultivation center registrations to ten. If more applications are received for each category of registration than the number of registrations available, it is imperative that the Department of Health or Alcoholic Beverage Control Board select from among the applicants on the basis of merit, specifically, considering relevant factors that are set out in the rules. The proposed rules appear to be somewhat contradictory and confusing on this point: as noted below in more detail, certain proposed rules suggest that registrations will be awarded on a "first come first serve basis," while other rules set forth factors to be considered by the Board. The registrants selected will perform an important public health function that requires a high degree of skill and a commitment to abide by the all the regulations fastidiously. No other jurisdiction in America that has a well-regulated medical marijuana program has selected entities based on "first-come, first-served" and it makes no sense for the District of Columbia to do so. Rather, applicants should be selected strictly on merit, based on a consideration of the factors set out specifically in the rules. Further, after the deadline for applications passes, all applications should be posted on-line to ensure the public has the opportunity to review and analyze the applicants.

Specific Comments

DCPC's specific comments on the proposed rules are set forth below. The section numbers correspond to the section numbers of the proposed rules.

Chapter 3—Use by Qualifying Patient, Transportation by Caregiver and Limitations On medical Marijuana

Section 300.9(a): This rule limits the maximum amount of medical marijuana any qualifying patient or caregiver may possess at any time to two ounces of dried medical marijuana. The Act authorizes the Mayor, through rulemaking, to increase that quantity to up to four ounces; and to establish limits on medical marijuana in a form other than dried. Act, §4(a), D.C. Code §7-1671.03(a). We urge the Mayor to exercise that authority in this rulemaking, to increase to four ounces the quantity that a patient can possess at any one time at their home or medical treatment facility, with the proviso that no more than two ounces can be dispensed in any one transaction. Like any patient who refills a prescription before the patient completely runs out of the medicine, qualifying patients should be able to refill their prescriptions, for up to two ounces, before they completely run out of the marijuana previously dispensed. If this is to be allowed, however, a patient will necessary have somewhat in excess of two ounces in their possession at any given time. To provide for that situation, the permitted amount should be increased to four ounces.

Section 300.9(b): This rule limits, to the equivalent of two ounces dried, the amount of medical marijuana in any other form that a patient may possess. As noted, the Act authorizes the Mayor, through rulemaking, to establish appropriate limits on the amount of medical marijuana in a form other than dried, that a patient may possess at any one time. Act, §4(a), D.C. Code §7-1671.03(a). Concentrated forms of marijuana—such as hash oil, tinctures and cannabis-infused edible items—typically require more cannabis to prepare than the amount of dried form that would be needed to produce the same effect. To allow physicians to recommend those forms of medical marijuana best suited to alleviating a patient's symptoms, the rule should permit possession by a patient of more than two ounces dried equivalent, if the recommendation is for a form other than dried. We would suggest that an appropriate limit, expressed as a dried equivalent, corresponding to a limit of four ounces a suggested above, would be eight ounces.

Chapter 400—Disposal of Medical Marijuana by Qualifying Patients and Caregivers

Sections 400.1 & 400.2: These rules require a qualifying patient or caregiver who is no longer registered, or whose registration is suspended or revoked, to return any unused medical marijuana to the Metropolitan Police Department. To avoid wasting medical marijuana that will be needed for low-income patients, and to help meet the needs of such patients, a qualifying patient/caregiver should be able to return unused medical marijuana to the dispensary for a partial refund. The dispensary will, under other provisions of

these rules, be responsible for accounting for all medical marijuana delivered to and dispensed by the facility, so there is no practical danger of diversion. It would, however, be appropriate to require that, if the returned marijuana is unusable by the dispensary due to its condition, the dispensary deliver that marijuana to the MDP for destruction.

Chapter 500: Qualifying Patients

Section 501.1: To ensure that only bona fide D.C. residents can participate in the program, as intended by the Act, we suggest that to qualify, a patient must have resided in the District for at least six months prior to filing an application for registration.

Section 502.1(e): This rule requires that the written physician's recommendation be dated not more than 30 days prior to the application date. However, section 800.1 of the proposed rules allows a physician to recommend the use of medical marijuana to a qualifying patient if the physician has conducted a complete physical examination of the patient within 90 days of the date of the recommendation. It makes no sense to permit a physician to conduct a complete physical exam and assessment 90 days before the recommendation, only to require the patient to come back for another appointment within 30 days. Given that these patients already typically bear the expense and burden of needing to consult multiple doctors and specialists for their conditions, this inconsistency should be resolved in favor of requiring that the physicians' recommendation be dated no more than 90 days prior to the application date—the same time window allowed for the complete physical exam and assessment.

Chapter 6: Caregivers

Section 601.1(e): This provision prohibits an individual from serving as a caregiver if he or she has ever been convicted of possession or sale of a controlled substance. The Act itself does not impose any such prohibition. Adopting such a prohibition in these rules would disqualify a family member, domestic partner or close friend of a qualifying patients from serving as a caregiver-- even if that individual had been convicted of a minor drug possession offense long ago. The proposed rules, section 5803.1, also prevent a dispensary from delivering medical marijuana to a patient, outside the dispensary. Therefore, for those patients unable to travel themselves to a dispensary and unable to select a caregiver due to this prohibition, there is no alternative for a qualified patient to obtain their medical marijuana under this program. Thus, there is no reason to burden patients from selecting particular caregivers by disqualifying them on this basis. As long as the chosen caregiver is not currently under parole or probation they should be able to assist their qualified patient.

Section 602.2: This section requires caregivers to pay for criminal background checks. The MPD, however, has access to the law enforcement databases needed to conduct such background checks, without incurring any incremental cost. There is no justification for levying a fee, and such a fee could impose an undue burden given that many caregivers are live-in relatives of low-income patients serving without compensation of any kind.

Chapter 8—Recommending Physicians

Section 800.1(c): This section effectively prohibits a D.C. physician from recommending the use of medical marijuana for a qualifying patient if the patient consulted with the physician for the "primary purpose" of determining whether use of medical marijuana is indicated. The effect of this rule is that, if a patient with a qualifying condition consults a new physician, licensed in D.C. and that doctor recommends use of medical marijuana in accordance with the Act and rules in that doctor's medical judgment, the recommendation will not be valid unless the patient continues to consult with that doctor on some undefined "ongoing" basis. In the meantime, the patient will be deprived of the use of medical marijuana in circumstances in which the Act clearly contemplates that the patient *will* be able to use the drug for medical purposes.

Further, the physician will effectively be punished by having her recommendation rendered invalid merely because the recommendation was made at the outset of the physician-patient relationship. "[P]hysician speech is entitled to First amendment protection because of the significance of the doctor patient relationship." *Conant v. Walters*, 309 F.3d 629, 636 (9th Cir. 2002), *cert denied*, 540 U.S. 946 (2003)(citing *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 884 (1992)). The *Conant* court enjoined a federal government policy that punished physicians from recommending medical marijuana on the grounds that the policy "condemns expression of a particular viewpoint, i.e., that medical marijuana would likely help a specific patient. Such condemnation of particular views is especially troubling in the First Amendment context." 308 F.3d at 637. As proposed section 800.1(c) likewise condemns expression by a physician, seeing a patient for the first or second time, of that same view, the proposed rule seems unlikely to survive constitutional scrutiny.

Section 801.1(f). The rule should not require a physician to include on the recommendation form the length of time the qualifying patient has been under that physicians' care. That information should be considered irrelevant for the reasons stated in our comments on section 800.1(c).

Section 803.1: The language of this provision should be amended to clarify that it is not intended to prohibit a doctor from having an office in the same building as a dispensary or cultivation center, only that a recommending doctor's office cannot be located with a cultivation center or dispensary licensed premises.

Chapter 10—Enforcement Actions

Section 1000.1(c)(1)—This subsection, by prohibiting possession of medical marijuana in a "public vehicle," would prevent a qualifying patient from taking public transportation from a dispensary back to the patient's home. The reference to "public vehicle" should be removed. As long as the patient's medicine remains in it's sealed container and the dispensing date is within twelve hours, it can be assumed the qualified patient is in compliance the proposed rules.

Chapter 12—Investigations and Inspections

Section 1200.1: While it is clear that the Department of Health must have authority to conduct unannounced inspections of cultivation centers and dispensaries, the proposed rule should be amended to make clear that cultivation centers may require Department officials to don appropriate protective coverings—sterile clothes, gloves, and a mask in particular—before entering a cultivation center. Introduction of foreign agents such as bacteria, insects, etc. into a cultivation center could easily destroy an entire crop, ruining months of work by the center and depriving patients of a needed source of supply. For that reason, cultivation center personnel will themselves, as a matter of course, be required to wear protective gear. Any government officials entering a cultivation center should be subject to a similar requirement and the center should have the right to deny access to a government official who is not using such gear.

Chapter 13—Fees

Section 1300.1: Many patients with the debilitating and life-threatening conditions that qualify them for use of medical marijuana, under the Act and these rules, are low-income individuals already struggling to make ends meet. Although reduced fees are provided for individuals with incomes less than 200% of the federal poverty level, many patients with incomes exceeding that level would still fall into this category. For example, a single individual with HIV and an income of only $22,000/year would not qualify for the reduced fees under section 1300.2. Further, because no health insurance plan covers the use of medical marijuana, these low-income patients already face a significant financial burden in availing themselves of the program. For these reasons, we believe that qualified patients should be required to pay no more than $50 for the registration fee. Caregivers, too, in most cases, are uncompensated volunteers, who should not have to incur a significant financial burden in order to help the patient; their registration fee should similarly be no more than $50. The renewal fees should be reduced to $25, given that the information needed to process the renewal will already be on file with the Department of Health. Replacement cards should be issued at no charge.

Section 1300.2: Individuals with incomes below 200% of the federal poverty level, who already face a severe challenge in being able to afford participation in the program on top of other medical costs, should not have to pay anything at all to register or to renew their registrations.

Chapter 51—Registration, License and Permit Categories

5101—Renewal Periods

Section 5101.2: It is critically important to the success of the Initiative and the Act that the community served by each potential and existing cultivation and dispensary have a full opportunity to participate in the application process, so that the community will be supportive of and engaged in the program. We believe that goal can best be achieved by providing an opportunity for the ANC of the single member district in which the proposed facility would be located, to comment on each renewal application, on an annual basis, for the first three years. Thereafter, that ANC should be provided an opportunity to comment once every three years, as the proposed rule contemplates. In addition, other ANC's located in the same ward but in different districts should be

provided an opportunity to comment once every three years, as the proposed rule contemplates.

5102—Registration, License and Permit Fees

Section 5102.2: The combination of substantial annual registration fees, and low daily penalty for failure timely to apply for renewal, will create an incentive for registrants not to make timely applications for renewal. The result could well be that a number of delinquent registrants do not obtain proper renewals, but still have their registration count against the maximum number of permitted facilities accessible by qualified patients. For this reason, after a certain period of delinquency in submitting an application for renewal of a registration for a cultivation center or dispensary, the registrant's registration should be revoked.

Section 5102.4: As noted above, a dispensary is a facility distributing a controlled substance for medical purposes. The proposed fee for registration of a dispensary, however, is vastly more than the fee payable in D.C. for a license from the Board of Pharmacy ($280) or the fee payable to HRLA for a license of a health care provider to distribute controlled substances ($130). It is difficult to understand the rationale or justification for charging an annual fee for registration of a dispensary that is 30-50 times the amount charged for fees for other licenses needed to distribute controlled substances for medical purposes. It is true, of course, that far fewer dispensaries will be registered than the number of pharmacists who are licensed each year. But the selection of which dispensaries will be registered should not turn on the ability of an applicant to afford an exorbitant fee.

If and to the extent that dispensaries will be regulated by ABRA in the same way as restaurants and bars serving alcoholic beverages, or stores selling such beverages, then the fees charged by ABRA should be in line with those payable for alcoholic beverage licenses for such establishments. Even a Class A retailer—a liquor store selling hard spirits for off-premises consumption—pays an annual licensing fee of $2,600. A bar serving less than 100 persons pays an annual licensing fee of only $1,300 and a bar serving more than 200 persons pays an annual licensing fee of $3,210. If anything, following the ABRA model, the fees for dispensaries should be lower than those for bars, since a dispensary can only serve a limited universe of qualifying patients, while a bar can serve an unlimited number of persons as long as its licensed capacity is not exceeded at any one time. Again, it is impossible to understand the justification for an annual license fee 4 to 6 times as much as the fee charged for analogous establishments under the ABRA licensing regime.

Section 5102.5: A $5,000 annual licensing fee for a cultivation center would make it economically impossible to operate such a center, given that a center will not be permitted to cultivate more than 95 plants at any one time. (*See* proposed rule 5804.1). Given this limitation, a cultivation center will be able to harvest no more than about 285 plants per year. If the annual licensing fee is $5,000, the cost of the annual fee alone would amount to $17.54 *per plant*, not including any other costs. This cost, plus the application fee, will be passed on and marked up by the dispensary, resulting in very significant costs to the qualifying patient. We would suggest that, in the absence of

compelling evidence that a higher fee is needed to fund the administration of the registration of cultivation centers, a fee of $5 per plant, amounting to $1,500 per year, would be far more reasonable.

Sections 5102.6, 5102.7 and 5102.9: These fees will be cumulative, and unduly burdensome, in the case of a director or officer who is also an employee and/or a manager. The language of these rules should be amended to permit, in the case of an individual applying for multiple permits, payment of the highest applicable fee.

5103—Application Fees

Section 5103.1: The proposed amount of $5,000 for the application processing fee, for a dispensary registration, is exorbitant and not consistent with the fees charged for processing applications for analogous licenses. Again, if the dispensary registration process is handled by the Department of Health, and treated in a manner similar to the licensing of pharmacists and health care providers dispensing controlled substances--as we believe should be the case—the fee of $280 for a pharmacy license actually includes the non-refundable application fee of $85. There is no conceivable justification for charging more than 50 times this amount for processing an application for a dispensary registration.

If the process is analogized to the licensing of facilities by ABRA, the processing fee should be within the range of the processing fee for new ABRA licenses, which is only $75.

Section 5103.2: For the reasons stated in our comments on proposed section 5103.1, the processing fee of $5,000 for an application for registration of a cultivation center is also exorbitant and unjustified.

Section 5103.3. For the reasons stated in our comments on proposed rules 5413.1 et seq.,. We believe that transfer of a dispensary registration to a new owner should not be permitted; rather, any new owner should be required to apply for a new registration. However, if transfers are permitted, the fee for a transfer should be within the range charged by ABRA for transfer of a license, which is $250.

Section 5103.4. The fee for transfer of a registration should a new location should be within the range charged by ABRA for such a transfer, which is $250.

Section 5103.6. The fee charged for ca corporate or trade name change should be the same as that charged by ABRA for such a change, which is $50.

5104—Medical Marijuana Certification Provider Permit

Section 5104.2: We strongly support the approval and licensing of those who will be authorized to train dispensary and cultivation officials and workers, and who will be authorized to provide a certification of completion of such training. The proposed rule, however, is evidently based on the "Training for Intervention Procedures" or "TIPS"

training that is provided to employees of bars and other establishments serving alcoholic beverages. The subjects listed in this proposed rule are not applicable to the dispensing of medical marijuana and will not the subjects in which officials and employees of dispensaries should be trained. Those visiting dispensaries are patients, not customers, and the problems with which dispensary employees will be dealing are not rowdy or underage patrons, but rather procedures for proper handling and dispensing of medical marijuana to qualified patients and caregivers in accordance with these rules.

Chapter 52—Registration Limitations

5200—Limitation on the Number of Dispensaries and Cultivation Centers

Section 5200.1: The proposed rule would limit the number of dispensaries, District-wide, to only five. The Act authorizes the Mayor to increase that number to up to eight. Act, §7(d)(2), D.C. Code §7-1671.06(d)(2). The Mayor should exercise that authority in this rulemaking. There should be at least one dispensary per ward. Otherwise, qualifying patients in those wards with no dispensary will be forced to travel long distances in order to obtain medicine that a physician has determined they need. Such patients in many cases have life-threatening and/or severely debilitating conditions, and should not be burdened with the need to travel excessive distances to obtain the medical marijuana that has been recommended to them.

Section 5200.2. The Act does not limit the number of cultivation centers, but rather authorizes the Mayor to determine the appropriate number by rulemaking. Act §7(d)(3); D.C. Code §7-1671.06(d)(3). Each cultivation center will be limited to cultivating 95 plants at any one time. It makes no sense to determine, arbitrarily, at the outset of the program that the total supply of medical marijuana should never exceed 950 plants (10 centers x 95 plants), in the absence of any experience with actual demand by qualifying patients. A more responsible approach would be to provide for an initial limit of ten centers, for the first year of the program, with reassessment by the Department of Health every six months thereafter, and to authorize the Department to increase the number of centers and invite additional applications for registration whenever the Department determines that there is a significant risk that the demand for medical marijuana by qualifying patients will exceed the available supply.

Chapter 53—General Registration Requirements

Sections 5302.1 and 5302.3: Section 5302.1 provides that the Board may approve—but not grant-- a registration for a cultivation center or dispensary prior to issuance of a certificate of occupancy, subject to the condition that the applicant will not engage in purchase or sale of medical marijuana until the COO and all other business licenses have been issued for the business. Section 5302.3 provides that the Board may grant the registration only after the COO and other business licenses have been issued. The Mayor should ensure that the Department of Consumer and Regulatory Affairs is made aware, upon issuance of these rules, that cultivation centers and dispensaries are legitimate commercial businesses, within applicable zoning classes; that COO's should be issued in the same way as for other businesses; and that DCRA should assess its own regulations

and promptly undertake any rulemakings necessary to ensure that cultivation centers and dispensaries can be treated in the same way as any other commercial business.

Chapter 54—Registration Applications

5400—General Qualifications for All Applicants

Section 5400.1: The qualifications set forth in this proposed rule for an "applicant" appear to apply only to applicants who are individual persons. Many, if not most, applicants for registrations will be *entities* such as for-profit or non-profit corporations. The qualifications for registration as an officer, director, incorporator or manager of a dispensary are set forth elsewhere in the Act and proposed rules. The rule should be clarified to indicate what requirements apply to which individuals holding particular roles in an entity, and which requirements are intended to apply to the entity itself.

5401 Additional Standards and considerations for Initial Registration Applications or Transfer of a cultivation Center or Dispensary to a New Location

Section 5401.1. Section 5402.2 implies that the Board will grant applications for registrations for dispensaries and cultivation centers on a "first-come, first served basis." This section, by contrast, provides that the Board will take into account certain specified factors in determining whether to grant an application. The rules should be modified to make clear that the Board will consider all applications that are complete and filed by the specified deadline; and that in selecting which of those applications should be granted, the Board will consider the factors specified in section 5401.1. Clearly, given the Board's role in ensuring that the program is properly implemented, the Board should select the *most qualified* applicants to receive registrations—not make that selection based on who shows up at the door first. In that regard, it should be noted that the ANC's in Wards 1 and 4 have passed resolutions calling on the selection of registrants to be based on merit.

Section 5401.5. The proposed rule prohibits a dispensary from operating "any other type of business" at the proposed location. The language should be modified to make clear that sale of paraphernalia, literature, posters and other educational and advocacy materials related to the medical marijuana program are permitted, as long as they are not a primary source of business income for the dispensary.

Furthermore, the maximum number of plants a cultivation center may cultivate places a cap on the maximum profit margins that can be obtained throughout the year. Cultivation centers, which are set up to grow any plant, should be allowed to diversify their cultivation portfolios to include fruits and vegetables. The cultivation of other legal fruits and vegetables will help ensure cultivation centers remain financially viable.

5402—Application Format and Contents

Section 5402.1: See comments on section 5401.1 above.

Section 5402.4: The required statements do not appear to be applicable to an applicant that is a non-profit corporation. An applicant that is a non-profit corporation should be required to certify that the directors of the non-profit corporation in fact control its governance and are not acting as agents for any other individuals or entities.

5403—Dispensary Registration Application Requirements

Section 5403.1: Subsection (d) requires an application to identify from which cultivation centers medical marijuana will be obtained. Except in the case of a dispensary which will include a cultivation center on site, this requirement makes no sense, because it will not be possible for any applicant for a dispensary registration to identify cultivation centers from which medical marijuana will be obtained until the Board first issues registrations for such cultivation centers. Furthermore, qualified patients will not be able to visit the cultivation centers because only registered staff will be allowed entry.

5406—Director, Officer, Member, Incorporator and Agent Registration Requirements

Section 5406.1: The proposed rules should be amended to provide that (i) an applicant that is an entity—i.e., a for profit or non-profit corporation—must identify all directors, officers and managers and (ii) the applicant entity can submit applications for registrations for its directors, officers and manager(s) *simultaneously* with its own application. Obviously, granting of the entity's application would be contingent on approval of the registrations of the individual officers, directors and manager(s) required to have them.

5409—Criminal Background Checks

Section 5409.1: Again, this provision is not worded in a way that would be applicable to entities applying for registration of a cultivation center or dispensary. Presumably the intent is that individual officers, directors and managers of dispensaries and cultivation centers must undergo a criminal background check; the rule should be reworded accordingly. In addition, there is no reason to charge individuals for criminal background checks as the necessary databases are available routinely to MDP and without any incremental cost to the District.

5412—Renewal Process

Section 5412.1: As noted in our comments on proposed section 5101.2, it is critically important to the success of the Initiative and the Act that the community served by each potential and existing cultivation and dispensary have a full opportunity to participate in the application process, so that the community will be supportive of and engaged in the program. Again, we believe that goal can best be achieved by providing an opportunity for the ANC of the single member district in which the proposed facility would be located, to comment on each renewal application, on an annual basis, for the first three years. Thereafter, that ANC should be provided an opportunity to comment once every three years, as the proposed rule contemplates. In addition, other ANC's located in the

same ward but in different districts should be proved an opportunity to comment once every three years, as the proposed rule contemplates.

5413—Additional Considerations for Transfer to New Owner

We believe that this entire section should be deleted and that registrations for cultivation centers and dispensaries should not be transferable, at all. Rather, any entity wishing to obtain a registration for any existing or new facility should be required to apply for a new registration. A registration for a cultivation center or dispensary is not like a liquor license that may appropriately be transferred by the owner to any other qualified owner willing to pay the asking price. Rather, a registration for a cultivation center constitutes authority to perform an important public health function.

For that reason, if a registrant discontinues operation of a cultivation center or dispensary for any reason, the Board should invite qualified entities to apply for that registration and should select the best qualified applicant based on the factors set forth in proposed rule 5401.1.

5414—Involuntary Transfers

For the reasons set forth in our comments on the proposed rules under subchapter 5413, we believe that involuntary transfer of a registration for a cultivation center or dispensary should not be permitted. Just as a license for a pharmacist, or a permit for health care provider to dispense controlled substances, cannot be involuntarily transferred as personal property, so too should involuntary transfer of a registration for a dispensary or cultivation center be prohibited.

5416—Limitation on Successive Applications After Denial

Section 5416.1: If a registered cultivation center or dispensary discontinues operations for any reason, or the registration is revoked, the opportunity to run that or another cultivation center or dispensary should of course be made available to another entity, to ensure that the population of qualifying patients in the District can continue to be adequately served. If an entity has previously applied for a registration and the application was denied, there is no reason why that entity should be barred from applying again for five years. A well-qualified applicant may have been denied one of the first five (or eight) registrations for a dispensary because other applicants were even better qualified. If one of those registrants discontinues operations, within the first year or two, and the applicant which was denied was considered the 6th best in the first rounds of applications, clearly the Board should be able to consider that entity's application for the registration slot that has opened up.

Chapter 55—Registration Changes

Section 5500.1: The Mayor may wish to adopt certain restrictions on the trade or corporate names for entities registered for cultivation centers or dispensaries. However, as long as a trade or corporate name does not violate those restrictions, the applicant should not have to obtain prior approval from the Board. Such approval of trade or

corporate names is not required for any other type of business and the requirement to obtain such approval raises significant First Amendment concerns.

Chapter 56

5601—Posting of Identification Requirement by Dispensary

Section 5601.1: We strongly support adoption of this rule, which will help to prevent diversion of medical marijuana to individuals who are not qualified patients. We also believe that this requirement will obviate the need for dispensaries to maintain copies of the physicians' recommendations containing the confidential medical records of patients. See our comments on section 6205.1.

5602—Hours of Operation and Sale

Section 5602.1: Just as it is vital that some pharmacies be open 24 hours a day so that patients can obtain prescriptions on an emergency basis, the rules should permit a dispensary to be able, during the nighttime hours, to honor an emergency recommendation from a physician that a qualified patient receive medical marijuana.

Section 5602.2: While it may be reasonable to preclude a cultivation center from delivering marijuana to dispensaries during the nighttime hours, managers and employees must be able to have access to the center 24 hours a day in order to tend to their crop. The rule should be amended to clarify that a cultivation center may be accessed by its own manager(s) and employees at any time, but only transportation and sales to dispensaries are allowed to be conducted during the permissible hours of daily operation.

5604—Manager's License

Section 5604.1: Non-profit corporations do not have "owners." The rule should be clarified to provide that each registrant that is an entity must have one person designated as a manager; that such person must obtain a manger's licenses; and that the manager must be present during the hours the cultivation center or dispensary is open.

Section 5604.8: The rule refers to itself; this is presumably an error and the intent of the rule is unclear.

5605—Destruction and Disposal of Unused or Surplus Medical Marijuana and Reporting Theft

Section 5605.5: If medical marijuana returned to a dispensary by a patient is still useable, the dispensary should be able to distribute it to other patients, in order to help keep costs down for the patient population. Therefore, section 5605.(a) should be amended to read: "Any damaged or unusable marijuana returned to a dispensary or cultivation center after being distributed to patient;…"

With respect to section 5605.5(b), see our comments on section 5804.1.

5607—Labeling and Packaging of Medical Marijuana

Section 5607.1: Subsection (d) of this proposed rule requires that the label affixed to any container of medical marijuana must state, the "cannabinoid profile" of the medical marijuana. In order to obtain a cannabinoid profile, however, a dispensary would need to purchase a mass-spectrometer and gas chromatograph—at a cost of well over $100,000. Even if a dispensary could find a laboratory within the District of Columbia that could perform the necessary testing, the cost would be prohibitive and it would be unlawful in any event to transport plants to and from the laboratory for testing. The Department should provide at least two licenses to District-based laboratories through subsequent rulemaking or the requirement for such testing should be eliminated.

Section 5607.3: The second sentence of this rule applies only to ingestible items and should be included in that section.

Section 5607.4: This rule would require labels to state that, "This product is manufactured without any regulatory oversight…." In view of the extensive oversight by the Department and the Board that would be provided for in these rules, such a statement would simply be untrue. We would suggest replacing that language with a warning stating, "There may be health risks associated with the ingestion or use of this product. Please consult your physician if you have any questions or concerns."

Section 5607.7: The use of the D.C. flag should not be prohibited. If the flag is used, however, the labeling should be required to state that the product is not endorsed, manufactured or used by the District of Columbia Government.

Section 5607.10: Labeling should be required to comply with the applicable requirements as set forth in the rules. Labeling that violates the rules should be prohibited and appropriate penalties imposed. There is no reason or justification to require advance approval of labeling by the Board, ABRA or MPD.

5613—Temporary Surrender of Registration—Safekeeping

Sections 5613.1 & 5613.2: Under these proposed rules, if a registered cultivation center or dispensary discontinues operations, the center or dispensary could retain its registration for up to four years without operating the center or dispensary. Given that only a limited number of centers and dispensaries will be licensed, such a result could prevent qualified patients from being able to obtain needed medicine. If operations are discontinued for one year or more, the registration should be cancelled and the opportunity to apply for the registration should be extended to new applicants.

For reasons stated in our comments on section 5413, a registrant that discontinues operations should not be permitted to sell a license. Any entity wishing to obtain that registration slot should be required to file a new application for a registration.

5614—Co-Location and Integration

Section 5614.2: Qualified patients and caregivers should not be permitted to have physical access to marijuana plants, but should be permitted to view the growing of the plants, in order to help instill confidence in the product.

5615—Point-of-Sale System

Section 5615.1: All dispensaries should be required to use the type of POS computer system described in the proposed rule. Without such a system, it would be impossible for a dispensary to maintain accurate records.

5620—Manufacturing Standards

Section 5620.1: Subsection (d) would prohibit the use of "synthetic growth regulators." The rule should be amended to clarify that this term would not include lighting equipment, a common, accepted and necessary means for successful indoor cultivation of marijuana.

Subsection (h) would confer on the Board authority to prohibit particular items from being used in the cultivation of marijuana. The Board does not possess the requisite expertise to exercise this authority. The banning of any additional items should be accomplished through further rulemaking.

5621—Transport of Medical Marijuana

Section 5621.1: A cultivation center should be able to apply for the number of transport permits it anticipates needing, at the same time as it applies for its registration. It makes no sense to grant a registration to a cultivation center that has no means of delivering medical marijuana to dispensaries unless a separate transport permit is obtained.

Chapter 57—Enforcement, Infractions and Penalties

5700—Mandatory Revocation of Director, Officer, Member,Incorporator, Agent and Employee Registration

5701—Mandatory Revocation

Section 5701.1(c). This proposed rule would require the Board to revoke a registration when the "registration holder" has been convicted of a felony or misdemeanor for a drug-related offense. It is unclear how this requirement would apply to a registration holder that is a for profit or nonprofit corporation. It makes no sense to evoke a registration by reason of the conviction of a single employee. Instead, the language should be amended to clarify that mandatory revocation is required only when the manager has been convicted of a drug related offense. Further, the language should be clarified to exclude a conviction for conduct that is permitted by the Act.

Section 5701.2(d). For the reasons set out in our comments on section 1200.1, the language of section 5701.2(d) should be amended to make clear that requiring Department, ABRA, or MPD officials to don protective gear before entering a cultivation

center would not constitute as unlawfully interfering or impeding an inspection of the premises.

Chapter 58—Prohibited and Restricted Activities

5800—Sale and Purchase of Medical Marijuana by Dispensaries

Section 5800.2: The proposed rule would prohibit a dispensary from offering to sell medical marijuana in person except within the registered premises. That language would effectively prohibit a dispensary from providing necessary information to qualified patients over the telephone—for example, the availability at the dispensary of particular types or forms of marijuana recommended by the patients' physician—before the patient goes to the trouble of visiting the dispensary in person. A dispensary should be able to provide information about its inventory to a qualified patient, over the telephone or on-line.

5803—Delivery of Medical Marijuana

Section 5803.1: The rules should permit a dispensary to apply for and obtain a transport permit, so that the dispensary can transport medical marijuana to qualified patients in those cases in which the patient is physically unable to visit the dispensary and a registered caregiver is unavailable to go to the dispensary to pick up their medical marijuana.

5804—Plant Limitations

Section 5804.1: In order to ensure an adequate supply of medical marijuana within the 95-plant limitation, cultivation centers must be able to clone existing mature plants in order to grow new plants. A cutting cannot produce useable marijuana, however, unless and until it reaches the flowering stage, in the vegetative cycle. The term "living marijuana plant" should be defined to exclude plants that have not yet reached the flowering stage.

5807—Minimum Age Requirements

Section 5807.3: If a person under 18 cannot even enter the premises of a dispensary unless he or she is a qualified patient, then the dispensary would be unable to check the patient's registration card and identification within the premises; the dispensary would have to check those documents outside the dispensary in a public place, which jeopardizes the privacy of patients and is simply impractical. The language of the proposed rule should be amended accordingly.

Chapter 59—Advertising

5900-Sign Advertising

A registered dispensary has a First Amendment right to make truthful statements about a product it is selling lawfully. Accordingly, this subchapter 5900 should be deleted.

Chapter 60—Records and Reports

6003—Cultivation Center Reports

Section 6003.2—Subsections (c), (d), and (g): The quantity, nature and price, of paraphernalia manufactured by a cultivation center, and the total costs of the center, constitutes proprietary information that is not needed in any way by the Board in order to prevent diversion of medical marijuana and exercise appropriate oversight. These items should be deleted.

6004—Dispensary Reports

Section 6004.2—Subsections (d) & (e): This information is proprietary and again, not needed in any way by the Board in order to prevent diversion of medical marijuana and exercise appropriate oversight. These items should be deleted.

6005—Sliding Scale Registration

Section 6005.1: The term "patrons" should be changed to "patients." The requirement to devote 2% of a dispensary's gross revenue to the program could push the prices of medical marijuana to unaffordable levels for low-income patients. The rule should be amended to clarify that a dispensary can lower its prices or donate to low income patients by an amount equal to 2% of its yearly gross revenue. The rules also do not make clear how dispensaries will be able to provide medical marijuana at reduced cost to the many low-income qualifying patients without a subsidy from the District Government through the program.

Chapter 61—Board Review Procedures

6102—Board Decisions

Sections 6102.3 & 6102.4: The rules should require the Board to address, in its findings of fact and conclusions of law, the specific factors set forth in section 5401.1. In addition, section 6102.4 should be reworded to make clear that the Board is to select from among competing applications based on the factors set forth in section 5401.1.

Chapter 62—Enforcement Hearings

6200—Revocation, Suspension or Fines—General Provisions

Section 6200.3: There is no reason to disqualify an entity whose registration is revoked from applying for another registration for as long as five years. The period of disqualification should be reduced to one year.

Section 6200.4: The period of disqualification should be reduced to one year.

Section 6200.6(d): This subsection contemplates that MPD officers will able to inspect all of the records of a dispensary, including the copies of physicians' recommendations that contain the confidential medical records of patients. A dispensary should not be required to make available for inspection by law enforcement personnel that portion of its records containing confidential medical information. Such records are normally unavailable to law enforcement without a court issued warrant or subpoena.

6205—Examination of Premises and Books and Records

Section 6205.1: Dispensary staff should not be required to disclose confidential patient medical records to law enforcement personnel without a court-issued warrant or subpoena. See our comments on section 6200.6(d). In addition, cultivation centers should be allowed to require ABRA and law enforcement personnel to don protective gear before entering the premises, for reasons stated in our comments on proposed section 1200.1.

DCPC appreciates the opportunity to submit these comments and looks forward to continuing to work with the Mayor in the successful implementation of the Act.

Respectfully submitted,

DISTRICT OF COLUMBIA PATIENTS' COOPERATIVE, INC.

CC: Honorable Chairman Vincent C. Gray, Honorable Councilmembers Jim Graham, Jack Evans, Mary M. Che, Muriel Bowser, Harry Thomas Jr., Tommy Wells, Yvette Alexander, Marion Barry, David Catania, Phil Mendelson, Kwame Brown, Michael A. Brown