



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

MARIJUANA REGULATORY AGENCY

In the Matter of

759 E. Pinconning, LLC
Assumed Name: Essence Collective
ERG No. 000236
License No. PC-000263
ENF Nos. 19-00054 & 19-00056

CMP Nos. 19-000493 & 19-000736

MOAHR Docket No. 20-027405

FINAL ORDER

The Marijuana Regulatory Agency (MRA), by its authorized representative, Executive Director Andrew Brisbo, issues this final order in the above-referenced matter, finding that:

1. On February 20, 2020, the MRA issued a formal complaint against the medical marijuana provisioning center license (no. PC-000263) of 759 E Pinconning, LLC dba Essence Collective (Respondent) under the Medical Marijuana Facilities Licensing Act (Act), MCL 333.27101 *et seq.* and administrative rules promulgated thereunder.

2. A contested case hearing was held on January 21, 2021, before an administrative law judge (ALJ) within the Michigan Office of Administrative Hearings and Rules (MOAHR).

3. On March 22, 2021, the ALJ issued a proposal for decision proposing that the MRA issue a final order finding that Respondent violated Section 402(15) of the Act and the following administrative rules: R 333.233(5), 333.236(1), 333.236(2), 333.274(1)(c), and 333.235(11) and take action on the February 20, 2020 complaint as the MRA deems appropriate. A copy of the ALJ's proposal for decision is attached and is incorporated consistent with the findings and conclusions of this order.

4. Having reviewed the whole record before it, the MRA makes the following findings of fact and conclusions of law:

a. Findings of Fact:

1. The MRA accepts the ALJ's findings of fact as set forth in the proposal for decision.

b. Conclusions of Law:

1. The MRA accepts the ALJ's conclusions of law as set forth in the proposal for decision.

5. Based on the above, the MRA finds that Respondent violated Section 402(15) of the Act and Mich Admin Code, R 333.233(5), R 333.236(1), R 333.236(2), R 333.274(1)(c), and R 333.235(11).

6. THEREFORE, IT IS ORDERED that:

- a. Respondent's license is suspended for a period of 7 days beginning at 12:00 a.m. on Thursday, September 2, 2021, and ending at 11:59 p.m. on Wednesday September 8, 2021.
- b. Respondent's license shall be automatically reinstated at the conclusion of the 7-day suspension period.
- c. Respondent must pay a fine in the amount of thirty-two thousand and 00/100 (\$32,000.00) dollars. This fine shall be paid within 30 days of the effective date of this order by check or money order made payable to the State of Michigan with "ENF Nos. 19-00054 & 19-00056" clearly displayed on the check or money order. Respondent shall mail the payment to: Department of Licensing and Regulatory Affairs, Marijuana Regulatory Agency, P.O. Box. 30205, Lansing, Michigan 48909.
- d. If Respondent fails to timely pay the fine, Respondent's license shall be suspended until payment is received.

7. If Respondent violates any provision of this order, Respondent may be subject to additional fines and/or other sanctions.

This order shall be effective 7 days from the date signed by the MRA's authorized representative, as set forth below.

Dated: 8/25/21

Andrew Brisbo
Digitally signed by: Andrew Brisbo
DN: CN = Andrew Brisbo email =
brisboa@michigan.gov C = US O =
Marijuana Regulatory Agency OU =
Executive Director
Date: 2021.08.25 12:53:49 -0400

Andrew Brisbo, Executive Director
Marijuana Regulatory Agency

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 20-027405

**Marijuana Regulatory Agency¹,
Petitioner**

**Case No.: 19-000493 & 19-
00073**

v

**Agency: Marijuana
Regulatory Agency**

**759 E Pinconning, L.L.C. d/b/a Essence
Collective,
Respondent**

**Case Type: MMF Disciplinary
Hearings**

Filing Type: Formal Complaint

**Issued and entered
this 22nd day of March 2021
by: Lindsay Wilson
Administrative Law Judge**

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On February 20, 2020, the Marijuana Regulatory Agency (Petitioner) filed a Formal Complaint² (Complaint), alleging violations by 759 E Pinconning, LLC (Respondent-Licensee) of the Medical Marijuana Facilities Licensing Act (Act), Act 281 of 2016, as amended (Act), MCL 333.27101 *et seq.*, and/or the Medical Marijuana Facility Licensing Administrative Rules, 2018 MR 22; R 333.201 *et seq.*

On December 22, 2020, the matter was thereafter referred to the Michigan Office of Administrative Hearings and Rules (MOAHR) for a hearing to be scheduled.

On December 22, 2020, MOAHR issued a Notice of Telephone Hearing, scheduling the hearing to convene on January 21, 2021.

¹ The Request for Hearing lists the Marijuana Regulatory Agency (MRA) as the Respondent. At the hearing, both parties confirmed that the MRA should be listed as the Petitioner and 759 E Pinconning, LLC dba Essence Collective should be listed as the Respondent.

² The Formal Complaint was orally amended at the January 21, 2021 hearing. Paragraph 7(c)(iv) was amended to correct a scrivener's error as the applicable Rule should be listed as "R 333.274(1)(c)". Paragraph 7(d) was amended to add "in violation of MCL 333.27402(15)". Paragraph 7(d) was also amended to change the facility compliance check date from September 27, 2019 to September 26, 2019.

The January 21, 2021 telephone hearing convened as scheduled. The Petitioner was represented by Alyssa A. Grissom, Assistant Attorney General. The Respondent was represented by Attorney Lawrence Elassal.

WITNESSES

Petitioner offered testimony from the following witnesses at the hearing:

1. Jeff Keister, MRA Regulation Agent
2. Joe LaBelle, MRA Regulation Officer
3. Lori King, MRA Regulation Agent
4. Dan Stickel, Detective Trooper, Michigan State Police
5. Melanie Carroll, MRA Regulation Officer
6. Kristie Jordan, Manager of MRA Medical Facilities Licensing Section

Respondent offered testimony from the following witness at the hearing:

1. Kirk Lytwyn, Owner of Respondent-Licensee

EXHIBITS

Petitioner's Exhibits

Petitioner Exhibit 1	Statement of Kirk Lytwyn, dated October 11, 2019
Petitioner Exhibit 2	Statement of Fred Abbas, dated October 11, 2019
Petitioner Exhibit 3	Gmail account printouts from Kirk Lytwyn, dated October 7
Petitioner Exhibit 4	Essence Monthly Sales for June-September 2019
Petitioner Exhibit 5	Video Loss confirmation emails from Kirk Lytwyn, dated October 7, 2019
Petitioner Exhibit 6	Metric System Training registration for September 13, 2019
Petitioner Exhibit 7	Screenshot of email from Petitioner regarding Regulatory Assessment Fee Invoice, dated April 30, 2019
Petitioner Exhibit 8	Invoice for Regulatory Fee, dated April 25, 2019

Petitioner Exhibit 9 Important Metrc Training Info handout
Petitioner Exhibit 10 Letter regarding Respondent's State Operating License
Approval, dated April 2, 2019

Respondent's Exhibits

No exhibits were offered on behalf of Respondent.

Issue(s)

Has the Petitioner established, by a preponderance of the evidence, that the Respondent-Licensee has violated the Act and/or associated administrative rules?

Applicable Law

MCL 333.27206 provides, in relevant part:

Sec. 206.

The marijuana regulatory agency shall promulgate rules and emergency rules as necessary to implement, administer, and enforce this act. The rules must ensure the safety, security, and integrity of the operation of marihuana facilities, and must include rules to do the following:

* * *

(c) Establish operating regulations for each category of license to ensure the health, safety, and security of the public and the integrity of marihuana facility operations.

MCL 333.27402 provides, in relevant part:

Sec. 402.

* * *

(15) An applicant or licensee has a continuing duty to provide information requested by the board and to cooperate in any investigation, inquiry, or hearing conducted by the board.

MCL 333.27407 provides, in relevant part:

Sec. 407.

(4) Except for license applicants who may be granted a hearing at the discretion of the board under subsection (3), any party aggrieved by an action of the board suspending, revoking, restricting, or refusing to renew a license, or imposing a fine, shall be given a hearing before the board upon request. A request for a hearing must be made to the board in writing within 21 days after service of notice of the action of the board. Notice of the action of the board must be served either by personal delivery or by certified mail, postage prepaid, to the aggrieved party. Notice served by certified mail is considered complete on the business day following the date of the mailing.

Administrative Rules³

Mich Admin Code R 333.233 reads in part:

Marihuana facilities; requirements.

Rule 33.

* * *

(5) A marihuana facility shall enter in the statewide monitoring system all transactions including, but not limited to, current inventory. These records must be maintained and made available to the department upon request.

Mich Admin Code R 333.235 reads in part:

Security measures; required plan; video surveillance system.

Rule 35.

* * *

(11) Surveillance recordings of the licensee are subject to inspection by the department, through its investigators, agents, auditors, or the state police, and must be kept in a manner that

³ The Medical Marihuana Facility Licensing Administrative Rules, formally promulgated and adopted effective November 27, 2018; 2018 MR 22; R 333.201 *et seq.*

allows the department to view and obtain copies of the recordings at the marihuana facility immediately upon request. The licensee shall also send or otherwise provide copies of the recordings to the department upon request within the time specified by the department.

Mich Admin Code R 333.236 reads in part:

Prohibitions.

Rule 36.

(1) Marihuana products not identified and recorded in the statewide monitoring system pursuant to the act, the marihuana tracking act, or these rules must not be at a marihuana facility. A licensee shall not transfer or sell a marihuana product that is not identified in the statewide monitoring system pursuant to the act or these rules.

(2) Any marihuana product without a batch number or identification tag or label pursuant to these rules must not be at a marihuana facility. A licensee shall immediately tag, identify, or record as part of a batch in the statewide monitoring system any marihuana product as provided in these rules.

Mich Admin Code R 333.274 reads in part:

Sale or transfer; provisioning centers.

Rule 74.

(1) A provisioning center may sell or transfer a marihuana product to a registered qualifying patient or a registered primary caregiver if all of the following are met: ***

(c) The licensee determines, if completed, any transfer or sale will not exceed the purchasing limit prescribed in R 333.275.

FINDINGS OF FACT

The following findings of fact are established based on the entire record in this matter, including the witness testimony and admitted exhibits:

1. Kirk Lytwyn is the owner of 759 E Pinconning, LLC, dba Essence Collective (Respondent-Licensee). At all times relevant, Respondent-Licensee operated as a marijuana provisioning center in Pinconning, Michigan.
2. On April 2, 2019, Petitioner sent Respondent-Licensee a letter indicating it was approved to receive a state operating license for a provisioning center pursuant to the Act and the Emergency Rules. The letter also noted that the regulatory assessment must be paid before the license can be issued. [Petitioner Exhibit 10].
3. On or about April 3, 2019, Regulation Officer Melanie Carroll conducted a pre-licensure inspection at Respondent-Licensee's facility. As part of the pre-licensure process, Ms. Carroll verbally went over a checklist of rules with Mr. Lytwyn, including the rule which requires the entering of all transactions, current inventory, and other information into the statewide monitoring system, which is known as METRC. [Testimony of Melanie Carroll].
4. METRC is the statewide monitoring system used by Petitioner to track licensees, their employees, and all products that are being sold. In order to get METRC credentials, the licensee first participates in METRC training and then must pass the METRC test. Licensees are also required to use a third party point of sale system that is capable of interfacing with the METRC system. Once the METRC credentials are received, the licensee will receive METRC tags, which are to be placed on the products. The METRC tags have a bar code which allows for the sale of products to then be tracked through METRC. [Testimony of Jeff Keister].
5. A licensed facility is required to be in compliance with METRC before operating and selling products. If a facility was operating temporarily prior to licensure, the facility is required to shut-down its operations, obtain METRC credentials, and enter the products into METRC before the facility can reopen and conduct sales. [Testimony of Jeff Keister; Testimony of Kristie Jordan].
6. On or about April 25, 2019, a state operating license was issued to Mr. Lytwyn for Respondent-Licensee. [Petitioner Exhibit 7; Testimony of Jeff Keister].
7. On April 30, 2019, Petitioner emailed Mr. Lytwyn regarding the regulatory assessment fee invoice. The email also attached three documents, including a document entitled "Important Metrc Training Info". This document describes the purpose of METRC training and states in part, "[o]nce a prospective licensee is approved by the State, that business and their employees will then be eligible to

sign up for the Metrc New Business training course.” The document also contains a flow chart which “outlines the steps necessary for a business to receive credentials into their Metrc account and begin entering and tracking their inventory.” [Petitioner Exhibits 7 and 9].

8. Respondent-Licensee began its operations of the facility in June 2019. [Testimony of Jeff Keister].
9. From June 2019 to mid-September 2019, Mr. Lytwyn operated Respondent-Licensee’s facility and sold marijuana products without the use of METRC and without having the products being identified and recorded in the METRC system. [Petitioner Exhibit 4; Testimony of Jeff Keister].
10. On September 12, 2019, Regulation Officer Joe LaBelle sent an email to Wayne Kinne, a representative of Respondent-Licensee, and Mr. Lytwyn in order to set up the semi-annual facility inspection. [Testimony of Joe LaBelle].
11. On September 13, 2019, Mr. Lytwyn contacted Mr. LaBelle via telephone to inquire about what would be covered in the facility inspection. Mr. LaBelle indicated they would be reviewing Respondent-Licensee’s employees and products entered into the METRC system, among other things. Mr. Lytwyn expressed surprise about the inspection including the checking of products in METRC. Mr. LaBelle informed Mr. Lytwyn that he was required to enter products into METRC before any products can be sold at a licensed facility. Mr. LaBelle further stated this should have been mentioned at Respondent-Licensee’s first inspection. [Testimony of Joe LaBelle].
12. Following his conversation with Mr. Lytwyn, Mr. LaBelle notified Regulation Agent Jeff Keister that Respondent-Licensee’s facility appeared to be open and operating without any record of products or sales being entered into METRC. [Testimony of Joe LaBelle; Testimony of Jeff Keister].
13. On September 13, 2019, at 8:20 a.m., Mr. Lytwyn registered for the METRC system training. [Petitioner Exhibit 6].
14. At approximately 12:00 p.m., on September 13, 2019, Mr. Keister went to Respondent-Licensee’s facility with Regulation Agent Danielle Cabbage and Detective Trooper Dan Stickel with the Michigan State Police. Mr. Keister addressed with Mr. Lytwyn the lack of METRC credentials and Mr. Lytwyn replied that he was going to be taking the METRC test. Mr. Keister informed Mr. Lytwyn

that he cannot operate the store while product was not entered in METRC and indicated that Mr. Lytwyn should shut-down operations to prevent any further violation of the rules. [Testimony of Jeff Keister; Testimony of Detective Trooper Stickel].

15. Mr. Lytwyn agreed to voluntarily shut-down operations until he received his METRC credentials. [Testimony of Jeff Keister; Testimony of Kirk Lytwyn].

16. On September 17, 2019, Mr. Lytwyn attended the METRC training class and obtained METRC credentials on September 20, 2019. Mr. Lytwyn subsequently reopened his facility once he received the METRC certification. [Testimony of Jeff Keister; Testimony of Kirk Lytwyn].

17. On September 26, 2019, Detective Trooper Dan Stickel, with the Michigan State Police, was driving by Respondent-Licensee's facility. He noticed there were vehicles in the parking lot and individuals leaving the facility with shopping bags. Based on his observations and his involvement in the compliance check on September 13, 2019, Detective Trooper Stickel contacted the Petitioner to determine whether Respondent-Licensee was operating in compliance with the rules; however, he was not able to receive any confirmation from Petitioner at that time. [Testimony of Detective Trooper Stickel].

18. As part of his assigned duties with the Michigan State Police, Detective Trooper Stickel is assigned to investigate and perform compliance checks on licensed marijuana facilities, which included Respondent-Licensee's facility. [Testimony of Detective Trooper Stickel].

19. After failing to receive confirmation as to Respondent-Licensee's status, Detective Trooper Stickel approached the facility to perform a compliance check. Detective Trooper Stickel stepped into the facility's vestibule area and was met by the manager, Fred Abbas. Detective Trooper Stickel identified himself and asked if he could go inside the facility; however, Mr. Abbas asked him to step outside. Detective Trooper Stickel asked Mr. Abbas if he was being refused entry and Mr. Abbas replied that he needed to contact Mr. Lytwyn. [Testimony of Detective Trooper Stickel].

20. Mr. Abbas was able to get in touch with Mr. Lytwyn by telephone and handed the phone to Detective Trooper Stickel. Detective Trooper Stickel asked Mr. Lytwyn under who's authority Respondent-Licensee was operating. Mr. Lytwyn replied that he was operating under his business license with the State of Michigan.

Detective Trooper Stickel informed Mr. Lytwyn that he was being denied access to the facility by Mr. Abbas. [Testimony of Detective Trooper Stickel].

21. During their phone conversation, Mr. Lytwyn informed Detective Trooper Stickel that he was in Florida and thus he could not provide him access to certain locked areas of the facility. As the conversation continued, Mr. Lytwyn stated that Detective Trooper Stickel could not enter the facility until he had spoken with his attorney. Detective Trooper Stickel reminded Mr. Lytwyn that as a police officer and an authorized agent of Petitioner, he was required to be permitted entry. Mr. Lytwyn again stated he needed to consult with his attorney first. Detective Trooper Stickel informed Mr. Lytwyn that he was not going to wait around and departed from the facility. [Testimony of Detective Trooper Stickel; Testimony of Kirk Lytwyn; Petitioner Exhibit 1].
22. On September 26, 2019, Detective Trooper Stickel did not conduct the compliance check. Detective Trooper Stickel did not explicitly ask Mr. Abbas or Mr. Lytwyn if they were in compliance with METRC. Additionally, neither Mr. Abbas nor Mr. Lytwyn provided proof of METRC compliance to Detective Trooper Stickel on the date in question. [Testimony of Detective Trooper Stickel; Testimony of Kirk Lytwyn].
23. Detective Trooper Stickel notified Mr. Keister that he attempted to conduct a compliance check of Respondent-Licensee's facility on September 26, 2019, and that he was denied access into the facility. [Testimony of Jeff Keister].
24. Based on the statements made by Detective Trooper Stickel, Petitioner began an investigation on the attempted compliance check and Mr. Keister requested video surveillance to determinate what had occurred. [Testimony of Jeff Keister].
25. Respondent-Licensee's facility is located in the 3rd District. On September 27, 2019, Regulation Agent Lori King was assigned to the 3rd District. Ms. King was instructed to reach out to Mr. Lytwyn and request video surveillance footage for Detective Trooper Stickel's visit to the facility on September 26, 2019. [Testimony of Lori King].
26. On September 27, 2019, Ms. King contacted Mr. Lytwyn via telephone and advised that she needed to obtain video surveillance footage of the day prior. Mr. Lytwyn informed Ms. King that he was in Florida and was unable to meet. Ms. King asked if there was someone else she could meet and Mr. Lytwyn indicated that no one else was available. Ms. King then notified her supervisor of

her communication with Mr. Lytwyn. Since Ms. King was working out of the Lansing area, Ms. King's supervisor told her to disregard going to Respondent-Licensee's facility. Ms. King attempted to call Mr. Lytwyn back, but did not receive an answer or a return call from Mr. Lytwyn. [Testimony of Lori King].

27. On or about October 7, 2019, Mr. Lytwyn received several email notifications that his video surveillance system had experienced a system failure. As a result, Mr. Lytwyn notified Mr. Keister that he could not provide the video surveillance as requested. Mr. Lytwyn then forwarded copies of the emails to Mr. Keister showing a system failure had occurred. [Petitioner Exhibits 3 and 5; Testimony of Jeff Keister].
28. As a result of the video surveillance system failure, Mr. Lytwyn was not able to provide video surveillance for the date in question. Mr. Lytwyn then shut-down the facility operations until the surveillance system was repaired. [Testimony of Jeff Keister; Testimony of Kirk Lytwyn].
29. On or about October 11, 2019, Mr. Lytwyn also provided Mr. Keister with written statements from himself and Mr. Abbas regarding their recollection of the events of Detective Trooper Stickel's visit in September 2019. [Petitioner Exhibit 1 and 2; Testimony of Jeff Keister].
30. On October 15, 2019, Mr. Keister and Mr. LaBelle visited the facility for a follow-up on the investigation regarding lack of access provided to Detective Trooper Stickel. During the investigation, Mr. Keister confirmed that Respondent-Licensee was in the METRC system. [Testimony of Jeff Keister].
31. On October 15, 2019, Mr. LaBelle returned later in the afternoon to perform an inspection to ensure Respondent-Licensee was properly in METRC and had proper labeling. Mr. LaBelle determined that some of the labeling was incorrect and gave Mr. Lytwyn some instructions on how to make the corrections. Mr. LaBelle returned on October 18, 2019, to confirm the corrections were made, and gave Respondent-Licensee a passing inspection. [Testimony of Joe LaBelle].

CONCLUSIONS OF LAW

Petitioner bears the burden of establishing, by a preponderance of the evidence, that sufficient grounds exist for the intended action to suspend, revoke, restrict or refuse to renew a license or to impose a fine. See R 333.294(6).

A 'preponderance of evidence' has been defined by Michigan courts as follows: "proof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). A preponderance of evidence is evidence which is of a greater weight or more convincing than evidence offered in opposition to it. It is simply that evidence which outweighs the evidence offered to oppose it. *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW2d 789 (1948).

In the matter at hand, Petitioner asserts that a notice of intent to impose fines and/or other sanctions against Respondent's license was based on Respondent-Licensee's alleged violations of Section 402(15) of the Act and violations of Mich Admin Code R 333.233(5), 333.236(1), 333.236(2), 333.274(1)(c), and 333.235(11). Based on the evidence presented, it is concluded that Petitioner has met its burden of proof to establish that Respondent-Licensee violated the Act and/or associated administrative rules and thus sufficient grounds exist for the imposition of fines and/or other sanctions against Respondent-Licensee's license. The Respondent-Licensee's violations of the Act and associated administrative rules are discussed in more detail below.

Statewide Monitoring System

Pursuant to R 333.233(5), "a marihuana facility shall enter in the statewide monitoring system all transactions including, but not limited to, current inventory. These records must be maintained and made available to the department upon request."

Additionally, R 333.236(1) and (2), provided the following prohibitions regarding the statewide monitoring system:

(1) Marihuana products not identified and recorded in the statewide monitoring system pursuant to the act, the marihuana tracking act, or these rules must not be at a marihuana facility. A licensee shall not transfer or sell a marihuana product that is not identified in the statewide monitoring system pursuant to the act or these rules.

(2) Any marihuana product without a batch number or identification tag or label pursuant to these rules must not be at a marihuana facility. A licensee shall immediately tag, identify, or record as part of a batch in the statewide monitoring system any marihuana product as provided in these rules.

R 333.274 also requires the following for the sale or transfer of marihuana product:

(1) A provisioning center may sell or transfer a marijuana product to a registered qualifying patient or a registered primary caregiver if all of the following are met: ***

(c) The licensee determines, if completed, any transfer or sale will not exceed the purchasing limit prescribed in R 333.275.

In the matter at hand, Petitioner asserts that Respondent: (i) did not enter into METRC all transactions or current inventory in violation of R 333.233(5); (ii) had at its facility marijuana products that were not identified or recorded in METRC, and sold or transferred that product in violation of R 333.236(1); (iii) had at its facility marijuana products on display and/or sale that were not labeled, tagged, identified or recorded in METRC in violation of R 333.236(2); and (iv) sold marijuana products without access to or use of METRC, making it impossible to verify if a patient or caregiver was exceeding their purchasing limits in violation of R 333.274(1)(c).

It was undisputed from June 2019 to mid-September 2019, Respondent-Licensee was operating and selling marijuana products that were not tagged, identified, entered, or recorded in the statewide monitoring system known as METRC. Nevertheless, Respondent argues that its facility opened during a time period when the rules were not fully clarified or established. Respondent further argued that it was operating under the Petitioner's emergency rules 19 and 20, which they contend allowed for temporary operation without the use of METRC.

The Department of Licensing and Regulatory Affairs promulgated emergency administrative rules for the purpose of implementing the Act, including rules pertaining to temporary operation of a marijuana provisioning center. Emergency Rule 19 set forth the circumstances pursuant to which unlicensed marijuana facilities would be permitted to operate on a temporary basis; however, this rule did not apply to those applicants who had been issued a state operating license. Specifically, Emergency Rule 19(7) provided that, "[n]otwithstanding the provisions of this rule, if a state operating license is issued, an applicant is no longer operating temporarily and shall comply with all the provisions of the act and these rules." (Emphasis added).

As noted above, there is no dispute that Respondent-Licensee was issued a state operating license on or about April 25, 2019. At that point, there was no pending application before Petitioner and, pursuant to the rules, Respondent-Licensee was no longer considered to be operating temporarily. Pursuant to Emergency Rule 19, the licensee "shall comply with all the provisions of the act and these rules." This includes the statute and rules which require a licensed facility to operate using the statewide operating system known as METRC. Thus, once Respondent-Licensee became a

licensed facility, Respondent-Licensee was required to be in compliance with METRC.

Petitioner maintains that a licensee is considered to be METRC compliant by entering all transactions, inventory, and other information into METRC, before the facility can once again begin to operate and sell products as a licensed facility. Respondent, however, argues that Emergency Rule 20 allowed facilities to operate without METRC during a transition period.

Emergency Rule 20 provides:

(1) To ensure the safety, security, and integrity of the operation of marijuana facilities, there is a transition period consisting of 30 calendar days during which marijuana product can be entered into the statewide monitoring system to ensure statewide tracking beginning on the day a state operating license is issued to a licensee for the first time except for additional licenses issued to the same license holder for a stacked license after a first license is issued.

(2) Within the 30-calendar-day period, a licensee shall do all of the following:

(a) Record all marijuana product in the statewide monitoring system during this 30-calendar-day period as prescribed by the act and these rules.

(b) Tag or package all inventory that has been identified in the statewide monitoring system as prescribed by the act and these rules.

(c) Comply with all testing requirements as prescribed by the act and these rules.

(3) After the 30-calendar-day period, any marijuana product that has not been identified in the statewide monitoring system under these rules and the act is prohibited from being onsite at a marijuana facility.

(4) A violation of this rule may result in sanctions or fines, or both.

(5) At any time during this 30-calendar-day period and thereafter, a marijuana facility is subject to an inspection under Rule 16.

Emergency Rule 20 plainly states that the purpose of the transition period of 30 calendar days is to ensure that the METRC monitoring system is tracking marijuana product from the date the state operating license was issued. (See Emergency Rule 20(1)). Therefore, under this Rule 20, Respondent-Licensee would still be required to

ensure that the METRC system was tracking all marijuana product from the date the license was issued, which in this case was on or near April 25, 2019. Yet, it was undisputed that the facility remained in operation from June 2019 to mid-September 2019, without entering product into the METRC system. As noted by Petitioner, even if the transition period did allow for a licensee to operate and sell marijuana product for a 30-day transition period, Respondent-Licensee operated well outside that transition time frame. Once Respondent-Licensee became licensed, it had a duty to shut down its operations while obtaining METRC compliance; however, this did not occur.

Respondent next argues that it was unaware of the METRC requirements as Petitioner had failed to notify Mr. Lytwyn of how to get in compliance with METRC or that the products had to be entered into METRC within a certain timeframe. At the hearing, Mr. Lytwyn also maintained that he was never told to take the METRC training class.

While Respondent repeatedly raised the issue of lack of knowledge or lack of notification pertaining to METRC, it was undisputed that Mr. Lytwyn was sent an email on April 30, 2019, with a METRC handout attachment that clearly states the necessity of obtaining METRC training, the days in which the training is offered, as well as a link where users can sign up. (See Petitioner Exhibit 9). The METRC handout also clearly lays out the steps necessary for the entity to receive credentials in METRC and begin tracking its inventory. (See Petitioner Exhibit 9, p 2).

Furthermore, Ms. Carroll credibly testified that she verbally provided Mr. Lytwyn with the METRC rules at the pre-licensing inspection, which was unrefuted by Mr. Lytwyn. Additionally, despite Mr. Lytwyn's alleged lack of knowledge, Mr. Lytwyn testified that he waited diligently for Petitioner to contact him to let him know when he could take the METRC training. This testimony establishes that Mr. Lytwyn was in fact aware of the required use of METRC prior to September 2019. Of note, Mr. Lytwyn provided no explanation for why he waited over three months from his date of licensure to obtain the METRC credentials. Mr. Lytwyn's conflicting testimony calls into question the veracity his statements regarding METRC. Even assuming *arguendo* that Mr. Lytwyn did not receive notice of how or when to get METRC credentials, ignorance of the rules is not a defense to non-compliance or operating unlawfully. It is noted, however, that Respondent-Licensee did voluntarily shut-down operations on September 13, 2019, and did not reopen until the facility was in compliance with METRC.

Similarly, I find no merit to Respondent's assertion that its failure to obtain METRC credentials was the result of confusion caused by the rapidly changing rules. Whatever confusion may have resulted from the various iterations of the emergency administrative rules, such confusion could not have reasonably led Respondent to believe that it was lawful for the entity to have remained in operation for several months without getting METRC credentials and entering its marijuana product into METRC. Although the

administrative rules, the rule mandating that an entity enter products into a state-wide monitoring system has not been modified since the emergency rules were first promulgated.

Finally, Respondent noted that but for Mr. Lytwyn's telephone inquiry to Petitioner's agent about METRC credentials, Petitioner would have been unaware of Respondent-Licensee's failure to comply with METRC. Respondent argues that Petitioner's failure to have a system of checks and balances in place is essentially what led to Respondent-Licensee's failure to obtain METRC compliance and that Mr. Lytwyn was a victim of these circumstances. This assertion, however, is not persuasive as Mr. LaBelle offered credible, un rebutted testimony establishing that he first reached out to Mr. Lytwyn to inform him of the upcoming compliance check. It was only after this notification that an inspection was forthcoming that Mr. Lytwyn reached out to Petitioner.

Accordingly, I find that Respondent-Licensee failed to comply with the terms of the Act and/or the associated administrative rules and, therefore, Petitioner's decision impose a fine and/or other sanctions was appropriate based on violations of the following: R 333.233(5), 333.236(1), 333.236(2), and 333.274(1)(c).

September 26, 2019 Compliance Check

In the matter at hand, Petitioner also asserts that Respondent did not allow a Michigan State Police trooper access to the facility for a compliance check in violation of Section 402(15)⁴ of the Act.

Section 402(15) of the Act states that, "[a]n applicant or licensee has a continuing duty to provide information requested by the board and to cooperate in any investigation, inquiry, or hearing conducted by the board."

The parties were in dispute as to what occurred between Detective Trooper Stickel and Mr. Lytwyn and Mr. Abbas. Detective Trooper Stickel testified that Mr. Lytwyn provided multiple excuses as to why he could not enter the facility and as a result he eventually left because he was not willing to wait around. Mr. Lytwyn asserted that he did not deny access to Detective Trooper Stickel, but acknowledged that he told Detective Trooper Stickel that he could not have access to the entire facility as certain portions were locked and only he had the key. Respondent argued this was not a restriction of Detective Trooper Stickel's access, but was simply a statement of fact. Regardless of where the key was located, Mr. Lytwyn's failure to leave a key with a member of management resulted in his inability to cooperate with the trooper's investigation. Additionally, Mr. Lytwyn provided no explanation for why he did not instruct Mr. Abbas

⁴ The February 20, 2020 Formal Complaint was orally amended at the hearing to add this provision of the Act.

to allow Detective Trooper Stickel to have access to those areas that were not locked, since Mr. Lytwyn acknowledged that he was aware that Detective Trooper Stickel was allowed to access to the facility as an agent of Petitioner.

It was undisputed that Respondent-Licensee was in compliance with METRC at the time of the attempted compliance check; however, Detective Trooper Stickel did not have knowledge of this at the time. The parties agreed that Detective Trooper Stickle did not ask for METRC information nor did Mr. Lytwyn provide him with his METRC credentials to establish he was in compliance. Mr. Lytwyn testified he did not think to provide proof of his credentials at that time. However, Mr. Lytwyn's testimony in this regard is not entirely consistent with his statement that he submitted to Petitioner where he indicates that he assured the trooper that he was in METRC. (See Petitioner Exhibit 1). Mr. Lytwyn further claimed that this was the last he heard of the incident; however, he acknowledges he that he was asked for video surveillance footage of the incident.

On review of the record, the evidence establishes that Mr. Lytwyn failed to cooperate in the inquiry by Detective Trooper Stickel as an authorized agent of Petitioner. Accordingly, I find that Respondent-Licensee failed to comply with the terms of the Section 402(15) of the Act and thus the imposition of fines and/or other sanctions would be appropriate.

Video Surveillance Footage

Mich Admin Code R 333.235(11) states:

Surveillance recordings of the licensee are subject to inspection by the department, through its investigators, agents, auditors, or the state police, and must be kept in a manner that allows the department to view and obtain copies of the recordings at the marihuana facility immediately upon request. The licensee shall also send or otherwise provide copies of the recordings to the department upon request within the time specified by the department.

Here, Ms. King credibly testified that the video footage of Detective Trooper Stickel's compliance check was sought out to verify what had occurred during the compliance check on September 26, 2019. Mr. Lytwyn did not dispute that Ms. King had reached out to him to request the video surveillance on the following day. Furthermore, Mr. Lytwyn did not dispute that he had told Ms. King that no one was available to obtain the video surveillance at that time. Following this communication, Mr. Lytwyn made no subsequent attempts to obtain and send the copies of the surveillance footage to Petitioner for the date in question. Rather, Mr. Lytwyn waited to contact Jeff Keister only after receiving several emails on October 7, 2019, approximately 10 days after the initial

request, which indicated that his video surveillance system had failed and the footage requested was now lost. Respondent argues that Petitioner's failure to follow-up and request the video again after September 27, 2019, is ultimately what led to the Petitioner's failure to obtain the copies. Respondent noted that as soon as Mr. Lytwyn could, he repaired the system and closed down the facility during that time

While the video surveillance system failure may not have been the fault of Respondent-Licensee, it is still considered a violation of the rule if the licensee fails to "allow the department to view and obtain copies of the recordings at the marijuana facility *immediately upon request.*" (Emphasis added). Thus, Petitioner has established the Respondent-Licensee's failure to immediately allow a review of the video surveillance footage to was in violation of R 333.235(11) and thus the imposition of fines and/or other sanctions may be appropriate.

In conclusion, based upon the entire record, the undersigned finds that Petitioner has met its burden of proving by a preponderance of the evidence that Respondent-Licensee engaged in violations of the Act and the associated rules and thus sufficient grounds exist for the imposition of fines and/or other sanctions against Respondent's license.

PROPOSED DECISION

Based on the above Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge proposes that the Executive Director of the Marijuana Regulatory Agency issue a Final Order as follows:

1. That Respondent-Licensee has violated Section 402(15) of the Act and the following administrative rules: R 333.233(5), 333.236(1), 333.236(2), 333.274(1)(c), and 333.235(11).
2. That the Executive Director of the Marijuana Regulatory Agency adopt the above Findings of Fact and Conclusions of Law, and take action on the February 20, 2020 Complaint as it deems appropriate.



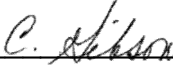
Lindsay Wilson
Administrative Law Judge

EXCEPTIONS

Under MCL 24.281 and Mich Admin Code, R 792.10132, a party may file exceptions to this proposal for decision within 21 days after it is issued. A party may file a response to exceptions within 14 days after they are filed. Any exceptions and responses shall be filed with the **Michigan Office of Administrative Hearings and Rules (MOAHR)** by regular mail to: **P.O. Box 30695, 611 W. Ottawa Street, Lansing, Michigan 48909**; by facsimile to: **Fax (517) 335-7535**; or by **E-mail (preferred)** to: MOAHR-GA@michigan.gov with a copy to all other parties and attorneys of record.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 22nd day of March 2021.



C. Gibson
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MARIJUANA REGULATORY AGENCY

In the Matter of

759 E Pinconning, LLC
Assumed Name: Essence Collective
ERG No.: 000236
License No.: PC-000263
ENF No.: 19-00054 & 19-00056

CMP No.: 19-000493 & 19-000736

FORMAL COMPLAINT

The Marijuana Regulatory Agency (“Complainant”) files this formal complaint against 759 E Pinconning, LLC, assumed name Essence Collective (“Respondent”) alleging upon information and belief as follows:

1. The Marijuana Regulatory Agency (MRA) is authorized under the Medical Marijuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq.*, and Executive Reorganization Order No.2019-2, MCL 333.27001, to investigate alleged violations of the MMFLA and the administrative rules promulgated thereunder, take disciplinary action to prevent such violations, and impose fines and other sanctions against applicants and licensees that violate the MMFLA or rules.
2. Section 402(12) of the MMFLA provides that the expiration of a license does not terminate the MRA’s authority to impose sanctions on the license.
3. Section 206(c) of the MMFLA provides that the administrative rules must ensure the health, safety, and security of the public and integrity of the marijuana facility operations.
4. Respondent’s conduct as described below is a risk to public health and safety and/or the integrity of marijuana facility operations.

MARIJUANA REGULATORY AGENCY
2407 NORTH GRAND RIVER • P.O. BOX 30205 • LANSING, MICHIGAN 48909
www.michigan.gov/MRA

LARA is an equal opportunity employer/program

FACTUAL ALLEGATIONS AND INTENDED ACTION OF THE MRA

5. Respondent holds an active state operating license under the MMFLA to operate a provisioning center in the state of Michigan.

6. Respondent operated at 759 East Pinconning, Pinconning, Michigan, at all times relevant to this complaint.

7. Following an investigation, the MRA determined that Respondent violated the MMFLA and/or administrative rules promulgated thereunder as set forth below:

- a. In September 2019, Respondent's facility was set to have its 6-month inspection. Upon review of Respondent's records, it was noted that Respondent was not listed in the statewide monitoring system (METRC).
- b. On September 13, 2019, MRA staff visited the facility. MRA staff observed that none of the product at the facility had METRC tags attached. Respondent confirmed that it did not have credentials for METRC and was not using METRC. Respondent provided June 2019 through September 2019 sales documentation for the facility, both handwritten, and from the point of sale system (POS).
- c. Based on the above:
 - i. Respondent did not enter into METRC all transactions or current inventory in violation of Mich Admin Code R 333.233(5).
 - ii. Respondent had at its facility marihuana products that were not identified or recorded in METRC, and sold or transferred that product in violation of Mich Admin Code R 333.236(1).
 - iii. Respondent had at its facility marihuana products on display and/or for sale that were not labeled, tagged, identified or recorded in METRC in violation of Mich Admin Code R 333. 236(2).
 - iv. Respondent sold marijuana products without access to or use of METRC, making it impossible to verify if a patient or caregiver was exceeding their purchasing limits in violation of Mich Admin Code R 333.374(1)(c).

- d. On September 27, 2019, a Michigan State Police (MSP) trooper went to the facility. MSP personnel advised the MRA that he was not allowed to access the facility for a compliance check.
- e. On October 15, 2019, MRA staff requested to view the video footage for September 27, 2019. Respondent was unable to send or otherwise provide copies of the recordings to the department upon request within the time specified in violation of Mich Admin Code R333.235(11).

THEREFORE, based on the above, the MRA gives notice of its intent to impose fines and/or other sanctions against Respondent's license, which may include the suspension, revocation, restriction, and/or refusal to renew Respondent's license.

Under MCL 333.27407(4) and Mich Admin Code, R 333.29494(2), any party aggrieved by an action of the MRA suspending, revoking, restricting, or refusing to renew a license, or imposing a fine, shall be given a hearing upon request. A request for a hearing must be submitted to the MRA in writing within 21 days after service of this complaint. Notice served by certified mail is considered complete on the business day following the date of the mailing.

Respondent also has the right to request a compliance conference under Mich Admin Code, R 333.294(1). A compliance conference is an informal meeting at which Respondent has the opportunity to discuss the allegations in this complaint and demonstrate compliance under the MMFLA and/or the administrative rules. A compliance conference request must be submitted to the MRA in writing.

Hearing and compliance conference requests must be submitted in writing by one of the following methods.

By Mail: Department of Licensing & Regulatory Affairs
Marijuana Regulatory Agency
P.O. Box 30205
Lansing, Michigan 48909

In Person: Department of Licensing & Regulatory Affairs
Marijuana Regulatory Agency
2407 North Grand River
Lansing, Michigan 48906

MARIJUANA REGULATORY AGENCY
2407 NORTH GRAND RIVER • P.O. BOX 30205 • LANSING, MICHIGAN 48909
www.michigan.gov/MRA
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If Respondent fails to timely respond to this formal complaint, a contested case hearing will be scheduled to resolve this matter. The MRA reserves the right to review the formal complaint and amend it should this matter proceed to a contested case hearing.

Questions about this complaint should be directed to the Marijuana Regulatory Agency's legal section at (517) 284-8599 or MRA-LegalHearings@michigan.gov.

Dated: Feb 20, 2020

MARIJUANA REGULATORY AGENCY

By: 
Kavita Kale, Enforcement Division Director

MARIJUANA REGULATORY AGENCY
2407 NORTH GRAND RIVER • P.O. BOX 30205 • LANSING, MICHIGAN 48909
www.michigan.gov/MRA

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In the Matter of

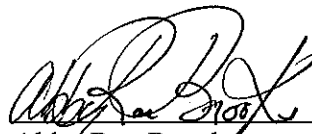
759 E Pinconning, LLC
Assumed Name: Essence Collective
ERG No.: 000236
License No.: PC-000263
ENF No.: 19-00054 & 19-00056

CMP No.: 19-000493 & 19-000736

PROOF OF SERVICE

I hereby certify that on the date below, I mailed a copy of the Formal Complaint dated February 20, 2020, in the above captioned case by certified mail (return receipt requested) to:

759 East Pinconning, LLC
759 East Pinconning
Pinconning, MI 48650



Abby Rae Brooks
Departmental Technician
Marijuana Regulatory Agency
Department of Licensing & Regulatory
Affairs