

**REGULATION OF THE BEVERLY BOARD OF HEALTH
RESTRICTING THE SALE OF MARIJUANA AND MARIJUANA PRODUCTS**

A. Statement of Purpose:

Whereas in 2012, the Commonwealth of Massachusetts legalized the sale of medicinal marijuana and in 2016 legalized the sale of adult-use marijuana¹;

Whereas the Massachusetts Cannabis Control Commission was established to regulate the growth, production and sale of marijuana products to control for safety, sanitation and purity through a strict licensing system²;

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”³; and

Now, therefore it is the intention of the Beverly Board of Health to regulate the sale of marijuana products where such sales are not in compliance with the regulations of the Cannabis Control Commission, 935 CMR 501.000 *et seq.*

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Beverly Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "boards of health may make reasonable health regulations".

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Board: the Beverly Board of Health.

Designated Agent of the Board of Health: the Director of Public Health and any person or entity, including health department staff, law enforcement officers, and designated agent of the Board to carry out the provisions of this regulation.

Business Day: any day of the week, inclusive of Saturday and Sunday, during which a retail establishment is open.

Marijuana: all parts of any plant of the genus *Cannabis*, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol (THC) as defined in M.G.L. c. 94G, §1; provided, however, that "marijuana" shall not include: (i) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (ii) hemp; or (iii) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

¹ Massachusetts Gen. Laws ch. 94I and 94G

² Massachusetts Gen. Laws ch. 10, §76

³ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

Marijuana Products: products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Permit Holder: Any person or business who applies for and receives a permit issued by the Board of Health, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

D. Unlicensed Sale of Marijuana or Marijuana Products Prohibited: Excluding establishments licensed by the Massachusetts Cannabis Control Commission, it shall be a violation of this regulation for any Permit Holder to sell or unlawfully provide marijuana or a marijuana product.

E. Enforcement and Penalties:

1. Any Permit Holder found in violation of this regulation shall receive a notice of violation from the Board or the Board's designated agent.
2. Any violation of this regulation shall be punishable by:
 - i. a fine of one thousand dollars (\$1000.00) in the case of a first violation;
 - ii. a fine of two thousand dollars (\$2000.00) in the case of a second violation within 36 months of a previous violation, and a suspension of any permit issued by the Board, including but not limited to a permit to sell tobacco products, for seven (7) consecutive business days; or
 - iii. a fine of five thousand dollars (\$5000.00) in the case of a third or subsequent violation within a thirty-six (36) month period, and a suspension of any permit issued by the Board, including but not limited to a permit to sell tobacco products, for thirty (30) consecutive business days.
3. Every day that a violation exists shall be deemed to be a separate offense. Separate but simultaneous violations shall be treated as separate violations. Multiple permit suspensions may not be served concurrently.
4. Any person who receives notice of a violation of this regulation may request a hearing before the Board. The request must be made in writing and filed within seven (7) days of the date the violation notice was received.
5. Upon accrual of four (4) violations of this regulation within a thirty-six (36) month period, or upon the commission of two (2) or more egregious violations of this regulation within thirty-six (36) months as

determined by the Board, the Board may issue a notice of intent to revoke and shall hold a hearing in accordance with this regulation and, after such hearing, may permanently revoke any permits held by the violator, including any permits to sell tobacco products in Beverly.

6. Before suspending or revoking any permit issued by the Board, including a permit to sell tobacco products, the Board shall provide notice of the intent to suspend or revoke such permit, which notice shall contain the reasons therefor and shall establish a time and date for a hearing, to be held no earlier than seven (7) days from the date of the notice. The permit holder or their designee shall have the opportunity to be heard and shall be notified of the Board's decision and the reasons therefore in writing. If after hearing, the Board finds that a violation of this regulation occurred, the Board shall suspend or revoke the subject permit. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings concerning the same offense. Upon suspension or revocation of a permit, all permitted products must be removed from the retail establishment. Failure to remove such products shall constitute a separate violation of this regulation.
7. Failure to comply with the terms of a permit suspension imposed pursuant to this regulation may subject the permit holder to an additional suspension of all Board-issued permits for thirty (30) consecutive business days.
8. Complaints and Investigations.
 - i. The authority to inspect retail establishments operating in Beverly for compliance and to enforce this regulation shall be held by the Board and its designated agents.
 - ii. Any person may register a complaint with the Board or its designated agent to initiate an investigation and enforcement of this regulation by the Board.
 - iii. Refusal by a permit holder or the employee of a permit holder to cooperate with an inspection or investigation pursuant to this regulation shall result in the suspension of any Board-issued permit for thirty (30) consecutive business days.
9. The Board may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board shall not preclude enforcement through any other lawful means.
10. The fines and penalties established herein shall not limit the Board's ability to suspend or permanently revoke a permit when, in the discretion of the Board, the circumstances or events underlying any violation warrant such suspension or revocation.

F. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

G. Effective Date:

This regulation shall take effect on May 24th, 2023.


_____ Justin T. Jordan, MD, MPH, Chair


_____ Sheryl R. Silva, MD, MPH, Member


_____ Rachel E. Morse, Esq., Member