

Compliance review: categories of violations and associated penalties

Vermont Cannabis Control Board Meeting

December 10, 2021

Penalties, generally

- Any violation may be the subject of an enforcement action by the Board.
- Depending on the category of the violation, one or more of the following penalties may be imposed for a violation:
 - Requirement to produce a corrective action plan.
 - Fine (maximum fines for Tier I cultivators and Tier II manufacturers shall be half the amount provided for in the categories of penalties)
 - Suspension of a license.
 - Revocation of a license.

Category 1 violations: could result in ineligibility to receive, renew, or maintain a license

Operating without all required permits, certificates, registrations and/or licenses;

Making an intentionally false statement to the Board or a Board designee;

Intentionally destroying or concealing evidence of a violation;

Failure to abide by a corrective action plan;

Failure to properly collect or pay taxes to the Department of Taxes;

Allowing unlawful activity on the premises of a Cannabis Establishment, or during transportation of Cannabis or Cannabis Product, that results in death or serious physical injury;

Operating a Cannabis Establishment while the license for the Cannabis Establishment is suspended;

Attempting to change ownership or assign a license to another entity without prior approval of the Board in accordance with Rule 1.15.2;

Transporting cannabis outside of the boundaries of this State;

Category 1 violations, continued

- Making verbal or physical threats to the Board or a Board designee;
- Failing to immediately admit a Board designee into the premises of a Cannabis Establishment upon request;
- Refusing to allow an inspection or obstructing a Board designee from performing his or her official duties;
- Purchasing or selling cannabis that has not passed the required analysis by a cannabis independent testing laboratory;
- Labeling Cannabis or Cannabis Products with potency limits that do not match independent laboratory test results;
- Purchasing, manufacturing, or otherwise using Cannabis or Cannabis Products from a source that is not a licensed Cannabis Establishment;
- Purchasing or selling cannabis not found in the Inventory Tracking System;
- Transporting or storing cannabis from an unlicensed source or diversion of cannabis or cannabis products.
- Other violations at the Board's discretion

Maximum penalties for category 1 violations

- First violation in the immediately preceding 3 years:
 - a civil penalty of not more than \$20,000, or
 - a suspension for not more than 30 days, or
 - revocation of a license or Cannabis Establishment identification card.
- Second or subsequent violation in the immediately preceding 3 years:
 - revocation of a license or Cannabis Establishment identification card.

Category 2 violations (pose threat to public health or safety)

- Making an unintentional false statement or representation of fact to the Board or Board designee;
- Unintentionally destroying or concealing evidence of a violation;
- Failing to verify the age of, or selling or otherwise providing Cannabis or Cannabis Products to, a person who is less than 21 years*;
- Allowing a person to enter or remain in a Cannabis Establishment or transport vehicle who is less than 21 years of age*;
- Permitting employment or otherwise accepting work by a person without a Cannabis Establishment identification card or temporary work permit;
- Effecting a change in control without complying with the requirements Rule 1.15;

*patients with registry cards may enter dispensary retail in accordance with rule/statute

Category 2 violations, continued

- Allowing a person who is less than 21 years of age to work or volunteer at the Cannabis Establishment;
- Not adequately separating medical cannabis sales from adult use retail sales;
- Selling an amount of cannabis in excess of transaction limits;
- Failing to maintain required security systems;
- Any intentional variance from approved procedures in a testing laboratory;
- Failing to notify the Board of theft of Cannabis or Cannabis Products as required by Rule 2.2.17;
- Transferring, moving, or disturbing Cannabis or Cannabis Product which has been placed on stop sale or quarantined by the Board without Board approval; or
- Failing to destroy Cannabis or Cannabis Product that has been ordered destroyed by the Board, or that has been adulterated or contaminated without successful remediation.

Maximum penalties for category 2 violations

- First violation in the immediately preceding 3 years:
 - a corrective action plan,
 - a civil penalty of not more than \$15,000, or
 - a suspension for not more than 20 days of a license or Cannabis Establishment agent registration card.
- Second violation in the immediately preceding 3 years:
 - a civil penalty of not more than \$20,000 or
 - a suspension for not more than 30 days of a license or Cannabis Establishment identification card.
- Third or subsequent violation in the immediately preceding 3 years:
 - revocation of a license or cannabis establishment identification card.

Category 3 violations (potential threat to public health or safety)

- Allowing consumption by any person of alcohol, Cannabis, or other intoxicants on the premises of the Cannabis Establishment or in areas adjacent to the premises of the Cannabis Establishment which are under the licensee's control, except as authorized by the Board;
- Failing to keep any required records, including updating the Inventory Tracking System;
- Failing to respond to an administrative notice of a violation or failing to pay fines;
- Allowing any activity which violates Vermont law;
- Selling or transferring unauthorized products or using unauthorized ingredients;
- Failing to notify the Board of a modification or expansion of the facilities of the Cannabis Establishment;
- Violating packaging or labeling requirements;

Category 3 violations, continued

- Storing or delivering an unauthorized Cannabis Product or a Cannabis Product outside the Inventory Tracking System;
- Failing to meet requirements for the disposal of cannabis waste;
- Using unauthorized pesticides, soil amendments, fertilizers or other crop production aids;
- Exceeding maximum serving requirements for Cannabis or Cannabis Products;
- Failing to comply with requirements for employee hygiene;
- Failing to maintain a reasonably sanitary Cannabis Establishment in line with industry standards;
- Failing to maintain adequate food safety standards, where relevant;
- Selling or failing to dispose of Cannabis, Cannabis Products or food items that are spoiled, contaminated, or adulterated;
- Failing to properly update the licensee's point of contact with the Board;
- Failure to maintain quality assurance/quality control program in a testing laboratory; or
- Failure to maintain updated standard operating procedures, where relevant.

Maximum penalties for category 3 violations

- First violation in the preceding 3 years:
 - a corrective action plan or
 - a civil penalty of not more than \$10,000.
- Second violation in the preceding 3 years:
 - a corrective action plan,
 - a civil penalty of not more than \$15,000, or
 - a suspension for not more than 10 days of a license or cannabis establishment identification card.
- Third violation in the preceding 3 years:
 - a civil penalty of not more than \$20,000 and/or
 - a suspension for not more than 20 days of a license or cannabis establishment identification card.
- Fourth or subsequent violation in the preceding 3 years:
 - a civil penalty of not more than \$20,000 and/or
 - a suspension of license or cannabis establishment identification card for a length of time to be determined by the Board, or
 - a revocation of license or cannabis establishment identification card.

Category 4 violations

(create environment conducive to abuses)

- Failing to have in the immediate possession of each Cannabis Establishment employee, while on the premises of a Cannabis Establishment, a Cannabis Establishment identification card or temporary work permit;
- Removing, altering or covering any required notice or sign;
- Failing to post any required signs;
- Failure to meet employee training and supervision requirements;
- Violating advertising regulations;
- Violating restrictions on sampling;
- Improper storage of Cannabis, Cannabis Products, or other foods;
- Infestation by pests that are not multigenerational;
- Lack of compliance with the statutory and regulatory requirements for the operation of a Cannabis Establishment in another jurisdiction;
- Transporting cannabis in an unauthorized vehicle;
- Picking up, unloading, or delivering cannabis at an unauthorized location; or
- Violating other Cannabis and Cannabis Product transportation regulations.

Maximum penalties for category 4 violations

- First violation in the preceding 3 years:
 - a corrective action plan or
 - a civil penalty of not more than \$5,000.
- Second violation in the preceding 3 years:
 - a corrective action plan,
 - a civil penalty of not more than \$10,000, or
 - a suspension for not more than 10 days of a license or Cannabis Establishment ID card.
- Third violation in the preceding 3 years:
 - a civil penalty of not more than \$15,000, or
 - a suspension for not more than 20 days of a license or Cannabis Establishment ID card.
- Fourth or subsequent violation in the preceding 3 years:
 - a civil penalty of not more than \$20,000 or
 - a suspension for not more than 30 days of a license or Cannabis Establishment ID card.

Category 5 violations (inconsistent with orderly regulation)

- Failing to notify the Board of any change in Cannabis Establishment contact information;
- Making a payment with a check returned for insufficient funds;
- Failing to properly submit reports required by the Board; or
- Failure to pay for costs involved in screening or required testing within 60 days.

Maximum penalties for category 5 violations

- First violation in the preceding 3 years:
 - a corrective action plan or
 - a civil penalty of not more than \$2,500.
- Second violation in the preceding 3 years:
 - a corrective action plan,
 - a civil penalty of not more than \$5,000 or
 - a suspension for not more than 5 days of a license or Cannabis Establishment ID card.
- Third violation in the preceding 3 years:
 - a corrective action plan,
 - a civil penalty of not more than \$10,000, or
 - a suspension for not more than 10 days of a license or Cannabis Establishment ID card.
- Fourth or subsequent violation in the preceding 3 years:
 - a civil penalty of not more than \$15,000 or
 - a suspension for not more than 20 days of a license or Cannabis Establishment ID card.

Severity of penalties: consideration of mitigating & aggravating factors

- Any prior violations that the Licensee has admitted to or was found to have engaged in.
- Whether the violation impacted public health and safety.
- Whether the violation is ongoing or has stopped.
- Good faith measures by the Licensee to prevent the violation, including (not limited to):
 - Proper supervision,
 - Consistent and documented employee training, and
 - Standard operating procedures established prior to the Division's investigation, and which include procedures directly addressing the conduct for which imposition of a penalty is being considered.
- Licensee's history of success or failure with compliance checks or prior corrective action plans.
- Corrective action(s) taken by the Licensee related to the current violation or prior violations.
- Willfulness and deliberateness of the violation.
- Circumstances surrounding the violation.
- The size of the licensee or operation.
- The revenues of the licensee or operation.
- Licensee self-reporting the violation(s).
- Owner or management personnel is the violator or has directed an employee or other individual to violate these rules or the law.

Health & Safety Orders (Board may issue for a violation related to public health and safety)

- Stop-sale order.
- Quarantine of Cannabis or Cannabis Product.
- Destruction and, if necessary, the prohibition of Cannabis or Cannabis Product.
- Cease and desist order.
- Board may issue a health & safety order in addition to imposing other allowable penalties.

Notifications of violations and Board action

Notice of violations can be issued with or without immediate effect, depending on a finding about the nature of the violation

If the violation doesn't pose an imminent threat to public health or safety, penalties will not take effect until the Board makes a final decision after the licensee has an opportunity to contest

If the violation does pose an imminent threat to public health or safety, the penalty imposed will take effect immediately. Licensee will still have the opportunity to contest the violation.

Health and safety notices will have immediate effect.

Board may issue a letter of warning instead of a notice of violation. No penalty will be associated with a letter of warning.