

**STATE OF VERMONT
CANNABIS CONTROL BOARD**

RULE 5: BOARD REMOVAL

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5 Rule 5: Board Removal

5.1 Section 1: General Provisions

5.1.1 Authority

The Cannabis Control Board adopts this rule pursuant to 7 V.S.A. § 843(c)(4), and other applicable law.

5.1.2 Scope and Purpose

The Board is charged with implementing and regulating a legal market for cannabis in Vermont. To that end, Board members must conduct themselves in an independent, fair, and competent manner. The purpose of this rule is to define the basis and process for removal of Board members for cause.

5.1.3 Definitions

- (a) “Board” means the Cannabis Control Board established under 7 V.S.A. chapter 31.
- (b) “Chair” means the Chair of the Board under 7 V.S.A. § 843(c)(1), unless that person is the subject of a complaint alleging conduct constituting cause for removal, in which case the member with the longest tenure shall serve as Chair during the proceedings governed by this rule. If the remaining members have served the same tenure, the executive director shall name a Chair from the remaining members for the purposes of proceedings under this rule.
- (c) “Complaint” means any allegation or allegations, in writing or otherwise, received by the Chair or legal counsel maintaining that one or more members have engaged in conduct constituting cause for removal.
- (d) “Executive director” means the executive director of the Board, as provided by 7 V.S.A. § 843(f).
- (e) “Formal complaint” means a document prepared by legal counsel upon direction of the Chair pursuant to section 5.3.3 of this rule, stating the allegations supporting cause for removal of a member and the factual basis thereof.
- (f) “Legal counsel” means the Board’s general counsel or designated associate general counsel or staff attorney.
- (g) “Member” means a member of the Board as described in 7 V.S.A. § 843(c) and includes the Chair.
- (h) “Participating member” means a member of the Board and the Chair but does not include the member who is subject of the complaint.
- (i) “Subject member” means the member who is the subject of a complaint.

5.1.4 Applicability

This rule applies to proceedings to remove a member for cause or impose other disciplinary sanction on a member. This rule does not supersede relevant state personnel policies, practices and procedures, or federal or state law.

5.1.5 Confidentiality

Members’ personnel records and employee information provided to the Board under this rule shall be handled in accordance with Vermont law and state personnel policies and are considered confidential, unless disclosure is otherwise required by law. The Chair and legal counsel shall consult with the Office of the Vermont Attorney General and the Department of Human Resources, as needed, prior to disclosing materials produced or gathered during the proceedings governed by this rule.

5.1.6 Time

- (a) In computing any time period, measured in days, that is established or allowed by this rule or by order of the Board or Chair:
 - i. the day of the act or event that triggers the period shall be excluded;
 - ii. every day, including intermediate Saturdays, Sundays, and legal holidays shall be counted;

- iii. the last day of the period shall be counted, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (b) A “legal holiday” means:
- i. any day declared a holiday by the President or Congress of the United States; and
 - ii. any day declared a holiday by the State of Vermont.

5.1.7 Severability

If any portion of this rule is found to be invalid, the remaining portion of the rule shall remain in force and effect.

5.2 Section 2: Basis for Removal

5.2.1 Cause for Removal

Any of the following may constitute a basis for removal for cause of a member from office:

- (a) Conduct that is prejudicial to the execution of the Board’s statutory mandate, whether or not related to official duties or constituting conduct in office, that
 - i. brings the Board into disrepute or disrespect, or
 - ii. renders the member unfit to act or to command public confidence;
- (b) The willful or negligent failure to appropriately address and resolve conflicts of interest as provided for in 7 V.S.A. § 843(d);
- (c) The refusal, failure, or inability to perform his or her duties at the Board;
- (d) Violations of Vermont personnel policies and procedures.

5.2.2 Factors to be Considered

The participating members shall consider and give appropriate weight to the following factors in determining whether there is cause for removal of a member against whom a complaint has been filed:

- (a) The nature and seriousness of the conduct at issue, including whether such conduct was intentional, technical, or inadvertent, or was committed maliciously, repeatedly, or for personal gain;
- (b) The effect of the conduct upon the member’s ability to perform the member’s duties satisfactorily;
- (c) The effect of the conduct upon the Board’s ability to perform its duties satisfactorily;
- (d) The notoriety of the conduct at issue or its impact upon the reputation of the Board;
- (e) Any mitigating circumstances surrounding the conduct;
- (f) Any aggravating circumstances surrounding the conduct; and
- (g) Any other factors the Board determines are relevant.

5.3 Section 3: Process for Removal

5.3.1 General Matters

- (a) In determining whether to remove a member for cause, the Board may receive information, investigate, dismiss unfounded complaints, issue written warnings, and conduct hearings.
- (b) The Chair, in consultation with legal counsel and the Department of Human Resources, may, at any time following the receipt of a complaint through the issuance of a decision and order, place the subject member on paid administrative leave if the alleged conduct supports such action.
- (c) The Chair, in consultation with legal counsel and consistent with state and federal law, may take reasonable measures not provided for in this rule to ensure that the process is conducted in a fair and impartial manner.
- (d) Except when the Board determines otherwise for good cause, the Board shall not address a complaint arising out of conduct discovered by the complainant more than 3 years prior to the date of the complaint.

5.3.2 Initial Inquiry

- (a) Within 3 days of receipt of a complaint alleging specific conduct that may constitute cause for removal, the Chair shall direct legal counsel to immediately commence a confidential, initial inquiry into the member's alleged conduct to determine if the matter should be subject to further investigation.
- (b) The subject member shall be notified of the complaint unless notification would compromise the initial inquiry.
- (c) Within 30 days of commencing an initial inquiry, legal counsel shall provide to the Chair and participating member initial written findings and arecommendation on whether the Board should conduct further investigation and an administrative hearing.
- (d) If on review the Chair and participating member agree that the allegations are unfounded, or if accepted as true would be insufficient to support a disciplinary action, the matter shall be dismissed, and complainant notified in writing of the dismissal within 10 days following such determination.
- (e) The deadlines contained in subsections (b) and (c) herein may be extended by no more than 30 days for good cause.
- (f) Notwithstanding this section, the Chair in consultation with legal counsel may refer the complaint to the Department of Human Resources, law enforcement, or other regulatory entity, during which time Board action on the complaint may be suspended.

5.3.3 Formal Proceedings

- (a) If the matter is not dismissed under section 5.3.2(d) of this rule, the Chair shall direct legal counsel to notify the participating member of the commencement of formal proceedings and to draft a formal complaint and notice of hearing setting the time and place for an administrative hearing. The formal complaint and notice of hearing shall be provided to the subject member within 10 days following a determination that the matter warrants further action.
- (b) The hearing shall be held no sooner than 20 days following the subject member's receipt of the formal complaint and notice of hearing.
- (c) The hearing panel shall consist of the Chair and participating member.

- (d) The Chair, in consultation with the participating member, shall designate outside counsel or an appellate officer to serve as hearing officer. The hearing officer may set appropriate limits on prehearing discovery given the nature of the allegations.
- (e) Legal counsel shall present the evidence in support of the formal complaint and has the burden of proving the allegations by a preponderance of the evidence. In the event that legal counsel is a witness to the proceeding, the Chair, in consultation with the participating member, shall designate outside counsel to present such evidence.
- (f) The subject member shall have the right to appear personally or through counsel to answer the charge, to present evidence in his or her defense, and to examine and cross-examine witnesses.
- (g) The hearing shall conform to the rules of procedure and evidence governing contested cases under the Vermont Administrative Procedure Act.
- (h) The Board shall ensure that confidentiality is maintained throughout the disciplinary process in accordance with state and federal law.
- (i) The failure of the subject member to appear in person or through counsel, absent good cause, may be treated as a waiver of all defenses and an admission of the alleged conduct.
- (j) A member may be removed for cause only upon a majority vote of the participating members. If a majority of the members do not agree on removal, the participating members may consider alternatives to removal for cause pursuant to section 5.3.4 of this rule, which must also be determined by majority vote.

5.3.4 Alternatives to Removal for Cause and Hearing Waiver

- (a) In the alternative to removal for cause, participating members may impose lesser sanctions against a subject member where there are mitigating factors, including, but not limited to:
 - i. The conduct, behavior, or incident on its own was minor;
 - ii. The conduct was inadvertent rather than purposeful;
 - iii. The conduct resulted in no or minimal harm; or
 - iv. The conduct was isolated and is unlikely to recur.
- (b) Lesser sanctions may include, but are not limited to:
 - i. Oral reprimand;
 - ii. Written reprimand; or
 - iii. Suspension without pay.
- (c) A disciplinary proceeding against a member may be resolved without formal hearing by agreed settlement, or upon the subject member's failure to appear to contest the allegations as set forth in section 5.3.3(i) of this rule.

5.3.5 Post-Hearing Proceedings

- (a) The Board shall issue a written decision containing specific findings of fact and conclusions of law and an order within 30 days of completion of the administrative hearing or a determination to waive the hearing under section 5.3.4(c) of this rule, and immediately deliver a copy to the subject member.
- (b) A copy of the written decision and order shall be provided to the Cannabis Control Board Nominating Committee and the Governor's Office. In cases of removal or imposed

discipline, a copy of the written decision and order shall be provided to the Department of Human Resources.

- (c) The complainant shall be notified whether allegations were substantiated and, if applicable, that the Board has voted for removal or disciplinary action.

5.3.6 Appeals

- (a) The Board's decision and order issued pursuant to section 5.3.5 of this rule shall be considered a final decision of the Board and may be appealed in accordance with the appellate procedures in 7 V.S.A. § 847.
- (b) The order shall not be stayed pending appeal.