Date: 02/23/2022

RE: Written Comment on Proposed changes to the Enforcement Action Process.

Dear MCB Members,

Thank you for the opportunity to provide written comment on this regulation. I was very involved with the work group that created the fine and fee schedule. This document is the framework for which that schedule operates. This is something that the industry as well as enforcement have wanted, and I applaud you for moving this forward.

There are however, a few sections that I do feel need to be clarified. I agree that we do not want to kick this can down the road any further – so it is my hope that these suggestions do not require additional public notice. That said, this is a complex and robust 29-page document of proposed changes. It will have significant impacts on the operation of staff as well as the proceedings of the board and licensee's. It is wise to make sure that this is the best it can be, even if that means further delays. The staff is already using the fine and fee schedule loosely and it seems to be working well. If there are substantial changes, there should be no urgency in prematurely approving the enforcement action process.

Here are the changes that I feel need to be implemented.

1) 3 AAC 306.801(b)(2) – providing access to business records at a reasonable time.

Reasonable time should be defined. Perhaps within a couple of days following an official request. There are many situations that could arise that would prevent a licensee from being able to satisfy the request within a short amount of time. Maybe they are sick, or on vacation, etc. What we should be trying to avoid here is compounding violations because a time limit is violated, a time limit that is not defined, and a time limit that will be problematic in appeals or hearings. I think it is a good idea to just define reasonable time.

2) 3 AAC 306.809 (3) – Requirement to include prior violations or criminal history of the licensee and licensed premises.

If you include prior criminal history you will be injecting bias into any potential appeal and review of the violation. Again, the spirt of this regulation (I believe) is to create a process that allows the board and staff to operate in a predictable and fair way. It should not be something that creates additional potential for litigation or administrative law reviews. I would

instead remove “criminal history” and instead keep it to prior relevant violations of the licensee or licensed premises.

3) 3 AAC 306.809(f) – Burden of Proof.

When operating in a quasi-judicial manner, in this case deciding whether or not to uphold a NOV, the Board should use the appropriate burden of proof. Substantial evidence refers to the quality and quantity of the evidence. Adopting a burden of proof that is based off of the preponderance of evidence, I believe is the appropriate evidentiary standard. Consider changing substantial evidence to preponderance of the evidence.

Thank you for the opportunity to comment on this regulation. I regret not being able to comment in person during the oral testimony.

Kind regards,

Ryan Tunseth
President, East Rip
License # 3A-13382
(907) 398-1233