

1 **BEFORE THE CANNABIS COMPLIANCE BOARD**
2 **STATE OF NEVADA**

3 STATE OF NEVADA, CANNABIS
4 COMPLIANCE BOARD,

Case No. 2020-23

5 Petitioner,

6 vs.

7 DESERT AIRE WELLNESS, LLC,

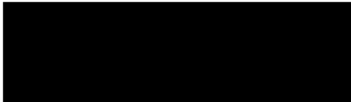
8 Respondent.

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10 **COMPLAINT FOR DISCIPLINARY ACTION**

11 The Cannabis Compliance Board of the State of Nevada (the "CCB"), by and through
12 counsel, Aaron D. Ford, Attorney General of the State of Nevada, L. Kristopher Rath, Esq.,
13 Senior Deputy Attorney General, and Ashley A. Balducci, Esq., Senior Deputy Attorney
14 General, having a reasonable basis to believe that RESPONDENT DESERT AIRE
15 WELLNESS, LLC. ("DAW" or "Respondent") has violated provisions of Chapters 678A
16 through 678D of the Nevada Revised Statutes ("NRS"), and Chapters 453A and 453D of the
17 Nevada Administrative Code ("NAC"), hereby issues its Complaint, stating the CCB's
18 charges and allegations as follows:

19 **JURISDICTION**

20 1. During all relevant times mentioned in this Complaint, DAW held, and
21 currently holds, the following license:

22 ID	License/Certificate	Last Issued / Renewed	Address
23 RD169	Adult-use Dispensary 25729455103203031356	7/1/2020	

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1 2. During all relevant times mentioned in this Complaint, DAW is and was
2 registered as a domestic limited liability company in the State of Nevada. The Nevada
3 Secretary of State lists Stacey Huffman and Brenda Gunsallus as the Managers of DAW.
4 Mr. Derek J. Connor is listed as the Point of Contact for DAW with the CCB.

5 3. Laws 2019, c. 595, § 240, eff. July 1, 2020, states, in pertinent part, as follows:

6 1. The administrative regulations adopted by the Department of Taxation
7 pursuant to chapters 453A and 453D of NRS governing the licensing and
8 regulation of marijuana establishments and medical marijuana
9 establishments remain in force and are hereby transferred to become the
10 administrative regulations of the Cannabis Compliance Board on July 1, 2020.
11 On and after July 1, 2020, these regulations must be interpreted in a manner
12 so that all references to the Department of Taxation and its constituent parts
13 are read and interpreted as being references to the Cannabis Compliance
14 Board and its constituent parts, regardless of whether those references have
15 been conformed pursuant to section 244 of this act at the time of
16 interpretation...

17 3. Any action taken by the Department of Taxation or its constituent parts
18 pursuant to chapter 453A and 453D of NRS governing the licensing and
19 regulation of marijuana establishments and medical marijuana
20 establishments before July 1, 2020, remains in effect as if taken by the
21 Cannabis Compliance Board or its constituent parts on and after July 1, 2020.

22 4. Effective July 1, 2020 and pursuant to NRS 678A.350, the CCB superseded
23 the Marijuana Enforcement Division of the Department of Taxation (the "Department") in
24 enforcing Nevada's laws and regulations for the cannabis industry.

25 5. As set forth below, the events at issue in this CCB Complaint occurred and/or
26 were discovered after July 1, 2020, but prior to the effective date of the Nevada Cannabis
27 Compliance Board's Regulations ("NCCR") on August 5, 2020. As a result, DAW is subject
28 to NRS Title 56 and NAC Chapters 453A and 453D for the violations asserted herein.
Therefore, DAW is subject to the jurisdiction of the CCB and subject to discipline pursuant
to NRS 678A through 678D and the relevant provisions of NAC 453A and 453D. Violations
are referenced herein to the statutes and regulations in effect at the time each said violation
occurred and/or was discovered.

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1 6. Pursuant to NRS 678A.500 and 678A.510(1), the CCB's Executive Director
2 has transmitted the details of the suspected violations of DAW to the Attorney General and
3 the Attorney General has conducted an investigation of the suspected violations to
4 determine whether they warrant proceedings for disciplinary action. The Attorney General
5 has recommended to the Executive Director that further proceedings are warranted, as set
6 forth in this CCB Complaint. The Executive Director has transmitted this recommendation
7 and information to the CCB. Pursuant to NRS 678A.510(2)(b), the CCB has voted to
8 proceed with appropriate disciplinary action under NRS 678A.520 through 678A.600, and
9 has authorized service of this CCB Complaint upon Respondent pursuant to NRS
10 678A.510(1).

11 **FACTUAL ALLEGATIONS**

12 7. CCB incorporates all prior Paragraphs as though fully set forth herein.

13 8. On February 21, 2020, the Department issued a Public Health and Safety
14 Advisory (the "Advisory") identifying twenty (20) brands of cannabis that failed various
15 microbial testing and retesting. These failures were discovered during an inspection of a
16 cannabis independent testing laboratory.

17 9. On March 5, 2020, the Department sent a directive to all cannabis sales
18 facilities via Listserv (the "Directive"). The Directive reiterated the Advisory, noting that
19 secondary testing by an independent lab had found failed microbial results for cannabis
20 products that the original lab had initially reported as passing. The Directive required that
21 all "dispensaries/retail stores" conduct an inventory check to identify and document
22 whether any cannabis brands listed on the Advisory were in their possession. If so, the
23 cannabis establishments were to submit an email to the Department identifying what
24 product or products were in their possession. Furthermore, these response emails were to
25 be accompanied by a request to destroy or return the failed product to the originating
26 cultivator.

27 10. On July 28, 2020, the CCB discovered, during another investigation, that
28 DAW had failed to comply with the Directive and sold a cannabis brand identified as Cherry

1 OG, Metrc Tag: 1A404030000076F000006887, which had failed laboratory microbial
2 testing for yeast and mold, coliforms, Enterobacteriaceae, and Aspergillus.

3 11. On July 28, 2020, CCB sent a letter to the point of contact for DAW enquiring
4 why DAW allowed sales of the failed product. On August 4, 2020, DAW replied to this
5 correspondence and acknowledged that it had sold the failed product set forth in Paragraph
6 10. DAW also indicated in this response that it had undertaken corrective measures to
7 prevent sales of failed cannabis products in the future.

8 **VIOLATIONS OF LAW**

9 12. CCB incorporates all prior Paragraphs as though fully set forth herein.

10 13. As to license RD169, Respondent DAW violated NAC 453D.905(3)(b)(11) by
11 selling cannabis that had not passed the analysis required by a cannabis testing facility
12 without written approval from the Department or CCB. Specifically, DAW sold a cannabis
13 brand identified as Cherry OG Metrc Tag: 1A404030000076F000006887, which had failed
14 laboratory microbial testing for yeast and mold, coliforms, Enterobacteriaceae, and
15 Aspergillus, as set forth in the Advisory and the Directive. This is a Category II violation,
16 which carries a civil penalty of \$10,000 and a suspension of up to 20 days. NAC
17 453D.905(4)(b)(1).

18 **DISCIPLINE AUTHORIZED**

19 Pursuant to the provisions of NRS 678A.600, NAC 453A.332, NAC 453D.312, NAC
20 453D.900, and NAC 453D.905, the CCB has the discretion to impose the following
21 disciplinary actions:

- 22 1. Suspend the license of DAW;
23 2. Impose a civil penalty of not more than \$35,000 for each separate violation of
24 NRS Title 56 and NAC Chapters 453A and 453D on the license of DAW; and
25 3. Take such other disciplinary action as the CCB deems appropriate.

26 The CCB may order one or any combination of the discipline described above.

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1 **RELIEF REQUESTED**

2 Based on the foregoing, counsel for the CCB respectfully requests the CCB impose
3 the penalty of a 20 day suspension against the license of DAW, RD169.

4 In addition, counsel for CCB requests the CCB impose civil penalties against DAW
5 in the amount of \$10,000.

6 **NOTICE TO RESPONDENT**

7 **PLEASE TAKE NOTICE**, that Respondent has a right to request a hearing on the
8 charges set forth herein, pursuant to NRS 678A.510 through 678A.590. **Failure to**
9 **demand a hearing constitutes a waiver of the right to a hearing and to judicial**
10 **review of any decision or order of the Board, but the Board may order a hearing**
11 **even if the respondent so waives his or her right. NRS 678A.520(2)(e).**

12 **PLEASE TAKE NOTICE**, you, as the respondent, **must answer this Complaint**
13 **within 20 days after service of this Complaint**, unless granted an extension. Pursuant
14 to NRS 678A.520(2), in the answer Respondent:

15 (a) Must state in short and plain terms the defenses to each claim asserted.

16 (b) Must admit or deny the facts alleged in the complaint.

17 (c) Must state which allegations the respondent is without knowledge or information
18 form a belief as to their truth. Such allegations shall be deemed denied.

19 (d) Must affirmatively set forth any matter which constitutes an avoidance or
20 affirmative defense.

21 (e) May demand a hearing. **Failure to demand a hearing constitutes a waiver**
22 **of the right to a hearing and to judicial review of any decision or order of**
23 **the Board, but the Board may order a hearing even if the respondent so waives his**
24 **or her right.**

25 **Failure to answer or to appear at the hearing constitutes an admission by**
26 **the respondent of all facts alleged in the Complaint. The Board may take action**
27 **based on such an admission and on other evidence without further notice to the**
28 **respondent. NRS 678A.520(3).**

1 The Board shall determine the time and place of the hearing as soon as is reasonably
2 practical after receiving the respondent's answer. The Board shall deliver or send by
3 registered or certified mail a notice of hearing to all parties at least 10 days before the
4 hearing. The hearing must be held within 45 days after receiving the respondent's answer
5 unless an expedited hearing is determined to be appropriate by the Board, in which event
6 the hearing must be held as soon as practicable. NRS 678A.520(4).

7 Respondent's answer and Request for Hearing must be either: mailed via registered
8 mail, return receipt; or emailed to:

9 Tyler Klimas, Executive Director
10 Cannabis Compliance Board
11 555 E. Washington Avenue, Suite 4100
12 Las Vegas, Nevada 89101
tklimas@ccb.nv.gov

13 If served by email, Respondent must ensure that it receives an acknowledgement of receipt
14 email from CCB as proof of service.

15 As the respondent, you are specifically informed that you have the right to appear
16 and be heard in your defense, either personally or through your counsel of choice at your
17 own expense. At the hearing, the CCB has the burden of proving the allegations in the
18 Complaint. The CCB will call witnesses and present evidence against you. You have the
19 right to respond and to present relevant evidence and argument on all issues involved. You
20 have the right to call and examine witnesses, introduce exhibits, and cross-examine
21 opposing witnesses on any matter relevant to the issues involved.

22 You have the right to request that the CCB issue subpoenas to compel witnesses to
23 testify and/or evidence to be offered on your behalf. In making this request, you may be
24 required to demonstrate the relevance of the witness's testimony and/or evidence.

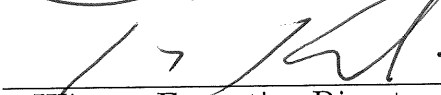
25 If the respondent does not wish to dispute the charges and allegations set forth
26 herein, within 30 days of the service of this Complaint, Respondent may pay the civil
27 penalties set forth above in the amount of \$10,000 and discontinue its operations for 20
28 days during which its license is suspended, on notice to:

1 Tyler Klimas, Executive Director
2 Cannabis Compliance Board
3 555 E. Washington Avenue, Suite 4100
4 Las Vegas, Nevada 89101

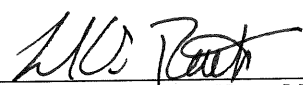
5 YOU ARE HEREBY ORDERED to immediately cease the activity described above
6 which is a violation of Nevada law.

7 DATED: November 17, 2020.

8 STATE OF NEVADA,
9 CANNABIS COMPLIANCE BOARD

10 By: 
11 Tyler Klimas, Executive Director
12 555 E. Washington Avenue, Suite 4100
13 Las Vegas, Nevada 89101
14 (702) 486-2300

15 AARON D. FORD
16 Attorney General

17 By: 
18 L. Kristopher Rath (Bar No. 5749)
19 Senior Deputy Attorney General
20 Ashley A. Balducci (Bar No. 12687)
21 Senior Deputy Attorney General
22 555 E. Washington Ave, Suite 3900
23 Las Vegas, Nevada 89101
24 (702) 486-9287

25 Attorneys for the Cannabis Compliance Board
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**DECLARATION AND CERTIFICATE OF SERVICE OF
COMPLAINT FOR DISCIPLINARY ACTION
(Service via Mail)**

I, Amber Virkler, hereby certify and affirm that:

1. I am over the age of 18 years old.
2. I am a Board Agent of the Cannabis Compliance Board (“CCB”), as defined in NCR 1.068.
3. Pursuant to NRS 678A.520 and NCCR 4.075, I have served the Respondent herein with the Complaint for Disciplinary Action (“Complaint”) in the above captioned matter as follows:

By placing a true and correct copy of the Complaint to be deposited for mailing in the United States Mail in a sealed envelope via registered or certified mail, prepaid in Las Vegas, Nevada, to Respondent’s point of contact with the CCB under NCCR 2.050 at Respondent’s address on file with the Board as follow:

Name of point of contact served: Derek Connor, Esq.

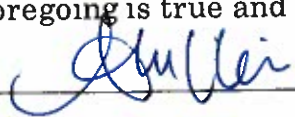
Address on file with CCB: _____

Date of Service: November 17, 2020

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 17, 2020

(date)



(signature)