IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
November 10, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

CANNABIS CARE OF WEST VIRGINIA, LLC,
Appellant Below, Petitioner

v.) No. 25-ICA-471 (Case No. 25-BOR-2876)

WEST VIRGINIA DEPARTMENT OF HEALTH,
OFFICE OF MEDICAL CANNABIS,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner Cannabis Care of West Virginia, LLC ("CC") appeals the October 28, 2025, order of the West Virginia Office of Inspector General Board of Review ("OIG Board"). Respondent West Virginia Department of Health, Office of Medical Cannabis ("OMC") filed a response.[1] CC filed a reply. The issue on appeal is whether the OIG Board erred in affirming the OMC's approval of Harvest Care Medical's ("Harvest") request for a change of location.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the OIC's order is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

On August 30, 2025, CC, a medical marijuana dispensary, learned that Harvest was in the process of obtaining a new dispensary permit following a request for a change of location. This move would allow Harvest to set up a dispensary directly adjacent to one of CC's dispensary locations. A representative of CC, Rudolph Geist, contacted the OMC, and he was told that there is no requirement to consider the proximity of another competing dispensary when granting a request for a new location/new permit. Thus, OMC indicated that proximity of a competing dispensary could not be the sole reason to reject Harvest's requests, and Mr. Geist was directed to file a request for a hearing if he wished to appeal that decision.

[1] CC is represented by David R. Karr, Jr., Esq. OMC is represented by Attorney General John B. McCuskey, Esq., and Assistant Attorney General James "Jake" Wegman, Esq.

CC alleges that shortly before September 4, 2025, OMC approved Harvest's request for a change of location for the location adjacent to CC. On September 15, 2025, CC filed an appeal of this decision and a request for hearing. A scheduling conference was held on September 23, 2025, in which the administrative law judge ("ALJ") ordered the parties to submit arguments on the issue of standing.

On October 16, 2025, a hearing on the issue of standing was held, and both parties were given the opportunity to present their arguments. The ALJ indicated at the end of the hearing that he would be ruling against CC. On October 28, 2025, the OIG Board issued an order dismissing the appeal. The OIG Board found that, "there are no challenges by the Appellant regarding the relocation of the Harvest Care dispensary that would support a judicial finding to revoke the Harvest dispensary permit or reverse the relocation decision." The OIG Board also concluded that "decisions by [OMC] to forgo revocations are not grievable by third-party permit holders." CC now appeals the OIG Board's order.

Our standard of review is as follows:

> The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority or jurisdiction of the agency;
> (3) Made upon unlawful procedures;
> (4) Affected by other error of law;
> (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

W. Va. Code § 29A-5-4(g) (2021).

CC argues that the OIG Board failed to address standing, despite the hearing specifically being scheduled to address the issue of standing. CC further argues that the Legislature intended for dispensaries to have geographical diversity, as evidenced by the fact that the initial 100 permits were issued to dispensaries spread across the state, not beside each other. CC also argues that "geographic diversity," including the proximity of a proposed dispensary location to other dispensaries, is required to be considered by West Virginia Code § 16A-6-3 when granting a relocation request. Finally, CC argues that the

OIG Board violated CC's right to due process by issuing a decision on the merits following a hearing that was scheduled exclusively to address standing. We disagree.

West Virginia Code § 16A-6-3(d) (2022), provides:

> The bureau shall consider the following when issuing a dispensary permit:
> (1) Geographic location;
> (2) Regional population;
> (3) The number of patients suffering from serious medical conditions;
> (4) The types of serious medical conditions;
> (5) Access to public transportation;
> (6) Approval by local health departments;
> (7) Whether the county has disallowed the location of a grower, processor, or dispensary; and
> (8) Any other factor the bureau deems relevant.

West Virginia Code § 16A-6-8 (2017) provides that "[t]he bureau may approve an application from a medical cannabis organization to relocate within this state or to add or delete activities or facilities." OMC argues that the factors set forth in West Virginia Code § 16A-6-3(d) for the issuance of an initial dispensary permit do not apply to relocation requests. However, even assuming OMC must consider the West Virginia Code § 16A-6-3(d) factors in considering a dispensary relocation request, we find no merit in CC's argument that geographic diversity is required by the statute or was intended by the Legislature. The statute requires that geographic location and regional population be considered when granting a new permit, but the statute is silent as to how closely located a dispensary can be to another dispensary. Accordingly, we find no error in the OIG Board's determination that there was no basis to reverse the relocation permit.

We also find that CC's argument that the OIG Board did not address standing is meritless. The OIG Board determined that, "decisions by the Respondent to forgo revocations are not grievable by third-party permit holders." In effect, the OIG Board determined that CC does not have standing to grieve the OMC's decision not to revoke a permit that had been granted to another dispensary. West Virginia Code § 16A-6-11 (2017) provides:

> The bureau **MAY** suspend or revoke a medical cannabis organization permit if:
>
> (1) The bureau has evidence that the medical cannabis organization has failed to maintain effective control against diversion of medical cannabis.
> (2) The organization violates any provision of this act or a rule of the bureau.

> (3) The organization has intentionally, knowingly, recklessly or negligently failed to comply with applicable laws of this State relating to medical cannabis.

(emphasis added.)

We conclude that CC has not identified any authority for the proposition that CC, as a third party, had standing to contest OMC's non-revocation of Harvest's permit. Therefore, we find no error in the OIG Board's conclusion that CC lacked standing to grieve the OMC's decision not to revoke Harvest's permit.

Finally, we find no merit in CC's arguments regarding due process. CC is correct that the OIG Board scheduled the October 16, 2025, hearing to address standing, and that the OIG Board ultimately addressed the merits of CC's challenge to OMC's decision to grant Harvest's relocation request. However, CC acquiesced in addressing this issue at the October 16, 2025, hearing. At that hearing, CC's counsel directly argued this merits issue, even in response to the ALJ's questions related to standing. CC's counsel also sought permission, which the ALJ granted, for Mr. Geist to argue, and he too addressed whether the OMC was required to consider a location's proximity to other dispensaries when considering a relocation request. Accordingly, CC's argument that the OIG Board denied CC's due process right to be heard on this issue is meritless. [2]

Our state and federal constitutions provide that no person may be deprived of life, liberty or property without due process of law. *See* W. Va. Const. art, III, § 10; U.S. Const. amend. XIV. But as the court set forth in Syllabus Point 6 of *State ex rel. Anstey v. Davis*, 203 W. Va. 538, 509 S.E.2d 579 (1998) regarding protected property interests:

> To have a property interest, an individual must demonstrate more than an abstract need or desire for it. He must instead have a legitimate claim of entitlement to it under state or federal law. Additionally, the protected property interest is present only when the individual has a *reasonable* expectation of entitlement deriving from the independent source.

[2] As part of its due process argument, CC asserts that it was "sandbagged" because the hearing was supposed to be limited to standing, but the merits of the case were discussed and counsel was not prepared to argue the merits. To the extent that the merits may have been considered, we do not find this argument compelling for a number of reasons. The parties briefed the merits before the court sua sponte raised the issue of standing, and CC's counsel did not object to discussing the merits, inform the circuit court that he was unprepared to argue the merits, or ask to continue the hearing.

See also Syl. Pt. 5, *Zaleski v. W. Va. Physicians' Mut. Ins. Co*., 220 W. Va. 311, 647 S.E.2d 747 (2007) (same); *YMCA of Parkersburg v. W. Va. DHHS*, No. 22-ICA-54, 2023 WL 4838229, *8 (Ct. App. 2023) (Scarr, J., concurring) ("A 'property interest' protected by due process must derive from private contract or state law, and must be more than a unilateral expectation of' a benefit. *Major v. DeFrench*, 169 W. Va. at 251, 286 S.E.2d at 695 [1982]."). In this case, CC did not have a reasonable expectation that it was legally entitled to operate the only medical marijuana dispensary on the block.

Regarding liberty interests, our law does recognize that liberty includes the right to carry on a lawful business, *see W. Va. Transp. Co. v. Standard Oil Co*., 50 W Va. 611, 40 S.E. 591, 593 (1901) ("The constitutions of the state and Union say that there shall be liberty. This includes the right to carry on legitimate business, as much as the right to be exempt from illegal imprisonment of body."); *State v. Memorial Gardens Develop. Corp*., 143 W. Va. 182, 190, 101 S.E.2d 425, 429-30 (1957) ("Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation.") (citation modified). However, that does not mean that anyone who does so is entitled to be free from any competition. *See generally State v. Memorial Gardens Develop. Corp*., 143 W. Va. at 193, 101 S.E.2d at 431 ("It is always unfortunate to some when fair competition seriously affects one's business, but that alone affords no legitimate reason for the regulation of the competitor.").

As the Supreme Court of Appeals of West Virginia has set forth, "[t]he 'clearly wrong' and the 'arbitrary and capricious' standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 3, *In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996). With this deferential standard of review in mind, we cannot conclude that the OIG Board was clearly wrong in affirming the OMC's decision.

Accordingly, we affirm the OIG Board's October 28, 2025, order.

Affirmed.

ISSUED: November 10, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White