

BEFORE THE OKLAHOMA STATE DEPARTMENT OF HEALTH
OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF OKLAHOMA *EX REL.*)
THE OKLAHOMA MEDICAL)
MARIJUANA AUTHORITY OF THE)
OKLAHOMA STATE DEPARTMENT)
OF HEALTH,)
)
PETITIONER,)
)
vs.)
)
FAST LABORATORIES OF)
OKLAHOMA CITY, LLC D/B/A)
FAST LABS)
)
)
RESPONDENT.)

Filed

AUG 21 2020

Office of
Administrative Hearings

CASE NO. MM-2020-246

**APPLICATION FOR LICENSE REVOCATION
AND SHOW CAUSE HEARING**

COMES NOW, the Oklahoma Medical Marijuana Authority of the Oklahoma State Department of Health (“OSDH”), and the State Commissioner of Health (the “Commissioner”), requests a show cause hearing for revocation of the Respondent’s license for violations of 63 O.S. §§ 420 *et seq.*, the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. §§ 427.1 *et seq.*, and the rules promulgated under Oklahoma Administrative Code (“OAC”) 310:681 (“Rules”). In support thereof, the OSDH alleges and states:

LEGAL AUTHORITY

1. OSDH is the state agency that has the statutory authority to license and regulate medical marijuana businesses pursuant to 63 O.S. §§ 420 *et seq.* and the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. §§ 427.1 *et seq.*

2. Pursuant to 63 O.S. § 1-106(B)(10), OSDH, by and on behalf of the Commissioner, has the authority to revoke, cancel, suspend, or nonrenew any license or permit when the holder of such license or permit has violated any law or any rules or standards of OSDH. Pursuant to 63 O.S. § 427.6(C)-(E), OSDH has the authority revoke, suspend a medical marijuana business license or take any “other action deemed appropriate by the Department” for “[f]alsification or misrepresentation of any material or information submitted to the department” and for “[a]ny other basis indicating a violation of the application laws and regulations as identified by the Department.”

3. Pursuant to 63 O.S. § 427.17(M) a “medical marijuana testing laboratory shall establish policies to prevent the existence of or appearance of undue commercial, financial or other influences that may diminish the competency, impartiality and integrity of the testing processes or results of the laboratory, or that may diminish public confidence in the competency, impartiality and integrity of the testing processes or results of the laboratory. At a minimum, employees, owners or agents of a medical marijuana testing laboratory who participate in any aspect of the analysis and results of a sample are prohibited from improperly influencing the testing process, improperly manipulating data, or improperly benefiting from any ongoing financial, employment, personal or business relationship with the medical marijuana business that provided the sample.”

4. Pursuant to 75 O.S. § 311.1, the OSDH Commissioner has the authority to delegate to an Administrative Law Judge (“ALJ”) the authority to issue a final agency order relating to revocation, cancellation, suspension, or any other matters related to any license or permit.

FACTS

5. Respondent owns and operates a medical marijuana testing laboratory located at 3680 E. I-240 Service Road, Oklahoma City, OK 73135-1737. Respondent is a laboratory who does business as FAST Labs and holds license LAAA-4Y4X-Z72Z, issued by OSDH (the "License") on or around February 11, 2020.

6. Per Respondent's licensure application, the owner listed for Respondent is Mary Veronica Roberts, who is listed as the 100 percent owner.

7. According to the FAST Labs' website, Kyle Felling, Ph.D., is the owner and Lab Director of FAST Labs. Mr. Felling also held himself out as the owner of FAST Labs to the OSDH's representatives as well as other FAST Labs employees.

8. Upon information and belief, Mr. Felling is a resident of Arkansas, not Oklahoma.

9. In December 2019, Respondent hired Adam Campbell as the Lab Director of Respondent's medical marijuana laboratory. Although Mr. Campbell was the Lab Director, Mr. Felling continued to maintain almost exclusive control of generating and reporting certificates of analysis ("COAs").

10. Respondent utilizes a software system called QBench where all data from Respondent's laboratory instruments is manually inputted, and upon completion of the testing process, a COA is generated therefrom. At one point, lab analysts would Dropbox this data from the testing instruments to Mr. Felling, who would then manually enter the data to QBench. At some later date, this process was changed to where the lab analysts themselves manually input this data to QBench.

11. All toxicology testing data, which includes testing data for microbials, heavy metals, residual solvents, and pesticides, went through Mr. Felling on QBench even though Mr. Felling was typically in Arkansas and uninvolved with the actual testing of samples. In other words, Mr. Felling was the one who would complete and publish COAs in the system that would then be reported to FAST Labs' clients.

12. On June 16, 2020, the Department received an anonymous complaint that Respondent, and specifically Mr. Felling, was falsifying cannabis test results. An investigation was initiated.

13. On June 19, 2020, OSDH performed an onsite investigation of Respondent's medical marijuana laboratory to review records, system software, and samples. The purpose of this investigation was to investigate falsified laboratory reports produced by Respondent and other reporting inaccuracies and testing violations.

14. During the June 19, 2020, onsite investigation of Respondent's medical marijuana business, OSDH learned of instances where Mr. Felling had entered a completed status on medical marijuana samples prior to conducting any testing on those samples in violation of 63 O.S. § 427.17(M) and OAC 310:681-8-2(c). Moreover, OSDH also found multiple instances where Mr. Felling had fraudulently changed raw testing data to ensure a passing testing result, and the passing result was reported on a COA to FAST Labs clients without further testing being done.

15. During the June 19, 2020, onsite investigation, Mr. Felling himself admitted to OSDH investigators that he had altered microbial and heavy metal results that were reported on COAs. Mr. Felling did not retest the samples that he altered.

16. Upon information and belief, Mr. Felling would frequently report residual solvent results prior to testing ever being completed. This became more common when Respondent's instrument that tested residual solvents went down for a period of time in April or May 2020 and there was a backlog of testing for this analyte.

17. An additional onsite investigation of Respondent's licensed premise occurred on July 17, 2020. At that time Respondent's instrument that tested residual solvents was packed up, so confirmation data for residual solvent testing could not be analyzed in violation of OAC 310:681-8-2(g).

18. A subsequent onsite visit took place on July 20, 2020. Respondent's instrument that tested residual solvents was back up and running during this visit. During this visit, there were at least twenty-six (26) instances between May 1, 2020, and May 13, 2020, where residual solvents had been reported as "PASS" on COAs, but Respondent's residual solvent instrument had no data supporting that the residual solvents had ever been tested in violation of OAC 310:681-8-2(g).

19. Throughout the investigation, Petitioner has performed numerous onsite visits of Respondent's medical marijuana business. The investigation revealed widespread, flagrant, continuous and willful violations that place the public's health and safety at risk, including evidence that Respondent fraudulently manipulated testing data, completed and reported COAs that showed the test samples did "PASS" without having supporting testing data, and failed to implement and/or adhere to basic standard operating procedures to ensure the integrity of the testing process. Medical marijuana patients rely on licensed medical marijuana testing laboratories to properly test the medical marijuana and medical marijuana product samples to ensure what is being consumed and/or inhaled is safe.

Respondent's fraudulent actions show an indifference to the safety of those who are intended to be protected by the services Respondent provides.

VIOLATIONS

20. Respondent violated OAC 310:681-8-2(c) and 63 O.S. § 427.17(M) when Respondent's owners, employees, and/or agents improperly influenced the testing process, improperly manipulated data, and improperly benefited from any ongoing financial, personal, or business relationship with the medical marijuana businesses that provided the sample.

- a. There are at least fifteen (15) documented examples that show where Mr. Felling went into QBench and either manipulated/altered data by changing the results of the raw data without running subsequent tests or Mr. Felling changed the status of a test sample from "IN PROGRESS" to "COMPLETE" without completing any testing.
 - i. On May 29, 2020, raw instrument data for test sample 27699 shows a lead level of 5387 ppb, which is above allowable thresholds. QBench data shows that Mr. Felling went in and changed the result of 5387 ppb to 0 ppb and then moved the test to completion on June 2, 2020, at 9:04 a.m. The COA reports "PASS" for heavy metals.
 - ii. On May 26, 2020, raw instrument data for test sample 27441 shows that *Staphylococcus aureus* was detected and an analyst had entered "1 CFU/g and 'FAIL'" for *Staphylococcus*" into QBench. QBench data then shows that Mr. Felling entered QBench on May 26, 2020,

- and changed that Staphylococcus result to 0. Mr. Felling then changed the status to "COMPLETE." The COA reports microbials as "PASS."
- iii. On June 1, 2020, raw instrument data for test sample 27816 for yeast and mold was 79867 cfu/g, which is above allowable thresholds. QBench data shows an analyst entered the result as "79867 cfu/g and 'Fail' for Mold." Mr. Felling entered QBench on June 3, 2020, at 4:05 p.m. QBench shows that 79867 was changed to 7986 and "PASS" at that time. Mr. Felling moved the sample status to "COMPLETE," and the COA reports Microbiology as "PASS."
 - iv. On May 29, 2020, raw instrument data for test sample 27705 shows a lead level of 1856 ppb, which is above allowable thresholds. QBench data shows an analyst had noted "Technical Action Needed." Mr. Felling went into QBench on May 29, 2020, kept the default 0 ppm and then moved the test to completion. The COA reports "PASS" for heavy metals.
 - v. On May 29, 2020, raw instrument data for test sample 27630 shows a lead level of 948 ppb, which is above allowable thresholds. QBench data shows an analyst had noted "Technical Action Needed." The default mode in QBench is 0 ppm. Mr. Felling went into QBench on May 29, 2020, kept the default 0 ppm and then moved the test to completion. The COA reports "PASS" for heavy metals.
 - vi. On May 29, 2020, raw instrument data for test sample 27595 shows a lead level of 3319 ppb, which is above allowable thresholds. QBench

data shows an analyst had noted "Technical Action Needed." The default mode in QBench is 0 ppm. Mr. Felling went into QBench on May 29, 2020, kept the default 0 ppm and then moved the test to completion. The COA reports "PASS" for heavy metals.

vii. May 29, 2020, raw instrument data for test sample 27571 shows a lead level of 21482 ppb, which is above allowable thresholds. QBench data shows an analyst had noted "Technical Action Needed." The default mode in QBench is 0 ppm. Mr. Felling went into QBench on May 29, 2020, kept the default 0 ppm and then moved the test to completion. The COA reports "PASS" for heavy metals.

viii. On June 3, 2020, instrument data for test sample 26741 shows residual solvent testing was performed and xylenes were detected. QBench does not show any testing phase. On May 12, 2020, QBench data shows Mr. Felling entered this sample as "IN PROGRESS" and was subsequently moved to "COMPLETED" by Mr. Felling on the same day. The COA was published on May 12, 2020, with residual solvents reported as "PASS." The COA was reported almost a month before testing was performed for residual solvents.

ix. On May 21, 2020, raw instrument data for test sample 27311 shows that *Staphylococcus aureus* was detected. QBench data then shows that Mr. Felling updated QBench to "IN PROGRESS (Analyzed)" on May 21, 2020, and QBench shows the *Staphylococcus* result to be 0 and "PASS" for *Staphylococcus*. On May 21, 2020, an analyst

changed the status of the sample to "IN PROGRESS (QA Review Pending)." On May 23, 2020, Mr. Felling then changed the status to "COMPLETED." The COA reports microbials as "PASS."

- x. On May 21, 2020, raw instrument data for test sample 27282 shows that staphylococcus was detected. QBench data shows that Mr. Felling updated QBench to "IN PROGRESS (Analyzed)" on May 21, 2020, and QBench shows Staphylococcus result to be 0 and "PASS" for staphylococcus. On May 21, an analyst changed the status of the sample to "IN PROGRESS (QA Review Pending)." On May 23, 2020, Mr. Felling then changed the status to "COMPLETED." The COA reports microbials as "PASS." In other words, Mr. Felling completed the result while the sample was still being evaluated by the analyst who actually was performing the test.
- xi. On May 19, 2020, raw instrument data for test sample 27113 shows that Staphylococcus aureus was detected. QBench data then shows that Mr. Felling changed the QBench status from "IN PROGRESS (QA Review Pending)" to "IN PROGRESS (Analyzed)" on May 19, 2020, and then changed the status to "COMPLETED." The COA reports microbials as "PASS."
- xii. On May 19, 2020, raw instrument data for test sample 27109 shows that Staphylococcus aureus was detected. QBench data then shows that Mr. Felling changed the QBench status from "IN PROGRESS (QA Review Pending)" to "IN PROGRESS (Analyzed)" on May 19,

2020, and then changed the status to "COMPLETED." The COA reports microbials as "PASS."

- xiii. On May 19, 2020, raw instrument data for test sample 27250 shows that *Staphylococcus aureus* was detected. QBench data then shows that Mr. Felling changed the QBench status from "IN PROGRESS (QA Review Pending)" to "IN PROGRESS (Analyzed)" on May 21, 2020, and then changed the status to "COMPLETED" on May 22, 2020. The COA reports microbials as "PASS."
- xiv. On May 29, 2020, QBench data shows an analyst moved sample 27595 to "IN PROGRESS (QA Review Pending)" and entered the result "1 CFU/g and FAIL for *Staphylococcus*." QBench data then shows that Mr. Felling kept the QBench status "IN PROGRESS (QA Review Pending)" but changed the result to "0 CFU/g and Pass" on May 29, 2020, and then changed the status to "COMPLETED." The COA reports microbials as "PASS."
- xv. On June 5, 2020, QBench shows an analyst entered for sample 28058 the result "1 CFU/g and FAIL for *Salmonella*," and the analyst moved the sample to "IN PROGRESS (QA Review Pending)." QBench data then shows that Mr. Felling entered on June 8, 2020, and kept the QBench status "IN PROGRESS (QA Review Pending)" but changed the salmonella result to "0 CFU/g and Pass," and then changed the status to "COMPLETED." The COA reports microbials as "PASS."

Mr. Felling himself admitted to changing this result entered by the analyst.

21. Respondent violated OAC 310:681-8-2(g) by failing to have any raw data available for analytes tested that were reported as "PASS" on COAs.

a. There are twenty-six (26) instances in the first two weeks of May 2020 where COAs were generated by Respondent, but Respondent did not have any raw data for residual solvents that were reported as "PASS" on those COAs.

i. Specifically, there was not any raw data available for residual solvent testing for samples 26322, 26501, 26502, 26510, 26522, 26542, 26565, 26570, 26605, 26591, 26770, 26769, 26629, 26628, 26608, 26419, 26420, 26421, 26422, 26437, 26442, 26443, 26453, 26419, 26409, and 26325. Each sample had a COA that reported residual solvents as "PASS" between May 1, 2020, and May 13, 2020.

REQUEST FOR HEARING

22. Based on the information listed above and pursuant to 63 O.S. § 1-106(B)(10) and 63 O.S. § 427.6(C)-(E), OSDH alleges that the Respondent's continued and flagrant violations of statute and regulations are grounds for revocation of respondent's medical marijuana business licensure. For this reason, OSDH requests a show cause hearing as to why the Respondent's license should remain in effect.

GENERAL PROVISIONS

23. This action is in addition to any other remedies provided by law and does not preclude the OSDH from seeking other relief as appropriate.

24. Pursuant to Massongill v. McDevitt, 1989 OK CIV APP 82, and pursuant to Title 310, Section 2-21-7, Paragraph A of the Oklahoma Administrative Code, a corporate entity may not represent itself. Any entity that is not an individual must be represented by counsel in the requested hearing or in any other aspect of litigation of this dispute.

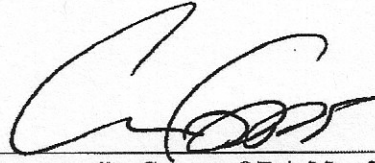
25. Respondent's failure to appear with counsel for a scheduled hearing or to file any responsive pleading shall be grounds for OSDH to seek a default judgment, pursuant to Title 310, Section 2-21-18 of the Oklahoma Administrative Code.

26. Pursuant to Title 310, Section 2-21-4, the Commissioner designates any inspector employed by the OSDH to accomplish service of process for OSDH. This designation shall continue for the duration of this litigation and apply to any pleading filed by the Petitioner.

WHEREFORE, Petitioner, the Oklahoma State Department of Health, prays this court revoke the License of Respondent and order Respondent to cease and desist all business operations, return the License to Petitioner, and dispose of any medical marijuana or medical marijuana products in Respondent's possession in accordance with OAC 310:681-5-10 and existing law, and grant any other and further relief to which Petitioner may be entitled.

DATED this 21st day of August, 2020.

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