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## Washington State Liquor Cannabis Board Meeting

Wednesday, Date, 2018, 10:00 a.m.  
LCB Headquarters - Boardroom  
3000 Pacific Avenue SE, Olympia WA 98501

### Meeting Minutes

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#### 1. CALL TO ORDER

Chair Jane Rushford called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 a.m. on Wednesday, March 21, 2018. She noted that Member Garrett and Member Hauge were absent, and due to the lack of quorum the action items on the agenda are postponed until April 4, 2018.

#### 2. APPROVAL OF MEETING MINUTES

The motion to approve Board meeting minutes was postponed.

#### 3. EMPLOYEE ANNOUNCEMENTS

Employee Retirement – Steve Johnson, Deputy Chief of Enforcement Presenting  
Deputy Chief Johnson honored Lieutenant Steven Trisko for over 40 years of service.

#### 4. PUBLIC HEARINGS (A-B)

##### **PUBLIC HEARING 4A – Packaging and Labeling**

Joanna Eide, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4A 1-3) and gave a presentation on packaging and labeling rules (PRESENTATION 1).

Chair Rushford opened the public hearing and invited the first citizen to the podium to provide testimony.

##### Chris Marr - Consultant

Mr. Marr stated that he was a regulatory consultant for a number of licensed processors.

Mr. Marr: Thanks to the Board for accepting stakeholder input and extending the effective date of the proposed rules. That will significantly reduce the burden of the new requirements. I want to raise one issue regarding the issues, and then another comment around implementation.

Based on my discussions, as stated in the issue and the PowerPoint, the purpose of some of the ruling which is “providing addition clarity for what is considered especially appealing to children”. As we know, that requirement in statute and rule has existed since the passage of I-502, and avoiding consumption by

kids has always been one of the Board's top priorities. All infused products now approved and being sold within our licensed system met that standard as determined by the formal approval process which has existed now for over three years. The new rules were not designed to raise or lower that bar, just to create more clarity and consistency and we appreciate that. Our concern is that processors that have invested considerable financial resources in product and brand equity and who have already met existing standards of "not appealing to kids" could be harmed by attempts to revoke existing packaging and labeling approvals. Note that I am only referring to aesthetic design product and label attributes, things like colors, logos, package design, and product forms and so on, and not child resistant packaging or other safety related standards. Those attributes and design standards were the same when those products were approved and they will be when those rules become effective. However, for the licensee they will be much clearer and easier to comply with. The loss of brand or product equity, or the diminishment of intellectual property associated with retroactively applying the same standards in clarified form could present significant financial harm to impacted licensees. I don't believe this is the intent of the Board. In fact the small business economic statement filed with the CR 102 indicates that given the delayed implementation timeline these new requirements are "unlikely to cause the loss of sales or revenue by marijuana businesses". And of course that would not be the case where those products whose previous approval was revoked.

To address this we believe the Board should clarify its intent to grandfather in existing products, labels and package designs approved under the existing process. We don't think this requires a change in the draft rules.

Lastly, as I have testified before on signage and other things, the devil is in the details of implementation. So, I would ask the LCB once again to adopt service level standards on approval times for packaging and labeling approvals and appeals, and I think it would also benefit the agency and stakeholders if you could create more transparency and easy access to information. I believe Joanna referenced some of those steps. So it includes licensee education as well as posting more in-depth information, up to date FAQs, examples of compliant and non-compliant packaging and labels and so on. For instance, many processors are negotiating with manufacturers on child resistant packaging. There are many product forms out there in the market. In many cases they want to switch over early in those lead times. I believe there should be a review process for manufacturers so we don't have to go through approval every time a product is submitted. We would know that a certain package form has approval deemed status. I appreciate your time, thank you.

#### Julia Lee – Cannabis Alliance

Ms. Lee presented written comments to the Board (CITIZEN HANDOUT 1).

Ms. Lee: Our membership is comprised of more than 180 business that span the state of Washington. I'd like to start by expressing how much we truly value the opportunity to collaborate with LCB and want to thank you for removing the harvest date requirement from the CR 102. This move was much appreciated by our members, and we sincerely we hope you will make it an interim policy in order to bring the rule and the store name and UBI to reality as soon as possible.

There are still some major issues with these current rules, however, that need to be addressed before rulemaking should come to a close. We want to note that other industry groups have made similar recommendations and therefore we would suggest that the packaging and labeling workgroup reconvene at least one more time before filing the CR 103 so that we may find resolution on these outstanding

issues. I'll mention some of them in detail and ask that you review our submitted letters which I have provided.

First, we strongly request a standardized cannabinoid label. This is very important because current labels in the industry are all unique and often list cannabinoid in misleading ways, whether intentionally or not. As a consumer attempting to compare two products of the same type, using the label is unnecessarily difficult. I have provided the Board with an example of this inconsistency. The standardized format would not take up more space, but would help the consumer draw their eyes to the relevant and required information. Much like a nutrition facts label or a drug facts label that you would find on any standard packaged food or medicine today. I have also provided the Board with a common example of each of those.

Second, the universal symbol. I have provided the Board with an example of the proposed symbol as we have significant issues with the current proposal. As you can see, it is too big, the colors clash with branding, the cost of printing colors is more expensive, etc. We would much prefer the universal symbol be designed by industry leaders. Again, I have provided the Board with an example of this. We'd like to note that this symbol was not included in any of the LCB consumer surveys. Our example is smaller, and not only does it convey all of the required information as the currently proposed symbol, but it also conveys that the product may be unlawful outside the state of Washington.

Some other issues we'd like to see addressed that are not currently in this version of the rules are:

- 1) Upon request materials – we recommend making every certificate of analysis accessible on the web, and require links or QR codes on the package and label linking to the test results.
- 2) Cartoons, fonts and colors – the proposed rules are too vague and subjective. They leave room for disputes between licensees and officers. We need concrete definitions of what is and is not allowed. Or, no restrictions on fonts and colors at all. There cannot be vague rules that are left up to interpretation.
- 3) Labeling of all additives – we recommend adding some language to the rules that help clarify that anything not derived from a cannabis plant and tracked in the traceability system is an additive and must be labeled as such

There are a couple more points regarding unadulterated usable marijuana and crown style caps that we would also like to see addressed which underscored our need and request to reconvene the packaging and labeling workgroup one more time. Again, we thank you for the opportunity to provide this feedback.

#### Nick Mosely – Cannabis Alliance

Mr. Mosely stated that works for a testing lab, is a Board member for the Cannabis Alliance, and participated in the packaging and labeling workgroup.

Mr. Mosely: I want to thank the LCB for the opportunity here, for opening up the packaging and labeling rules. I think you can see by the number of people here that these rules are very important to many stakeholders all the way through the production chain. Specific thanks to Joanna for having organized the monthly meetings for the packaging and labeling workgroup, and for keeping us in line while we were doing that. She made sure we knew what rules we had an opportunity to provide change to and what were legislative issues that we needed to bring up with our legislators. Thank you Joanna.

Thank you to the industry at large, and the other industry groups, for coming to the table and discussing these things. Throughout the whole process it felt like pretty much every stakeholder was on the same page about what we wanted. There wasn't a lot of disagreement, it was a very productive experience. I think that Julia just highlighted that there are still a few outstanding issues, a few points of clarification, maybe a few missed opportunities. Maybe we can blame it on being distracted by traceability system over the last couple months, but there are still a few outstanding issues that I think need to be addressed.

With my time here at the podium I wanted to advocate for an opportunity for the packaging and labeling group to reconvene at least one more time before a CR 103 is filed so we can have an opportunity to discuss the handful of outstanding issues. Thank you.

Mary Catherine McAleer – Association of Washington Businesses (AWB)

As you may know, the AWB is state's oldest and largest statewide business association. We represent about 7,000 business members. We also represent cannabis farmers, processors, and retailers and we appreciate the opportunity to provide comment today on WAC 314-55-105 and 106 and the changes the LCB has made thus far.

Our members would like to see a standardization of the cannabinoid label as well. AWB member businesses both involved in the cannabis industry and outside of it want to see safe, informed, educated purchasing by Washingtonians that power our private sector otherwise. Having a standard label, we believe, would make sense for consumer protection and confidence.

We strongly urge the LCB to adopt a universal symbol that clearly indicates Washington State products belong inside Washington State. We, and I personally, advocating primarily to the legislature have not experienced an adequate level of awareness outside of the cannabis industry that there is a prohibition against moving product outside the state of Washington. We think that a state specific universal symbol would be an easy way to communicate and reiterate that important law.

Insuring that cannabis products on the shelf today are safe and reliable is a paramount to AWB members. In order to provide quality assurance to cannabis consumers we support some of the changes that have been made to the COA (certificate of analysis) language. A label QR code to the products COA will be a great consumer education tool we think, both with regard to displaying product characteristics and allowing consumers reasonable expectations about the product they are purchasing.

Finally, AWB supported [House Bill] 2334 this year during the legislative session regarding cannabinoid additives out of concern for foreign unregulated CBD. To stimulate Washington State production of CBD and to protect consumers from harmful toxins we would suggest requiring labeling of CBD not tracked by the current 502 traceability system. The same suggestion we think goes for treated and adulterated products. We look forward to continuing to discuss the rule language with the LCB as the process moves forward. I appreciate your time today.

Sarah Rasor - Citizen

I find labeling to be a huge issue as I try to go out into a 502 system. There is confusion not only because of the lack of standardization but what people consider an additive. For instance, if you add something to a concentrate it is an additive. I need to know what terpenes you add in there. I need to know any other natural cannabis things that you add in there as well. It's really hard for me think of looking up the pesticides with a QR code, because I don't have a QR reader on my phone. People that aren't really

technologically savvy shouldn't have to search out information, it should be available. I know that COAs are supposed to be available to the public, but I have only been to one store that has actually produced a certificate of analysis. That is out of at least 50 stores that we've been to. The rest of the stores, almost all of them, actually reacted poorly to us asking questions. One of us told us that we "could tell the LCB that their spy didn't work". This is coming from a consumer, and I was attacked at a 502 asking about pesticides because apparently I'm too knowledgeable. I'm just trying to get clean meds. Thank you for your time. I ask that next time that you do convene a meeting to go over these things that you add either a patient or general consumer just to have a little bit of a say, I think it would really help. Thank you very much.

#### Lindsay Short – DB3

Ms. Short stated that the DB3 Corporation manufactures Zoots edible products.

Ms. Short: We're very excited with the new rules coming through. We're excited that the rules have been pushed to the 102. There are a few small pieces that we'd like to speak to.

One is the delayed effective date, which is great. We would encourage the Board to think about not just a delayed effective date, but how that affects each piece of the supply chain. For instance, when can a manufacturer stop shipping out old packaging and then when can a retailer stop selling old packaging.

The only other piece I'd like to bring up is the universal symbol. I know I'm one of several. We love it, we love the idea, what we don't love is having to have two symbols. If one of the big pieces we're trying to do reduce real estate, this more than doubles the amount of real estate on the primary packaging that edible companies need. Is there a way we could combine "not for kids" and "this has marijuana" into one symbol that would be on the front of the packaging that is universally known to everybody in Washington State? Thank you for your consideration.

#### Peggy Button – Citizen

I'm going to back to when it was old-school, when it was medical, we did have packaging problems, yes. But what I'm seeing now is a lot of waste. This is a new industry. We're getting rid of garbage bags that we have to pay a nickel extra if we want to use a certain garbage bag. But I'm seeing all this garbage that is collected from the 502, and there's a lot of it.

Besides that, I would like to see the harvest date remain on the package. I saw one package where the expiration was four years from now. Cannabis doesn't have a four year shelf life. I think by having the harvest date it lets the consumer know when it was harvested because after a year if you retest it, it will test totally different than what is on the package. It should be based on harvest date, not picking when it will be beyond its freshness.

That's all I have to say, just too much waste and freshness date is important.

Chair Rushford thanked everyone for their participation and collaboration as the LCB works through the rulemaking and closed the public hearing.

## **PUBLIC HEARING 4B – Marijuana Retail License Forfeiture**

Joanna Eide, Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4B 1-3).

Ms. Eide: I do want to touch on a couple items, especially since we aren't able to move to our action items today given that we do not have a quorum. It is important that we proceed with the public hearing today on the CR 102 that was filed on February 7 for the marijuana retail forfeiture rules.

I want to acknowledge initially had we had a quorum today we were planning on requesting approval for a Supplemental CR 102 for the marijuana retail license forfeiture rules to address some of the concerns that we heard and also to provide some additional clarity. Instead we will be coming back to the Board on April 4, 2018, with the Supplemental CR 102. I want to make sure that was clear prior to taking public testimony.

Chair Rushford opened the public hearing and invited the first citizen to the podium to provide testimony.

### Ezra Eickmeyer – Cannabis Retailers for Smart Regulation

I think the lack of sign-ups for the hearing today shows that the agency responded very well to some of the concerning parts in the initial set of rules, so kudos on the second version of this. Really, really good job on the second version. I think it's very clear, the boundaries are set, and it gives people who were banking on having at least until the end of April the chance to get their doors open.

Just a couple little things, in setting a date in November and then saying that you have to open 12 weeks before that is, I think, a great way to do this and I support that structure. 12 weeks gives people until August. I don't think you necessarily need to go that far, I think the 20 weeks would still be adequate but that is a decision for the agency. Either way it was a great restructuring of the rules.

There is one hole here that I will suggest filling for retailers who are in jurisdictions with a ban or moratorium. Once we get those bans lifted, it's not clear how much time those retailers are going to have to open. In those jurisdictions they are required to notify the LCB that the local ordinance has changed. I think a lot of them can't start build-out or apply for a permit, they are just treading water in those jurisdictions, and are in pretty massive distress. So, let's say the city of Kent dropped their ban tomorrow, the people that are licensed should have a year to get their doors open and get functional with plenty of flexibility from the agency as long as they can show that they are quickly spending money on a build-out and working to get open as fast as possible. Just a suggestion to clarify to those people in those jurisdictions, the dozens of licenses affected, that if you are in a jurisdiction that doesn't allow you to open that you have a year or year and a half with some flexibility to get your doors open once the bans drop. Because, under the current rules you could technically say that "you've been licensed by the agency for three years and didn't open by November 1 so as soon as this ban goes down you are automatically without a license". That's just a loophole I didn't even think about until last night, so I apologize I didn't send anything in writing, but we do have another hearing coming up. Great job, again, thank you very much.

Chair Rushford closed the public hearing.

## 5. ACTION ITEMS (A-D)

Chair Rushford: Again, I just want to express our regret for those who were here for the action items today, I think some of those people have left. We did not anticipate that we would not have a quorum and appreciate your collaboration and flexibility.

## 6. GENERAL PUBLIC COMMENT

Chair Rushford invited citizens to address the Board regarding any issues related to LCB business.

### Chris Marr - Consultant

Today the Board was planning on taking action, and I assume will, to approve the CR 103 to allow the private labeling of spirits. As you know this is a practice that the LCB has not permitted because it constitutes a per se monies worth violation which is in conflict with tied house laws. That said, the practice of private labeling in spirits has been allowed to exist amongst the largest retailers in Washington for over five years since the passage of initiative 1183 despite the lack, in most cases, of exclusivity clause which would be in the final rules if approved by the Board. So when the Board takes that action, I would applaud it and I think it's long overdue.

On the marijuana side, licensees have been subject to the same tied house laws and monies worth restrictions. However, unlike spirits retailers, those prohibitions have been actively enforced, in most cases with warnings and direction to sell through product. This has caused considerable hardship for smaller producer processors who want to focus on production without the added cost and responsibility and overhead of marketing and distribution. In some cases, the ability to specialize on production only represented the ability to stay in business in this very difficult market place which some would argue is plagued by serious overproduction.

I wanted to let the Board know that in the next few days I will be submitting a written request to the Board to undertake rulemaking to allow private labeling, sometimes called white labeling, of cannabis products under WAC 314-55, utilizing the same regulatory structure that is proposed for spirits. It is similar to the approach contained in HB 2473 and SB 6172 this past session, neither of which passed. Both bills contained a non-exclusivity and reasonable availability clauses similar to what you would be looking at with the spirits private labeling. With it, communizing the rules for spirits and cannabis private labeling would strike the right balance between protecting the public at risk and allowing licensees to benefit from streamlining their business operations.

I want to touch on one other point, going back to the devil is in the details. I have a client who has been informed by the Examiner's office that they will not allow packaged product to be repackaged. So, if I'm switching brands because of the changing in the packaging and labeling rules or just deciding to switch, even though the traceability system allows for it and we went through a process of clarification last year, what I'm understanding from the Examiner's office is that they won't allow me to repackage my own product. I don't believe that is the intent of the Board. I will send an email which follows up on this and explains this in a little more detail. I do believe that a little more clarity is required from the Board, because what will happen is that some people will migrate to other brands because of labeling requirements or brand identity or designs. For me not to be able to take product that will expire or that I want to communize with other products in my product line, seems to be a regulatory over-reach. Perhaps we did not explain it properly on our end, but I do believe that is an area where the Board needs to provide a little direction. With that, thank you.

Steve Sarich – Cannabis Action Coalition

I'll make this short since you don't have a quorum. To make you aware, and we'll give you something in writing in the meantime, now that you have closed down the last access point for patients, patients need to find out where they can get medical products not just you saying that there is medical product. What we'd like to have you do with your traceability system is put up a page that shows where medical products are, what they are, who's got them, on an ongoing basis so we don't have to drive for 30 miles to find products then show up and they aren't there. Or we show up and they can't provide certificates. So, if you will put up on your website a way for us to find those products and which stores have them, I'm sure the stores that have them would also love to have you do that, and have hyperlinks to the testing on it that would be greatly appreciated.

**ADJOURN**

Chair Rushford adjourned the meeting at 10:48 a.m.

Minutes approved this \_\_\_\_\_ day of \_\_\_\_\_, 2018\*

*\*Due to lack of quorum for this meeting, there will be no motion to move and approve these minutes.*

	<i>Not Present</i>	<i>Not Present</i>
_____ Jane Rushford Board Chair	_____ Ollie Garrett Board Member	_____ Russ Hauge Board Member

Minutes prepared by: Dustin Dickson, Executive Assistant to the Board

**LCB Mission** - Promote public safety and trust through fair administration and enforcement of liquor, tobacco and marijuana laws.

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