Washington State
Liquor and Cannabis Board

Washington State Liquor Cannabis Board Meeting

Wednesday, May 30, 2018, 10:00 a.m.
LCB Headquarters - Boardroom
3000 Pacific Avenue SE, Olympia WA 98501

Meeting Minutes

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, May 30, 2018. Member Ollie Garrett and Member Russ Hauge were also present.

2. APPROVAL OF MEETING MINUTES

The motions to approve the May 2, 2018 and May 16, 2018 Board meeting minutes were postponed.

3. ACTION ITEMS (A-B)

ACTION ITEM 3A - Board Adoption CR 103 for Marijuana Retail License Forfeiture Rules

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

Ms. Eide: As you recall we had legislation pass that required the LCB to create a regulatory structure for forfeiture of retail licenses that are not fully operational and open to the public within a specified amount of time. There were some parameters that were set within statute that were also reflected in rule, including exemptions for those retail licenses that were located within a ban or moratoria or that are unable to open for other reasons such as business permitting, zoning issues or other ordinances.

For a business to be considered open and operational it must:

- Be open to the public for a minimum of five hours a day between the hours of 8:00 am and 12:00 midnight, three days a week;
- Post business hours outside of the premise in the public view; and
- Report monthly sales from the sale of marijuana products and pays applicable taxes.

A retailer must meet these requirements within 12 months of issuance of the license, or November 1, whichever is later. If they do not and do not qualify for one of the exemptions, they would be subject to forfeiture.

Exceptions the Board can exemptions for this forfeiture requirement consider circumstances that occur outside of their control which have become a barrier for them to become fully open and operational. There

are also requirements for documentation. Of course, if the LCB does move to forfeit a retail license underneath this rule, the licensee would have the ability to appeal that decision.

We had an initial CR 102 filed for these rules, and made changes through a supplemental CR 102 filing which addressed a lot of the concerns raised on the initial CR 102, resulting in very few comments which is a good sign. It means it is clear, easy to understand and that we addressed the concerns that were raised. The summary of comments received is in the concise explanatory statement here for you. You will see it is fairly light, we did not receive any testimony at the last public hearing.

If the Board does approve this CR 103 for final rules, it will be filed with the code reviser today and effective 31 days later on June 30, 2018.

Ms. Eide then requested approval from the Board to file proposed rules.

MOTION: Member Hauge moved to adopt the CR 103 for Marijuana Retail License Forfeiture Rules

SECOND: Member Garrett seconded.

ACTION: Motion passed unanimously.

ACTION ITEM 3B - Board Adoption CR 103 for Spirits Mini Bottles

Karen McCall, Senior Policy and Rules Coordinator, said she was on the agenda to request the Board to adopt the CR 103 for Spirits Mini Bottles.

Ms. McCall: Rather than adoption of the rules, she asked to wait until next Board meeting to address these. I'm still trying to get some information together based on comments that were received that I would like to present to the Board prior to making a decision.

Chair Rushford: We appreciate this.

4. PUBLIC HEARINGS (A-B)

PUBLIC HEARING 4A – Complete Meals for Spirits, Beer, and Wine Restaurants

Karen McCall, Senior Policy and Rules Coordinator, began the briefing with materials (HANDOUTS 4A 1-2).

Ms. McCall: I received two comments on this particular rulemaking. The rulemaking was started based on a concern that our food service requirements for spirits, beer and wine restaurants were not culturally diverse. With the menus that we are seeing in the restaurant industry now, we wanted to be more up to date and include more items in the rules.

Something else we did in the proposed rules is remove the requirement that an entrée had to be a complete meal with a side dish. We took out the requirement for the side dishes. Side dishes still need to be offered but do not need to be included with the entrée to be considered a complete meal.

Chair Rushford opened the public hearing and invited the first citizen to the podium to provide testimony. No one came forward for comment, and Chair Rushford closed the public hearing.

PUBLIC HEARING 4B – 2017 Cannabis Legislation Implementation

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

Ms. Eide: This rulemaking is not just what is required after passage of laws in 2017. It is also a rather large omnibus rulemaking including clarifying and technical changes as well as other changes identified by staff, stakeholders and others that were desirable, necessary, or advisable.

I won't go through the entire issue paper here but will mention it because it is a rather large rule packet. The issue paper that was submitted with the CR 102 for this rulemaking does go through it in an abbreviated way, hitting the major points that are contained within this rulemaking. I want to turn people's attention to that. There are several sections within chapter 314-55 WAC that are proposed to be adjusted as part of this rulemaking.

I also wanted to mention that we have been receiving comments, some right after the CR 102 was filed. I want to mention a couple items that seem to be of a particular focus in the comments we received so far. One is regarding samples. There is a proposal included this rule package to restrict vendor samples, and it is important to differentiate because there has been some confusion. They are to be different from education or budtender samples. Vendor samples are used for the purposes of negotiating the sale of a product that the retailer does not already carry. The proposal includes some restrictions around who can receive the vendor samples. It also includes that those with purchasing authority would be the ones receiving those vendor samples. The idea was to ensure that cannabis wasn't being used as compensation for employees that don't have direct input into purchasing authority. I think the language that was included makes it appear to be overly restrictive, so we are looking for ways that we can provide more flexibility around that. We understand that there are those that have purchasing authority at a retailer that don't necessarily consume cannabis or it may be too large of a volume for one person to consume on a reasonable basis. We are taking a look at what sort of documentation as far as who would be contributing to reviews of products to help inform a purchasing decision.

A point that I wanted to mention is the commission-based compensation arrangements for producers or processors, allowing producers or processors to use a commission based compensation arrangement with an employee. That has been getting some favorable comments. We also have comments received around the proposal for processer service arrangements. Processors would not have to sell useable marijuana for extraction purposes and then buy it back plus the cost of the service of extraction to then incorporate into other goods. There are additional provisions that people have questions about so we are looking at those as well.

We've received comments submitted in an impressive grid format. Thank you to those that have done that. It makes it easier to identify exactly the provisions they are talking about.

Another question I wanted to mention is volume discounts. Current rules do not allow discounts of any kind. In the interest of taking a step forward in our rather conservative approach to making adjustments in restrictions in the cannabis industry, we included a proposal in this rulemaking modeled after liquor rules for volume discounting. There have been concerns raised. I've heard from many smaller producers and processors that they fear this will have a negative impacts for them, while others have been positive

about volume discounts in looking for the ability to use them. Obviously we've heard more of that from the retail side, and some with caveats asking to make smaller changes to make it work better. We are looking at all of these things carefully.

Those are the primary things we are hearing about, I don't want to dis-acknowledge any of the other comments we've heard. These are just the highest level of comments thus far. We will be taking a look at all of the comments we receive until the comment period ends today.

Member Hauge: We talked yesterday at caucus about volume discounts and our concerns about how that might disrupt market power. We are going to spend some more time on that.

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

Logan Bowers - Hashtag
Members of the Board and the agency, thank you for the opportunity to address you today. My name is Logan Bowers, I'm the owner of Hashtag Cannabis in Freemont and Redmond.

Broadly speaking, it's great to see this large rulemaking package going forward harmonizing the rules, I think most of the changes are really great. I did want to address specifically the discount rules which have already been noted as somewhat controversial. I think there is kind of a presumption with the discount rules that volume discounts are neutral and they don't produce influence between the different players. That might be true in liquor because there are so few producers but in cannabis there are many producers and many retailers.

So, volume-only discount rules produce a situation where it increases the influence of some licensees and decreases the influence of others. It creates winners and losers and long lines of influence across the tiers. I think that is problematic and I ask that the Board not enshrine a specific set of winners and losers. For example, if you are a new independent producer/processor and you are trying to get into a store you aren't going to sell like hotcakes on day one. It takes time to build a clientele of customers. The incumbent larger producers already in that store are going to be selling at a volume discount. If you aren't allowed to put in introductory pricing, then you come in at a price disadvantage because you are a now producer that doesn't sell a lot so your prices have to be priced higher than the incumbent producer. That allows the incumbent producers to structure a pricing program to deny retailers the ability to bring in new producers, or at least make it harder.

Similarly, large retailers can do a flip-side tactic where they will squeeze the producer/processors to have larger volume discounts to make their smaller competitors less profitable, putting them at structural disadvantage because the smaller stores won't be able to achieve the same price levels.

I think it is good that the Board and Joanna are attempting to move us forward like a normal industry, but I ask that the Board take a more neutral approach. You'll hear some people that love it because it creates winners for them. You'll hear some people hate it because it creates losers for them. I recommend that the Board take a neutral approach that does not produce that effect. Thank you very much.

Chris Marr - Consultant
For the record I am Chris Marr, I represent over 20 different marijuana licensees. I'd like to comment on a number of proposed rules and I'll be providing more in-depth comments in writing with section references.

First of all, limiting volume discounts to licensees operating under the same UBI. I understand the intent here, we're trying to limit cooperative purchasing by entities with limited or no relationships, but this change requires even those with identical ownership to operate under one UBI. The purpose of separate entities under different UBIs is to minimize risk. I don't think any competent attorney would advise this. Also, some licensees offer minority interest to store manager-partners to retain the. In fact, this offers a lot of opportunities for people to move, particularly on the retail side, into the business. For Seattle stores, multiple licenses operating under one UBI could actually trigger the newly enacted head tax, which is another consideration. We would request that you eliminate or modify this. Possibly you require majority ownership by a common individual. I'm glad you are rethinking this.

Limiting vendor samples: I won't put too fine a point on that. I'm glad you are reconsidering that for a whole range of issues. None of you were here when I was on the Board. The Board actually used to sample new alcohol products. We used to come back from lunch and sometimes find a dozen bottles laid out with evaluation forms on our desk, which isn't a bad format to use but if we sampled them all ourselves we would have visited Betty Ford a couple times.

Excise tax on shrinkage. New language states that any product inventory reduction not adequately documented would be assessed the excise tax. This makes any inventory shrinkage subject to treatment as a retail sale and is at odds with both standard accounting practice and Department of Revenue definitions. The LCB is seeking to create its own unique definition of a retail sale. The traceability system tracks shrinkage and that data can be used to determine if a retail transaction did or did not occur. We would ask that, as with a new rule aligning records retention with DOR policy, your strike this section and maintain consistency with DOR definitions of taxable sales.

Licensing contracts. During the 2017 session SB 5101 addressed the fact that existing statutes don't affect the licensee's ability to enter into licensing agreements. Discussions with the sponsors that many of us had at the time revealed their intent was in fact to allow royalty based intellectual property licensing agreements. 5101 was rolled into omnibus 5131, but the proposed rules omit any reference to licensing and thereby fails to implement the RCW as directed by the legislature. We would ask that you add language that addresses licensing agreements which permit royalty based payments.

The last point I would make is with regard to advertising penalties. The idea here is to put teeth in the new rules to make sure folks are compliant with the outdoor advertising regulations you just adopted. These were actually proposed even before compliance notices were going out for those new rules. You need to keep in mind that because retailers have numerous signage, one visit could result in numerous violations.

I'll close by saying that Director Garza informed WACA members last October that enforcement would be hiring an advertising compliance coordinator. You actually have not begun advertising for that position yet. So, education comes before enforcement, please hold off until you do that and you know if it's even necessary.

Toni Mills - Citizen

I am a Burien resident. I worked in health care for 30 years prior to completing your first medical consultant course here in Washington State. January this year I did not renew because you still don't have compliant products out there for us to refer patients to. If I have to tell a patient to take a product home and bake it in the oven because the microorganisms in the molds are mildews are dangerous to an immune compromised patient, that's not medication.

At the very least there should be a warning label sent home for those patients. We do that for pharmaceutical meds, and that should be done for the stuff that you are trying to market to patients as medicine.

There's still no compliant products out there. When we do get compliant products I would recommend that we have samples for patients just like we do for pharmaceuticals. We have a pharmaceutical closet that we can give samples to our patients to take meds home to try before we give them a script to spend an exorbitant amount of money on. I think that would be a great idea.

Before 502 was implemented patients were able to take jars and smell them. A lot of them have nausea issues so scents trigger nausea and help relieve some of the stressors.

The terpene profiles are not being addressed with your medicines. It is very important that be added.

Also, Indian reservations are selling pesticide free products for $60 an ounce. At this time it meets the same guidelines as what your 502 shops promoting for patient use. At this point I'm going to recommend that if patients are not growing their own products and don't have a reliable pesticide free person growing for them that they go to these reservations to offset the 37% excise tax that they are being forced to pay.

Chris Masse – Miller Nash
Ms. Masse greeted the Board and introduced herself.

I have several clients in the cannabis space, I want to focus my comments just on one particular rule today. I did submit written comments that cover a little bit more.

Specifically I want to talk about WAC 314-55-035, this is the true party of interest and financier rule. I very much appreciate staff's attempts to clarify this rule. It really needed it and I really appreciate it. It is in my opinion one of your highest stakes rules that you have. It is a focus of agency hires right now, focusing on undisclosed TPIs and financiers, but it is a very confusing rule. It is inconsistently applied, and having personally read every single ALJ decision out there about TPI and financier issues, there seems to be confusion among your judges on how to apply it as well. I really want to commend you and commend Joanna for taking this on and trying to make it more clear. I always appreciate efforts to help me give better advice to my clients.

There are a couple things I wanted to highlight. This is not in the rule, this is a request by me and is in my comments as a new section for that rule for additional funding from already vetted financiers or the owner of the businesses themselves. This is a call I have received more than once from a client of mine which is "it's Friday, payroll needs to happen today, and I don't have enough cash in my bank account to cover payroll. I have enough cash in my personal bank account to cover payroll, but I don't have enough cash in my business bank account to cover payroll".

These businesses do not have a line of credit. In fact that has gotten worse since the Cole Memo was rescinded, not better. They don't have typically have access to an emergency line on some money that has been previously vetted by the Board as "ok" to fund their business.

So, I either have to advise them:

1) Go ahead and take money from your personal account, put it into your business account, violate LCB rules, potentially get a TPI violation and lose your license,
2) Withhold you wages from your employees, subject yourself to double damages for wrongful withholding of wages, have all of your employees quit on Monday because they need the paycheck and can't wait around waiting for you to catch up on your cash flow

For a lot of these businesses cash flow ebbs and flows. If you are a grower and you area waiting for harvest or you are waiting to make that sale you might not have enough cash flow to get you through the next payroll opportunity.

What I recommended, and I put this in my comments that I sent to Joanna, is a provision that would allow upon notice to LCB for a previously vetted financier or the owner of the business themselves to put money into the business. You would then be able to review that after the fact. If that money didn't check out the owner of the business would have to pay it back immediately and could be subject to AVN for financier violation. That puts a lot of risk on the licensee which means they aren't going to abuse it. They aren't going to use drug cartel money, un-vetted money, all of the things that you are concerned about from the Cole Memo just won't be an issue because the stakes are too high for the owner.

It's a though I had to try and improve that and to streamline it, make it go more quickly. I appreciate your time, thank you.

Dominique Scalia – DBS Law

My name is Dominique Scalia, an attorney in Seattle. I practice primarily in the fields of creditor's rights and insolvency. My practice has a particular focus on receiverships. I represent a number of receivers and also frequently represented creditors in receiverships and sometimes even debtors in receiverships.

In 2016 I had the pleasure of initiating Washington's first receivership of a marijuana business. Since that time I have been involved in a number of these cases. I want to comment today about the proposed new rule governing receiverships, WAC 314-55-137. I am submitting much more robust written comments about this provision but were a few things I wanted to highlight for the Board today.

A receiver is a court appointed agent of the court, afforded by Washington's Superior Courts to take possession of assets and typically to liquidate them typically for the benefit of creditors. And that is for the benefit of all creditors. Voluntary creditors like lenders and suppliers of businesses as well as involuntary creditors like tort victims or employees who are owed back wages.

In the cannabis industry, receiverships are a really important remedy in particular. In cases of insolvency, bankruptcy is not available of course due to federal restrictions not only for cannabis businesses but for their owners, sometimes even for their landlords and for their suppliers they have been turned away from bankruptcy court. This is a really important remedy for them.

It' also really important for creditors because even under state law certain creditor remedies are still going to be unavailable because creditors are not able to foreclose on the assets of the cannabis business directly. They can't take possession of those assets, including the license, directly.

All of these restrictions make cannabis businesses, in some respects, judgement proof but for the availability of this one remedy. In Washington we are very fortunate to have one of the more robust receivership statues in the nation. It serves as a model for many other states. Not only that, but the Board

has also foreseen this need and has already implemented regulations that contemplate the use of this remedy in the cannabis industry.

Thanks to those regulations, neutral third party receivers are able to be appointed to take possession of these businesses and their assets and with notice and involvement of opportunity for hearing for all involved parties, liquidate these businesses and pay creditors. If not for that remedy, both voluntary and involuntary creditors would go unpaid.

The other thing I want to highlight is the urgency of the need for receivers in a lot of situations. You just heard about cash flow situations. A lot of times these things need to happen very quickly before a license is cancelled, before assets dissipate.

The regulations that are being proposed for receivers would limit receivers to taking control of only five licenses at a time and only being able to operate one type of license, either a retailer or a producer and processor license. There are currently only two receivers that are operating these types of receiverships in Western Washington and I know of one other in Eastern Washington.

These regulations would essentially make receiverships an unreliable remedy for creditors and licensees. Right now, this is the only way that creditors can ensure they are going to have any ability to enforce obligations against these companies. It makes it so that they cannot condition such things as the extension of credit on the appointment of a receiver when it is needed, because when it's needed there's not going to be a receiver available. There's not going to be a qualified receiver that is able to step in because they might already be holding licenses or holding the wrong type of license.

I would encourage you to consider my more detailed comments about some other practical questions that go unanswered by these regulations. I do think regulations are absolutely needed in this area, but I would encourage the Board adopt regulations that will not essentially eliminate this remedy.

Dan Fallon – Receiver

Good morning, thank you for allowing me to speak. My name is Dan Fallon, my company McAllen and Sons, Inc. is one of the aforementioned receivers in the 502 world in western Washington. Most of my comments are the result of hearing from your licensees and/or their counsel. Those calls are coming to our office, maybe not on a daily basis but certainly on a weekly basis, and it's from those comments that I wanted to share a few thoughts with the Board today.

The receiver is an officer of the court and our job is to protect all the creditors including state agencies. The overriding theme is that we are all about compliance. Once we step in and take over our job is one of being in compliance with the LCB and other state agencies, which is a slightly different view than perhaps the license whose shoes we have now stepped into. The receiver brings order where there is chaos and it's at a time when it is particularly necessary. We look out for all the stakeholders and respond to all the stakeholders which includes the vendors, the landlords, the creditors and all these people who at this time of crisis are generally ignored. When we look at the long term viability and success of the industry those stakeholders should be considered and not dismissed during the times of crisis.

The receiver already has a great deal of restrictions put on it. Namely, we are an officer of the court. We are an open kimono. Everything we do is subject to the court's oversight and for all the parties to comment, and one of those parties would in fact be the LCB. They should be on a regular distribution of all the motions and have a chance to speak up.

The restriction to five receiverships I think is unnecessary in part because the market will already take care of that issue. When I get a call from a licensee or from an attorney representing a licensee it's important that they know that I have a good relationship with the LCB. That is important to me if we want to be successful. We can't be adverse to the LCB because no one would want us to be the receiver and I believe that would take care of itself.

These things also tend to come in batches where sometimes it's the same landlord and maybe a dozen licensees. It's easy for them to opt for a receivership option, and limiting it to five is very restricting on your licensees. The same thing with restricting the grower/processor and retailer. I'd prefer that the Board look at us not as a licensee with the potential of violating the issues that you rightly protect in that flow, but one of complying with the Board and trying to help out licensees get out of a very bad situation in an organized fashion.

I think the LCB will look at this much like the Department of Revenue, Department of Labor and Industry and other state agencies look at us, which is they welcome us with open arms. Thank you for your time.

Brooke Davies – Cannabis Organization of Retail Establishments

This is quite a lengthy and robust set of rules, so amongst us there are a lot of things in the rules that are good. For example, removing quarantine and a lot of things like that I'd like to note before I go into some things that we have concerns about.

The first one is vendor sampling which several people have mentioned and Joanna mentioned it herself. This new rule requires that samples only be given to employees on staff with product ordering authority. As one of my first jobs in the industry I was a buyer for two retail stores in King County. I depended greatly on the reviews of the other employees on staff because that wasn't really my expertise. What I was good at was spreadsheets, math, numbers and organization, so it was really critical for me to be able to give those samples to the other employees, look at their reviews, and make my decisions based upon that. I understand where the rule is coming from, I've talked to Joanna and enforcement. Keeping those things in mind we would recommend requiring to identify certain individuals that will be reviewing products and maybe require some sort of documented evaluation process.

The second thing is the excise tax on inventory shrinkage. Chris Marr mentioned this in his comments so I'll echo what he said. The language states that product inventory reductions that are not adequately documented will be assessed the excise tax. According to my research a normal shrinkage in a retail business is about two percent of sales. Of that two percent:

- 34% is due to employee theft
- 38% is shoplifting
- 16% is administrative errors
- 7% is vendor fraud
- 6% is unknown

Our third party traceability point of sale systems are actually set up to track these sorts of things. When you go in to do inventory audits it will actually make you site a reason. We would ask at least to have that be adequate documentation so that those shrinkages are not subject to the excise tax.

The last thing that I will mention is in Section 12(c) requiring return of incorrect orders within eight days. This requires that product different from that ordered by a retailer to be returned within eight days of the delivery. So again, speaking from first-hand experience, this does happen occasionally where maybe a producer/processor makes a last minute substitution as a product ordered by the retailer wasn't available. Usually those mistakes are identified at intake. The person looking at the P.O. and the manifest and saying "we didn't order this, we're not going to take it". Occasionally those things are missed because that person on staff wasn't there. In that case it takes several days for that information to get to the person on staff that can identify it. Once that is identified, setting up a return is actually a lengthy process for the retailer. You really do have to have someone on staff that is trained to do it and to make sure you maintain compliance, and often the producer/processor is on the other side of the state. They might not be able to get back for two or three weeks. We ask that window be extended to a more reasonable time frame. Thirty days is our suggestion but anything would be helpful. Thank you.

Jim MacRae – Straight Line Analytics
Obviously this is an extensive set of rules, isn't it fun when the legislature brings these down for you? I have a number of comments.

Chair Rushford: Please state your name for the record.

Jim MacRae: I am Jim MacRae, Straight Line Analytics. Section 15, subsection 7, in dealing with the tribes. If the tribe fails to respond to the suggested placement of a license the language currently as written assumes a rejection by the tribe. That seems antithetical to every other instance of that I've seen. A failure to respond should be an assumption that "it's ok". If the tribe does not want a business on the land the tribe should say so. They are given 30 days to do so. A failure to respond should not reinforce the monopoly that the rule set has already given the tribes.

With respect to the research licenses, Section 073, the substantive move I see there is an increase in the number of pages for the proposal from four to eight pages. My understanding that as of today you do not have a single research granted after a year. Possibly one is very close, possibly one other is getting there. There's clearly something standing in the way of it. I see nothing in the proposed rule changes to address what I think most people see is the fundamental issue, which is there is a decided lack of intellectual property protection in the application packets of those licenses. Expanding the number of pages that they can do for their proposal simply puts more information on the list. It was an advantage that was put forward in the original. I was a short thing because they didn't have to go into great detail, they had to go into sufficient detail.

On quality assurance testing 075, you state that the QA results must be made available. I would request that throughout the document be changed to "must be provided" as opposed to "must be made available".

Volume discounts. Those promote consumption. You have eliminated the possibility of doing commissions at the retail budtender level because of the concern that they promote consumption. I submit to you that volume discounts going into retail also promote consumption and they should be stricken from the rules.

At the retail level, the retention of patient records is being moved from three to five years to "be consistent with the Department of Revenue". First of all, those cards only last a year. They have to be renewed on an annual basis. Secondly, it is a self-incrimination thing, and requiring them to be kept at the store level increases the risk to patents of federal seizure and the ramifications thereof from the stores. It is

interesting that you are being selectively consistent with the Department of Revenue here when you have effectively ignored the Department of Agriculture and the Department of Health with respect to their pesticide guidance and other guidance to keep patients safe. It would appear in the constellation of how this agency is putting forth rules that you want to keep medicine down, that's just and objective assessment of the totality of what you are doing. I would suggest that you, if anything, remove that retention period for the records at the retail store.

In relicensing and renewing a co-op, you are saying on an annual basis you can go in there and basically the co-op people have to prove the cards. Why don't you use the database you've got to check and see if the co-op people are there? Putting this on the shoulders of the co-op people just seems to be another unnecessary administrative step.

On the receivership, why don't you make the receivers that you approve licensed, just like a transporter or a researcher license. You have a separate set of rules for the receivers. Anybody that is in possession of cannabis that may be selling it should be licensed by you.

There are a couple of other things but I am at my four minutes. Thank you.

Shawn DeNae Wagonseller – Washington Bud Company

We are one of very few that actually go through the Department of Health pesticide and heavy metal testing our crops so that we can bring product to the market that has the Department of Health's general use compliance sticker. The next step in my business that I want to be able to do with the pesticide and heavy metal tested product is to create high THC products and micro-dose low THC products. Those products are best for most patients, ingestible. I contacted a candy maker a while back under the old BioTrack system, manifested some high CBD oil to them, they made a set of lozenges that were low dose THC. In going through the process of getting that product approved, I called the Department of Health and they didn't have a problem with it. I called the Department of Agriculture, they didn't have a problem with it. What held me up are the LCB rules and I have a couple of different reasons for that. One was that BioTrack had limitations for transfering product from that processor to my processor licenses. Another issue is that in the rules, those edibles that are put into individual pill packs are actually considered an end use product for retail. However, they still need to be put into a final package, heat sealed, labeled for a store and delivered. I wasn't able to bring that product to market -- I'm not sure if it was limits in traceability or rules. I've emailed back and forth with Joanna quite a few times, and the last email I got back you said you believed that the intention of this rule is to not allow that transfer. I don't know if there's been any further definition on that.

I believe one remedy is to define an end product meaning that the product requires no further packaging or processing. If you just add that word packaging, that helps clear up the end product. An intermediate product, see, processor to processor can transfer intermediate product. If the intermediate product definition is that infused products that are individually sealed but not packaged for retail may transfer from processor to processor and be considered intermediate product. With the Department of Agriculture being okay with that, Department of Health being okay with that, me bringing pesticide and heavy metal tested products to the market, I'm being held up by this rule. I'd like you to change it and allow it, because right now in the omnibus rules it doesn't specifically address this. And so then it comes up to interpretation, and we know what happens with interpretation. We need to really define this practice, especially with service contracts coming on because processors that have expertise in making tinctures or candies or lozenges or beverages ought to be able to produce those products and transfer them to another company that wants to put their brand on them and distribute them.

I think it is a simple ask and I think it would clear up a lot of confusion with the rules. Thank you so much.

Anne Sultan – A Bud and Leaf
My name is Anne Sultan. I co-own with my husband A Bud and Leaf, a retail marijuana store. I am here to follow up on comments that I made last meeting and with additional details. If I may approach, I put those in writing (CITIZEN HANDOUT #1).

Chair Rushford: I believe this intended for the general comments, is it?

Ms. Sultan: Yes it was, I thought we were there.

Chair Rushford: No, we are still in the public hearing.

Ms. Sultan: I assumed we were there, I can wait.

Chair Rushford: Thank you. Is there anyone we missed for comment on the public hearing? If not we will move to the general comments.

Chair Rushford closed the public hearing.

5. GENERAL PUBLIC COMMENT

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

Jim MacRae – Straight Line Analytics
I'll let her go first since she's already started.

Chair Rushford: That would be fine, yes.

Anne Sultan – A Bud and Leaf
I'm following up on comments that I made a couple weeks ago at your last meeting. Thank you so much. Let me briefly say that I think again that the matter is urgent as it relates to my request for a minority and female working group. I have outlined for you in the document that I presented this morning a timeline, and the timeline for the establishment for this group is very ambitious. But it is ambitious because of the urgency. I was pleased to hear the comments of the other speakers because they echo the comments that I made last time I appeared and today, that small enterprises in the cannabis industry are at a distinct disadvantage and we are in crisis at this time.

This working group according to the initial schedule I'm providing would collect data, analyze the data and provide a written report with the specific details and strategic recommendations that would certainly benefit minority and female cannabis owners, but it would benefit all small cannabis businesses. I would ask that you consider this. I'm asking that the working group members be identified by as soon as next week. We would have a written report with all of the professional aspects that one would expect, as I mentioned previously I myself have both a law degree and a PhD. Another person working with me has a

PhD, so we know how to do really high quality, professional research that uses all the rigorous empirical components that are required to be acceptable even in peer reviewed university level article.

I would ask that you take a look at what I've presented. Please let us know how we can help you. That is our goal, to use our expertise from having done this work for decades and share it with you so that hopefully we will benefit and other small owners will benefit as well. Thank you so much.

Jim MacRae – Straight Line Analytics

I'm going to talk primarily about the traceability system and its current status. However, I wanted to start off with something I've said three times before this body, or some mix of people that were on the Board at one point or another. You still as of last week have the BOTEC assessment of the size of the medical marijuana market in Washington State on your website. This was the study that was commissioned and delivered I believe in December of 2015 at the request of the Board. I've testified before, I've written about this, and that study is garbage. It really is embarrassing to this Board and I think somewhat of an affront to many of the taxpayers of this state that it continues to be placed and retained on your site, and hence gives a degree of credibility to it. We have seen the University of Washington Cannabis Law and Policy project in their early days reiterate the experimental design and methodology of that report and basically double down. I'm concerned that crap will come to be considered best available science in the field and that would really be a tragedy if it were.

Just an aside, if this entity begins to actually embrace the concept of cannabis as medicine and begins to address, and I know I've heard some things that sound like you are concerned about it now, the relative lack and surprising lack of uptake of medical products, medical sales, medical patients, and medical certifications on the part of businesses, a lot more tax revenue would be had for the state. If you do right by patients it's a huge tremendous revenue impact. You are failing abysmally in that end right now.

Traceability. Every few weeks, every week or two, eleven numbers are updated on a grid and I appreciate you doing that. Those presumably are being spit out by the traceability system. The arguably most significant number in that are the revenue numbers because they are tied so directly to tax. They give an idea, the only idea we have now of really the size of the market and the dynamic of it. Those numbers, the last that I looked had been updated through the 24th of the month. If you annualize them they are coming out to be approximately $3 billion dollars of sales. That is about two and a half times the best projections out there, which include mine and those of the EFRCC. Those numbers are wrong. They are just flat our wrong. Maybe some of the ones about number of people using the system are right and all that but they are just wrong. And this is wrong after that thing has been operational as the sole means of people reporting their information. For now, coming up on four months I believe, that's unacceptable. You are just now considering rules, I don't want to speak to them, but the increase that the legislation required of the fees, initially $480, now chronically $300 to fund this piece of [expletive]...

Chair Rushford: I am going to ask for yourrespect of everybody in the room.

Mr. MacRae: Ok. This piece of garbage that is the MJ Leaf traceability system that is dysfunctional right now. I apologize for not showing respect, I don't think it's worth any to be frank, but I will try and be professional in my language.

To continue to require people to pay for something that is, if anything, compromising their business just seems wrong. I really have to begin to question whether the authority granted to this agency is not being systematically abused by this Board.

Mike McDonald – Endicott Enterprises LLC

I'm here to talk about signage today. There have been some new rules and regulations regarding signage. We have had our signage on the building since the day we opened, March 17, 2017. The logo on our sign is 1,585 square inches. When we first submitted it to the LCB we had a cannabis leaf on there. That has now been changed and the cannabis leaf has been removed from this sign.

The issue we seem to be running into is the light box for our sign exceeds 1,600 square inches. I will submit this to the Board today. It has the dimensions on there, but it's clear that the logo does not exceed 1,600 square inches. I proposed an idea to fix it to my LCB agent where I wanted to basically put a metal frame on the exterior of the light box to enclose the logo. I was told that was not sufficient enough and now I'm at the point where I need to spend $10,000 to $15,000 to purchase new light boxes to then put our logo on there. I find this to be kind of ridiculous that we need to go out and to that seeing how our logo does not exceed 1,600 square inches. This sign was affixed to the building before we took ownership of it and I submitted all this to the LCB for approval before we put it up there and we got a thumbs up "go for it". We went and did that and now I'm being asked to take down the light box and put up a new light box.

Personally I find it a little silly that we are focusing on things like this when we have numerous retailers in the cannabis industry who are far behind in their taxes. To ask a retailer like myself who is in good standing with his taxes to then fork out another $10,000 to $15,000 for it, I fear that this could become a problem. Someone brought up an excellent point about payroll earlier and being sure to pay people on time. Having unexpected expenses that are as significant as this has an effect on the bottom line.

I don't know exactly needs to be changed or done, but I feel that our logo is within the 1,600 square inches. It is technically 15 square inches under the requirements and now I am being asked to remove a light box, put a smaller one on there, and I just find it to be a little ridiculous.

The cannabis leaf has been removed. When I came to the Board at the last hearing I submitted pictures of that. I do understand that we also have a rotating sign that is on a separate plot of land. In my eyes it is a billboard. It has our trade name on there with the 21+ rec and med endorsement that we have. The cannabis leaf has been removed from that. Since we viewed it as a billboard it does have the warning at the bottom. Now, I understand that we are going to be enforcing new regulations on the size of a billboard. I understand if I have to change that sign I will go ahead and do it. But, this was a sign that was built in nineteen-seventy-something, I don't think with the new rules and regulations regarding signage in the city of Tacoma that I sign would be built like that today. When we got into it, it was an empty, dumpy kind of sign and we have brought it back to life. I do not want to see that sign go into an empty, dumpy place again.

I'd like to submit this to the Board (CITIZEN HANDOUT #2), and thank you for the time and listening to us.

Jim Angel – Green City Collective

I'm here along with Suzannah Suh, I'd like to briefly introduce her and then let her speak out the rest of her time. She is the only owner of Green City Collective which is a retailer in Snohomish County. She, as you are likely aware, the Board recently cancelled her license because her store experienced three sales to a minor within a three year window. She didn't have an opportunity to come before the Board as the penalizing authority, she wanted to come here and petition in person and have the opportunity to speak to you directly.

Member Hauge: I don't think that's appropriate.

Chair Rushford: It is not appropriate here. The petition cannot happen here at a Board meeting.

Member Hauge: She can make a comment, but we cannot accept any kind of official petition.

Mr. Angel: She's just here to exercise her constitutional right to petition for…

Member Hauge: Wait a minute. There is a lot of layers of process on our actions. Those processes have to be followed. We are not going to depart from those today. If your client wants to make a comment she is entirely able to do that. However, this will not constitute any kind of formal step in any adjudicative process.

Mr. Angel: She's here to comment to the Board.

Chair Rushford: Comments are acceptable, thank you. This will not be a remedy.

Keith (no last name given, translator for Ms. Suh): She cannot speak English very well, so I am going to translate. She says she'll take all of the responsibility about her business and not properly educating her employees. She'll take all the responsibility that she didn't properly educate her employees and that's the reason she came today. So basically, she is a single mom and having financial difficulty. She would be thankful if she could sell her business to a buyer. She is the only income source for her two babies, so it is critical that she can sell. She has to sell her business. She doesn't have any hope if she cannot sell this business. She has a tax issue with the state, it's the only way she can pay all the taxes is to sell the business. Please help her sell the business. There is a new buyer already on the line waiting for the decision of the Board.

Chair Rushford: Thank you for your comments.

Don Skakie – Citizen

It has become publically acknowledged that some of the testing that was done on medical products was done before they were actually licensed or had been certified. The labs that did some of the testing on medical cannabis products did so before they were accredited to do so. As a result of that, no product has been recalled, and it is a concern that a test by an unaccredited lab is basically the same as a test that's completely lacking at all.

The Board is a regulatory agency, it is an enforcement agency and now in this case you need to be a public service agency and look out for what is best for the customers. In this case that is the medical consumers that rely on proper testing when making their purchasing decisions.

Shawn Wagonseller – Washington Bud Company

Just a couple quick things that have come to my attention that I think the Board should be aware of. One is I was delivering to a store that had been recently robbed and they explained to me that the transportation companies often transfer product in her parking lot. They explained to her that they often transfer products between vehicles at stores parking lots. That made her really concerned about additional exposure from thievery, if thieves get a hold of that information it could draw them to her

parking lot. I don't know how that is supposed to work, I don't know if that's the way the LCB has deemed it to work. If not, I would caution that there needs to be some sort of control around that.

The other thing is separate office space. My enforcement officer told us during that a recent remodel and move that I could not have my office in a separate location, on the same parcel, on the same address but in a separate building, that it had to be in the camera space of the licensee. Most of the retailers that I service have separate office spaces. They have their stores around and then they have a separate office space to run their business out of. I would just ask that we producer/processors are allowed that same flexibility to be able to place our offices that run our businesses that never has marijuana in it in a location of our choosing. Thank you.

Crystal Bohannon – Honu Enterprise

Thank you for your time today. There are two things that have not been brought up today that I would like to bring to the Board's attention.

In the recent WAC proposed rules, the 314-55-095 and 314-55-096, the language between topicals and edibles are all kind of lumped together. I would like to propose that the Board evaluate and consider separating those. The body consumes and edible different than a topical or a lotion. I'd like to share some information this afternoon with the Board about consumption rates that we got from local pharmaceutical companies that have been guiding our purposes. Thank you for listening today, consider separating those languages because the body does consume those differently.

The second point is the sampling of cannabis edible and the cannabis topical or lotion needs to also be separated as well. The amount of one cannabis edible for example, could be a small peanut butter cup or a silver dollar. That's the amount we are able to sample to a potential retail store so they can see if it is a product they'd like to carry in their store. But a topical, 10mg, is about the size of dime. Basically you could put it on one knuckle. I don't think they would get the efficiency of it and realize the benefits of it when you are just able to put lotion on one knuckle. I'd love to share this afternoon with the Board some information that we've got with our pharmaceutical partners the absorption rate of those lotions and how they are different to the human body. Thank you.

ADJOURN

Chair Rushford adjourned the meeting at 11:12 a.m.

Minutes approved this 8 day of AUGUST, 2018

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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For questions about agendas or meeting materials you may email dustin.dickson@lcb.wa.gov or call 360.664.1717