



## **Board Caucus Meeting**

Tuesday, March 30, 2021, 10:00am  
This meeting was held via conference call

### **Meeting Minutes**

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#### **CAUCUS ATTENDEES**

Chair David Postman  
Member Ollie Garrett  
Member Russ Hauge  
Dustin Dickson, Executive Assistant

#### **GUESTS**

Rick Garza, Agency Director  
Kathy Hoffman, Policy and Rules Manager  
Audrey Vasek, Policy and Rules Coordinator

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#### **APPROVAL OF MEETING MINUTES**

Chair Postman announced the consideration of the March 16 Board caucus minutes were being postponed until a later date.

**MOTION:** Member Hauge moved to approve the March 16 Special Board caucus and March 23 Board caucus minutes.

**SECOND:** Member Garrett seconded.

**ACTION:** Chair Postman approved the motion.

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#### **AGENCY UPDATES**

Rick Garza: Good morning Board members, David, Ollie and Russ and staff.

One thing I wanted to share is that I got an email from Chris yesterday stating that our agency request legislation passed the Senate yesterday and since it was not amended in the Senate, it goes directly to the Governor for signature. And again, that was the legislation that extends the COVID allowances for a couple more years. I think it was a 46 to 3 vote in the Senate. I just wanted you to be aware that Chris did a great job along with staff and others to bring that bill forward and move it through the legislative process. Any questions?

Chair Postman: Not for me. Thanks to Chris for the work on the bill, that's great news.

Member Garrett: No questions.

Member Hauge: No questions.

Mr. Garza: Secondly, last week I provided testimony to the House Commerce and Gaming Committee. I saw earlier last week that the Commerce and Gaming Committee was having a work session during its last meeting entitled "The Future of Cannabis Industry in Washington State". Chris inquired about that and thought it might be a good opportunity, if time was available, for me to give an update to the Committee, regarding the work of CANN-RA.

As you all know, the Cannabis Regulators Association (CANN-RA) was formed last winter. Testifying gave me an opportunity to talk about the work of that organization. Ohio just joined us last yesterday to become the 27<sup>th</sup> state to join CANN-RA along with the District of Columbia. Also in the last couple of days, the state of New York approved legislation to create an adult use program (They've had a medical program in New York for years). I also shared that we became an affiliate of Council of State Governments last month, which many of the legislators know about because many are going to those meetings.

I also covered a couple of other issues. One is social equity and the other is Delta-8. I know you're all aware of these because we've been discussing our social equity law for quite some time and passed it last year and now are waiting for the task force to give us recommendations. But also the emerging issue of Delta-8 and the discussions that we've had with other states. This highlights the ability of CANN-RA as an association that only represents regulated states. We're quite different than most associations where we don't allow advocates into the association and we don't allow the industry into our association at this point. It's really an opportunity for the regulated states and jurisdictions to work together around policy development. I also shared, as I discussed with all of you, that we're looking at a work session in the interim around Delta-8 to review what we can do by rule. Then we'll begin working with the Board to propose legislation to address the issue of not just Delta-8, which is a fairly new cannabinoid, but all cannabinoids that have any kind of psychoactive effect or intoxicating effect. Right now, as we've talked about, what we know and what I shared with the committee is that when legalization occurred through I-502, Delta-9 was the cannabinoid that was identified in statute and rule. Now we've seen this outbreak of new cannabinoids and realized that we need an ability by rule to bring it under regulation like Delta-9 and then obviously go to the legislature, possibly next year, with a bill to codify that. This is just another change in the evolution of this industry that we regulate. I explained that we would be putting a workgroup together, which will include all the state agencies also that are involved - Department of Agriculture, Department of Health - to helping us. Because, as you know, agriculture regulates the hemp that's in the state's farm bill that passed several years ago.

I also shared about what we knew about legalization federally, indicating that we would also put a workgroup together that would look at how do we prepare ourselves, both as a regulator and as the industry for cannabis if national legalization occurs. I shared some of the discussions that are occurring that may be in the next two to four years. There will be an effort that will move forward to either de-schedule cannabis as a controlled substance or something to that effect. And I also shared, as I think I've shared with all of you in discussions that we've had, that Schumer, Wyden, and Booker in the Senate will be proposing legislation regarding this in the next few weeks, if not in the next month. That's the vehicle a lot of people are talking about that will begin the discussion of legalization. You've also got the Safe Banking Act that has passed the House previously, and you also have the Moore Act that passed the House last year. But, given the divide in the US Senate, people think it may be some time before implementation or legalization actually occurs. I'll stop there and take any questions you might have.

Chair Postman: Thanks, Rick. I thought it was great that you were able to appear before the Committee and share the workings of CANN-RA. You know, it is interesting. You had very few colleagues when this whole thing started and now you have a lot more and the new challenge may be what happens with

federal de-scheduling or legalization and how we maintain the market as we see it here. There's a lot of challenges still that other states could help us on.

One question for you, regarding clarification on the workgroup related to Delta-8. Are you talking about a workgroup to help with the legislation piece or is that something you would expect before our own rulemaking?

Mr. Garza: That's a good question, David. I think that the work that Kathy and the agency policy workgroup has been doing for the last month, if not longer, as it relates specifically to Delta-8 is something that, as you know, I think we're a couple of weeks away of bringing something to the Board to look at as far as a draft proposal of how we deal with the issue of Delta-8 in the Board's rulemaking authority. I think there's a broader discussion that needs to happen, also, David and Board members, around the other cannabinoids that we're seeing in other states and even within our own state. I'm talking about Delta-10 and others, to try to work with the industry and work with everyone to figure out how do we get a hold of all the cannabinoids that may be psychoactive and make sure that they're being regulated in our marketplace in the same way that Delta-9 is. And so, I see them as two different pieces. But it's a really good question, David, and I'm certainly open to any thoughts if that doesn't work. But the idea was to try to do what we can by rule with Delta-8 as we understand it and have a broader discussion of what do we take to the legislature to cover all of this, because they're just emerging and they're different cannabinoids than we're used to and we're going to continue to see that.

Chair Postman: I agree completely. I just wanted to make sure that everyone was clear that we're not slowing down on the work that Kathy and her team have been doing on rulemaking on Delta-8. We expect that in the near future, as you say. But we also know we have some limited statutory authority and we are going to have to go to the legislature eventually. So, we'll have an iterative process here. But I think you laid it out exactly right and I appreciate that.

Mr. Garza: I'd like to also share that last week, I believe, on Thursday or Friday, our friends in Oregon, the OLCC, the Oregon Liquor Control Commission, went before Committee with a bill that they put together. Their process is a little different than ours -- we're too far along to introduce a bill -- but they're looking at a bill, far-reaching, that would cover all the cannabinoids. So, we'll be looking at what the other states are doing. I know that New York has done something interesting. I also know staff is going to be working to see if there's something in that proposed Oregon law that we could use. That's going to be an ongoing project of CANN-RA to look at how do we help ourselves through the interim or through the legislatures to be able to deal with this new emerging cannabinoid. Thanks.

Chair Postman: Thank you, Rick. Any questions? Ollie?

Member Garrett: I haven't yet listened to what you said last week but coming from a person who wears multiple hats and works with different organizations, -- I forgot your role at CANN-RA -- but when you're speaking on behalf of the LCB, are you making it clear what role you're in between the two organizations for clarity for people that are listening in? I'm bringing it up because I saw some comments indicating that there was not clarity. I'm not saying it's true, but just as an FYI.

Mr. Garza: Maybe help me with that Ollie because I'm always an LCB employee if that's your question. I work for the LCB.

Member Garrett: I know that.

Mr. Garza: But, I'm also a member and this entire agency, not just me, but every person that works for the agency is a member of CANN-RA. Just like as we are on the alcohol side with NABCA (National Alcohol Beverage Control Association) and NCSLA (National Conference of State Liquor Administrators), those are two associations that were created years ago that represent regulators of alcohol throughout the state. So, when I share the work of CANN-RA -- and help me understand if there's something that isn't clear -- because I've been doing it on the alcohol side with NCSLA and NABCA for years. So, I don't see them as separate hats, I guess is what I would share, Ollie, that I'm an LCB -- I'm the Director of the LCB in Washington State -- and I collaborate with the other state regulators. And often, sometimes we take different positions because we're in a different place than some of the other states are. So, there's a real need there. I'll share, because you've raised it Ollie, that we're not always in the same place in the systems that we set up with the new systems that are being set up. But really what we're here to do as CANN-RA members is to collaborate with one another when these challenging issues -- and Delta 8 is a perfect example -- occur. So, yes, Ollie, the only thing I would say, I don't know if I have a "CANN-RA hat". I'm just a member just like you are of CANN-RA. Thank you, Ollie.

Member Garrett: It's good to clarify that that the LCB as a whole is a member of CANN-RA.

Chair Postman: We all often hear questions and often criticism about any kind of multi-state effort. People sometimes fear we're giving away our sovereignty or are falling under the direction of some other group. It's not the case. CANN-RA doesn't direct what we do any more than the National Conference of State Legislators directs what the state legislature does. It's just an opportunity to share notes and expertise and get help. It doesn't have any regulatory authority over Washington State or anything of the sort.

Mr. Garza: That's a really good point, David, because having done this on the alcohol side I just assumed that the public would understand that -- it's a501(c)(4), it's a nonprofit. It has no authority, no power, no regulation or law.

Chair Postman: We've gotten these questions from legislators about other multistate efforts and it's just important to make clear this is a professional organization meant to share expertise and get guidance. We don't buy into any minimum standards or anything of the sort. It's just a helpful organization like every group of professionals have, I think. I'm glad we're a part of it.

Member Garrett: And that's good clarity, Rick, especially since it's new to the industry to have that clarity. Good conversation.

Mr. Garza: Thanks, Ollie.

Chair Postman: Russ, any questions for Rick?

Member Hauge: No. I listened in on the presentation, Rick, that you made and it was first rate. I really appreciate your initiative in getting involved with this new organization because, as we know from Delta-8, we're trying to sustain a very artificial regime here in keeping this trade within the state of Washington. We need to look to the other states. We need to rely on the other states. We need to help the other states and help them help us as we face this hour.

Mr. Garza: Well said, Russ. I think that's exactly right. It's become an opportunity. And, the formation of CANN-RA is new but we've been meeting with the other states, as I shared with the Committee, for almost four years next month. We hosted the first meeting of the "regulators roundtable", as it was called,

the first four states, Alaska, Colorado, Washington, Oregon almost four years ago, and we've been meeting every six months since then.

What I'm sharing now is that we've actually formed an association with bylaws and a constitution just like any professional association. So, maybe that's why it doesn't feel new to me but probably is new to everyone else because our staff and our agency including Ollie and Russ and others, David, have been part of the discussions that we've had on the roundtable for several years.

Member Garrett: I think I went to one of those meetings when it was in Boston.

Mr. Garza: That's correct, Ollie. I even shared with the Committee that when we put our social equity bill together, I mentioned that you took a staff person with you -- I think it was Brett -- to a meeting of the states who were speaking about social equity. I think Shaleen Title, the Commissioner from Massachusetts was one of the people. I think a designee from LA was also there, Ollie. I shared that a lot of the work that we created in that bill was developed from the work that we were learning from other states who were in the middle of trying to make sure that social equity was part of their cannabis industry as they began. I think that's an great example, Ollie. I'm thinking that was two or three years ago that you took that trip.

Member Garrett: Yes, it was.

Chair Postman: Thank you, Rick, anything else to report today?

Member Garza: No, that's it. Thank you.

Chair Postman: Thank you so much. I appreciate it. We will move now to the next item on our agenda - Board meeting prep and rules update, so I'll turn it over to Kathy Hoffman and Audrey Vasek, the Policy and Rules Manager and Coordinator.

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## **BOARD MEETING PREP AND RULES UPDATE**

Kathy Hoffman: Thank you, Chair Postman. Good morning everyone. I'm going to just give a brief update on cannabis rule projects and then turn it over to Audrey to give an update on our alcohol rule projects.

First I'll start with the quality control rules. Like I shared last time, we completed an internal review of all comments received at the public hearing last November. I finalized the responsive documents and will be able to share it with all of the associated exhibits a little later this week or early next week. It's a very large document. I think at last count it was well over 150 pages worth of material. We continue to explore where we can align revisions within our statutory authority and with the traceability redesign that was shared in caucus a couple of weeks ago. I'll be able to firm up a timeline once we're fully staffed on that.

The next rule project concerns Tier I expansion. We are preparing to release the survey results in report form by the end of this week. We continue internal discussions focused on developing a proposal that considers all the elements of our authorizing environment. I look forward to bringing that proposal to give you a little later this spring.

Moving on now to the criminal history background check redesign project. We've held four fairly lengthy internal drafting sessions. Now our project team can meet again and discuss the suggested conceptual

revisions to the rule. Originally, I assumed that the project might need more than one “listen and learn” session but at this point I think one session will be fine. I'm looking toward the last week of April to hold that session. Under this tentative timeline then, we'll be able to bring a proposal to you in mid to late June, which that places finalization in early to mid-August, which stays in line with our original plan for this project.

For tomorrow, I will ask for your approval to rescind Board Interim Policy (BIP) 03-2018. It was approved in April of 2018 to temporarily lift the requirement that marijuana licensees observe a 24-hour quarantine period prior to transfers of product to other licensees. The policy was designed to address challenges that our licensees encountered when transferring product as the then new Leaf traceability system was being implemented and referred specifically to two parts of rule. That particular BIP was designed to be rescinded upon adoption of rules. On October 31 of 2018, the Board did adopt the rules to implement the policy and those rules became effective December of 2018. So, the BIP is no longer necessary. I was going to provide a copy of the entire filing for that particular rule project -- and it was a big omnibus rulemaking -- there were about 45 pages of changes to that rulemaking. So instead, I've attached the changes in a link within the rescission document for you to take a look at.

The next item I'll bring to the Board meeting tomorrow is a CR 101 for your consideration that would add a permanent cross reference in our cannabis processor and retailer rules to the State Board of Health permanent prohibition of vitamin E acetate. Our current emergency rules allow the Board to take disciplinary action against a processor retailer who sells vapor products containing vitamin E acetate. The Board approved that emergency prohibition last May and we've extended it while the State Board of Health pursued permanent prohibition under the premise that eventually our emergency rules would become permanent. So, now that that's occurred, we can change references in our rules to the permanent prohibition with the State Board of Health rules. I realize you probably need a flowchart to understand the linkage between all of these things. At any rate, this is a technical rule project and we don't anticipate scheduling any “listen and learn” sessions. Can I answer any questions on this?

Chair Postman: Just one quick question, Kathy, on the current emergency order. Is there a pending expiration or do we have any period in between when that would expire and the permanent rules put in place, or is it going to be covered?

Ms. Hoffman: We will have to renew our prohibition that is referred to in the current emergency rules related to processors and retailers one more time. It expires in April. But those emergency rules have always referred to the agency intention to make these permanent at some point.

Chair Postman: Okay, great. And your memo did a good job explaining all this, so I appreciate it. Any other questions for Kathy on those pieces?

Member Garrett: No questions.

Member Hauge: No questions.

Ms. Hoffman: Can I ask for one more thing before I close off and hand it to Audrey? I wanted to speak just briefly to the work that we're doing with Delta-8 and the coordination and workgroups and just offer that coordination will also include working with some of our partner agencies like Department of Health and State Board of Health. Because, I think this concern extends beyond LCB and I'm really looking forward to doing that collaborative work with other agencies as appropriate. I just wanted to add that when we think about workgroups and overall effectiveness. Thank you.

Chair Postman: Good. Thank you.

Ms. Hoffman: Audrey, over to you.

Audrey Vasek: Thanks, Kathy and good morning, everyone. I have a couple of brief updates today on the alcohol rulemaking side.

I'll start with the rule project related to distillery reporting and payment rules. For background, this is the rule project that considers revising the distillery reporting and payment requirements in WAC 314-28-070 and 080 and other rules if necessary to be consistent with the Court of Appeals decision in Blue Spirits Distilling. A set of conceptual draft rules was shared through GovDelivery for public feedback on March 1, with a comment period ending tomorrow, March 31. We've received a couple comments so far and once the comment period ends, the project team -- which includes staff from the finance enforcement and licensing divisions -- will meet to review the feedback and develop a CR 102 rule proposal. I tentatively hope to present the CR 102 to the Board in April.

I have another brief update on the supplemental CR 102 for the rule project to implement 2020 legislation Engrossed Second Substitute Senate Bill 5549, related to distilleries. For background, this is the bill that modified the privileges and requirements for distillery and craft distillery licenses, established a new offsite tasting room license available to those licensees beginning January 1, 2021. The bill also authorized jointly operated offsite tasting rooms in conjoined consumption areas under certain circumstances. The supplemental CR 102 was approved at the March 17 Board meeting and was filed with the code reviser. The public hearing is set for April 28. A notice of the proposed rulemaking was sent to GovDelivery subscribers and published on the LCB website. That concludes my alcohol rulemaking updates for today. I'm happy to answer any questions.

Chair Postman: Alright, thank you, Audrey. I don't have any questions. Ollie or Russ, anything?

Member Garrett: No questions.

Member Hauge: No, thank you.

Chair Postman: Great. Okay. Thank you, Audrey. And we are to our last item on the agenda, Board member and executive assistant reports. Dustin, I'll check with you first. Anything to report?

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## **BOARD MEMBER AND EXECUTIVE ASSISTANT REPORTS**

Dustin Dickson: Good morning, Chair and members Garrett and Hauge. We wrapped up the final rounds of our new virtual environment platform testing and have started rolling that out to the agency. A couple of divisions got their licenses yesterday and I think the remainder are going out today, so we're working on the final transition for the agency to Teams. Once that has been rolled out to the agency, we'll do some further testing on the meetings platforms and how applicable that's going to be for our publicly engaged meetings -- for caucus, Board and EMT meetings -- and hopefully be able to launch that as our primary meeting platform in the next few weeks. We're looking forward to that.

Chair Postman: That's great. Dustin, when we do that, will we be on video at that point or will we be using Teams for audio only?

Mr. Dickson: The plan is to be on video. It's a little bit more of a stable platform than the one that we're using now, so that is the ultimate goal, yes.

Chair Postman: That's great.

Mr. Dickson: That's it from me, thank you.

Chair Postman: Great. Thank you, Dustin.

Member Garrett: I have a question. I know I've been on some Teams meetings and they have the people seated in seats so the setup looked like exactly what the in-person meeting would look like. Is that something that's unique to those meetings, or is that something we could do as well?

Mr. Dickson: That is one of the functions, or potential applications, that is within Teams meetings. That's something that we can definitely look at as well, yes.

Member Garrett: Good.

Chair Postman: I'll just say, I think it's going to be great. It's a good tool. And just exactly what you said Ollie, it just makes it so much easier to have these sorts of meetings and conversations when we can look at each other. We'll all have to train ourselves to not roll our eyes, but I think it'll be a great improvement for our ability to have these meetings. So, we're looking forward to that. Anything at all more from you, Ollie?

Member Garrett: Yes, regarding the task force, and I see Rick is still on the phone so you can help me out with this Rick. I'm on the licensing work group of the social equity task force and we're having a meeting on April the 21<sup>st</sup>. That's going to be the first meeting going over the licensing aspect of social equity. Christy Hoff is helping with that and I know that Rick and I talked about the fact that she needs some help from the agency with staffing. We had loaned her an employee that I think is no longer with us or available, and we talked about getting another employee loaned to her, maybe someone from licensing. Rick, do you know where we are on that and if that's going to work?

Mr. Garza: I don't. I'll find out today and email you.

Member Garrett: Okay. And then we had some recommendations for the social equity bill. I think I saw emails going back and forth noting strikers and other things. Rick, do you know, did our suggestions get implemented into the bill?

Mr. Garza: I know as much as you, Ollie, that there were emails going back and forth and that Chris is working with folks to make sure that that occurs. But I'll send an email to Chris and ask him to update the three of you of where we are with that.

Member Garrett: Thank you. Looking at my notes, that's all I have. Thanks.

Chair Postman: Russ, anything from you today?



Member Hauge: No, I had my conversations with Rick and Megan and others and I expressed my interest in working on this Delta-8 issue if we put together some task forces. I just want to make a record of that interest. Thank you.

Chair Postman: I know you're ahead of it, certainly from where I am, and so I appreciate that and I think that works well from my perspective.

Member Garrett: Yesterday I had Kathy give me an education on Delta-8 and to bring me up to speed of understanding the whole Delta-8 conversation.

Chair Postman: Kathy also has educated me on this as well as others. I talked to Sarah as well and it's a fascinating, complicated issue, Russ. So, we appreciate your attention and interest.

That then is the last item we have on the agenda today. Thank you all for joining and we will see you tomorrow for the Board meeting itself. Have a great day.

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Meeting adjourned at 10:44am.

Minutes approved this 14<sup>th</sup> day of April, 2021.



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David Postman  
Board Chair



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Ollie Garrett  
Board Member

*Not Present*

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Russ Hauge  
Board Member

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