



Washington State Liquor and Cannabis Board Meeting

Wednesday, May 26, 2021, 10:00am

This Meeting was Convened Via Conference Call

Meeting Minutes

1. CALL TO ORDER

Chair David Postman called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 am on Wednesday, May 26, 2021. Member Ollie Garrett and Member Russ Hauge were also present.

2. APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the May 12, 2021, Board meeting minutes.

SECOND: Member Hauge seconded.

ACTION: Chair Postman approved the motion.

Chair Postman: Thank you. And now we'll hear from Kathy Hoffman, the Policy and Rules Manager for a cannabis related rulemaking timelines update. Ms. Hoffman.

3. CANNABIS RELATED RULEMAKING TIMELINES

Presenter – Kathy Hoffman, Policy and Rules Manager

Ms. Hoffman: Thank you, Chair Postman and good morning to you and Board members Garrett and Hauge. I will give a brief update on cannabis rules in progress starting with the cannabis quality control rules. Now that Jeff Kildow has joined us as our cannabis Policy and Rules Coordinator, we're working this week on reestablishing a timeline for this project. We also received confirmation from the Office of Regulatory Innovation and Assistance (ORIA) - and that came in while I was out last week - that the deadline for bids on our convenience contract has been set for June 9 and then OFM, Office of Financial Management, will follow up with responses to that request for bids shortly thereafter. We learned that there was a change in staffing at OFM that caused a bit of a delay in moving our contract forward. But we're back on track now. And this is good news for us and I'm looking forward to working with Jeff to move this important work forward.

With respect to criminal history background check redesign, our "listen and learn" session to review draft conceptual rules was rescheduled to June 1. So that's next week. Even so, we remain on track to be able

to bring a proposal to you in late June. That places finalization in early to mid-August which that aligns with our current rule development plan.

Moving on to the Tier I expansion rule proposal, one comment has been received, thanking the agency for the proposal. And a second comment was received yesterday that expressed opposition to the proposal. Our public hearing on this rule proposal is set for the next Board meeting on June 9. And under that timeline, we can bring a CR 103 package to you for review on or about July 7.

And then finally, with respect to the CR 101 recently filed concerning THC isomers beyond Delta-9, no comments have been received to date. Our “deliberative dialogue” session is scheduled for the morning of June 3. And our focus for that session is cannabis plant chemistry. We've assembled a well-qualified diverse group of experts to keep the focus on cannabis plant chemistry and we'll explore five or so questions that are concentrated on things like isomerization, the differences in heat and solvent processes, and byproducts of conversion. I'm pleased to share that our registrants list so far includes attendees from several other states as well as Canada. And I also want to reiterate that we are committed to grounding this work in fact and data. We believe this iterative approach we're taking is the most appropriate for the multi-dimensional authorizing environment in which this work falls, as well as the most productive way to situate that work. This process is designed to make space for all the interests to be heard and discussed equally.

That includes my update for today. May I answer any questions?

Chair Postman: First of all, just a basic question. With the work with ORIA, can you tell me what a convenience contract is?

Ms. Hoffman: A convenience contract is a way that we can contract with an economist because LCB doesn't have an economist on staff. So, the convenience contract sets up that relationship with a contracted economist to do our work for us with respect to the Regulatory Fairness Act analysis that we're required to do when rules may have an economic impact on licensees who must comply with them.

Chair Postman: Okay. I knew we were looking to contract with an economist. It was the convenience part that confused me. And then on the, I guess we call it everything but Delta-9 project and “deliberative dialogue” in that process, it is ever changing it seems even in the short period of time we've been looking at it. But I just want to be clear and make sure I have this in my head clear so the public understands where we're coming from. And you said this – it's an iterative process. So we've put out a statement, we now have a CR 101 to begin rulemaking. The first step in that is a “deliberative dialogue”, where we're going to have scientists talk about plant chemistry. We're trying to be very open about this, that we are in a fact-finding process. But we only have limited authority in rulemaking for non-Delta-9 regulation. So tell me if I got this right. Our goal here is to begin this rulemaking, which is going to help inform us about the science and other pieces of this. And Member Hauge is our lead on this. And so a lot of learning going on here. But we have every expectation that this will require legislation to give the agency authority to regulate anything outside Delta-9, which could include Delta-8, certainly Delta-10 or any other derivative here that is psychoactive or impairing. We're going to need to ask the legislature for the authority to regulate that. Do I have that right?

Ms. Hoffman: That is absolutely correct. The agency is limited in its regulatory authority here. And RCW 69.50, our controlling statutes, our authorizing statutes, really limit our authority to Delta-9 and marijuana as it's defined in the Controlled Substances Act. It's very limited and very narrow.

Chair Postman: So in the rulemaking, if stakeholders are worried or concerned about what happens in rulemaking, it is limited by statute today what could possibly happen. We do not intend rulemaking to be the last word on this. We're not attempting to try to regulate Delta-8 through rulemaking.

Ms. Hoffman: That is correct. We don't have the authority to do that.

Chair Postman: Thank you, I'm trying to clarify it for the public but also in my own head. I'm still just trying to make sure how this will go, so I appreciate that. Other questions for Kathy on cannabis rulemaking from the Board?

Member Garrett: No questions for me.

Member Hauge: No questions from me. Thank you, Kathy.

Ms. Hoffman: I will move on to our next action item then. Thank you very much, Chair Postman.

4. GENERAL RULEMAKING

Presenter – Kathy Hoffman, Policy and Rules Manager

ACTION ITEM (A)

ACTION ITEM 4A - Board Approval of CR 102 for Enforcement of State Board of Health Prohibition of Vitamin E Acetate in WAC 314-55-077 and 079

Kathy Hoffman, Policy and Rules Manager, began the briefing with materials (HANDOUT 4A).

Ms. Hoffman: This morning, I'd like to request your approval to file a CR 102 that proposes to add a permanent cross reference in our cannabis processor and retailer rules to the State Board of Health's permanent prohibition of vitamin E acetate. By way of background, the Board prohibited the use of vitamin E acetate by any person licensed under chapter 69.50 RCW, or the Controlled Substances Act, by emergency rule last September. The LCB prohibition applied to cannabis processors and retailers and the emergency amendments were added to WAC 314-55-077 and 079 that would allow the Board to take disciplinary action if a licensee failed to comply with the LCB prohibition.

Now, at the same time, the Washington State Board of Health, or the SBOH, was working on a permanent prohibition of vitamin E acetate that would also apply to any person licensed under the Controlled Substances Act. And that rule became permanent last November. So as a result, and as intended when we began this emergency rulemaking last year, we now propose to update WAC 314-55-077 and 079 with a reference to the permanent SBOH vitamin E acetate prohibition. Assuming these rules are adopted with the appropriate references, the LCB prohibition can then be rescinded or just allowed to expire.

For a brief procedural history on this particular rulemaking, we filed a CR 101 for this project on March 31 of this year and notice was published in the Washington State Register on April 22. The formal comment period ended on May 21. And to date, we have not received any comments.

Timeline

May 26, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list. Formal comment period begins.
June 16, 2021	Notice published in the Washington State Register.
July 7, 2021	Public hearing held and formal comment period ends.
No earlier than July 21, 2021	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals who offered written or oral comment at the public hearing, and during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list.
August 21, 2021	Rules are effective 31 days after filing (unless otherwise specified), consistent with RCW 34.05.380(2).

Ms. Hoffman asked if there were any questions. There were none

MOTION: Member Hauge moved to approve the filing of the CR 102 for Enforcement of State Board of Health Prohibition of Vitamin E Acetate in WAC 314-55-077 and 079

SECOND: Member Garrett seconded.

ACTION: Chair Postman approved the motion.

5. ALCOHOL RELATED RULEMAKING AND TIMELINES

Presenter – Audrey Vasek, Policy and Rules Coordinator

TIMELINES

Ms. Vasek: Good morning, Chair Postman and Board members Garrett and Hauge. I have a few brief updates on the alcohol rulemaking timelines before introducing the public hearing on the distilling reporting rules.

For the first update, the rule project to implement 2020 legislation, Engrossed Second Substitute Senate Bill 5549 related to distilleries, is now complete. After the CR 103 and final rules were adopted at the Board meeting on May 12, the CR 103 was filed with the code reviser's office. The concise explanatory statement was sent to all those who provided public comment and a GovDelivery message with this information was sent out to subscribers. The rules will go into effect on June 12, 2021 and more information is also available on our recently adopted rules webpage.

My next update, the rule project to implement 2021 legislation, Engrossed Second Substitute House Bill 1480 related to Covid-19 alcohol allowances, is officially underway. After the CR 101 package was approved at the May 12 Board meeting, I filed the preproposal with the code reviser's office and notice will be published in the Washington State Register on June 2. The initial comment period is currently open and will remain open until July 2. We've received one comment so far in support of the rulemaking. The internal workgroup has begun developing conceptual draft rules and we anticipate holding one or two "listen and learn" sessions tentatively in July or August to gather public feedback, depending on when we're able to finish developing those conceptual draft rules and share them publicly. Following these listen and learn sessions, I anticipate bringing a CR 102 package sometime in September.

For the rule project to create summary suspension and state provisions to enforce the Governor's Proclamations, this is the rule project that considers making the current emergency summary suspension rules on this subject, WAC 314-12-250 and 275, permanent. The Board approved filing the CR 101 on April 14, 2021 and is published in the notice to stakeholders. The initial comment period is open until June 5. We've received 27 comments so far with most of those emailed to us in the past few days. All of the comments so far have been opposed to the rulemaking. The internal work group is currently in the process of developing conceptual draft rules. I have a plan to share those out publicly and eventually hold "listen and learn" sessions. We've met several times over the past month and are currently considering options for moving forward before sharing those conceptual draft rules publicly. I anticipate that we will have more updates on this project in July.

Finally, for the distillery reporting and payment rules project, the public hearing is on the agenda for today and before providing some background on that project, I'd like to pause and see if there's any questions related to the other rulemaking timelines.

Chair Postman: Just one quick one and I'm sorry, I know we've talked about this before and you were just talking about it. On the CR 101 on the summary suspension, you said that you'd probably have updates in July. Would that be when we would perhaps look at conceptual drafts or talk about next steps?

Ms. Vasek: The anticipated timeline to either share those conceptual drafts publicly or talk about other options or next steps would be in July. And in the meantime, the internal project team is still meeting to take a look at the conceptual draft and how to move forward.

Chair Postman: Okay, great. And how long is the public comment period on that?

Ms. Vasek: Until June 5.

Chair Postman: Okay, great, thank you. Other questions on alcohol rulemaking from the Board?

Member Garrett: No questions for me.

Member Hauge: No questions for me. Thanks, Audrey.

Chair Postman: Thank you, Audrey. We can move now to the public hearing.

PUBLIC HEARING (A)

PUBLIC HEARING 5A – Distillery Reporting and Payment Rules

Audrey Vasek, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 5A).

Ms. Vasek: Thank you. I'll just provide some brief background on the distillery reporting and payment rules project. This is the project that considers revising the distillery reporting and payment requirements in chapter 314-28 WAC to be consistent with the Court of Appeals decision in *Blue Spirits Distilling*, which held that the LCB rules requiring distillers to pay spirits retailer licensing fees when they acted as spirits retailers were invalid. The CR 101 initiating this rule project was approved by the Board and filed with the code reviser on February 17, 2021.

To develop the proposed rules and engage stakeholders, a set of conceptual draft rules was shared through GovDelivery for public feedback in March. This feedback was included as "Attachment B" to the CR 102 memo. Most of the feedback received was general and did not include any specific suggestions for changes to the conceptual draft rule language. So, based on this feedback, we decided not to make any changes to the rule language so the proposed rules included in the CR 102 package were identical to the conceptual draft rules. The Board approved filing the CR 102 and proposed rules on April 14, 2021. The proposed rules remove all reporting and payment requirements for distilleries and craft distilleries by repealing WAC 314-28-070 and 080 and amend existing references to reporting and payment requirements in several other rule sections, including WAC 314-28-010, 055, and 090.

The public comment period on the proposed rules opened on April 14 and it will remain open until close of business today. We have received one written comment so far. After the public hearing, the project team will meet to review the comments received and if no substantive changes are made to the proposed rules, the final rules could be adopted on June 9 at the earliest, which would put the effective date on July 10, 2021. More information about the proposed rules and how to provide comment is available on the LCB webpage.

That concludes my presentation before the public hearing. I'm happy to answer any questions.

Chair Postman: None from me. And I don't think we have anybody signed up to comment. But I'll pause first to see if the Board has any questions or comments about this issue on distillery reporting.

Member Garrett: I have no comments.

Member Hauge: No questions. Thank you.

Chair Postman: Thank you. And then I just want to double check before I move on, Dustin, that we have nobody signed up to testify at the public hearing.

Dustin Dickson: That's correct, Chair.

Chair Postman: Okay, great. Well, then we will close the public hearing on that.

Then Ms. Vasek, anything more on the alcohol side for us?

Ms. Vasek: Nothing further from me. Thanks, Chair Postman.

Chair Postman: Great. Thank you for your work today.

6. GENERAL PUBLIC COMMENT

Chair Postman: We will move to the next item, which is general public comment. This is when citizens are invited to address the Board on issues of interest to them. We have a couple of people signed up. Just a quick reminder, please state your name and affiliation for the record before you begin. And then be mindful of the timer. Each person will have four minutes to speak, and with 30 seconds remaining, Dustin will jump in just to give you a heads up. So, pardon that interruption but we want to make sure we keep to the clock. With that, the first person I have on my list is Marcus Charles.

Marcus Charles – Cleen Technology

Hi, my name is Marcus Charles and I'm here to testify today as President of Cleen Tech, a cannabinoid life science company based here in Washington State. We only license hemp sourced THC technology to regulated cannabis license holders, like hemp sourced CBD, which is processed from the same cannabis plant as marijuana. And hemp sourced THC reflects innovation made possible by extensive research and development into the natural properties and possibilities of cannabis in general. Hemp sourced THC is just the latest innovation in the legal cannabis marketplace and is the topic of conversation among regulators across the country.

Health and safety are the most critical priorities in a well-regulated and toxic market. Products manufactured and sold outside of regulated marketplaces in independent retail shops and not produced with health and safety as paramount can hurt people but also undermine public trust and confidence in the work of the licensed industry because it's really hard to tell the difference between regulated products and unregulated products when you see them in a retail storefront. I commend the Washington State Cannabis Board on its stated mission to promote public safety and trust through fair administration and enforcement of liquor, cannabis, tobacco, and vapor laws. In service of that mission, I would urge you to finalize and adopt mandatory quality testing that was discussed previously in your meeting. All legal cannabis products in Washington State need to be tested. Only by centering the public health in this way can we ensure that the baseline for future regulation is in fact safety first. Clean Tech's research and development includes rigorous testing of hemp source THC. Anything less or anything that could compromise a consumer should be unacceptable and a nonstarter for any cannabis product here in Washington State. I'm happy to report that our licensed process is sound, product is safe, and we would be pleased to share lab results with you and your staff.

We want to be transparent with you about what we do, not only to build confidence in hemp sourced THC, but also be a model for the commitment that you should expect from all of your licensed players. We are concerned that the recent clarifying policy statement and public comments by the Board suggests that the Board may be contemplating engaging and crafting policy in such a way that would inadvertently pick winners and losers in our legal marketplace based on some kind of undefined worthiness scale. We agree that regulated systems should uphold a strong and stable marketplace, and that regulators play a critical role in overseeing that market.

Regulators' most distinguished responsibility is to oversee the current marketplace and its current license holders who in general are working in good faith to stay in compliance with regulations, but then also give all the license holders the tools to innovate and expand their current business models to prepare for the future with new, innovative, safe products. License holders that are innovating their business models and investing in innovation that are creating significant future cannabinoid opportunities here in our state should not be part of any assessment --

Mr. Dickson: Marcus, you have 30 seconds.

Mr. Charles: -- of policy worthiness. Any decisions on the worthiness of place in the Washington State cannabis market belong to the consumers.

We firmly believe that the Liquor and Cannabis Board should continue to prioritize its mission of public safety so that the adult consumers may choose from a spectrum of legal THC products. The regulatory agencies should not make the choice of consumers based on preference or familiarity of one business model over another. The outcome of that kind of worthiness engagement by the regulator causes uncertainty for --

Mr. Dickson: Marcus, that's your time.

Mr. Charles: -- market and the illicit marketplace will take over if that is not finished. Thank you.

Chair Postman: Great. Thank you, Mr. Charles. Appreciate that. The next person signed up is Stacey Peterson.

Stacey Peterson – Apex Cannabis

Good morning. My name is Stacey Peterson. My husband Troy and I are the licensees and founders of Apex Cannabis, with three locations in Eastern Washington. We are members of WACA (Washington Cannabusiness Association).

Recently, WACA leadership met with the Governor's office to discuss allowing cannabis retailers to provide an incentive to vaccinated customers. They settled on the name "Joints for Jabs". My understanding is Governor Inslee endorsed the concept and it is now with the LCB for the review of how such a program would be structured.

Additionally, and separately, I recently met with the leader of a local community health provider in the Spokane area. They are looking to partner with community organizations and businesses to provide vaccinations in smaller settings. Our shop in central Spokane near Gonzaga University has a 2800 square foot showroom and an area dedicated to medical consultations. We have a security person staffed at the door who IDs and directs customers. When we toured the shop, the leader thought the venue would work well. We are just beginning our discussions but we are excited about the potential opportunity. It would allow us to partner with a well-established and respected medical provider in support of the goal of promoting vaccinations within the community. If it comes together, our goal would be to create a program which features vaccinations with the extra incentive that "Joints for Jabs" will provide.

Since retailers may not ever offer giveaways or gift-with-purchase style promotions, we believe consumers will be excited and motivated by the complimentary product. Of course, time is of the essence regarding vaccinations. I'm here today to respectfully request that the LCB fast track the "Joints for Jobs" initiative. As licensees who take the rules and regulations seriously, we understand that there is complexity in allowing cannabis retailers to give away product, even just in the short term. If there would be value in WACA meeting with the agency to discuss issues, concerns, or solutions, we would like to engage and be supportive. There is a significant opportunity for the LCB and licensees to be seen as a major contributor and part of the solution regarding the fight against Covid-19. We should move quickly and pull together as an industry to make this happen and contribute to our community. Thank you for your time and consideration.

Chair Postman: Thank you. Appreciate that. The next person signed up is former Board member Chris Marr.

Chris Marr – Consultant

Thank you, Chair Postman. Welcome to the Board. Members of the Board, good morning and thank you for the opportunity to speak.

My name is Chris Marr. I work as an industry consultant and lobbyist. And as was mentioned, I had the honor to serve on the Board when I-502 was passed. I'm really proud of the groundbreaking work that we did, as well as the efforts by LCB staff and the current Board to continue to improve upon it. But if I'm completely honest, I must acknowledge that our work fell short in a number of areas. That includes fair prioritized licensee diversity and a tendency towards over-regulation that in retrospect has limited innovation.

Now, I noted the umbrage Board members took with the comments by Vicki Christophersen of WACA at your last meeting and I'm not sure if it was the message or the messenger. I can only say that many of the concerns she raised have been expressed by licensees I work with. As far as the enforcement issue she cited, I'll acknowledge much, much has been done, often at the prodding of the legislature. But there's much more to do to evolve the culture and focus on education over enforcement. And that includes efforts to improve consistency and communication. My focus is on changing laws and regulations that allow this industry to operate like any other. I held out some hope that "Cannabis 2.0" would be the avenue to do that and that has not been the case.

A few examples. I came before the Board two years ago after you changed the rules to allow private labeling of spirits asking the same for the cannabis industry. This would have allowed growers to choose to focus on production instead of marketing. You denied my request. Yet seven months later, the LCB lost an ALJ (Administrative Law Judge) decision on its prohibition, yet nothing was ever communicated to licensees and no rule change was ever initiated.

After unsuccessful efforts to have LCB permit revenue based IP (intellectual property) licensing agreements, which are common in other industries, the industry was successful in passing a bill in 2017. Proposed rules allowed only fixed compensation. So I went back, helped pass SB 1794 allowing all cannabis licensees to use revenue based agreements. Despite the legislative attempt, LCB still does not allow retailers to use them.

The LCB has determined flower packaged in handle jars, which only cost a few pennies more than regular jars, constitute conditional sales. It makes no sense to discourage the use of packaging that won't end up in a landfill. I mean, what public safety benefit does it serve? Why are our PAL (packaging and labeling) so tone deaf to sustainability?

A year ago, I worked with legislators to pass SB 6057 to allow volume discounting, which the Board permits for retailers, but not for processors. In other words, the price for 100 has to be the same as price for one. Yet your own traceability system tells you this prohibition is violated regularly. The bill passed the senate but was killed in retaliation for the failed labor standards bill. LCB continues to ignore this issue instead of having a dialogue on its solution.

I could go on but I'll stop there. Having been in your shoes, I know criticism isn't always easy. You need to know it's not personal but it's also not without basis. It comes from entrepreneurs who put at risk everything they own to launch this industry.

Mr. Dickson: Chris, you have 30 seconds.

Mr. Marr: Okay, thank you. Many are struggling and see a more evolved regulatory approach in other states, which puts them at a disadvantage in a looming 50-state market. They want Washington to evolve as well, to adopt a regulatory stance that protects public safety and prevents youth access while assisting our industry in driving the same economic growth and innovation as the wine industry. I hope the board will work with WACA and other stakeholders to set aside any frustrations --

Mr. Dickson: Chris, that's your time.

Mr. Marr: -- and accomplish that and commit to being part of that effort. Thank you for your time.

Chair Postman: Thank you for your time. Appreciate that. I have a couple of thoughts. First, let me just double check. Dustin, is that the end of our signup?

Mr. Dickson: One more, Chair. Jim MacRae is registered today as well.

Chair Postman: I'm sorry, Jim. I missed that. Yes. Jim MacRae, please.

Jim MacRae – Straightline Analytics

Thank you very much. Good morning, Chair Postman, members of the Board and staff. My name is Jim MacRae. I'm a resident of Legislative District 1 and run an analytic consulting business focusing on emerging state regulated cannabis markets.

As a legacy substance abuse researcher, I've been following the development of the regulated cannabis market in this state closely and with great interest over almost eight years now. Through that work, I've increasingly found myself focusing on a number of issues that are negatively impacting the quality of regulated product and ultimately, the safety of consumers of regulated product. Much of my understanding of this market, Washington's market, has come from the data that have traditionally been made available by this agency and by others involved in regulating and otherwise influencing its operations. In that context, I want to thank Director Smith for her explanation of the question I posed to the Board regarding the pending "not issued" retail cannabis applications listed in your marijuana applicants worksheet. It was confusing to me that such entities still existed in the retail space. I very much appreciate the explanation that was offered last week. Thank you very much for following up on that question.

In that context, I have one follow up question regarding the current status of retail license applicants. During yesterday's board caucus, the licensing managers informed the Board that there were currently 486 licensed retail businesses in the regulated cannabis market and 45 applicants holding retail title certificates (RTC). And in looking at the current retail marijuana applicants file dated yesterday, 5/25/21, the data shared with the Board yesterday aren't consistent with the privilege status published yesterday. And by the way, although the file was renamed "cannabis applicants" on the website, and good for you for doing that, when you download the file it's still called "marijuana applicants". Specifically, the 5/25 file lists 443 active issued applicants for 32 that are pending issued, 26 that are pending not issued, and 65 that

are closed permanently. And 42 of those 65 appear to be retail title certificate holders. This differs from the 45 RTCs mentioned by staff yesterday.

Similarly, staff mentioned that there are 486 licensed businesses when one totals active issued and the two pending categories, the sum is actually 501 not 486. Given that one can easily conclude that there are still about 15 pending not issued applicants. So there's a discrepancy here. I wonder if you could get clarification of that between the numbers they're giving you and the numbers that are being released on your website. That would be very helpful for me. I think it's important, given the equity stuff and all that.

One other thing just briefly. A couple of weeks ago when Ms. Christophersen addressed the Board about a negative perception, bad information, fear based ideas of the people working in the industry and mentioned that her opinion and that of her membership, the agency is still grappling with those issues 10 years after 502 was passed. I agree with some of the stuff that she said. But there was one thing she mentioned in that, that I want to take a little bit issue with. She mentioned, just in an offhand way, displeasure – and this is again getting at the over regulation and enforcement that people are being - I don't know what the word is, prosecuted is the wrong word - but that are being dealt with administratively now as if the old penalty --

Mr. Dickson: Jim, you have 30 seconds.

Jim MacRae: Thank you. -- as if the old penalties were still in effect. And there's a new penalty grid that's less onerous. Well, I testified when we last changed the penalty grid. I asked the question, would they be retroactive? And the answer was no. If you did the crime while the law was this, the rule was this, you would be held accountable to that penalty. I really don't want to see the Board go away from that. And I'm a little disturbed about some of the aggressive attempts that regulatory capture that are coming out of that organization --

Mr. Dickson: Jim, that's your time.

Mr. MacRae: -- and the tag team we just saw with Mr. Marr. Thank you.

Chair Postman: Thank you, Jim. Appreciate that. That then does end the list of people who are signed up. A few comments in response, and I'll then, of course, give my fellow Board members an opportunity to respond.

First, Ms. Peterson from Apex, I'm impressed with the idea and just speaking as one Board member, but that is the sort of partnership that I think is important if we're going to try to do something like this where there is an actual opportunity for people to get vaccinated in conjunction with a retailer. That answers a lot of the concerns that I personally would have about what free product giveaway would mean and the difficulty in enforcing that in a safe way. And so I can assure you, we're looking at that and we are working closely with the Governor's office on what might be possible.

This goes to the bigger question that we were just hearing as well about, are we still grappling with this system almost ten years after. Yeah, all of this is new. So until a couple of weeks ago, we never thought about free beer giveaway for shots because that world didn't exist. And then after that happened, we heard from cannabis retailers. And so that was brand new. So we're working on it and we'll see what we can do. There are concerns from public health. It is a balance between the public health gain from getting more people vaccinated and then the lack of some of the controls that could happen. So we need to find

a way to do it the most professional and responsible and safe way. But we're doing that and I think we're moving as quick as we can. And I will specifically follow up with staff on what you were discussing there. And I expect you will hear from us. So thank you for bringing that to us.

And to respond in general more to Chris Marr and Marcus Charles with those issues. First, Mr. Charles, I absolutely agree with much of what you said about what our priorities should be in terms of public safety and public health and what is the role of regulation. I've not heard anybody on the Board talk about using some "undefined worthiness scale" in addressing the Delta-8, et cetera, issues at all. I'll also just say that as I was just talking about the idea of a vaccination site, comments from one Board member do not make policy. Everybody on this Board is free to have their opinions and then we discuss it and staff brings recommendations. But I don't think I've heard that from anybody. I've talked in these open Board meetings about this issue repeatedly. I think that if folks can really go back and listen to what Kathy Hoffman said not just today but previously on more than one occasion about what our intention around Delta-8 is, it is not different from what you laid out, Mr. Charles or what's been discussed by others. It is going to be an iterative process. It has to be. We do not have the authority to act now. The legislature's not in session either. But we do think it's important to be open. We are transparent and that's what you're all reacting to is what we've said.

The clarification statement is not an enforcement order. We've been clear about that both in writing and in public comments. It does not indicate a ban on anything. It is the thinking as of this moment and then we move into the rulemaking, which will be a different moment and a different discussion, which again, is very focused on gathering facts and science. And then we will work with stakeholders to develop legislation to bring to the legislature. I am all but certain that is the path. We will be going to the legislature to find a way to regulate this. That's what's happening in other states. There's a lot of talk about how we're behind other states on this or we have a very different approach. I don't believe that's true. We are in touch with other states on this issue a lot, both reading in the popular media as well as in professional circles. And I don't think that's the case. I think you will find Washington's approach is not that different than some of our neighboring states. So I appreciate that.

Mr. Marr, you talked about the Board "taking umbrage" at some comments. And as one who did take some umbrage, let me just share a couple of thoughts. We are not opposed to hearing criticism. That's what these general public comment periods are for. I welcome it. I've always welcomed criticism in any job I've ever held. And I've had an openness to that from any corner. What is not helpful is when people address motive of LCB staff or Board members. And it's hard to move into a productive conversation when it begins with some widespread condemnation based on alleged motive and a maliciousness that some believe exists. That's difficult to deal with. And I've urged people to try to set aside that attitude in addressing motive and just really try to talk about the policy differences. In part, I'm new here, right? And luckily, so far, there aren't too many people who are mad at me yet, but they're mad about other things. So it's not constructive. We need to be able to set aside some of that animus and suspicion and bias and be able to have open conversation about it.

The other thing that I think is worth noting, and that's particularly true for people like yourself who are known to our staff and other prominent people in the industry who talk to LCB staff and Board members on a regular basis. And we hear one thing and then a different message publicly and that's upsetting as well. So if people are able to get their questions answered and connect with our subject matter experts and policy experts and others in the agency, it's a surprise to some then when they are attacked in a public comment. I've just always felt like, if you have a criticism of somebody in public office and you have a relationship with that person, they're people too and they deserve to have some professional courtesy there. And if you're objecting to something, it doesn't need to be said initially in a public meeting that

doesn't allow for a true discussion or a chance for those staff people to respond. That shakes the confidence of public staff.

So, I understand your concern about over regulation. And I'll say again, on this question about us still grappling, yes, we're still grappling just like every state. And again, there's this almost blurry nostalgia if you will, for what other states are doing. Nostalgia's not the right word, but you know, romanticizing that the other states have a clear picture. Some have the advantage of not having been first, right? So they learn from the work that you did, Mr. Marr, and others here and they continue to learn from us. Other states are at the same place. Colorado, obviously at the same place we are and they continue to change. We invented this system and now we need to reinvent this system. And I said this when I started the job, and I'll continue to say it, but our job is to continue to evolve. Nobody at this agency has ever said anything to me even remotely like "well, we're done, we got it. Job done". It's all about innovation. It's all about trying to be dynamic and to listen to what's going on in the industry and in the market and among consumers, and among public health advocates.

Public health is important and it is part of these discussions. And it's easy to sort of make fun of concerns about a handle on a jar. But I've talked to the public health people about it. And there are reasons. We also have things that are on the books that we can't ignore even if retailers decide that it's ridiculous. And if you talk to the public health people, there's a real concern about normalization of these things and promotion that that lives on. And if you have a mug, and that's what a piece of glass with a handle on it is, is a mug that says, "Buy your weed at Joe's weed shop" and it sits on your kitchen table, that's a possible message there. I don't think it's ridiculous to say "is that really the right thing to do, to have that in a place where children might see it? And does it normalize?" I'm not saying that that regulation needs to exist forever these days. And maybe not. Maybe it needs to be looked at but it's on the books, so it can't just be ignored. Nobody has been punished for it at this point. There's been a lot of discussions. And there are some public health concerns. So I think that it's easy to pick one little thing out at any time and make any regulatory body look silly in that way when you find something. But there are reasons for it, both why it exists and why it still exists, and why enforcement needs to take it seriously. They don't get to pick and choose what they enforce. The enforcement officers look very carefully at what is on the books. And that's the way we all want. Every one of you will always say we need a safe and regulated system. That's how you do it. And if we want to change it, we need to look at changing it. You can't just decide we're going to put a handle on this jar and call it a jar and not think it's going to run up against that.

So I just beg of you to not try to make light of these safety issues. And if there are concerns, bring them to us. If you have ideas for change, bring them to us. And let's talk about it. The agency is very open. I think the process that we're following on Delta-8, et cetera, will in fact be a model for this sort of rulemaking. The fact that we're starting with a discussion about the science of the plants, I think is incredible. That's exactly what we should do. We should not move to yes/no, this is in and that is out. We're not picking winners and losers any more than any regulatory scheme ever does. There might be people who are unhappy with what we end up with at the end because they're not looking to operate in the same kind of system we all say we envisioned together. So that could happen. But this is going to be an incredibly open, collaborative process and again, my best guess is with legislation which will require more public meetings and public hearings and drafts of legislation and public votes and public signing and everything else. It is going to be incredibly open and collaborative. People will have their chance to be heard.

I exceeded my four minutes. So I apologize for that. And I will check with my fellow Board members to see if they have any comments before we adjourn today.

Member Garrett: David, I think you covered a lot of it well and I'm sure that the community welcomes how you are responding openly during a Board meeting to some of the comments coming from the general public, which is new and something we didn't do in the past. I find it to be very refreshing. So, thank you.

Chair Postman: Thank you. I appreciate that. Member Hauge, anything for us today?

Member Hauge: Yes, I would like to adopt Ollie's comments as mine, and yours as well. I really appreciate this new dynamic that the meeting is taking on. And I appreciate the comments that come forward and the opportunity to address some of the claims of our shortcomings in real time. Thank you very much.

Chair Postman: Thank you both. I appreciate that and just for the public's knowledge, because of the Open Public Meetings Act, and we only have three board members, any two of us talking together is a quorum. And we don't do that. So these meetings, the Board caucus yesterday and the Board meeting today and the Executive Management Team we have, which is all publicly broadcast, are our only opportunities to talk. And I think there is a value in us opening up these conversations and talking with you who come and sign up to talk to us, as well as for us to be able to hear each other. So I greatly encourage the public to come and share their thoughts. And always I encourage people to send us material as well. The Board is always interested in reading anything from stakeholders on policy or complaints or criticism, of course. So thank you for that. Thank you for allowing me to talk. And with that, we will adjourn today's board meeting. Thank you all very much.

ADJOURN

Chair Postman adjourned the meeting at 10:52am.

Minutes approved this 9th day of June, 2021



David Postman
Board Chair



Ollie Garrett
Board Member



Russ Hauge
Board Member

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

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