## Amber Virkler

**From:** Angela Whitfield <angela.whitfield@medmen.com>
**Sent:** Monday, June 1, 2020 9:23 AM
**To:** CCB Regulations
**Subject:** Comment on Proposed Regulations RC025, RP016 MMNV2 Holdings

Please see the below comments defined by section for the proposed regulations. Thank you for this opportunity to provide comments.

1.125
Can the different "Lots" also be described in grams. Items in the seed to sale tracking system must be in grams according to training.

1.165
Can Production Run also be described in grams. Items in the seed to sale tracking system must be in grams according to training.

1.245
Is an immature cannabis plant less than 8" tall and 3" wide? For the purposes of the seed to sale tracking software, a cannabis plant is considered "vegetative" and no longer "immature" once it was reached 8" tall and 3" wide.

6.010
Can "one ounce" of usable marijuana be expressed in grams. One ounce is actually 28.3g but I understand the state has defined one ounce to be 28 grams. Can this be explicitly stated? Also mentioned in section 12.010.

6.080
Section 3: if we can acquire seeds from anyone how can these be tracked in the seed to sale tracking system if the supplier does not have seed to sale tracking software? Currently we have no way to introduce seeds into the seed to sale tracking software. All new plants must come from another plant or be transferred from another license.

6.135
Quarterly reporting is currently reported on the 30th of the month for the three previous months. Ex: Jan, Feb, March reporting is due April 30th. Due to harvesting and curing schedules, it would be impossible to fully capture the entire month of March by April 15th. Curing schedules can take up to 21 days before product is fully cued and ready to package. Reporting by April 15th would lead to completely inaccurate harvest data.

9.040
Section 3. Guidance was provided by the department on common items and understood shelf life of those items. Any exception to these understood lives would require testing by the manufacturing facility. Will a similar memo be issued by the Board?

10.035
Section 3 mentions that all components must be stored 6 inches off the floor. 9.030 states "fifteen centimeters". Can the units system in the regulations please be unified to avoid confusion?

12.010
While tincture is called out separately here, it is packaged and treated as an edible in the seed to sale tracking software. The single package limit for tincture versus edibles are very different. Can more clarification be given on how to package tincture in the seed to sale tracking software?

12.035
Can it please be stipulated that the serving size statement is not required for concentrated cannabis product and is only required for edible products. Serving sizes are not defined and are not required to be defined for concentrates so have a serving size statement on these labels is incompatible.

13.015
Section 4, the distributor must updated the manifest to accurately depict any delays in arrival times, any route change, or any new driver information. The originating establishment cannot be responsible for knowing, or entering this information in the seed to sale tracking software.

**Angela Whitfield**
*Production Manager*
MedMen
MedMen.com

## Amber Virkler

**From:** Marla McDade Williams <marlamw@strategies360.com>
**Sent:** Monday, June 1, 2020 9:25 AM
**To:** CCB Regulations
**Subject:** Re: Proposed Regulations of the CCB

Thank you for providing these draft regulations.

Will they replace the regulations in NAC Chapter 453A and 453D in whole?

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**MARLA MCDADE WILLIAMS**
Senior Director

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**From:** Medical Marijuana <MEDICALMARIJUANA@LISTSERV.STATE.NV.US> on behalf of Nevada Department of Taxation, Cannabis Compliance Board <marilyngray@TAX.STATE.NV.US>
**Sent:** Friday, May 29, 2020 5:25 PM
**To:** MEDICALMARIJUANA@LISTSERV.STATE.NV.US <MEDICALMARIJUANA@LISTSERV.STATE.NV.US>
**Subject:** Proposed Regulations of the CCB

Please see attached memo regarding the proposed regulations of the Cannabis Compliance Board.
A reminder notice will go out again on Monday morning.
- Cannabis Compliance Board

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## Amber Virkler

**From:** Savino Sguera <savino@digammaconsulting.com>
**Sent:** Thursday, June 4, 2020 10:52 AM
**To:** CCB Regulations; Marco Troiani
**Subject:** Comments on proposed CCB regualtions

Greetings.

Please see comment below.

**********

Savino Sguera
Comments on proposed CCB regulations

Page 101, 11.055.b
(4) Alpha-terpinolene is incorrect terminology. It should be written as "delta-terpinene" or "terpinolene".

**********

--
Savino Sguera
Chief Science Officer, Digamma Consulting
+1 (631) 834-9227

## Amber Virkler

**From:** Dennis Gutwald <dgutwald@mcdonaldcarano.com>
**Sent:** Thursday, June 4, 2020 9:03 PM
**To:** CCB Regulations
**Subject:** Propose Regulation section 2.040(1) and (3) seem to say the same thing unless I am missing something.

**Dennis Gutwald** | Partner

**McDONALD CARANO**

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# MEMO

To: State of Nevada Compliance Board

From: Anansi Enterprise LLC – (Tim Eli Addo & Kofi Forkuo-Sekyere)

Date: June, 6, 2020

Re: Recall Procedures for Cannabis in Nevada

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Nevada should be proactive in its approach for strengthening recall procedures for contaminated cannabis products. Increasing strength of lab testing is an important step for guaranteeing consumer safety. However, stronger testing needs to be paired with ways for warning the public of contaminated cannabis products. Establishing an effective cannabis recall program now will help ensure Nevada's gaming industry can safely create revenue share models for cannabis. The gaming and tourism industries will seek to profit from another potential lucrative revenue stream as cannabis get closer to federal legalization. Furthermore, the Proposed Final Regulations of the Cannabis Compliance Board does not address how contaminated cannabis products should be recalled or recorded. Regulation 6 of the Proposed Final Regulations of the Cannabis Compliance board does not address how contaminated cannabis products should be recalled or recorded. Regulation 10 of the Proposed Final Regulations of the Cannabis Compliance board does not address how contaminated cannabis products should be recalled or recorded. Regulation 11 of the Proposed Final Regulations of the Cannabis Compliance board does not address how testing facilities should respond during a recall for contaminated cannabis products. Regulation 13 of the Proposed Final Regulations of the Cannabis Compliance board does not address how distributors should respond during a recall for contaminated cannabis products. **Anansi Enterprise is prepared to provide recall procedures for each step of the cannabis supply chain (sellers, producers, distributors, testing facilities).**

**Policy Issue:** The current method the Department of Taxation uses to notify the public of recall is ineffective in notifying all the parties involved. The lack of notification to affected parties can be fatal, especially since medicinal cannabis patients may already suffer from a compromised immune system. Nevada needs to be equipped with a method of notification and containment for potential recalls on cannabis products.

**Public safety should be the highest priority for cannabis regulators**

This memo is not written in fear that an issue may happen. Fatalities from contaminated cannabis have already happened in two states. Although, it had limited press coverage, the deaths still leave a lasting impact. This issue affects the consumers, and also the cultivators, processors, and dispensaries that may be liable. **Given the current pandemic, producers and sellers are more prone to contamination since they are experiencing a surplus in inventory; forcing companies to find new, unproven, ways to store cannabis safely.**

Moreover, contaminants in cannabis products can be a tremendous burden for medical patients waiting to receive an organ transplant. The American Association for the Studies of Liver Diseases (AASLD) has warned potential recipients to refrain from using cannabis because containments can have fatal effects on the transplant procedures. Better testing and recall procedures will help hopeful transfer recipients to consume cannabis for medicinal purposes.

- Other consumer goods are subject to Federal and State product recall procedures. These procedures try to increase the probability of notification and recapturing of affected products
    - The FDA requires the following for recall strategies:
        - Classification of recall (in terms of severity)
        - Public Warning
        - Effectiveness Check Level (ensuring all parties who sold and consumed products have been notified)
- Solidifying Nevada's recall program will further legitimize the state's cannabis programs by providing assurance to consumers
    - Consumers will have proper notification if a contaminant issue ever occurs
    - Other states will look to Nevada's improved recall procedures as a blueprint to enact similar procedures in their state
- Preventative measures need to be placed to ensure fatalities will not happen again as a result of neglect from regulators
    - Fatalities from contaminants have already occurred in the cannabis industry. In both cases, the products in question had received a passing grade from the lab.
    - Collection of new data sources are not needed to enact a safe recall protocol. The cannabis industry is already stringent. The amount of personal information required for all parties involved, especially the consumers, is already known and written into law. This information can be leveraged to provide an affective recall tool, that the state and MME's can access.

**Solution:** Ensure implementation of proper recall procedures for every licensed cannabis facility in Nevada. This includes establishing protocols for each facility and employee that could be involved with a product recall, especially compliance managers and directors. Recall procedures will include a technology application that tracks information about the cannabis product; including, the location of the batch to provide a current map of batch location. Templates will be provided for companies and employees who wish to conduct a voluntary recall. This solution will make sure that all parties involved – including the end user – are properly notified.

**The solution we offer considerers the following as criteria for solving this urgent public health issue:**

1. Notifying the public and affected parties in an urgent manner
2. Training of all personnel involved with product recalls
3. Isolating the entities affected to stop a faulty product from spreading
4. Providing accurate mapping of batch distribution, including times of distribution
5. Making participation mandatory for all MMEs (dispensaries)
6. Accessibility by all registered cannabis companies in the State of Nevada

**Implementation:** Implementation of solution will require training all licensed cannabis facilities on the steps of conducting an effective recall. Relevant personnel will learn the steps one should take in the event of a recall. This includes training personnel on how to complete templates when conducting a voluntary recall. A bi-weekly import of information is required from dispensaries, cultivators, and processors to help map the distribution of batches. This information is currently being logged in various systems by employees and can be reviewed by the state for medicinal patients. This process only requires data that is already required for submission by cannabis entities to be compliant with Nevada Law.

Information needed includes:

- Name and/or zip code of customer who purchased batch
- Time of purchase
- Method of contact (phone, email, social media, etc.…)

***About Anansi Enterprise LLC***

*Anansi Enterprise is founded by Tim Eli Addo. Eli continues to be an inspiring voice for patient advocacy and minority involvement in the Nevada Cannabis industry. A brilliant mind, Eli plays an important role in Nevada's patient advocacy through current hemp and cannabis legislation.* In 2013, Eli was one of the pioneers behind the hemp industry in Nevada. He lobbied House of Representatives Congresswoman Dina Titus (d) and former Congressman Joe Heck (r) to cosponsor the HR 525 Farm Bill. Also, Eli was instrumental in drafting the language for important amendments to SB 374, two of which further patient advocacy: the ability for patients to test their cannabis products at a state licensed Nevada testing lab. Furthermore, Eli helped establish the foundation for the cannabis market in Nevada through operational consulting for MMEs as a R&D consultant for Cannalysis, which includes consultation on anything from the production,

testing and compliance. *Eli continues to fight for minority representation in the Nevada cannabis industry, especially when it comes to cannabis legislation. Nevada is filled with smart people who can greatly impact cannabis and cannabis legislation. Unfortunately, because many of these people are minorities, Nevada – and other states – have not yet capitalized on this opportunity.* ***Therefore, Anansi Enterprise seeks to provide diverse and effective leadership regarding cannabis legislation****.*

For more information about Anansi Enterprise visit https://anansi.io

**To read more about Eli's inspirational story, click the links below**:

https://invisibleproject.org/timothy-eli-addo/
https://uspainfoundation.org/news/pain-warrior-month-timothy-eli-addo/

To whom it may concern,

I would like to make the following comments in response to the proposed regulations set forth by the Cannabis Compliance Board (CCB). Current regulation **11.075 (7)** Testing states the following:

*"Except as otherwise provided in this subsection, a cannabis cultivation facility or a cannabis product manufacturing facility may submit a request for retesting of not more than 50 lots or production runs each calendar year. For any subsequent failure of a quality assurance test in a calendar year, the facility shall destroy the lot or the entire production run, as applicable. A lot which only fails a quality assurance test for moisture content must not be counted for the purpose of this subsection."*

I would propose that the "50 lot" limit set for submitting a request for retest should only apply to those samples which fail quality assurance tests from both testing labs. Retest samples which are deemed "safe for sale" by the lab performing the requested retest should not count towards this limit. Cultivation facilities should not be penalized based on discrepancies between labs and potentially lose or lessen the value of revenue generating products that would otherwise be deemed "safe for sale" based on a submitted retest.

If both labs come to a consensus on a "failed" test for whatever quality assurance factor originally triggered the request for retest, this in my opinion would be a more appropriate indication of issues at the cultivation level and not discrepancies between labs. Otherwise, raising the "50 lot" limit to something closer to 100 may also help reduce any possible negative impact to the cultivator.

Thank you for considering this request for the proposed regulations.

Sincerely,

Daniel Hopper, PhD.

## Amber Virkler

**From:** Daesia Angstadt <Daesia.Angstadt@medmen.com>
**Sent:** Monday, June 8, 2020 2:55 PM
**To:** CCB Regulations
**Subject:** Regulation Comments

Good Afternoon,

Thank you for the opportunity to provide commentary on the proposed regulations. Please see commentary below.

Starting in section 12.0230 to 12.045
The regulations currently state that the number of the medical cannabis establishment registration certificate (medical license number) for the cultivation and/or production facilities operating under a dual license is required on the product label (if applicable). Would it be possible to remove that information from the labels, in the interest of saving space on product labels for important warnings and information?

Thank you for your time and consideration.
Have a great afternoon.

**Daesia Angstadt**
*Inventory Control Technician III*
*P: 775-830-8072*

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MedMen.com

## Amber Virkler

**From:** Steve Pacitti <SPacitti@Gdallashorton.com>
**Sent:** Monday, June 8, 2020 3:51 PM
**To:** CCB Regulations
**Subject:** Comments to Proposed Regulations of the Cannabis Compliance Board

Section 5.110(5) is substantially overbroad and unnecessarily burdensome. Section 5.110(5) requires certain forms to be signed by "[t]he owners, officers or board members" of a cannabis establishment….

This regulation implies that ALL owners, officers or board members must sign any transfer application. This requirement exceeds and ignores governance statutes, law and common sense.

This requirement is inherently overbroad and unduly burdensome.

There is substantial administrative difficulty in requiring ALL members of a manager-managed LLC to sign any ownership transfer application. Managers of a manager-managed LLC generally have fiduciary or other obligations to the members in carrying out their duties as managers. Members have delegated managerial responsibility to the managers. Because of the legal duties and obligations of a manager to its constituent members, it should not be necessary for the Department to satisfy itself that all members have approved a transfer of ownership interest. This is particularly burdensome when there are several members or members are out-of-state, hospitalized, deceased or otherwise unavailable. Therefore, this requirement ignores NRS 86, the contractual delegations of the operating agreement and common sense.

Likewise, the requirement that both "officers" and "board members" sign is inherently superfluous, illegal and overbroad. "[B]oard members" may only act as members of a board. They have no individual authority. For example, any director who disagrees with the action, although it may have been agreed upon by the requisite vote of the board, may refuse to sign the form, even though their dissention is irrelevant. This dissident director may be able to usurp the powers of the president by refusing to sign, when the signature of the president should be all that is necessary. This requirement allows any director to exercise powers over the corporation individually, which corporate governance laws simply do not permit.

Moreover, the resolutions of the board of directors are carried out by the officers. Therefore, requiring each individual board member sign the form is anomalous, because they only act as a board and requiring officers AND board members to sign is redundant. The only required signatures should be an authorized officer, not all officers.

Therefore, I believe that Section 5.110(5) should be amended to read that:

5. The *authorized* owners, *managers* or officers of a cannabis establishment shall notify the Board on a form prescribed by the Board each time an ownership interest in any amount in the cannabis establishment is transferred. (emphasis added)

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Martindale-Hubbell "AV" Rated Preeminent 5.0 out of 5.0
Mountain States Super Lawyer 2017, 2018, 2019
Avvo Rating 9.1 Superb
VegasLegal Magazine Legal Excellence Award 2018
Desert Companion 2014 Top Lawyer
Vegas, Inc. 2012 Top Business Lawyer
Who's Who 2015 Top Attorneys of North America

NV CANNLABS
FROM ART TO SCIENCE

June 8, 2020

**Re:** Public comment for proposed regulations released by The Cannabis Compliance Board May 29, 2020

1. Regulation 6
    a. 6.020.6: *A cannabis establishment shall not commence the operation of any material change to the facilities or operations of the cannabis establishment until the Board Agents complete an inspection or audit of the change or notifies the cannabis establishment… (a) The infrastructure of the facilities of the cannabis establishment, including, without limitation, modification requiring demolition or new construction of wall, plumbing, electrical infrastructure…*
    **COMMENT: Please clarify if this includes laboratories installing new instrumentation which could lead to electrical upgrades like installing transformers or upgrading electrical panel.**
    b. 6.075.1.d: *Consumer education and support, including, without limitation…*
    **COMMENT: Please clarify if laboratories need to comply to this section as laboratories do not market or have regular contact with consumers.**
    c. Section 6.080.2: *Except as otherwise provided in subsection 3, a cannabis establishment shall only acquire cannabis or cannabis products from another Nevada licensed cannabis establishment, including, without limitation, a cannabis cultivation facility, a cannabis product manufacturing facility or a cannabis sales facility.*
    **COMMENT: Please clarify if this statement will prevent laboratories from accepting samples from consumers or hemp manufacturers who do not hold a license.**
    d. 6.080.5.a: *Each day's beginning inventory, acquisitions, harvests, sales, disbursements, disposal of unusable cannabis and ending inventory…*
    **COMMENT: Laboratories have previously been exempted from documenting inventory, outside of Metrc. Do laboratories need to start saving beginning and ending inventory reports on a daily basis from Metrc or are laboratories still exempt?**

e. 6.080.5.h.1: *A description of the concentrated cannabis or products containing concentrated cannabis received from the cannabis product manufacturing facility, including the total weight of each product, the amount of THC, measured in milligrams, and the production run number for each product;*
**COMMENT: When laboratories receive concentrated cannabis, we do not know the amount of THC the product contains. Can you please clarify if and how labs would obtain this information during the receiving process?**

f. 6.080.6.c: *Provide for quarterly physical inventory counts to be performed by persons independent of the manufacturing process which are reconciled to the perpetual inventory records.*
**COMMENT: Laboratories have previously been exempted from documenting inventory, outside of Metrc. Do laboratories need to start submitting quarterly reports or are laboratories still exempt?**

g. 6.085.1.a.3.II: *A video printer capable of immediately producing a clear still photo from any video camera image…*
**COMMENT: Please clarify if this must be a *video printer* or if a color printer will be acceptable.**

h. 6.087.2: *Not allow a person who does not possess a cannabis establishment agent registration card which is valid at the cannabis establishment to: (b) Be employed by or have a contract to provide services for the cannabis establishment.*
**COMMENT: Can you please further define a contract employee? Cannabis establishments have many contracts with persons who provide services. For example, a company may contract lawyers or accountants who may only be on premises 2-3 times a year, cleaning crews who are only on premises once per week, exterminators who are only on premises once per month, etc. Do all these contractors need agent cards?**

i. 6.087.4: *Provide written notice to the Board…*
**COMMENT: Please provide appropriate emails when notifications are required.**

j. *6.090.1.a: Cleans his or her hands and exposed portions of his or her arms in a hand-washing sink pursuant to NCCR 6.090: (10) Before donning gloves for working with cannabis products.*
**COMMENT: Laboratory employees often switch gloves between samples and immediately put on new gloves. Please clarify if the gloves are being switched to prevent cross contamination and the employee is not engaging in any other activities that contaminate hands, they do NOT need to re-wash hands before putting on new gloves.**

*k.* 6.090.1.b: *If working directly in the preparation of concentrated cannabis or cannabis products: (3) Wears a hairnet.*
**COMMENT: Please clarify if laboratory employees are required to wear hairnets when preparing concentrated cannabis for analysis.**

*2.* Regulation 11

a. 11.015.1: *…A cannabis testing facility may retrieve samples from the premises of another cannabis establishment and transport the samples directly to the cannabis testing facility.*
**COMMENT: Please clarify testing facilities do NOT have carry limitations when utilizing appropriate metrc manifest(s).**

*b.* 11.055.1.a: *Cannabinoids: (1) THC*
**COMMENT: "Potential total THC" was defined in section 1.150 as *the sum of the percentage by weight of tetrahydrocannabinolic acid multiplied by 0.877 plus the percentage by weight of Delta-9 tetrahydrocannabinol and Delta-8 tetrahydrocannabinol*. Can you clarify if THC is in this section included both D-8, D-9 Or a combination thereof?**

Sincerely,

Brenda Shalloo, COO
NV Cann Labs

June 9, 2020

STATE OF NEVADA
CANNABIS COMPLIANCE BOARD
*Via Email:* regulations@ccb.nv.gov

RE: Proposed State Of Nevada Regulations of the Cannabis Compliance Board (CCB)

Dear CCB Members,

Thank you for the opportunity to review and provide comment on the proposed State of Nevada Regulations for cannabis. Crooked Wine (DBA Blackbird Logistics) holds two distribution licenses in Nevada, in the cities of Reno and Las Vegas.

We believe we are one of many operators in the state that can assist the CCB in an advisory capacity, and ensure that the regulations implemented this year are reflective of the operational workflows in the cannabis industry. In other states, we are working equally as hard to establish state-industry working groups, as we have witnessed premature roll-out, and then redaction, of state administrative cannabis procedures/bulletins that were not compatible with the current operational landscape. We welcome the opportunity to work with the CCB on a continuing basis to provide input on regulations from an operational perspective, and how proposed regulations and procedures may cause secondary impacts to efficient workflows.

Although not required, we recommend that the CCB implement public review procedures under Chapter 233B, Nevada Administrative Procedure Act. To date, we have not been able to easily find posting of the final CCB Members or these proposed regulations. Following the state's public review procedures under Chapter 233B will ensure that operators have a chance to raise and convey to the CCB any regulations that conflict with the state's now-established cannabis industry operational workflows.

The following summary identifies the sections of the proposed regulations that we feel garner the need for more discussion and revision.

Sincerely,

**Crooked Wine (DBA Blackbird Logistics)**
Tim Conder, CEO
tim@myblackbird.com
316 California #30, Reno, NV 89509

**2.050 Service of notices in general**
Identifying the single primary contact as the owner/managing officer of the company does not represent the operational/compliance manager of a licensed facility that would be responding to citations and urgent matters. In other states, we have had electronic notices go to owners that were unavailable for several days. We recommend that the BCC include a provision for the identification of a secondary contact that represents a managing member of the business operations on the ground. This would ensure that more than one individual can receive, and respond to, the electronic notifications.

**5.015 Qualifications for licensure**
This section provides several provisions for the denial of licensure based on perceived character. We recommend that the qualifications for licensure remain solely based on scorable criteria. This will remove potential causes for litigation if a license is denied based on perceived, subjective personal characteristics.

**5.025 Submission of application by person who holds medical cannabis establishment registration certificate for cannabis establishment of same type; issuance of license; refund of fee if application not approved.**
Blackbird supports provisions that limit the potential for monopolies and large conglomerates; however, limiting a person's ability to hold no more than two medical cannabis establishments of the same type, throughout the entire state, may result in forcing the issuance of licenses to individuals who lack business competence and experience. We request that the CCB review this provision in light of the state's intent to increase access to medical cannabis, and the estimated total licenses available in the state over the next five years. Perhaps varied limits based on license types are warranted. For example, a distributor may only need three locations to efficiently cover transport for the state, but a dispensary should have the ability to open one store per region/county. Section 5.110 (c) is an adequate provision for preventing monopolies.

**5.085 Surrender of license if cannabis establishment has not received final inspection; extension of time for final inspection; fee not refundable.**
If an applicant is establishing a facility from the ground up, the time it takes to get final planning approval, construction, and final inspection will likely be longer than the 12 months prescribed in this section. We appreciate the inclusion of the extension clause on a case-by-case basis, and want to highlight the likelihood of this extension being requested in this industry is somewhat frequent, depending on the order and timeframes in which the state and local approvals are granted.

**5.095 Renewal of license**
Please include a table that establishes the annual license renewal fees. We recommend that any sections referencing application fees list those fees in text, or reference an appended table of fees.

**5.100 Grounds for denial of issuance or renewal of license; grounds for revocation of license; notice; opportunity to correct situation.**
Please explain the intent behind denying licensure to an owner of a cannabis testing facility if he/she is also an owner, or holds financial interest, in any other cannabis establishment. This provision seems overreaching if the intent is to prevent conflict of interest and self-testing. We recommend the CCB replace this provision with one that explicitly prohibits the cannabis testing between entities owned by the same individuals (or having the same ownership interest).

**5.110 Requirements for transfer of all or a portion of ownership interest; reimbursement of costs to Board; notice to Board; disclosure of facts pertaining to representative capacity of certain persons to Board; permission of Board required for registering certain information in the books and records of the cannabis establishment; investigation.**
Please clarify Section 5.110 (3). Does CCB intend to establish a fee schedule for processing administrative changes in an organization, or is this provision included to capture unusual circumstances when a change of ownership requires investigation beyond the standard administrative review process?

**5.150 Categories of registration cards**
Does an independent contractor providing consultation services (i.e., a third-party compliance review) for a cannabis establishment require a registration card? Clarification on the term contracted “labor” may be needed.

**6.035 Confidentiality of name and any other identifying information of persons who facilitate or deliver services pursuant to Title 56 of NRS to persons who apply for or are issued registry identification card or letter of approval; exceptions.**
The state’s seed-to-sale tracking system inputs and the requirement to list and print copies of personal driver and vehicle information on every transfer/sale significantly raises risks associated with targeted robberies and identity theft. We request that the CCB work with operators to understand how the current print-receipt requirements fulfill this Section’s intent to protect personal information. We have several solutions we would be happy to share and discuss further that would ensure that the state has a record of delivery driver information, in perpetuity, without having that information printed on a piece of paper that could easily get lost.

The fastest solution to reducing targeted robberies and identity theft is to apply GPS vehicle delivery requirements to dispensary deliveries and distributors, and remove the detailed

transport personnel information from the printed manifests. California implements the following provision of what we consider a good alternative to printed information:

*A vehicle used for the delivery of cannabis goods shall be outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of the delivery vehicle and recording a history of all locations traveled to by the delivery employee while engaged in delivery. A dedicated GPS device must be owned by the licensee and used for delivery only. The device shall be either permanently or temporarily affixed to the delivery vehicle and shall remain active and inside of the delivery vehicle at all times during delivery. At all times, the licensed retailer shall be able to identify the geographic location of all delivery vehicles that are making deliveries for the licensed retailer and document the history of all locations traveled to by a delivery employee while engaged in delivery. A licensed retailer shall provide this information to the Bureau upon request. The history of all locations traveled to by a delivery employee while engaging in delivery shall be maintained by the licensee for a minimum of 90 days.*

Many licensed distributors already implement detailed, secure, GPS fleet management systems to manage their operations. These systems track all transport vehicles completing transfers, including all the detailed driver and vehicle information required on BCC manifests. Instead of filling in the driver and vehicle fields in the seed-to-sale tracking system, a distributor would simply enter a shorthand notation to the order tracking number or other delivery reference point associated with the company's chosen computerized fleet management software. All pertinent information on the transfer driver and vehicle is secure, within the fleet management software, and can be provided to regulatory agencies and other authorities, upon request.

Distributor's would need to ensure that the personal information normally inputted in these fields is readily accessible, upon request, and maintained by the licensee for a period of time mandated by CCB. This approach would effectively protect driver's personal information, reduce the potential for vehicle tracking for targeted robberies, and would still fulfill the intent of the regulation to maintain detailed information on the movement of cannabis goods within the state. This GPS provision could be added to Section 7.055.

**6.120 Restrictions on advertising; required posting of signs in cannabis sales facility.**
The CCB may want to consider modification and/or addition of additional signage related to consumption lounges.

**6.123 Use of packaging: Required approval by Board.**
Since the CCB is not individually responsible for approving packaging and logos, should this section be revised to reflect compliance with applicable sections related to packages and labels?

**7.025 Prohibition on sale that exceeds maximum usable quantity of cannabis**
This section should be updated to reflect new limits established for medical cannabis.

**7.040 Delivery to consumer: General requirements.**
Subsection 3 needs to specify website address or actual name of web page; not easily found.

Subsection 10 reflects a delivery model in which a driver performs a single order fulfillment before returning to the dispensary for the next order. This single-order delivery workflow is not a sustainable model, and further discussion is needed to understand the CCB intent around encouraging a typical delivery model in which a driver would have several orders to deliver in one route. Provisions in these proposed regulations favor a single-order delivery model that contradict the state's intent to reduce vehicle miles traveled and greenhouse gas emissions. There are solutions and regulations implemented in other states that may be a good test case to model after and improve delivery efficiencies.

**7.045 Delivery to consumer: Duties of cannabis sales facility.**
Additional discussion around Subsection 2 is needed to ensure that the CCB understands the challenges in reflecting more than one delivery in a single trip using the current seed-to-sale tracking system.

A cannabis sales facility that is using a third party delivery service currently has to share access to their seed-to-sale tracking system account in order for the distributor to update the driver information. Additional discussion is needed to ensure that CCB understands the limited options a third party delivery service has when it comes to accurately updating the tracking information. A new access model is recommended for cannabis sales deliveries that allows the third party delivery service to update driver information, similar to how wholesale distribution currently operates.

Should Subsection 4 be updated to reflect a timeframe in which information can be altered? For example: can be altered up until the order leaves the cannabis facility. Subsection 10 directly contradicts Subsection 4 (real-world traffic conditions will generate changes in planned routes). Additional discussion is needed to ensure that CCB understands the complexities of route planning and real-time variabilities that cannot be captured in written form in advance of a delivery. Other solutions include mandates on providing CCB GPS tracking logs with actual turn-by-turn records, instead of trying to populate the route information in advance.

Subsections 6 and 7 directly contradict the state's intent to protect personal information (see comment under Section 6.035). A truncated version of the shipping manifest should be produced that redacts the personal driver information and detailed vehicle information. Other states allow for electronic receipts.

We hope CCB also considers these issues raised in light of an industry that is new and should reflect “green” environmental practices (i.e., reduced vehicle miles traveled and printed receipts/paper transactions).

**7.050 Delivery to consumer: Restrictions; duties of cannabis establishment agent making delivery.**
As previously highlighted under Section 7.040, we believe Subsections 1 and 2 of this provision favor a single-trip distribution model that should be reviewed by CCB and discussed further. We encourage CCB to develop regulations that favor a typical distribution model, with larger limits on the total customers serviced in one route.

**13.015 Duties of distributor delivering cannabis or cannabis products; transportation manifest; duties of originating cannabis establishment and receiving cannabis establishment; maintenance of records.**
As previously highlighted under Section 7.045, the logistics of writing out predicted routes for multiple deliveries within the seed-to-sale tracking system is near impossible and very cumbersome (see Subsection 2). Additional discussion with CCB is requested to ensure all parties understand the intent, current limitations, and other options available to fulfill the state’s request.

Subsection 4 directly conflicts with the state’s requirement for distributors to update driver information per transfer.

As previously highlighted under Section 6.035, additional discussion with CCB is requested to ensure that driver and vehicle information is secure. A truncated version of a printed wholesale transfer manifest would achieve the desired confidentiality. We believe the requirements under Subsection 7 conflict with the state’s intent to protect personal information.

**13.020 Storage area for cannabis and cannabis products; verification of inventory; inspection by Board.**
Additional discussion with CCB is requested around the ability for a distribution hub to store product for a short period of time that would allow for efficient delivery routing and less vehicle miles traveled. As with any other industry, the distributor typically utilizes a transfer hub to ensure maximum efficiency in the delivery route. Without the ability to utilize a distribution hub, we are constantly sending multiple drivers along the same route for deliveries. Utilizing a distribution hub, would also greatly improve estimated delivery windows. This distribution model works well in California. We do not agree that the storage of cannabis products should only be permitted under extraordinary circumstances, as prescribed in Subsection 3.

**13.025 Amount that may be transported by distributor; transportation by cannabis establishment agent; restrictions on transportation by vehicle.**
In light of the social distance protocols implemented by the State, in response to the COVID-19 pandemic, we request that CCB temporarily allow distributors to waive the second driver requirement.  Having two drivers in close quarters promotes the spread of this contagious virus.

High Compliance

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Nevada Dispensary Association's Comments

I. Introduction

The Nevada Dispensary Association ("NDA") appreciates this opportunity to assist the Board as it develops a new regulatory paradigm for the cannabis industry. The development of a comprehensive regulatory scheme, aided by industry leaders like the NDA, is integral to the continued success of this relatively nascent industry. Moreover, as the Board develops rules to address the issues in the cannabis industry that were identified by the Legislature in the hearings for and prior to the passage of Assembly Bill 533 (2019), the NDA hopes to be a source of both information and pragmatic and comprehensive solutions. It is within this context and with these intentions that the NDA respectfully submits the following comments.

II. Comments: Proposed Rule Changes and Additions

a. Add rules that outline the requirements for a petition for rehearing.

Proper enforcement is essential to the effectiveness of any regulatory scheme. Successful regulators establish relationships with the industries they regulate through an open, transparent, and fair enforcement process. To that end, NDA proposes that the Cannabis Compliance Board ("Board") adopt regulations outlining the process for rehearing of disciplinary matters before the Board, pursuant to Nevada Revised Statues ("NRS") 678A.590, to ensure those who may be disciplined under the Board's rules have an opportunity to exhaust their administrative remedies to the extent that there is an identifiable and material problem in the Board's findings and decisions. The NDA believes that an appeals process would not only provide greater equity under the Board's rules, but it would also provide a procedural step that the Board could reference in any potential litigation against the Board that may be founded in a claim regarding a violation of due process. Notably, a rehearing could cure procedural defects that may derail an otherwise lawful disciplinary action.

Regulations surrounding rehearing should focus on the statutory requirements outlined in NRS 678A.590, as well as provide the movant with some certainty as to when their motion will be decided. The NDA recommends that the Board act on a motion for rehearing within 60 days of filing. In addition, the Board should prescribe a process that allows parties of record to oppose a motion for rehearing. These goals can be accomplished by adding the language below, or language that is substantially similar, to the end of Rule 4:

*Rule 4.1XXX Motion for rehearing.*

*1. A motion for rehearing must:*

*(a) Specifically set forth the nature and purpose of any additional evidence to be introduced.*

*(b) Show that such evidence is material and necessary and reasonably calculated to change the decision of the Board.*

*(c) Set forth a sufficient reason that existed for failure to present the evidence at the hearing of the Board.*

*2. A motion for rehearing of an order must be supported by an affidavit of the moving party or his or her counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not introduced at the hearing.*

*3. A motion for rehearing of an order must be filed with the Board and served upon all parties of record within 10 business days after service of a decision and order.*

*4. An opposition to a motion for rehearing may be filed with the Board by any party of record in the proceeding within 10 business days after the filing of the motion. The opposition must be confined to the issues contained in the motion. The opposition must be served upon all parties of record. Proof of service must be attached to the opposition.*

*5. The Board will grant or deny a motion for rehearing within 60 days after the date of its filing. If no action is taken by the Board within this time, the motion shall be deemed denied.*

*6. Unless otherwise ordered by the Board, a motion for rehearing or the granting of such a motion does not excuse compliance with, or suspend the effectiveness of, the challenged decision and order.*

*7. If the Board grants a motion for rehearing, it will, within 30 days thereafter, conduct a hearing to allow the parties to present additional evidence and will issue a modified final decision and order or reaffirm its original decision and order.*

*8. A modified final decision and order of the Board issued upon rehearing will incorporate those portions of the original decision and order which are not changed or modified by the modified final decision and order. A modified final decision and order is the final decision of the Board.*

b. Default to the Nevada Rules of Civil Procedure

While the Board has proposed several procedural regulations designed to provide due process to licensees, inevitably, especially in the Board's early years, there will be procedural issues that the Nevada Cannabis Compliance Regulations ("NCCR") does not cover (for example, the proposed regulations are silent as to how and when a party can move to strike evidence in a hearing). Rather than attempt to promulgate rules for every scenario, the Board should defer to the Nevada Rules of Civil Procedure where its regulations are silent. Therefore, the NDA recommends the following addition to Rule 1:

*Rule 1.025 Scope; applicability of Nevada Rules of Civil Procedure.*

*1. The provisions of this chapter govern practice before the Board.*

*2. To the extent that any action before the Board is not covered by these provisions, the Board may follow the applicable rule in the Nevada Rules of Civil Procedure.*

c. The Board should define diversity.

Consistent with the legislative intent memorialized in several provisions in Chapter 678B of the NRS that the Board prioritize diversity, the NDA recommends that the Board define diversity to establish certain policy goals and objective metrics to help ensure that all of the participants in the industry are similarly committed to diversity.[1] Importantly, the Board should define diversity before it promulgates regulations establishing the relative weight of the criteria of merit used to rank applications prior to requesting applications pursuant to proposed NCCR 5.020. Accordingly, the NDA requests that the Board invite comments from stakeholders regarding the best way to define diversity and measure progress.

d. Evidence improperly handled pursuant to proposed NCCR 2.065 should not be admissible.

The Board correctly requires any article of property seized by a Board Agent to be treated with sufficient care and safety to establish a chain of custody. Chain of custody is established to ensure that hearings are conducted fairly by requiring documentation related to the evidence seized, including the following: the location of evidence; time and date of evidence recovery; description of item; condition of item; and unique markings on the evidence.

While the rule as proposed is identical to Nevada Gaming Commission ("NGC") Regulation 2.120(1), chain of custody is particularly important when dealing with fungible goods, like cannabis and cash (two goods heavily used in the cannabis industry). Therefore, while NDA agrees that the regulations which govern gaming should be emulated by the Board, it is important that material differences between the gaming and cannabis industry be reflected in these promulgated rules. Accordingly, the NDA proposes that the Board amend the proposed regulation to state that a failure to comply with the subsection ***may*** render that evidence inadmissible in a proceeding before the Board.

Specifically, the regulation could be amended as follows:

[1] *See* NRS 678B.280(1)(f) (requiring the Board to consider diversity as one criteria of merit when determining whether to issue an adult-use cannabis establishment license pursuant to NRS 678B.250); *See also* NRS 678B.240(1)(i) (requiring the Board to consider diversity as one criteria of merit when whether to issue a medical cannabis establishment license pursuant to NRS 678B.210). The Board must also adopt regulations providing for the gathering and maintenance of comprehensive demographic information, including, without limitation, information regarding race, ethnicity, age and gender for each owner and manager of a cannabis establishment and holder of a cannabis establishment agent registration card, which must then be transmitted to the Legislature on January 1 of each odd numbered year. NRS 678A.450(2)

**2.065 Procedure for control of evidence.**

1. When a Board Agent seizes any article of property, the custodian of evidence for the Board shall place the evidence in a secure facility and enter in a suitable system sufficient information to establish a chain of custody. A failure to comply with this subsection ~~shall not~~ *may* render evidence inadmissible in any proceeding before the Board.

*2. If the Board or hearing officer admits evidence in a proceeding that was not handled in compliance with subsection 1, the findings of fact and conclusions of law submitted to the Board must demonstrate that the seized evidence is sufficiently reliable and probative to be admissible*

This simple amendment retains the Board's ability to admit evidence that does not comply with proposed NCCR 2.065 when appropriate, while also acknowledging that the lack of a sufficient chain of custody is problematic. This amendment ensures licensees are afforded the opportunity to assert that a material and deleterious deviation in the chain of custody is so problematic that the evidence cannot be relied on in a proceeding before the Board.

III. Proposed NCCR 4.020 Grounds for disciplinary action should be clarified.

NCCR 4.020, as proposed, states that any violation of Chapter 56 of the NRS or NCCR is grounds for disciplinary action by the Board, including the immediate revocation of a license. Paragraph 2 of proposed NCCR 4.020, refers to violations of "this chapter," as distinct from Chapter 56 of the NRS and the NCCR. The violations referenced in paragraph 2 are grounds for disciplinary action "including, without limitation immediate revocation of a cannabis establishment agent registration card." As worded, it appears that it is the Board's intention for paragraph 1 of the proposed rule to define the scope of disciplinary actions available to the Board when a cannabis establishment violates Chapter 56 of the NRS or NCCR, and for paragraph 2 of the rule to define the scope of disciplinary actions available to the Board when a registered agent violates proposed NCCR 4.

NDA respectfully requests the Board clarify whether "this chapter" in proposed NCCR 4.020(2) refers to proposed NCCR 4, Chapter 56 of the NRS, or NCCR in its entirety.

IV. Suggestions on moving forward

Establishing a new regulatory paradigm, while simultaneously building a regulatory agency from scratch is akin to building an airplane as you're flying it. Knowing that more regulations will need to be promulgated in the near future, the NDA respectfully proposes that the Board consider addressing several additional issues in upcoming rulemaking proceedings, specifically rules that provide for:

1. Request for deviation from NCCR – A lasting regulatory framework must be flexible in its implementation. This is especially true as the Board begins to put the rules into practice. Providing a mechanism that allows an applicant, licensee, or agent card holder the ability to explain why a particular provision should be waived would benefit not only the petitioner, but also the Board. These requests will be instructive to the Board as to how well the rules fit the industry and what requirements may need to be amended or removed. [2]

2. Request for declaratory order – NDA would appreciate the opportunity to request a declaration from the Board when it is unclear how a rule should be interpreted. Our members are committed to complying with all rules and regulations. To do so in an industry and marketplace that is so rapidly developing, NDA members need to be able to act on new and innovative ideas with confidence that Board will not later find they violated any rules. In addition, providing for declaratory orders will also reduce the Boards cost spent on enforcement as it will reduce the number of enforcement actions that result from accidental non-compliance. [3]

3. Standards for settlement of a civil penalty sought under proposed NCCR 4.030 – Administrative efficiency is served by allowing parties to stipulate to fines prior to conducting a full hearing. The Board should consider allowing stipulations for both civil penalties as well as application determinations and promulgate rules that outline when stipulations may be appropriate for the Board to consider.

4. Guidelines on how adversarial proceedings are conducted with respect to the Board staff's contact with the Board prior to approval of any decision and order – The Board will consider applications and disciplinary actions. Presumably, there will be staff from the Board that will present evidence to the Board or hearing officer in an adversarial proceeding. It is imperative that the Board establish procedures that will prevent ex parte communications with the Board when Board staff effectively participates as a party to a proceeding.

## V. Conclusion

The NDA appreciates this opportunity to submit these opening comments to the Board. Given that the NDA's mission is to dedicate its resources to developing and promoting best practices among Nevada cannabis dispensaries as well as supporting the efforts of cannabis establishments to provide high quality, safe cannabis to Nevada's consumers, the NDA will continue to support the Board as it promulgates the rules that will be necessary to ensure that the best practices of the cannabis industry are properly codified.

[2] Nevada Administrative Code 703.115 is a simple model for requests for deviation that can be adopted from the Public Utilities Commission.

[3] NGC Regulation 2A provides a useful model for declaratory rulings.

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Director Tyler Klimas
Executive Director
Cannabis Compliance Board
555 E. Washington Avenue, Suite 5100
Las Vegas, NV 89101
Submitted via email: regulations@ccb.nv.gov

June 9, 2020

Dear Director Klimas,

On behalf of members of the Nevada Dispensary Association ("NDA"), thank you for considering the comments below in response to the proposed Nevada Cannabis Compliance Regulations ("NCCR") published on May 29, 2020. The requests and comments below may not be exhaustive as the comment period is relatively brief and some matters are subject to clarification.

Please feel free to request further information or clarification relating to any of the requests and comments below. In addition, please also consider the comments attached that Dallas Harris, Esq., founding partner of High Compliance, prepared on behalf of the NDA.

## COMMENTS

### Definitions

Please modify the proposed definition of private residence under NCCR 1.163 to prohibit deliveries to establishments that are required to pay transient occupancy tax rather than prohibiting certain locations, such as weekly and monthly hotels, where people often do maintain a residence similar to an apartment.

### Agent Cards

Please modify NCCR 5.120(3), which requires owners with less than five (5) percent interest to obtain an agent card, provide a background check, and provide other financial information. Please consider replacing that with language authorizing the Board to request that a specific establishment provide a background check on certain, or all, owners with less than five (5) percent ownership interest if the Board has a reasonable suspicion or reason for doing so. Please also require that each establishment provide an annual disclosure of all owners (it is not feasible to provide these disclosures in real time as ownership is fluid for publicly traded and some privately held companies).

Requiring agent cards for owners with less than five (5) percent interest in a cannabis establishment would be nearly impossible, if not actually impossible for many currently operating cannabis establishments.

One of the reasons it is not feasible to comply with this proposed regulation is that ownership of small amounts changes in real time in a publicly traded company and some privately held companies. A shareholder could own 4.9% one day, 5.1% the next day, and then go back down to less than 5%. The owners with less than five (5) percent interest do not have control or influence in the company, unless they are an officer or board member in which case they are required to obtain an Executive Agent Card and undergo more scrutiny.

As the Board is aware, gaming regulation is an aspirational model for the CCB and gaming does not require the proposed level of compliance and scrutiny for owners with less than five (5) percent interest.

Please maintain current requirements for employee agent cards (applicants must be 21 years of age or older and cannot be convicted of excluded felonies). Please do not require additional information about civil penalties and judgments against the applicant as proposed under NCCR 5.120. When AB533 was drafted and passed, there was a clear intent to increase the level of scrutiny on "executive" level agent cards, but not on cards below that threshold.

**Licensing**

Please reference the numerical limits on licenses set forth in NRS 678B.260 and 678B.220.

Please clarify whether owners less than five (5) percent interest must be included in a license application and license renewal application and what those owners will be required to submit. If applicants must include background checks and extensive financial records for owners with less than five (5) percent, smaller investors who do not control the business may be precluded from investing and potentially only persons with larger amounts of liquid capital will be able to meet this burden.

Please consider outlining a process for implementing the statutory requirement to convene a subcommittee and conduct a study on the illegal market and provide recommendations to the legislature pursuant to NRS 678A.310.

Please consider outlining a process for imposing sanctions on unlicensed and illegal market activity.

**Transfers of Interest, Investment, Profit-Sharing, etc.**

Please provide a procedure and more clarity as to the process relating to reviewing and approving or denying investments, transfers of interest, profit-sharing, license transfers, etc. As the Cannabis Compliance Board ("CCB") is aware, there has been a moratorium on transfers of licenses imposed since October 2019. This moratorium has been problematic for many establishments and there is a lack of understanding as to the purpose of the moratorium and how issues relating to transfers can and should be remediated.

The NDA respectfully requests that revised proposed regulations shed more light on how the transfer process has changed since the moratorium was imposed and how the process will change once the current moratorium has been lifted. In addition, the NDA respectfully requests the revised proposed regulations include timelines for when and how transfers, investments, and profit-sharing will be reviewed and approved or denied.

**Due Process**

Please consider allowing written discovery under NCCR 4.110.

Please remove the provision under NCCR 2.065 that allows evidence for which the chain of custody has not been maintained to be admitted in a disciplinary proceeding. Please instead allow the Board to deem the evidence admissible, but require a written finding as to why the Board finds the evidence reliable.

Please remove the provision under NCCR 4.120 that creates a rebuttable presumption that missing records, documents, and surveillance would be harmful to the licensee. The regulations already provide for sanctions for failures to maintain these items and the burden of proof in a disciplinary matter is relatively low (preponderance of the evidence) and thus procedural safeguards should be maintained.

Please clarify whether violations of chapters of 453A and D will be taken into account when considering civil penalties under NCCR 4.030.

Please outline a process for non-Board Members to petition for a regulation change pursuant to NRS 678A.460.

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**Operations**

Please afford a time period in which licensees may replace labels and packaging that reference "marijuana" rather than "cannabis." Please allow for up to two (2) years to be in full compliance with this provision.

Please define diversity or outline a process for stakeholders to provide input on the definition of diversity as a step toward accomplishing goals to promote diversity.

Please remove the proposed requirement NCCR 6.085 to require a training officer to sign confirmation of training completed by a security manager as this is extremely difficult to obtain and there is no evidence or data to indicate that this requirement will result in increased security. Alternatively, please include a requirement that the CCB maintain a published list of when and where the courses outlined in the regulations are available.

Please remove the requirement that a passport to verify a consumer's age be issued by the United States under 7.020 (this language was inadvertently included in Nevada Administrative Code).

Please change the amount of adult use cannabis that can be transported at one time under NCCR 7.050 to the same amount as medical cannabis (from 5 ounces to 10 ounces) as the 10 ounce amount allowed in medical has not been a public safety issue.

Please remove the requirement to provide each individual customer with a manifest generated by the seed to sale tracking system as required under NCCR 7.050 and allow establishments to provide receipts generated by their own point of sale system. This provision is not necessary to maintain accurate records or provide customers with accurate information.

Please remove the proposed additional restriction on delivery limiting orders to one (1) ounce per "calendar day" under NCCR 7.050(4). The current statutory requirement for cannabis purchases is one (1) ounce. There has not been a significant issue with purchase amounts so this would impose additional regulatory tracking and burdens unnecessarily.

Please include specific timeframes to adjudicate operational decisions (product approvals, administrative holds, packaging approvals, transfers of interest, etc.).

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Please consider incorporating the current provisions allowing curbside service to continue allowing retail stores to maximize social distancing.

**Patient Cards**

Please remove any additional proposed requirements to obtain a patient registry identification ("patient card") under NCCR 14 as medical patients are already required to obtain a card through the Division of Public and Behavioral Health, which imposes a process and fee that discourages many patients from obtaining a card. The NDA and its members have encouraged and supported measures that would promote the health of the medical marijuana program in Nevada and measures that render patient cards even more inaccessible would erode the success of the patient program and impose further barriers to medical marijuana patients.

**Miscellaneous**

Please provide a process in which the application for a license under Regulation 5 will be drafted and include a provision for gathering industry feedback in that process.

**CONCLUSION**

Thank you again for your time and consideration of the above comments and requests as well as the enclosed comments prepared by High Compliance on NDA's behalf. While all of the above comments and requests are noteworthy, some are more critical to the success of the regulatory framework. NDA respectfully requests the opportunity to further discuss those matters.

Respectfully Submitted,

Riana Durrett, Esq.

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Proposed Regulations of the Cannabis Compliance Board (May 29, 2020)
Inputs Submitted by G3 Labs, LLC (L007)

| Item | Page | Current Text | Comments |
|---|---|---|---|
| 1 | 15 | 1.155.3(b) "…74°F (24 °C);…" | *Please modify the text to: "…74°±4 °F (24 °±2.2 ° C);…"*<br><br>The designated temperature needs to have an allowed range. Otherwise it will cause a difficulty for production facilities to be in compliant. |
| 2 | 16 | 1.200 "sampling protocol" defined… | *Please modify the text to "Sample protocols" means the procedures specified by the Board…of cannabis for qualify assurance testing as outlined in section 11.050 "*<br><br>Regulation section 11.050 delineates the sample protocols. |
| 3 | 20 | 2.065.1 "When a Board Agent seizes any article of property, the custodian of evidence for the Board shall place to evidence…" | *Please add language to designate a custodian for such evidence.*<br><br>As written, there is no designation for a custodian. As observed, there is only the Agent's signature on the evidence seal. As such, the "chain-of-custody" could only go from the Agent to the receiving party. |
| 4 | 23 | 4.050.1(a)(1) "Transporting cannabis in an unauthorized vehicle;" | *Please clarify that this rule is not applicable to testing facilities.*<br><br>Samplers from testing facilities may use more than one vehicle. Apparently it is not feasible to "authorize" all the potential vehicles unless the authorization is granted by the responsible cannabis establishment. |
| 5 | 24 | 4.050.1(a)(18) "… storing cannabis from an unlicensed source…" | *Please exempt patient samples and/or public verification samples (purchased from cannabis sales facilities) from this requirement.* |
| 6 | 38 | 5.075.3 "Board Agents may enter…at any | *Please modify text to "Board Agents may enter…at any time* |

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| | | time…" | *during operation…"*<br><br>Cannabis facilities such as testing labs do not operate 24/7 (anytime). |
| 7 | 53 | 6.025.1 "The Board may charge and collect a fee from any cannabis establishment that is involved in a complaint…" | *Cannabis establishment shall not be charged fees when the complaint submitted is unsubstantiated.*<br><br>As written, "tort" complaints (even absent of malice) will cost an establishment the "fees" and potentially jeopardize the financial for the establishment, especially if deluged with frivolous claims. |
| 8 | 58 | 6.080.2 "Except as otherwise…" | *Please exempt patient samples.*<br><br>As written, patients cannot submit samples to cannabis testing facilities, a cannabis establishment, for testing. |
| 9 | 63~64 | 6.085.6 & 7 related to "security manager or director" | *Please provide clear guidance for when and where the required courses are available to satisfy such training to be qualified as security manager or director.*<br><br>As written, a cannabis establishment will have difficulty evaluating the qualifications and implementing any required trainings. |
| 10 | 64 | 6.087.2 "Not allow a person who does not possess a cannabis establishment agent registration card which is valid at the cannabis establishment to:…(b)…(d)…" | *Please clarify that these requirements are not applicable to service providers such as instrument/supplies vendors, electrician, plumber, construction labors, etc.* |
| 11 | 65 | 6.090.1(b) "If working directly …" | *Please clarify that this requirement is not applicable to a testing facility.* |
| 12 | 68 | 6.115 "Prohibition on treating or adulterating usable cannabis with chemical or other compound." | *Please specify that testing facilities are exempt from this section.*<br><br>Testing facilities conduct testing by treating or adulterating |

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| | | | usable cannabis with chemical or other compounds. |
| 13 | 76 | 8.010.1 "…(a) all soil amendments, fertilizer, …" | *The information should also be provided in writing to testing facilities too.* |
| 14 | 81 | 9.040.3 "…shall perform testing, as specified by the Board, to determine the shelf life of …." | *Please clarify that how does the "appropriate Board Agent" determine the applicable protocols for shelf life testing?* |
| 15 | 92 | 11.015.1(b)&(c)<br>Maintaining independence of testing facilities | **CCB regulations need to add language that will hold C/P accountable for their invoices to testing facilities conducted quality assurance tests within certain time period, such as 30 days.**<br><br>**Since the CCB regulations are mirroring the spirit of gaming regulations, it is important to prevent situations where testing facilities inadvertently lose the independence. As much as every effort is being made by the testing facilities to be compliant as "independent", the non-payment and aged account receivables from cultivations/productions (C/P) are *de facto* having testing facilities to "fund" the operation of those C/P.** |
| 16 | 93 | 11.025.3 "The Board may require an independent third party to inspect and/or…" | *Please note that the Board should be responsible for the cost for such inspection and/or monitoring.* |
| 17 | 93 | 11.025.5 "The Board Agents or an independent third party …" | *Please note that the Board should be responsible for the cost for such inspection.* |
| 18 | 95 | 11.040.4 "To maintain continued licensure…with continued satisfactory performance as determined by the appropriate Board Agent." | *Please modify the text to "To maintain continued licensure…with continued satisfactory results in participation of proficiency testing program."*<br><br>"Proficiency" and "performance" should not be used interchangeably. And 11.040 details the satisfactory of proficiency testing, therefore it is not necessary to burden |

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| | | | the "Board Agent" with the task to determine "continued satisfactory." |
| 19 | 95 | 11.040.8 "successful participation includes an acceptable score for 100% of the target analytes…" | *Please provide the technical basis for using 100% as the acceptable score.*<br><br>In the case of proficiency testing, 100% does not represent better operations. FDA requires 80% for clinical labs and EPA 75% for contract labs and laboratory accreditation as passing scores. |
| 20 | 95 | 11.040.9 (b) "…If the testing facility fails…that they will not recur." | *Please delete this paragraph.*<br><br>Over-reliance on proficiency test results to evaluate laboratory quality or individual proficiency is considered as unacceptable by the National Institute of Standards and Technology and should be avoided when administering proficiency tests. |
| 21 | 100 | 11.050.3 "…A sample of a production run must be the lesser of 1 percent of the total weight of the production run or 25 units of product." | *Please add text "… for concentrates, minimum of 5 grams of a production run is required."*<br><br>This requirement, as written, is not feasible to sample concentrates. |
| 22 | 100 | 11.050.5 "…weighed within 2 hours after harvest." | *Please clarify that what assurance could testing facilities obtain on the "2 hours" rule is followed?*<br><br>Without such assurance, testing facilities cannot be held responsible to be compliant on this requirement since it is included in Regulation 11. |
| 23 | 101 | 11.050.7 "…shall…within 2 business days after obtaining the results." | *Please modify the text to "…shall…within 2 business days after the final certificate of analysis become available…"*<br><br>Changing will allow time for data review/validation and actions required for seed-to-sale system (METRC.) |

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| 24 | 102 | 11.070.1(d) "…testing facility shall document…on the sample package…" | *Please modify the text to "…testing facilities shall ensure the correct METRC label is adhere to the sample package."*<br><br>To "document" such information on the sample package is not feasible due to the sampling location set up and the difficulty of doing so physically. |
| 25 | 104 | 11.075.1 "…aw…" | *Please modify the text and spell out "aw" as "water activity"* |
| 26 | 105 | 11.075.9 "If a sample passes the same quality assurance test upon retesting…need not destroy the lot or production run…" | *Please clarify that what if the retest samples failed on the different category of the quality assurance test.*<br><br>Should a further retest allowed or the associated lot/production run be destroyed? |
| 27 | 105 | 11.080 "Collection and testing of random samples from cannabis establishments for comparison with results reported by testing facilities…." | *Please clarify that in the case where no "retention samples" available, what type of assurance is there to prevent any contamination occur after the original sample was collected and analyzed?* |

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June 9, 2020

**Via Email**

Cannabis Compliance Board
State of Nevada
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Carson City, Nevada 89706
regulations@ccb.nv.gov

**Re: Comments on Proposed Regulations 1-15 of the Cannabis Compliance Board**

To Whom It May Concern:

On behalf of Deep Roots Medical LLC dba Deep Roots Harvest ("Deep Roots"), thank you for the opportunity to submit comments on the Cannabis Compliance Board's proposed regulations. We fully appreciate the need to amend the regulations and the rationale behind such amendments. Although it is our belief that a model closely resembling the Nevada gaming rules and regulations could eventually be appropriate, we understand that this is a complex area requiring a great deal of thought and effort to make it successful.

We hope our comments below are helpful and we look forward to assisting the Cannabis Compliance Board in further refining those details. Our comments are listed in bold italics.

A. To help facilitate the regulatory process, Deep Roots suggests the following regulation be given consideration.

***NCCR 2.XXX General Powers.***

1. ***The Board may, in writing, waive, restrict, or alter any requirement or procedure set forth in these regulations, if the Board determines that the requirement or procedure is impractical or burdensome, that the waiver, restriction, or alteration is in the best interest of the public and the cannabis industry, and that the waiver, restriction or alteration is not outside the technical requirements necessary to serve the purpose of the requirement or procedure.***

B. Deep Roots agrees with NCCR 5.095 which improves efficiency measures and reduces unnecessary licensee burdens in the renewal of a cannabis license.

C. Deep Roots understands the importance of having regulations in place to ensure integrity of a cannabis applicant or licensee. While it is believed that the intent of subparagraph 5 below was meant to meet this objective, greater clarity could be provided so that a cannabis applicant or licensee has an opportunity to remedy the Board's denial. Therefore, Deep Roots proposes striking out certain words.

**NCCR 5.100 Grounds for denial of issuance or renewal of license; grounds for revocation of license; notice; opportunity to correct situation.**

5. Before denying an application for issuance or renewal of a license for a cannabis establishment or revoking such a license as a result of the actions of an owner, officer or board member of the cannabis establishment pursuant to paragraph (b) of subsection 1 or paragraph (b) of subsection 2, ~~the Board may provide~~ the cannabis establishment ***will have*** ~~with~~ an opportunity to correct the situation.

D. The regulations could be further clarified to take into account the less than 5% investors of a publicly-traded corporation, and the institutional investors with more than a 5% interest in the cannabis licensee. Most publicly-traded corporations have numerous stockholders for whom it would be impracticable and infeasible to apply for waivers each time a transfer is made. In addition, some publicly-traded corporations are wholly owned subsidiaries of other publicly-traded corporations. With regard to institutional investors, waivers for certain investors who are passive and subject to regulation by other regulatory bodies would generate a positive financial impact on the cannabis industry. Therefore, Deep Roots suggests the following addition be given consideration.

**NCCR 5.120(3) Policies and procedures for waiving requirement to obtain a cannabis agent registration card for any owner, officer and board member who holds an ownership interest of less than 5 percent.**

***(k) A less than 5% investor of a publicly-traded corporation that applies for or holds a cannabis license or has control of a cannabis license applicant or licensee will be exempt from suitability requirements only as long as such investor's direct or indirect beneficial ownership interest in such publicly-traded corporation meets the less than 5% limit. The Board may, in its discretion and at any time, require any beneficial owner, regardless of the number of shares owned, to apply for a finding of suitability.***

***(1) A publicly-traded corporation that applies for or holds a cannabis license or has control of a cannabis license applicant or licensee shall notify the Board, as soon as practicable after it becomes aware that, with regard to any such publicly-traded corporation, any investor has beneficially acquired:***

- ***greater than 5% of any class of the publicly-traded corporation's equity securities;***
- ***the ability to control the publicly-traded cannabis applicant or licensee or the publicly-traded corporation that has control of a cannabis license applicant or licensee; or***
- ***the ability to elect 1 or more directors of the publicly-traded corporation that applies for or holds a cannabis license or has control of a cannabis license applicant or licensee.***

***(2) If a publicly-traded corporation that applies for or holds a cannabis license or has control of a cannabis license applicant or licensee either files or is served with any schedule 13D or 13G or form 13F under the Securities Exchange Act of 1934, as amended, it must submit a copy of the filing to the Board within 14 days after receipt or filing. A publicly-traded corporation that applies for or holds a cannabis license or has control of a cannabis license applicant or licensee must file a list of record holders of its voting securities with the Board annually, and must maintain a current stock ledger which may be examined by the Board at any time. If any securities are held in trust by an agent or by a nominee, the record holder may be required to disclose the identity of the beneficial owner to the Board. A failure to make such a disclosure may be grounds for finding the record holder unsuitable. A publicly-traded corporation that applies for or holds a cannabis license or has control of a cannabis license applicant or licensee must render maximum assistance in determining the identity of the beneficial owner.***

***(l) An institutional investor who acquires beneficial ownership of a cannabis applicant or licensee shall notify the Board within 14 days after the institutional investor acquires the interest or files form 13D or 13G with the Securities and Exchange commission, or both, and provide such additional information as may be required by the Board.***

***(1) An institutional investor who acquires and holds a less than 15% interest, for investment purposes only, in a cannabis applicant or licensee may apply to the Board for a waiver of suitability requirements under NCRR 5.125.***

***(2) An institutional investor granted a waiver under NCCR 5.125 that subsequently intends to influence or affect the affairs of the cannabis licensee must provide notice to the Board and file forms for determination of suitability before taking any action that may influence or affect the affairs of the cannabis licensee.***

Thank you again for the opportunity to share our thoughts with the Cannabis Compliance Board. We appreciate your time and consideration of our comments.

Naturally, should you have any questions or if we can provide any additional assistance, please do not hesitate to contact us.

Very truly yours,

Lori C. Rogich

cc: Keith Capurro, CEO

June 9, 2020

To: Cannabis Compliance Board

From: Jennifer DeLett-Snyder
Join Together Northern Nevada
505 S. Arlington, Suite 110
Reno, NV 89509
775-324-7557

Comments: Overall the regulations appear to be thoughtful and well-intentioned. I have two areas for which I'd like to address: 1) CBD sales, and 2) drive-through dispensaries.

Regarding CBD sales, I believe the state is losing much needed tax revenue by not enforcing CBD sales by non-dispensaries. In reviewing the proposed regulations, it appears CBD is to be sold at a cannabis dispensaries only. In Washoe County, CBD products are sold at myriad locations.

In regard to drive-through dispensaries, the regulations do not address this function, yet there are dispensaries in the state that are operating drive-through sales. A Sun Valley location in north Reno has had a fully operational drive-through window for close to a year. The current NRS does not allow for drive-through sales, so I encourage the compliance board to review and address as appropriate.

Sincerely,

*Jennifer DeLett-Snyder*

## Amber Virkler

**From:** Meep Teepo <whisper.n00f@gmail.com>
**Sent:** Tuesday, June 9, 2020 2:07 PM
**To:** CCB Regulations
**Subject:** Public commentary

Hello,

Overall the regulations look sound, if not a bit voluminous.

Was there a cost study done to determine the impact of these regulations on a typical grower, distributor, manufacturer, etc?

While the regulations appear to be a list of best practices,and that is great, smaller growers could be priced out of the market.

Signed,

A concerned citizen

June 9, 2020

Tyler Klimas
Executive Director
via email regulations@ccb.nv.gov
Cannabis Compliance Board
555 E. Washington Avenue, Suite 5100 | Las Vegas | Nevada | 89101

Thank you for sharing the regulations under consideration for adoption by the Cannabis Compliance Board (CCB). THRIVE appreciates this opportunity to provide feedback before the formal workshop. A considerable amount of time was spent creating a side-by-side comparison to understand how these regulations differ from the existing provisions of NAC 453A and 453D. It would be helpful to see the changes in italics in the future to expedite this process. Although these proposed regulations will be codified in a new chapter, it does not make them "new," with some exceptions, since they are primarily modeled after the existing law. Additionally, we need to know which regulations in Chapter 453A and 453B of the Nevada Administrative Code are proposed for repeal. Also, there are sections that simply state the "the Board will promulgate regulations…" we presume this is a placeholder and the regulation itself is forthcoming.

As to the regulations themselves, THRIVE has the following comments:

- The fine for violations is increasing substantially. We believe there should be accountability for egregious violations, but there should be some method made available to the industry to determine when the maximum fine will be imposed. As proposed, it appears very subjective.
- Will there be documentation provided to justify adding components that are now new violations? Again, we support accountability and trust that these new items are included because there have been inspection findings that jeopardize the reputation of the industry.
- A lot of new responsibilities are being added for the Executive Director, and there are new requirements for establishments to submit information that requires prior approval. These practices may increase the cost to oversee the industry. The 2019 Legislative Session recognized the industry needs to be held responsible for complying with the statutes and regulations, however requiring pre-approval for advertising was repealed. We suggest recognizing there should be a standard for the industry to meet, the standard will be assessed at a respective inspection, and if there are violations, they will be addressed. Requiring prior approval from Board staff for standard operations will only increase frustration for CCB staff and for the industry.
- Section 5.110—The Legislature has previously dealt with the issue of transferring licenses. The final standard for transfers is that transfers are done in accordance with an establishment's

guiding policies, and that no transfer be made to anyone who does not meet the statutory requirements as they have been established. The Department of Taxation was not approving a transfer as much as it was auditing that the transfer was done as required. Understanding there is a desire to move into a different realm for determining the parties to whom a license may transfer, we suggest reconsidering how to make transfers a priority so business opportunities are not lost because of the length of time it takes to conduct a review.

- As it relates to a person's felony history, the statutes have established the felony crimes that exclude a person from ownership or employment. We do not believe the CCB has the authority to expand the list of felony crimes that may prevent a person from ownership or employment.
- Section 6.040 brings forward provisions from NAC Chapter 453A, which is administered by the Division of Public and Behavioral Health. It is not clear what authority the Board has over that agency, but in general, we suggest repealing this regulation because oversight of attending providers of health care is done by their respective licensing organizations.
- Section 6.065 relates to moving to a new location within the same jurisdiction. With the exception of retail sales establishments, we suggest amending this section to allow for other establishment types to move outside of a jurisdiction if there is approval from the receiving jurisdiction.
- Section 6.120 is not needed because the advertising provisions are already included in Nevada Revised Statutes 678D.430. Further, the CCB was not given explicit authority to enact more restrictive regulations on advertising.
- Section 6.135 requires quarterly reports to the Board concerning production, purchases and sales of cannabis and cannabis products. It is not clear the purpose of this reporting to the CCB. If the purpose is to compare sales data to determine if it is consistent with taxes paid, then the reporting should be to the Department of Taxation, not the CCB.
- Add a new section specifically authorizing provisions related to curbside delivery. This model has proved useful for the industry and rather than respond on an emergency, specific authorization will allow us to ensure we have crafted high quality controls.

We look forward to working with the CCB as the CCB begins to take oversight over the cannabis industry. We trust we can have open communication with the CCB and staff to ensure we are able to continue to showcase Nevada as a place where there is clear regulatory authority that ensures quality oversight over the industry.

Respectfully,

Mitchell D. Britten, CEO

TISHA R. BLACK
MICHELE T. LOBELLO
JOHN D. JONES

ANDREW P. DUNNING
ELISABETH S. FLEMMING
J. RUSTY GRAF
BRIGID M. HIGGINS
MARK T. LOUNSBURY

BLACK & LOBELLO
ATTORNEYS AT LAW

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SEAN T. HIGGINS*

*OF COUNSEL
*ALSO LICENSED TO PRACTICE IN FL

June 9, 2020

**Via email to regulations@ccb.nv.gov**

Cannabis Compliance CCB
Attn: Director Tyler Klimas
555 E. Washington Avenue, Suite 5100
Las Vegas, NV 89101

Re: Proposed Regulations of the Cannabis Compliance CCB

Dear Director Klimas:

This correspondence shall serve as the public comments submitted by Black & LoBello to the Cannabis Compliance CCB ("CCB") in response to the proposed Nevada Cannabis Compliance Regulations ("NCCR") published on May 29, 2020. The law firm of Black & LoBello represents a number of all manner of licensees in the Nevada Cannabis Industry as business and regulatory legal counsel. We have met with our local and national clients and discussed the proposed NCCRs. This letter is meant to address our clients' concerns and comments regarding the same.

As you are most likely aware, Tisha Black, Esq. is the president of the Nevada Dispensary Association ("NDA"), and as such Black & LoBello supports the comments of the NDA on the regulations and incorporates the same in this submittal.

In addition to the NDA comments, Black & LoBello, on behalf of its attorneys and cannabis clients, hereby expresses the following concerns and comments as to the proposed NCCRs:

- **Secondary Point of Contact** – We request that the CCB consider adding a secondary point of contact in NCR 2.050. This contact would be designated to receive copies of all notices and other communications disseminated to the licensee's primary point of contact, and to authorize such second point of contact to communicate with the CCB and obtain information from the licensee. This would allow for counsel and compliance consultants to receive communications from the State and/or the CCB in an effort to assist and collaborate in their day to day operations and compliance matters. More importantly, it allows for the efficient handling of compliance and regulatory matters in an increasingly complicated and regulated industry.

- **Transfer of Interest, Investment, and Profit Sharing** – More clarification is needed as to the process for notifying and seeking approval from the CCB for investments, profit-sharing, transfers of ownership interest, and license transfers. Specifically, the criteria used for approval of the transfers and the process utilized by the CCB or the State in so approving or denying the transfers of ownership needs to have timelines and deadlines to be applied to the applicant, the CCB and/or the State. The orderly and efficient transfer of ownership in and the transfer of the same is necessary for the industry to properly operate as a free market.

- **Owners of less than 5% Interest** – Please clarify whether persons or entities holding less than 5% of the interests in a licensee must be included in initial license applications and renewal applications. Specifically, in some instances reporting is defined as each owner while in other sections reporting is required only of owners holding five percent (5%) or more. This is an important clarification for purposes of license application and renewal compliance, consistency and reporting transparency.

- **Limitations on Promoting Cannabis and Cannabis Products** – Please provide a clarification as to what is referenced by the word "promotion" in NCCR 6.20(a). Specifically, if this limitation prohibits only product claims or whether it includes promotions of items in inventory for a reduced sale price, volume discount or free product with purchase promotions.

- **Confidentiality** – We feel it is imperative that certain sensitive information such as applications, intellectual property, trade secrets, security drawings, personal and financial information of a licensee which is contained within the system of CCB records be kept confidential and not be disclosed to public parties without proper court authority. Alternatively, please consider providing a licensee a notice and opportunity to keep such information confidential or to limit the disclosure of such information in a manner consistent with gaming regulations (See, NRS 463.120 et. seq. and Nevada Gaming Establishment Regulation 5, generally).

- **Disciplinary Hearings** – NRS 678A.410 states all meeting of the Board are open to the public. Please clarify if disciplinary hearings and proceedings are considered meetings for purposes of public viewing, reporting and comment.

Black & LoBello appreciates the opportunity to submit these comments to the CCB and is pleased to participate or comment further at any future request or opportunity provided. Thank you, kindly.

Respectfully,

Tisha Black, Esq.

Cannabis patients desperately need your help because writing the state's cannabis regulations originally had been tasked to the industry lobbyists, themselves. When patients tried to find legislative support by explaining that the marijuana attorneys and their monied agenda had failed to protect consumers and our communities, we were unilaterally instructed that all cannabis-related legislation must go through them, and no one else. As a result, our cannabis patients have not been given proper consideration, because Nevada's Dispensary Association "is not willing to work on anything that may affect the current profit-margin of their clients". So clearly there is dire need for new and improved regulatory oversight in Nevada. Cannabis patients hope the Cannabis Control Board will bear its weight to become the foundation from which the most serious issues of consumer safety and the safety of our communities, may be resolved in an objective reality, outside the political fray.

**FIRST AND FOREMOST WE WOULD LIKE YOU TO CONSIDER MUCH MORE STRINGENT CONSEQUENCES FOR CANNABIS ESTABLISHMENTS UPON ALL VIOLATION(S):**

The penalties are MUCH too low. We feel a mere slap on the wrist isn't going to bring the teeth we've most definitely needed in order to protect the public from nefarious business practice. So far, serious health violations have gone completely ignored because the cannabis lab owners themselves were granted total control over establishing the industry's initial testing standards. (Hence all the recalls.) In fact, Nevada's Independent Laboratory Advisory Committee (ILAC) was presented with many subject matter experts brought in by the Department of Agriculture who explained why ignoring scientific data shouldn't be accepted as this industry's practice, yet we've seen no resolve. Instead, we've seen the ILAC amend its meeting bylaws to exclude public input, and then they closed their doors to all.

Nevada's regulatory framework should not again be allowed to fail the public! As patients, we mean the board no disrespect, but the fines and penalties as presently written, make it appear as if the industry's lobbyists are still being given all power in crafting the state's cannabis law.

We're presenting the following amendments as follows, with the new language introduced, underlined.

**Page 47**
**5.125 Policies and procedures for waiving requirement to obtain a cannabis agent registration card for any owner, officer and board member who holds an ownership interest of less than 5 percent.**

We insist that family members (to include ex-spouses) and those people who have live-in relationships with an establishment owner are not granted complete anonymity, even if they live out of state, appearing to exert no influence or control.

**Subsection 2.) A certification by the cannabis establishment that the person who holds an ownership interest of less than 5 percent is not a family member, is not in a close personal relationship with, and does not exert control or hold a position of authority over the cannabis establishment and any of the other persons who claim ownership in the cannabis establishment; and**

**PAGE 74**
**7.050 Delivery to consumer: Restrictions; duties of cannabis establishment agent making delivery.**

Allowing delivery to doctors' offices, places of medical and therapeutic care and private clubs which are 21+ and do not hold a gaming license would allow for a much broader economic impact on all Nevada business. There's little value to our community in regulating the entire billion-dollar industry into the hands of the politically connected.

**Subsection 4.) A cannabis sales facility may only deliver cannabis or cannabis products to a private residence, licensed medical and therapeutic offices, licensed non-gaming adult-only (21+) public establishments, bed & breakfasts, hotels & motels, and shall not deliver more than 1 ounce of cannabis or an equivalent amount of cannabis products to any consumer in one calendar day.**

**Pages 97-100:**
It's extremely odd that our state's informational chart specifically references NCR 67B.786 many times but where is that information to be gleaned for the public's view? Concerned citizens should have access to the exact testing standards labs adhere to. In fact, let me make you aware that our state's cannabis patients have been begging to see Chromium added to the list of heavy metals because it's sloughing off from the equipment used during extraction. And we also want to see Nickel banned (even at low levels) because it's acting as the catalyst in creating "accidental chemical synthesis" during various downstream processes.

Patients also want the CCB to know that from the start of cannabis' regulatory inception, lab owners have been allowed to call all the shots in establishing testing standards (through the ILAC) while purposely hiding the important information about what's really going on… even though it meant completely ignoring the scientific data and all the subject matter experts presented to the ILAC at my behest, by the Department of Agriculture in 2018. But now YOU can immediately help to ensure consumer safety by simply requiring cultivation facilities also document the specific timetable to which any chemicals have been applied.

It will almost immediately help avoid some of the problems being experienced at this time. Because cannabis plants soak up (much like a sponge) everything sprayed onto them especially during the flowering stage, those chemicals can affect everything in the downstream processes (as it does in the case of Nickel). Chemicals not broken down

during cultivation will cause “accidental chemical synthesis” during processing for which the industry has no remedy in sight. Which is also why cannabis patients want the pesticide and chemical additive information presented along with the labs’ COA at point of purchase. Medical patients who suffer with immune compromised health NEED to know what we’re ingesting so that we may protect our health at all times.

In that vein now we’ll go back a few pages and propose the following (new language is underlined) in order to increase corporate accountability:

**Page 59**
**6.080 Inventory control system; authorized sources for acquisition of cannabis and cannabis products; duties of establishment if loss incurred; maintenance and availability of documentation:**

**5(d) (6) A list of all chemical additives used in the cultivation, i<u>ncluding, without limitation, non organic pesticides, herbicides and fertilizers along with the frequency and timetable to which the chemicals and additives were applied.</u>**

**Page 75 & 76**
**8.010 Required written disclosure with each lot of usable cannabis; provision of free samples to cannabis sales facility; applicability of provisions governing excise tax on cannabis to free samples:**

**Subsection 1 (a) “All soil amendments, fertilizers, pesticides, <u>fungicides, and other crop production aids applied to the growing medium or cannabis plant included in the lot showing the timetable to which they were applied; and”</u>**

**Page 90**
**10.075 Cannabis establishment: Establishment of and adherence to written procedures for sanitation; requirement to retain person who is certified applicator of pesticides:**

**Please add to subsection 1: <u>(c) Establishing the timetables to which each chemical may or may not be allowed for use during cultivation and maintaining a log for each crop/harvest.</u>**

**Page 112**
**12.050 Cannabis sales facility: Required disclosures and warnings:**

**Subsection 1.) A Cannabis sales facility must provide with all useable cannabis sold at retail accompanying material that discloses**
**any <u>pesticides/fungicides/growth regulators applied to the cannabis plants and growing medium during production and processing and the timetable to which they were applied if they were applied during the plants’ flowering period.</u>**

**Page 91**
**11.010 Employment, qualifications and duties of scientific director; inspection of testing facility upon appointment of new director:**

**Subsection 6.) The scientific director must be on the premises of the testing facility <u>for a full 8 hour shift at least 8 workdays each month.</u>**

I very much look forward to meeting our Cannabis Control Board in person the very first chance we all get. Patients are very excited to meet each and every one of you and I promise to do my best in not seeming too intense because the fact is I mean to be kind. Certainly, you've nothing but the hardest and most thankless work ahead of you, so I mean to lend you kind and loving support, as only your community can.

Sincerely.
Mona Lisa Samuelson
Founder of MJ PLAN
Marijuana Patient Lobbyists and Advocates for Nevada

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KIMBERLY MAXSON-RUSHTON, ESQ.
EMAIL: krushton@cooperlevenson.com

FILE NO. 98001/00172

June 9, 2020

Honorable Michael Douglas, Chair
Nevada Cannabis Compliance Board
555 E. Washington Ave. Ste. 4100
Las Vegas, NV 89155

Re: Draft Regulations of the Cannabis Compliance Board

Dear Chair Douglas:

On behalf of the Livery Operator's Association ("LOA"), please allow this correspondence to respectfully request modification to two (2) draft regulations proposed for the Cannabis Compliance Board's future consideration.

By way of background, the LOA is a professional trade organization comprised of certificated commercial motor carriers licensed to operate in and around Southern Nevada. *Please find attached hereto a list of the current members of the LOA.* Previously, the LOA sought clarification of the term "Public Transportation" as used initially in Nevada Administrative Code ("NAC") 453D and thereafter, in Nevada Revised Statute ("NRS") 453D.310(13) and whether taxi's were included in the category of public transportation. As stated in subsection 13 of NRS 453D.310, taxi's are not deemed to be a "motor vehicle used for public transportation."

Although NRS 453D.310 will sunset on June 30, 2020, the subject statutory language remains intact pursuant to NRS 678D.430, effective July 1, 2020. Therefore, as applicable to the advertisement of cannabis, taxis do not fall within the category of a "motor vehicle used for public transportation." NRS 453D.430(7). Accordingly, the LOA request that proposed regulations 1.195 ***Public Transportation defined*** and 6.120(1)(c)(2) ***Restrictions on advertising*** be amended to reflect the referenced statutory language specific to taxis. For your ease of review, please find enclosed a copy of both statutory provisions NRS 453D.310 and NRS 678D.430.

Thank you for your consideration of this request. Should you have any questions or wish to discuss this further, please do not hesitate to contact me.

Sincerely,

Kimberly Maxson-Rushton, Esq.

*Enclosures*

cc: T. Klimas
B. Bell

# LIVERY OPERATORS ASSOCIATION OF LAS VEGAS (LOA)

# 2020 BOARD OF DIRECTORS AND MEMBERS

## LOA BOARD / OFFICERS:

| | |
|---|---|
| President | Brent Bell |
| Vice President: | Jonathan Schwartz |
| Secretary / Treasurer: | George Balaban |
| Board Members: | BJ Balaban |
| | JJ Bell |

## CURRENT LOA MEMBERS:

BELL TRANS
DESERT CAB COMPANY
HENDERSON TAXI
ODS CHAUFFEURED TRANSPORTATION
ODYSSEY LIMOUSINE
PINK JEEP TOURS LAS VEGAS
PRESIDENTIAL LIMOUSINE
WHITTLESEA BLUE CAB COMPANY
YELLOW CHECKER STAR CAB
NEW CAB CO.
VIRGIN VALLEY dba BLUE DESERT CAB

# LIVERY OPERATORS ASSOCIATIONS
# Comments Regarding Proposed Regulations of CCB

**NRS 453D.310 Requirements and restrictions concerning sale and advertising of marijuana products; requirements on marijuana product manufacturing facility and retail marijuana store; local government not prohibited from adopting more restrictive regulation concerning advertising; civil penalties. [Effective January 1, 2020, through June 30, 2020.]**

1. Each retail marijuana store and marijuana product manufacturing facility shall, in consultation with the Department, cooperate to ensure that all marijuana products offered for sale:

(a) Are labeled clearly and unambiguously:

(1) As marijuana with the words "THIS IS A MARIJUANA PRODUCT" in bold type; and

(2) As required by this chapter and any regulations adopted pursuant thereto.

(b) Are not presented in packaging that contains an image of a cartoon character, mascot, action figure, balloon or toy, except that such an item may appear in the logo of the marijuana product manufacturing facility which produced the product.

(c) Are regulated and sold on the basis of the concentration of THC in the products and not by weight.

(d) Are packaged and labeled in such a manner as to allow tracking by way of an inventory control system.

(e) Are not packaged and labeled in a manner which is modeled after a brand of products primarily consumed by or marketed to children.

(f) Are labeled in a manner which indicates the number of servings of THC in the product, measured in servings of a maximum of 10 milligrams per serving, and includes a statement that the product contains marijuana and its potency was tested with an allowable variance of the amount determined by the Department by regulation.

(g) Are not labeled or marketed as candy.

2. A marijuana product must be sold in a single package. A single package must not contain:

(a) For a marijuana product sold as a capsule, more than 100 milligrams of THC per capsule or more than 800 milligrams of THC per package.

(b) For a marijuana product sold as a tincture, more than 800 milligrams of THC.

(c) For a marijuana product sold as a food product, more than 100 milligrams of THC.

(d) For a marijuana product sold as a topical product, a concentration of more than 6 percent THC or more than 800 milligrams of THC per package.

(e) For a marijuana product sold as a suppository or transdermal patch, more than 100 milligrams of THC per suppository or transdermal patch or more than 800 milligrams of THC per package.

(f) For any other marijuana product, more than 800 milligrams of THC.

3. A marijuana product manufacturing facility shall not produce marijuana products in any form that:

(a) Is or appears to be a lollipop or ice cream.

(b) Bears the likeness or contains characteristics of a real or fictional person, animal or fruit, including, without limitation, a caricature, cartoon or artistic rendering.

(c) Is modeled after a brand of products primarily consumed by or marketed to children.

(d) Is made by applying concentrated marijuana to a commercially available candy or snack food item other than dried fruit, nuts or granola.

4. A marijuana product manufacturing facility shall:

(a) Seal any marijuana product that consists of cookies or brownies in a bag or other container which is not transparent.

(b) Affix a label to each marijuana product intended for human consumption by oral ingestion which includes, without limitation, in a manner which must not mislead consumers, the following information:

(1) The words "Keep out of reach of children";

(2) A list of all ingredients used in the marijuana product;

(3) A list of all allergens in the marijuana product; and

(4) The total weight of marijuana contained in the marijuana product or an equivalent measure of THC concentration.

(c) Maintain a washing area with hot water, soap and a hand dryer or disposable towels which is located away from any area in which marijuana products intended for human consumption by oral ingestion are cooked or otherwise prepared.

(d) Require each person who handles marijuana products intended for human consumption by oral ingestion to wear a hair net and clean clothing and keep his or her fingernails neatly trimmed.

(e) Package all marijuana products produced by the marijuana product manufacturing facility on the premises of the marijuana product manufacturing facility.

5. A retail marijuana store or marijuana product manufacturing facility shall not engage in advertising that in any way makes marijuana or marijuana products appeal to children, including, without limitation, advertising which uses an image of a cartoon character, mascot, action figure, balloon, fruit or toy.

6. Each retail marijuana store shall offer for sale containers for the storage of marijuana and marijuana products which lock and are designed to prohibit children from unlocking and opening the container.

7. A retail marijuana store shall:

(a) Include a written notification with each sale of marijuana or marijuana products which advises the purchaser:

(1) To keep marijuana and marijuana products out of the reach of children;

(2) That marijuana and marijuana products can cause severe illness in children;

(3) That allowing children to ingest marijuana or marijuana products, or storing marijuana or marijuana products in a location which is accessible to children may result in an investigation by an agency which provides child welfare services or criminal prosecution for child abuse or neglect;

(4) That the intoxicating effects of marijuana products may be delayed by 2 hours or more and users of marijuana products should initially ingest a small amount of the product, then wait at least 120 minutes before ingesting any additional amount of the product;

(5) That pregnant women should consult with a physician before ingesting marijuana or marijuana products;

(6) That ingesting marijuana or marijuana products with alcohol or other drugs, including prescription medication, may result in unpredictable levels of impairment and that a person should consult with a physician before doing so;

(7) That marijuana or marijuana products can impair concentration, coordination and judgment and a person should not operate a motor vehicle while under the influence of marijuana or marijuana products; and

(8) That ingestion of any amount of marijuana or marijuana products before driving may result in criminal prosecution for driving under the influence.

(b) Enclose all marijuana and marijuana products in opaque, child-resistant packaging upon sale.

8. If the health authority, as defined in NRS 446.050, where a marijuana product manufacturing facility or retail marijuana store which sells marijuana products intended for human consumption by oral ingestion is located requires persons who handle food at a food establishment to obtain certification, the marijuana product manufacturing facility or retail marijuana store shall ensure that at least one employee maintains such certification.

9. A marijuana establishment:

(a) Shall not engage in advertising which contains any statement or illustration that:

(1) Is false or misleading;

(2) Promotes overconsumption of marijuana or marijuana products;

(3) Depicts the actual consumption of marijuana or marijuana products; or

(4) Depicts a child or other person who is less than 21 years of age consuming marijuana or marijuana products or objects suggesting the presence of a child, including, without limitation, toys, characters or cartoons, or contains any other depiction which is designed in any manner to be appealing to or encourage consumption of marijuana or marijuana products by a person who is less than 21 years of age.

(b) Shall not advertise in any publication or on radio, television or any other medium if 30 percent or more of the audience of that medium is reasonably expected to be persons who are less than 21 years of age.

(c) Shall not place an advertisement:

(1) Within 1,000 feet of a public or private school, playground, public park or library, but may maintain such an advertisement if it was initially placed before the school, playground, public park or library was located within 1,000 feet of the location of the advertisement;

(2) On or inside of a motor vehicle used for public transportation or any shelter for public transportation;

(3) At a sports event to which persons who are less than 21 years of age are allowed entry; or

(4) At an entertainment event if it is reasonably estimated that 30 percent or more of the persons who will attend that entertainment event are less than 21 years of age.

(d) Shall not advertise or offer any marijuana or marijuana product as "free" or "donated" without a purchase.

(e) Shall ensure that all advertising by the marijuana establishment contains such warnings as may be prescribed by the Department, which must include, without limitation, the following words:

(1) "Keep out of reach of children"; and

(2) "For use only by adults 21 years of age and older."

10. If a marijuana establishment engages in advertising for which it is required to determine the percentage of persons who are less than 21 years of age and who may reasonably be expected to view or hear the advertisement, the marijuana establishment shall maintain documentation for not less than 5 years after the date on which the advertisement is first broadcasted, published or otherwise displayed that demonstrates the manner in which the marijuana establishment determined the reasonably expected age of the audience for that advertisement.

11. Nothing in subsection 9 shall be construed to prohibit a local government, pursuant to chapter 244, 268 or 278 of NRS, from adopting an ordinance for the regulation of advertising relating to marijuana which is more restrictive than the provisions of subsection 9 relating to:

(a) The number, location and size of signs, including, without limitation, any signs carried or displayed by a natural person;

(b) Handbills, pamphlets, cards or other types of advertisements that are distributed, excluding an advertisement placed in a newspaper of general circulation, trade publication or other form of print media;

(c) Any stationary or moving display that is located on or near the premises of a marijuana establishment; and

(d) The content of any advertisement used by a marijuana establishment if the ordinance sets forth specific prohibited content for such an advertisement.

12. In addition to any other penalties provided for by law, the Department may impose a civil penalty upon a marijuana establishment that violates the provisions of subsection 9 or 10 as follows:

(a) For the first violation in the immediately preceding 2 years, a civil penalty not to exceed $1,250.

(b) For the second violation in the immediately preceding 2 years, a civil penalty not to exceed $2,500.

(c) For the third violation in the immediately preceding 2 years, a civil penalty not to exceed $5,000.

(d) For the fourth violation in the immediately preceding 2 years, a civil penalty not to exceed $10,000.

13. ***As used in this section, "motor vehicle used for public transportation" does not include a taxicab, as defined in NRS 706.124.*** (Added to NRS by 2017, 3665, effective January 1, 2020; A 2019, 2342; R 2019, 3896, effective July 1, 2020)

**NRS 678D.430 Requirements and restrictions concerning advertising by adult-use cannabis establishment; local government not prohibited from adopting more restrictive regulations concerning advertising. [Effective July 1, 2020.]**

1. An adult-use cannabis establishment:

(a) Shall not engage in advertising which contains any statement or illustration that:

(1) Is false or misleading;

(2) Promotes overconsumption of cannabis or cannabis products;

(3) Depicts the actual consumption of cannabis or cannabis products; or

(4) Depicts a child or other person who is less than 21 years of age consuming cannabis or cannabis products or objects suggesting the presence of a child, including, without limitation, toys, characters or cartoons, or contains any other depiction which is designed in any manner to be appealing to or encourage consumption of cannabis or cannabis products by a person who is less than 21 years of age.

(b) Shall not advertise in any publication or on radio, television or any other medium if 30 percent or more of the audience of that medium is reasonably expected to be persons who are less than 21 years of age.

(c) Shall not place an advertisement:

(1) Within 1,000 feet of a public or private school, playground, public park or library, but may maintain such an advertisement if it was initially placed before the school, playground, public park or library was located within 1,000 feet of the location of the advertisement;

(2) On or inside of a motor vehicle used for public transportation or any shelter for public transportation; or

(3) At a sports or entertainment event to which persons who are less than 21 years of age are allowed entry.

(d) Shall not advertise or offer any cannabis or cannabis product as "free" or "donated" without a purchase.

(e) Shall ensure that all advertising by the adult-use cannabis establishment contains such warnings as may be prescribed by the Board, which must include, without limitation, the following words:

(1) "Keep out of reach of children"; and

(2) "For use only by adults 21 years of age and older."

2. Nothing in subsection 1 shall be construed to prohibit a local government, pursuant to chapter 244, 268 or 278 of NRS, from adopting an ordinance for the regulation of advertising relating to cannabis which is more restrictive than the provisions of subsection 1 relating to:

(a) The number, location and size of signs, including, without limitation, any signs carried or displayed by a natural person;

(b) Handbills, pamphlets, cards or other types of advertisements that are distributed, excluding an advertisement placed in a newspaper of general circulation, trade publication or other form of print media; and

(c) Any stationary or moving display that is located on or near the premises of an adult-use cannabis establishment.

3. If an adult-use cannabis establishment is operated by a dual licensee, the adult-use cannabis establishment may:

(a) For the purpose of tracking cannabis, maintain a combined inventory with a medical cannabis establishment operated by the dual licensee; and

(b) For the purpose of reporting on, the inventory of the adult-use cannabis establishment, maintain a combined inventory with a medical cannabis establishment operated by the dual licensee and report the combined inventory under a single medical cannabis license or adult-use cannabis license.

4. If a cannabis establishment is operated by a dual licensee, the cannabis establishment shall:

(a) For the purpose of reporting on the sales of any adult-use cannabis establishment or medical cannabis establishment operated by the dual licensee, designate each sale as a sale pursuant to the provisions of this chapter or chapter 678C of NRS; and

(b) Verify that each person who purchases cannabis or cannabis products in a sale designated as a sale pursuant to the provisions of chapter 678C of NRS holds a valid registry identification card.

5. An adult-use cannabis retail store shall not sell cannabis or cannabis products through the use of, or accept a sale of cannabis or cannabis products from, a third party, intermediary business, broker or any other business that does not hold an adult-use cannabis establishment license.

6. An adult-use cannabis retail store may contract with a third party or intermediary business to deliver cannabis or cannabis products only if:

(a) Every sale of cannabis or cannabis products which is delivered by the third party or intermediary business is made directly from the adult-use cannabis retail store or an Internet website, digital network or software application service of the adult-use cannabis retail store;

(b) The third party or intermediary business does not advertise that it sells, offers to sell or appears to sell cannabis or cannabis products or allows the submission of an order for cannabis or cannabis products;

(c) In addition to any other requirements imposed by the Board by regulation, the name of the adult-use cannabis retail store and all independent contractors who perform deliveries on behalf of the adult-use cannabis retail store has been published on the Internet website of the Board; and

(d) The delivery is made by a cannabis establishment agent who is authorized to make the delivery by the adult-use cannabis retail store by which he or she is employed.

*7. ***As used in this section, "motor vehicle used for public transportation" does not include a taxicab, as defined in NRS 706.124.*** (Added to NRS by 2019, 3838, effective July 1, 2020).

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June 9, 2020

Honorable Michael Douglas, Chair
Nevada Cannabis Compliance Board
555 E. Washington Ave. Ste. 4100
Las Vegas, NV 89155

RE: Draft Regulations of the Cannabis Compliance Board

Dear Chair Douglas:

On behalf of RSR Analytical Laboratory ("RSR") thank for the opportunity to offer comment on the proposed regulations of the Cannabis Compliance Board ("CCB"). My clients and I look forward to working with the CCB to ensure the continuing safety and productivity of Nevada's cannabis industry.

**Regulation 1: Issuance of Regulations: Construction; Definitions**

Proposed Regulation 1.110 "Imminent health hazard" defined.

RSR requests that the CCB consider more specific language relative to what constitutes an "imminent health hazard." Similarly, RSR requests clarification of the standards set forth in Proposed Regulation 4.065 and exactly how the CCB will determine "the nature, severity and duration of ***any anticipated injury, illness or disease*****....." Correspondingly, RSR request clarification of the factors set forth in subjection 1(a)-(j) and how they meet the presumptive standard of causing an imminent health hazard?

RSR respects the CCB's interest in protecting employees in the cannabis industry as well as Nevada's medical and recreational consumers however, designation of a cannabis facility as creating an "imminent health hazard" should require specific demonstration of an illness or injury. The presumption that a power outage could cause an injury or illness to a member of the public is an overly subjective standard which could unnecessarily impact a cannabis licensee and its business reputation.

**Regulation 2: Cannabis Compliance Board; Organization and Administration**

Proposed Regulation 2.065 Procedures for control of evidence.

RSR respectfully requests that the last sentence be removed from the proposed regulation as it is contrary to Nevada Revised Statute ("NRS") 233B.123 and the obligation that, in contested cases, evidence be secured, maintained and handled in a manner that ensures the preservation and integrity of it. Moreover, said language appears to conflict with proposed regulation 4.120 or, otherwise, create disparate treatment between how an agent handles evidence and a licensee's actions. Specifically, the fact that under 4.120 as written, a licensee's failure to maintain documents, records, etc. creates a presumption against the licensee in a disciplinary action, which could result in the suspension or revocation of a license.

**Regulation 4: Disciplinary Proceedings**

Proposed Regulation 4.020 Grounds for disciplinary action.

RSR requests clarification of the proposed draft language contained in 4.020(2) relative to "immediate revocation" in light of NRS 233B.127(3), which specifically states that *"[n]o revocation, suspension, annulment or withdrawal of any license is lawful unless, before the institution of agency proceedings, the agency gave notice by certified mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action."*

Additionally, there are no provisions contained in NRS 678A – NRS 678D that relieve the CCB from the requirements set forth in NRS 233B.127(3). Accordingly, RSR respectfully requests that proposed regulation 4.020, as well as other references to "immediate revocation" be removed.

Proposed Regulations 4.030-4.060 Violations and Civil Penalties

RSR recognizes the importance of ensuring that licensees in Nevada's cannabis industry operate safely and in a manner that is both suitable and respectful of the Silver State. For these reasons licensees are required to undergo significant scrutiny during the application process and thereafter, licensees must adhere to high regulatory standards (i.e. license renewals, agent registration cards, training, etc.). Added to this are the herculean costs cannabis licensees must pay annually to the state and local municipalities to maintain their licensees. Collectively, these factors demonstrate a commitment to compliance by Nevada's cannabis licensees.

As outlined in the Proposed Regulations, the fine amounts for violations of Title 56 and/or the corresponding regulations range from $2,500 to $90,000 (per violation) based on the severity of the offense. In response, RSR respectfully submits that the proposed fine amounts unduly punish licensees

for non-compliance. Mandatory fines, especially as high as $90,000, do not ensure compliance nor do they encourage licensees to self-report or seek assistance from the CCB. Furthermore, the proposed civil penalties fail to consider mitigating factors or a licensee's ability to take immediate corrective action.

Lastly, RSR submits that a graduating fine, which increases based on the number of violations within an otherwise short period of time (3 years) fails to consider prior corrective actions taken by the licensee, whether mitigating factors exist or whether a change of ownership has occurred during said period.

Proposed Regulations 4.070 Complaint

RSR recommends that the proposed regulatory language be amended to clarify that this section refers to disciplinary complaints filed by the CCB.

However, in those instance when a CCB "disciplinary complaint" results from a complaint lodged by a member of the cannabis industry, RSR requests that 4.070 be amended to include the name of the complainant, how and when the complaint was made, and all other information and/or documentation submitted by the complainant in support of their complaint.

Additionally, RSR strongly encourages the CCB to consider expanding the regulations to implement a more transparent complaint process relative to the ability of one cannabis licensee to file a complaint against another licensee. For example, the Nevada Transportation Authority has promulgated regulations which provide parties, such as consumers and other operators (competitors) with the ability to submit a complaint about a licensee. Said regulatory standards allow a licensee to respond to the complaint *prior to investigation*. Thereafter, the NTA determines whether to dismiss the complaint or direct staff to proceed with an investigation. *See*, Nevada Administrative Code ("NAC") 706.3973 – 706.398.

Proposed Regulation 4.105 Grounds for summary suspension; notice; request for hearing.

For the reasons articulated above in response to Proposed Regulations 4.025 and 4.070, RSR respectfully submits that the language contained in 4.105(1) creates a subjective standard by requiring a licensee to know what action "*could be an impairment* to the health and safety of the public."

Furthermore, 4.105(1) is based on hypothetical circumstances. Marijuana like other agricultural products can develop yeast and mold based on how its handled and / or stored. Similarly, airborne pathogens can result from environmental factors that exist at either the cultivation site or the retail facility. For these reasons the CCB is encouraged to articulate specific actions that are known to lead to health and safety issues or, alternatively, establish a regulatory process whereby upon a report of an illness or adverse reaction to a cannabis product sold in Nevada conduct an expedited investigation.

**Regulation 5: Licensing, Background Checks and Registration Cards**

Proposed Regulation 5.070 Inspections.

RSR submits that mutual cooperation between regulators and licensees is the most effective way to ensure regulatory compliance. As such, spot inspections by CCB staff, conducted without notice should be limited to defined instances in which there is an immediate threat to the safety of the public.

Proposed Regulation 5.075 Authority to inspect and investigate.

RSR notes the previously referenced concerns with the proposed complaint process and respectfully submits the same concerns as applicable to proposed regulations 5.075 and 6.025(1).

Specifically, 5.075 encourages competitors within the industry to lodge complaints against one another. Under the proposed "complaint" process a licensee is subject to an unannounced otherwise intrusive inspection, which is disruptive to work and at times abusive to licensees and their staff. An additional concern is the fact that the cost of the unannounced inspection is borne by the unknowing licensee. See, 6.025. Practices such as this should not be encouraged but rather carefully scrutinized to prohibit anti-competitive behavior.

Equally concerning is 5.075(8), which states that within 72 hours of becoming aware that a cannabis operator is operating without a license the Board will conduct an inspection. RSR respectfully submits that actions such as this require immediate inspection/action by both CCB and law enforcement.

**Regulation 11: Cannabis Testing Facilities**

Proposed Regulation 11.025 Inspection by Board or authorized third party.

RSR respectfully requests clarification of subsections (3) and (5) of 11.025. More specifically, RSR questions the necessity of having a third party perform the functions of inspecting and monitoring a testing facility. As the CCB is aware each testing facility is required to develop specific standards and methodologies for testing cannabis in Nevada. RSR, like other testing facilities, consider these standards and methodologies to be proprietary in nature and construes them to be "trade secrets" as defined in NRS 600A.030(5). As such, RSR respectfully states a concern with the use of a third party to monitor a lab's operations and their access to confidential information.

Proposed Regulations 11.040 Proficiency testing.

RSR seeks clarification of 11.040(8) and (9) relative to achieving an "acceptable score" and achieving a "100% score."

Proposed Regulation 11.045 Limited testing for research and development.

RSR requests confirmation that this regulation specifically pertains to research and development of cannabis (plants and products).

Proposed Regulation 11.070 Testing.

Proposed regulation 11.070(1) requires that testing be performed "immediately before" a cultivation facility packages it for sale. While RSR has no objection to the regulatory intent the language assumes that a lab knows when the cannabis product is about to be packaged – that decision/action is solely within the discretion of the cultivation facility therefore, the obligation should be on the cultivator versus the testing facility.

Proposed Regulation 11.075 Quality Assurance Testing.

RSR respectfully requests clarification of 11.075(7) relative to why a failed quality assurance test for moisture content is treated differently than other quality assurance tests?

Proposed Regulations 11.080 and 11.085 Collection and testing of random samples & Random quality assurance checks.

RSR strongly urges the CCB to *not allow* cannabis testing facilities to conduct re-testing functions on behalf of the state. In light of the number of laboratories in Nevada capable of testing cannabis and cannabis products there is no reason why the CCB should use a licensed testing facility to compare results from another licensed testing facility. Moreover, cultivators and production facilities should not be forced to provide samples to a lab they do not regularly use in order to be in compliance.

**Conclusion**

In conclusion, my clients and I would like to thank you for your consideration of the comments set forth herein. Should you have any questions or wish to discuss this further, please do not hesitate to contact me.

Sincerely yours,

Kimberly Maxson Rushton, Esq.

cc: T. Klimas

**JUNE 9, 2020**

**STATE OF NEVADA**
Grant Sawyer Office Building, Suite 4100
555 E. Washington Avenue
Las Vegas, Nevada 89101

RE: Proposed Regulations of the Cannabis Compliance Board

## QUESTIONS & COMMENTS

After careful review, the proposed regulations offer more clarity where the use of more explicit language and terminology has been added. Flower One Holdings seeks additional insight into proposed regulations below:

### 6.015 BOARD AUTHORIZED TO LIMIT CANNABIS PRODUCTION WITHIN STATE.

The Board may, upon findings made following a public hearing that the public interest will be supported by limiting the cultivation of cannabis in this State, limit the amount of cannabis in production within this State.

**6.015:** It is uncertain if this "authorization to limit" cannabis cultivation and production is geared toward license limits for producers (E.g., Cultivation/Production), or if the regulation seeks to reduce the caps on output at a given time to include any future and current licensed cultivators.

It would be beneficial if the Board could provide additional color as to how this regulation would solve an existing or anticipated problem? Or, if the problem is unknown, what the implications would be in terms of outcomes; meaning what would most likely be produced from limitations placed on cannabis cultivation, and specifically what types of cultivators or producers would be limited under this moratorium.

### 6.020 LIMITATIONS ON PROMOTING CANNABIS AND CANNABIS PRODUCTS.

1. A cannabis establishment:
   (a) May only promote cannabis or a cannabis product through marketing the laboratory results on the label of the cannabis or cannabis product; and
   (b) Must not use an independent testing laboratory or other laboratory to promote any other attributes of cannabis or a cannabis product.
   (c) Must not make any health claims including but not limited to healing, curing, treating or reducing risk of any illness or health related condition.

**6.020:** It appears this regulation may be intended to address a potential problem with cannabis products being promoted as dietary supplements, or to remove the use of misleading consumer marketing/advertising terminology to extinguish the risk of consumer fraud in the market.

FDA Food Labeling & Nutrition regulations provide guidance for, evidence-based review system for proper **Scientific Evaluation of Health Claims**. This provides the economic and regulatory precedent to allow for instances where qualified health claims (QHCs) may be allowed when supported by sound scientific evidence – even when failing to meet the exalted, more rigorous "significant scientific agreement" standard required for an authorized **health claim**. To ensure that these claims are not misleading, they must be accompanied by a disclaimer or other qualifying language to accurately communicate to consumers the level of scientific evidence supporting the claim.

There is ongoing scientific research into the medicinal and health benefits of cannabis, specifically targeting the investigation and study of cannabis mixtures and phenotypes and their potential health impacts. The Center for Medicinal Cannabis Research (CMCR) in San Diego, CA, is working to fund primary and pilot cannabis-related studies that further enhance the understanding of the efficacy as well as adverse effects of cannabis and cannabinoids as pharmacological agents for the treatment of medical and psychiatric disorders, and their potential public health impacts.

The FDA has approved several drugs that contain individual cannabinoids, such as Epidiolex, which contains a purified form of CBD derived from cannabis, was approved for the treatment of seizures associated with Lennox-Gastaut syndrome or Dravet syndrome, two rare and severe forms of epilepsy. And Marinol and Syndros, which contain dronabinol (synthetic THC), and Cesamet, which contains nabilone (a synthetic substance like THC), are approved by the FDA. Dronabinol and nabilone are used to treat nausea and vomiting caused by cancer chemotherapy. Dronabinol is also used to treat loss of appetite and weight loss in people with HIV/AIDS.

Has the Board created these regulations using the best available scientific, technical, economic, and other information? More accurate and precise information leads to a better understanding of the problem and more effective regulatory outcomes. This type of information is useful both when determining the need for the regulations and assessing the impacts of those regulations.

Scientists, economists, technical experts, and others can improve proposed rules by helping to prevent unnecessary regulation offering expert advice and opinion, citing published reports, or providing relevant data or evidence regarding the effects of a proposed rule or the need for the rule.

Is the Board open to building a process to allow for emergent research and double-blind scientific study data to be submitted for pre-evaluation to provide a means to investigate or create a process by which cannabis product claims would be allowed under explicit conditions?

## REGULATION 12 - PACKAGING AND LABELING OF CANNABIS PRODUCTS

**12.010 to 12.060 :** Warning label: "THIS IS A CANNABIS PRODUCT" will be required on packaging and labels and supports the rollover for use of "cannabis" terminology.

Due to the lengthy lead times for packaging materials and the recent COVID-19 pandemic events, sizable financial investments have been made to place orders for packaging that complies with existing requirements. We currently estimate a year (365 days) before we could fully deplete our current inventory of packaging materials.

Could the Board offer some clarity as to when this new requirement will would go into effect?

Does the Board plan to issue a transitional grace period to allow producers and sales outlets enough time to deplete their current stock of packaging printed with the "MARJIUANA" warning labels?

And if so, what will the timeframe be for this transitional period?

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Sincerely,

*JC Friedel*

JC Friedel
Quality & Compliance Assurance Manager
Flower One Holdings Inc.
Email: jfriedel@flowerone.com
Office: 702-827-6052

MCLETCHIE LAW

ATTORNEYS AT LAW

**VIA E-MAIL ONLY**

June 9, 2020

State of Nevada
Cannabis Compliance Board
1550 College Parkway, Suite 115
Carson City, NV 89706
Email: regulations@ccb.nv.gov

**Re: Comments to Proposed Nevada Cannabis Compliance Regulations**

Dear Cannabis Compliance Board:

I am writing on behalf of GreenMart of Nevada NLV LLC ("GreenMart") and Vegas Valley Growers North LLC ("VVGN") to provide comments below in response to the proposed Nevada Cannabis Compliance Regulations ("NCCR") published on May 29, 2020. The attached sets forth our comments. GreenMart and VVGN also join in the comments provided by the Nevada Dispensary Association.

Regards,

*/s/ Margaret A. McLetchie*
Margaret A. McLetchie

**Cannabis Compliance Board**
**Comments to Proposed Regulations**

| Proposed Regulatory Revision | Comment |
|---|---|
| **2.040 Appearances**<br>1. Except as provided in subsection 2 or unless an appearance is waived by the Chair, all persons, or their attorneys or agents, if any, must appear at the Board meeting at which their matter is to be heard. Requests for waivers of appearances must be in writing, must be received by the executive assistant no later than eight business days before the meeting, and must explain in detail the reasons for requesting the waiver. If at the time of its meeting the Board has any questions of an applicant, licensee, or registrant who has been granted a waiver and is not present, the matter may be deferred to another meeting of the Board. | For convenience, attorneys should be able to represent clients at Board meetings without clients being present. |
| **2.040 Appearances**<br>3. Unless an appearance is waived by the Chair, all persons, or their attorneys or agents, if any, must appear at the Board meeting at which their matter is to be heard. Requests for waivers of appearances must be in writing, must be received by the executive assistant no later than eight business days before the meeting, and must explain in detail the reasons for requesting the waiver. If at the time of its meeting the Board has any questions of an applicant, licensee, or registrant who has been granted a waiver and is not present, the matter may be deferred to another meeting of the Board. | For convenience, attorneys should be able to represent clients at Board meetings without clients being present. |
| **2.060 Employee records.**<br>1. All records concerning Board employees maintained by the Board are confidential as set out in NAC 284.718.<br>2. Access to employee records declared confidential by this section shall be allowed only as set out in NAC 284.726. | Board employees and activities normally subject to the Nevada Public Records Request Act ("NPRA") should continue to be subject to the NPRA. Their activities are not entitled to any more confidentiality than other state agencies. |
| **4.030 Imposition of civil penalty; revocation or suspension of license or cannabis establishment agent registration card; corrective action.**<br>1. (c) If corrective action approved by the Board will cure the noncompliance or violation but will not be completed within 30 days after issuance of the order, suspend for more than 30 days the license of a cannabis establishment or the cannabis establishment agent registration card of a person who fails to comply with or violates the provisions of the NCCR and Title 56 of NRS. | To ensure sufficient time for corrective action, 60 days should be provided to cannabis establishments to cure any noncompliance. |

| Proposed Regulatory Revision | Comment |
|---|---|
| **4.100 Reinstatement of license or cannabis establishment agent registration card: Application; conditions, limitations or restrictions upon reinstatement; denial.**<br>1. If a person applies for reinstatement of a license or cannabis establishment agent registration card that has been revoked pursuant to this chapter, the person shall:<br>(a) Submit an application on a form supplied by the Board.<br>(b) Satisfy all the current requirements for the issuance of an initial license or cannabis establishment agent registration card.<br>(c) Attest that, in this State or any other jurisdiction:<br>(1) The person has not, during the period of revocation, violated any state or federal law relating to cannabis, and no criminal or civil action involving such a violation is pending against the person; and<br>(2) No other regulatory body has, during the period of revocation, taken disciplinary action against the person, and no such disciplinary action is pending against the person.<br>(d) Satisfy any additional requirements for reinstatement of the license or cannabis establishment agent registration card prescribed by the Board. | An applicant for reinstatement of a license or registration agent card should not be required to attest that they have not violated any federal law as mere possession of cannabis violates federal law. |
| **5.015 Qualifications for licensure.**<br>1. In addition to the considerations in NRS 678B.200 and NRS 678B.280, the Board may consider the following in determining whether any person qualifies to receive a license under the provisions of chapter 678B of the NRS:<br>(a) The adequacy of the person's business competence and experience for the role or position for which application is made;<br>(b) The unsuitable affiliates of the person applying for the license even if the person is found suitable by the Board, but associates with, or controls, or is controlled by, or is under common control with, an unsuitable person;<br>(c) The adequacy of the proposed funding for the nature of the proposed operations; and<br>(d) The suitability of the source of funding unless the person satisfies the Board that the source of funding:<br>(1) Is a person of good character, honesty, and integrity;<br>(2) Is a person whose background, reputation and associations will not result in adverse publicity for the State of Nevada and its cannabis industry; and<br>(e) The Board may consider any other qualifications or behavior of the person that the Board determines is inconsistent with the declared policy of the State. | The proposed regulations should more narrowly define "unsuitable." The Board could still maintain discretion, but unsuitable is too broad and allows for too much subjectivity. |

| Proposed Regulatory Revision | Comment |
|---|---|
| **5.100 Grounds for denial of issuance or renewal of license; grounds for revocation of license; notice; opportunity to correct situation.**<br>2. (c) An owner, officer or board member of the cannabis establish intentionally provides information that the Board determines is false or misleading; or<br>5. Before denying an application for issuance or renewal of a license for a cannabis establishment or revoking such a license as a result of the actions of an owner, officer or board member of the cannabis establishment pursuant to paragraph (b) of subsection 1 or paragraph (b) of subsection 2, the Board shall provide the cannabis establishment with an opportunity to correct the situation. | The Board should only be able to revoke a license for the intentional provision of false or misleading information. Alternatively, the Board should only be able to revoke a license for the negligent provision of false or misleading information. |
| **5.110 Requirements for transfer of all or a portion of ownership interest; reimbursement of costs to Board; notice to Board; disclosure of facts pertaining to representative capacity of certain persons to Board; permission of Board required for registering certain information in the books and records of the cannabis establishment; investigation.**<br>6. A person without a valid cannabis establishment agent registration card for a cannabis establishment shall notify the Board prior to any: (a) Transfer or conveyance of any interest of 5 percent or greater in or to a cannabis establishment, or any portion thereof of 5 percent or greater; or (b) investment therein resulting in an ownership interest of five percent or greater; or (c) exercise of a significant level of control over; or (d) participation in the profits of five percent or greater thereof →by or to any person acting as agent or trustee or in any other representative capacity for or on behalf of another person. Such notification must disclose of all facts pertaining to such action, including, without limitation, a description of the reason for the transfer and any contract or other agreement describing the transaction. Such person must be issued a cannabis establishment agent registration card for the cannabis establishment at issue, on approval by the Board of the proposed action. | A person without an agent registration card should only be required to notify the Board of transfers, investments, or profit participation of 5% or greater in a cannabis establishment.<br><br>Employees, agents, personal representatives, lenders or holders of indebtedness of a cannabis licensee should be required to obtain agent cards but not apply for licenses. |

| Proposed Regulatory Revision | Comment |
|---|---|
| **5.120 Submission of information by cannabis establishment to obtain or renew registration card for person employed by or contracted with establishment or for volunteer; fingerprinting and application fee; issuance of registration card; temporary registration.**<br>3. An officer and board member who wishes to hold an ownership interest in a cannabis establishment of less than 5 percent shall submit to the Board an application on a form prescribed by the Board. The application must be accompanied by:<br>4. A cannabis establishment shall notify the Board within 10 business days after a cannabis establishment agent ceases to hold an ownership interest in the cannabis establishment of 5 percent or greater, be employed by, volunteer at or provide labor as a cannabis establishment agent to the cannabis establishment. | An owner who wishes to acquire less than a 5% interest in a cannabis establishment should not be required to submit an application to the Board unless such acquisition results in the owner owning greater than a 5% interest in the cannabis establishment in the aggregate. Alternatively, only an owner who wishes to acquire less than a 5% interest in a cannabis establishment should be required to submit an application to the Board only if the owner will also direct the operations of the cannabis establishment. |
| **5.125 Policies and procedures for waiving requirement to obtain a cannabis agent registration card for any owner, officer and board member who holds an ownership interest of greater than 5 percent.**<br>1. The Board may waive the requirement to obtain a cannabis agent registration card for any person who holds an ownership interest of greater than 5 percent in a cannabis establishment if: (a) The cannabis establishment requests waiver of the requirement on a form prescribed by the Board, including the following information: (1) An explanation as to why the cannabis agent registration card requirement should be waived for the person who holds an ownership interest of greater than 5 percent; (2) A certification by the cannabis establishment that the person who holds an ownership interest of greater than 5 percent does not exert control or hold a position of authority over the cannabis establishment and any of the other persons who claim ownership in the cannabis establishment; and (3) Any other information requested by the Board necessary to promote the health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and the declared policy of this State. | An owner who owns less than a 5% interest in a cannabis establishment should not be required to obtain an agent registration card. Alternatively, only an owner who owns less than a 5% interest in a cannabis establishment and directs the operations of the cannabis establishment should be required to obtain an agent registration card. |
| **6.020 Limitations on promoting cannabis and cannabis products.**<br>1. A cannabis establishment:<br>(a) May only promote cannabis or a cannabis product through marketing the laboratory results on the label of the cannabis or cannabis product; and<br>(b) Must not use an independent testing laboratory or other laboratory to promote any other attributes of cannabis or a cannabis product.<br>(c) Must not make any health claims including but not limited to healing, curing, treating or reducing risk of any illness or health related condition. | Subsection 1(a) seems like it could pose potential First Amendment problems.<br><br>The deletion of "through marketing the" will eliminate any ambiguity that cannabis products can be advertised as set forth in Section 6.120. |

| Proposed Regulatory Revision | Comment |
|---|---|
| **6.025 Board authorized to collect fee for costs for oversight; hourly rate.**<br><br>3. As used in this section, "substantiated" means supported or established by evidence or proof. | The term "substantiated" should be defined or clarified. For example, does this mean a deficiency was issued or an order was by the Board? |
| **6.060 Operation in accordance with plans and specifications included in application; deviation from plans and specifications; documentation of change to facilities; inspection or audit of change to facilities.**<br>2. A cannabis establishment may operate in a manner that deviates from the plans or specifications included within its application for a license if the change would comply with state and local laws, regulations and ordinances and, if the deviation is material, the cannabis establishment provides the Board with a written notification of its intent to make the change which includes, without limitation: (a) The name, physical address and license number of the cannabis establishment; and (b) A description of the proposed change. | Cannabis establishments should only be required to notify the Board of material deviations to plans or specifications within its application. |
| **6.070 Persons authorized on premises; visitor identification badge and other requirements for other persons; maintenance and availability of visitor log.**<br>7. Live animals shall be allowed on the premises only under the following conditions:<br>(a) Decorative fish in aquariums<br>(b) Patrol dogs accompanying police or security officers<br>(c) In areas that are not used for cannabis storage or preparation, and that are usually open for customers, including but not limited to sales areas, service animals that are controlled by the disabled employee or consumer, if a health or safety hazard will not result from the presence or activities of the service animal.<br>(d) Nothing in this Section shall be construed, or in conflict, with the Americans with Disability Act. | Paragraph 7, Section d should state, "Nothing in this Section shall be construed to supersede, or be in conflict with, the Americans with Disability Act. |
| **6.085 Required security measures, equipment and personnel; location of outdoor cultivation facility must allow for response by local law enforcement.**<br>3. A cannabis establishment shall make a reasonable effort to repair any malfunction of security equipment within 72 hours after the malfunction is discovered. A cannabis establishment shall notify the Board and local law enforcement within 24 hours after a malfunction is discovered and provide a plan of correction. Failure to make a reasonable effort to correct a malfunction within 72 hours after the malfunction is discovered is a violation of this section. | The first sentence of subsection 3 of Section 6.085 requires a cannabis establishment to make a "reasonable effort to repair any malfunction of security equipment within 72 hours." Accordingly, the second sentence of subsection 3 of Section 6.085 should mirror the "reasonable effort" standard set forth in the first sentence of subsection 3 of Section 6.085. |

| Proposed Regulatory Revision | Comment |
|---|---|
| **6.090 Cleanliness and health of cannabis establishment agents.**<br>3. A cannabis establishment agent shall not work directly with concentrated cannabis or cannabis products if the cannabis establishment agent has:<br>(a) A symptom of gastrointestinal infection, including, without limitation, diarrhea or vomiting;<br>(b) A sore throat with fever;<br>(c) Jaundice; or<br>(d) A lesion that appears inflamed or contains pus, including, without limitation, a boil or infected wound that is not covered with:<br>(1) An impermeable cover and a single-use glove if the lesion is on a hand or wrist, both of which must be changed at any time that hand washing is required;<br>(2) An impermeable cover if the lesion is on an arm; or<br>(3) A dry, durable, tight-fitting bandage if the lesion is on another part of the body. | Please consider adding coughing in light of efforts to reduce the spread of Covid-19. |
| **6.120 Restrictions on advertising; required posting of signs in cannabis sales facility.**<br>1. A cannabis establishment:<br>(a) Shall not engage in advertising which contains any statement or illustration that:<br>(1) Is false or misleading;<br>(2) Promotes overconsumption of cannabis or cannabis products;<br>(3) Depicts the actual consumption of what appears to be cannabis or cannabis products; or<br>(4) Depicts a child or other person who appears to be less than 21 years of age consuming cannabis or cannabis products or objects suggesting the presence of a child, including, without limitation, toys, characters or cartoons, or contains any other depiction which is designed in any manner to be appealing to or encourage consumption of cannabis or cannabis products by a person who is less than 21 years of age.<br>(b) Shall not advertise in any publication or on radio, television or any other medium if 30 percent or more of the audience of that medium is reasonably expected to be persons who are less than 21 years of age.<br>(c) Shall not place an advertisement:<br>(1) Within 1,000 feet of a public or private school, playground, public park or library, but may maintain such an advertisement if it was initially placed before the school, playground, public park or library was located within 1,000 feet of the location of the advertisement;<br>(2) On or inside of a motor vehicle used for public transportation or any shelter for public transportation; | Under definition of "public transportation" this would appear to ban advertisement on taxis. Please clarify that advertisements on taxis are permitted. |

| Proposed Regulatory Revision | Comment |
|---|---|
| **7.020 Valid proof of identification of age of consumer required.**<br>3. Identification presented to satisfy subsection 1 must be a valid and unexpired:<br>(a) Driver's license or instruction permit issued by this State or any other state or territory of the United States;<br>(b) Identification card issued by this State or any other state or territory of the United States for the purpose of proof of age of the holder of the card;<br>(c) United States military identification card;<br>(d) A Merchant Mariner Credential or other similar document issued by the United States Coast Guard;<br>(e) A passport issued by, or recognized by, the United States Government or a permanent resident card issued by the United States Citizenship and Immigration Services of the Board of Homeland Security; or<br>(f) A tribal identification card issued by a tribal government, as defined in NRS 239C.105, which requires proof of the age of the holder of the card for issuance. | Please consider accepting international identification, including passports and other government issued identification. |
| **7.050 Delivery to consumer: Restrictions; duties of cannabis establishment agent making delivery.**<br>1. A cannabis sales facility shall not deliver more than 5 ounces of cannabis or an equivalent amount of cannabis products to any combination of consumers within a single trip.<br>2. A medical cannabis sales facility shall not deliver more than 10 ounces of cannabis, edible cannabis products or cannabis-infused products, or any combination thereof when making a sales delivery exclusively to persons who hold a valid registry identification card or designated as a primary caregiver. | These limits should be raised substantially or eliminated as the current limit has not been established as necessary to protect public safety. The current limit is arbitrary and does not increase public safety especially given that a vehicle can carry 10 ounces of medical cannabis. A person committing theft is not concerned as to whether the cannabis is medical or adult use and thus the limit should be the same. In addition, an increase would promote efficiency, which is beneficial to a regulated market and necessary to compete with illegal market operators. |

Memo to: CCB
Memo from: MM Development Company, Inc. dba Planet 13
Subject: Comments to Proposed Regulations 1-15.

Background

On May 29, 2020, the Cannabis Compliance Board (or "CCB") sent notice seeking input from interested parties on proposed regulations 1-15. The deadline provided for comments was 5:00 p.m. PST on June 9, 2020, and are to be written and emailed to regulations@ccb.nv.gov.

MM Development Company, Inc. dba Planet 13 (or "MMDC") is a Nevada licensed dispensary, cultivation, production, and distribution operator in Nevada, owned 100% by publicly traded British Columbia corporation Planet 13 Holdings, Inc., ticker symbol PLTH on the Canadian Securities Exchange.

We appreciate this opportunity to provide comment.

Regulation 1, and corresponding Regulation 6, Specific Comments Regarding Definition of Public Transportation and Taxicabs

*Section 1.195(4) definition and implications for Section 6.120(c)(2):*

Section 1.195(4) defines "Public Transportation" as including "Other forms of transportation which charge a fare and are available to the public." We request that taxicabs as defined at NRS 706.124 be specifically excluded from the definition of public transportation.

Section 6.120(1)(c)(2) states that "A cannabis establishment … Shall not place an advertisement … On or inside of a motor vehicle used for public transportation …"

Under cannabis statutes, taxicabs are specifically excluded from the definition of public transportation under 678D.430(7), which states, "As used in this section, "motor vehicle used for public transportation" does not include a taxicab, as defined in NRS 706.124."

Cab companies were deemed not to be public transportation by the Nevada Department of Tax during the years 2018, 2019, and in 2020 through the current date, a finding which has remained uncontested through the current date. We agree with this prior determination. Historically in Nevada, cannabis companies have used cab company wraps in compliance with NRS 453A, 453D, and corresponding regulations to advertise the licensee brand and location. MMDC also points out the implications of further advertising restrictions and how even a highly regulated privileged industry must have access to commercial free speech.

Regulation 4, General Comments Regarding Penalty Framework

*Comment 1, Penalty Framework.*

Under Regulation 4.030(2) there is a process described to determine the civil penalty amount "To determine the amount of a civil penalty assessed pursuant to this section, the Board will consider the gravity of the violation, the economic benefit or savings, if any, resulting from the violation, the size of the business of the violator, the history of compliance with the NCCR and Title 56 of NRS by the violator, action taken to remedy the violation, the effect of the penalty on the ability of the violator to continue

in business and any other matter as justice may require." Commenter supports the inclusion of these factors and the weighing and balancing that the Board and its agents propose to undertake.

Regulation 4.035 through 4.060 establishes penalties based on category of violations, inclusive of suspension, revocation, and civil penalty amounts. Each of these regulations includes language that states, "Before consideration of the factors described in subsection 1(a), the Board will presume that the following are appropriate penalties for violations of the NCCR and Title 56 of NRS", which appears to nullify the more thoughtful and measured approach to each unique determination of statutory and regulatory violations by licensees under 4.030(2).

We request that the presumption that the maximum penalty is appropriate be replaced with language that the "After analysis of the factors under Regulation 4.030(2), the Board may determine the appropriate penalties for violations of the NCCR and Title 56 of NRS, up to the following amounts, which determination shall be presumed an appropriate penalty for the violation."

Furthermore, we request that the Board reduce the civil penalty upper limits and reduce the penalty escalation framework from three years to two years.

<u>Regulation 5, Specific Comment Regarding Public Company and <5% Owners Without Control</u>

Under Regulation 5.125, the Board has the authority to waive agent cards for <5% owners. We support this initial position, but believe further adjustment is required to make public company ownership reporting and verification achievable.

MMDC, as a subsidiary of Planet 13 Holdings, Inc., requests a regulatory presumption, such presumption revocable by the Board in its sole discretion, that <5% stockholders of a public company that a) is an owner of a subsidiary licensee of the public company or b) the public company is the licensee, shall not be required be listed as an owner by individual name or to apply for agent cards, unless such <5% stockholder is also a Director, Employee, or Officer.

It would be problematic for a public company to meet the proposed regulatory requirement, specifically with regards to objecting beneficial owners who purchase stock in the markets through a broker intermediary and sell the stock without any disclosure of their name or contact information made available to the licensee. An easily understood example would be an objecting beneficial owner day-trader, whose name will not be released by the broker dealer, and only owns the stock for a short period.

A beneficial owner of a security is someone who has a security held by a financial intermediary. This tends to be the individual's broker, or, in some cases, it may be another financial intermediary the person is associated with. An objecting beneficial owner (OBO) instructs the financial intermediary who holds the securities to not provide the owner's name and personal information to the company that issued the securities. A non-objecting beneficial owner (NOBO) agrees to allow their personal information to be released to the company.

For a company such as Planet 13 Holdings, Inc., shareholders own interests either directly in their name, or through a broker dealer in Canada. In order to for Planet 13 Holdings, Inc. to penetrate the broker dealer beneficial ownership shield, the stockholder must file forms with the broker dealer stating they are a Non-Objecting Beneficial Owner. For voting purposes at the annual shareholders meeting, Planet

13 Holdings, Inc. requires that all beneficial owners who desire to cast a vote at the annual shareholders meeting must be a non-objecting beneficial owner, or hold their shares through direct ownership registered through a transfer agent. If the shareholder is an objecting beneficial owner, they are not allowed to vote on the board members who will oversee the corporation, and thus exert no control over the entity.

In lieu of the requirement for reporting <5% owners, MMDC proposes that public companies holding ownership interests in licensees can annually submit a a) the name, audited financial statements, and securities registration of the public company, b) a list of >5% individual persons who are direct or beneficial owners, b) the financial intermediary and broker dealers holding accounts on behalf of beneficial shareholders through the Canadian Depository for Securities Ltd. (CDS Limited), accompanied by an attestation by the public company that no <5% shareholder that is not also an Officer, Employee, or Director exerts control over the Licensee.

It is important to note, that financial brokers, banks, and financial intermediaries have a strict "know-your-customer" statutory and regulatory framework to ensure invested proceeds are not illegally sourced. Furthermore, if the >5% beneficial owner is an OBO, then they do not have the ability to vote their share, and thus, do not have any form of actual (by vote) or perceived (by virtue of holding such a small interest in a publicly traded company) control over the license.

This is an important issue, as public company investor funds and liquidity are a source of capital that will create jobs, infrastructure, and tax base in Nevada.

<u>Regulation 6, Quarterly Inventory and Sales Reporting Deadline</u>

*Comment 1*, MMDC respectfully notes that 15 days after the quarter close may not be sufficient time to assemble inventory reports, reconcile, and then submit to the CCB.

Proposal 1: Set a 1-month deadline following the quarter close.

Proposal 2: Allow for a notice procedure from licensee to obtain a once per quarter two-week extension.

<u>Regulation 7, Cannabis Sales Facility Sales</u>

*Comment 1, minor proposed edit regarding regulatory framework and drafting format.*

Regulation 7.015 should be edited to state:

"7.015 Duties of cannabis establishment agent before sale to consumer. Before a cannabis establishment agent sells cannabis or cannabis products to a consumer, the cannabis establishment agent shall 1. Verify the age of the consumer *in accordance with Regulation 7.020;* 2. Offer any …"

If the above edit is adopted, we advise CCB to add the approved verification scanner language to Regulation 7.020.

*Comment 2, regarding sales limits, Regulation 7.025.*

CCB must add clarification – as currently worded this could be a limit on all future sales to that same customer over any time period. On information and belief, the intent of the drafter was that each sales transaction would not exceed the stated limits. For example, Customer A enters into a dispensary, and purchases an ounce of usable cannabis product, and then departs the facility. The customer can return

at a later time for and make a purchase for another ounce at each subsequent visit. Alternatively, CCB can look to the same limiting language established at Reg. 7.050(4), i.e. a one ounce delivery in a 24 hour period.

*Comment 3, Increase of 5 oz limit on recreational sales to 10 oz*

Absent a compelling basis (for example, a clear correlation between health, security, or safety), the 5 oz delivery transportation limit for adult-use cannabis should match the 10 oz medical limit. There would be no additional security risk when compared to transportation of 10 oz medical cannabis deliveries, and significant cost benefits to companies offering deliveries, which savings could be passed on to customers and would increase competition among companies offering delivery. This would also serve to have a muting effect on large cannabis company monopolies in Nevada.

*Comment 4, Regulation 7.050, Definition of Gaming Operator*

The definition of gaming license should match the Title 56 definitions, being "a nonrestricted gaming license described in subsection 1 or 2 of NRS 463.0177" and not the overly broad definition provided herein being "a gaming license, as defined in NRS 463.0159"

*Comment 5, Regulation 7.050, Accident reporting*

Two hours may not be sufficient time to resolve the accident and then report to the accident. In lieu of the two hour requirement, we propose a reasonableness standard, but not to exceed 12 hours.

Proposed Regulation 7.050(9) Each cannabis establishment agent delivering cannabis or cannabis products must: (a) Report to a person designated by the cannabis establishment to receive such reports any motor vehicle crash that occurs during the delivery as soon as reasonably possible after the crash occurs, but in no instance shall such time to report exceed 12 hours;

<u>Regulation 15, Minor Edit – reference to gaming regulations.</u>

Pointing out for drafters, no comment otherwise.

Silver State Government Relations

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June 9, 2020

Honorable Michael L. Douglas, Chairman, Cannabis Compliance Board
Tyler Klimas, Executive Director, Cannabis Compliance Board
555 E. Washington Street
Las Vegas, Nevada 89101

Dear Sirs:

I am reaching out to you on behalf of N2 Packaging LLC (N2 Pack), a cannabis packaging company that already operates in over 20 different state cannabis markets. N2 Pack had previously entered the Nevada marketplace but was unable to continue its operations as there needed to be some additional clarity provided to the Marijuana Enforcement Division (MED) about N2 Pack and their process. Specifically, the MED expressed concern over N2 Pack's process and how its reduced oxygen packaging environment might interact with cannabis and cannabis products. Additional conversations were undertaken with MED, now the Cannabis Compliance Board (CCB, the Board).

It appears that with the addition of section 9.025 sub 4, the Board is demonstrating an abundance of caution related to cannabis product manufacturing. Hazard Analysis and Critical Control Point (HACCP) plans are standard in certain food packaging situations in order to prevent contamination. However, cannabis regulations already address this issue in 1.155 [for reference, provided below]. Because the ingredients being processed by N2 Pack in it reduced oxygen packaging process qualify for the exclusions from the definition of 'potentially hazardous cannabis product and ingredients' presented in 1.155 subsection 3, it is therefore not necessary for a HACCP plan when reduced oxygen is the processing method. While positive in its intent, given that it is not possible for contaminants to enter cannabis that is already in a sealed container, this is excess regulation. Also, none of the 20 states in which N2 Pack is already active require a HACCP plan.

Therefore, it is recommended that the second sentence of 9.025 sub 4 be removed, as it is unnecessary. Alternatively, this sentence could be substituted: ***Those processes that are packaging cannabis products that meet the exclusions listed in 1.115 3. are exempt from the HACCP plan requirement.***

"4. A cannabis product manufacturing facility preparing menu items that require a HACCP plan as determined by the appropriate Board Agent must be approved by a processing authority prior to submission. ~~Special processes requiring a HACCP plan include, but are not limited to, canning, reduced oxygen packaging, and other processes as determined by the appropriate Board Agent.~~"

Respectfully,

Will Adler,

Principal of Silver State Government Relations,

on behalf of

Scott Martin,

CEO, N2 Packaging Systems, LLC

Comments on the proposed regulations of the Cannabis Compliance Board:

1. I do not see it required in the proposed regulations, but so the CCB is aware every person that currently requests an agent card is required to get two of the same sets of fingerprints taken every year, one set of fingerprints for medical and one set for recreational. We get charged for two of the same sets of fingerprints every time we apply for an agent card. Why is one set of fingerprints and background check not satisfactory for both medical and recreational licenses? This is unnecessary and every person in the cannabis industry is required to do it.

2. With regards to Definition 1.125 Defining Lot, I request that the lot size of flower be increased from 5 pounds a lot to 10 pounds a lot and that the Trim lot size be increased from 15 pounds a lot to 30 pounds a lot. These lot sizes were originally arbitrarily decided on and increasing the size does not create a public safety issue. Cultivators can grow hundreds of pounds of finished flower of the same strain at the same time in the same room which will yield the same or similar results for all of the finished product. So being forced to lab test every 5 pounds of the same strain of flower is unreasonable and only adds costs to the end consumer.

3. The 15% Excise tax on wholesale cannabis should be charged at 15% of the actual sale for an arm's length transactions and not based on a market rate set by the department that is based on data that is 6-8 months old. The market rate set by the department is not reflective of the current market rate and market conditions and results in cultivation facilities paying significantly higher than what NAC 372A and NRS 372A intended which is a 15% excise tax.

4. Currently for an independent cultivation there is no way to do quality control on the products we produce without having to burden our dispensary customers by transferring product to them for us to then go to their location and buy it back. At this point the product has already been sold and it is too late to perform quality control. Also this option is only possible if the dispensary clients are willing to do it for us as it entails additional work and provides no added value. There is no other industry where you are legally not allowed to perform quality control on the products you produce especially in agriculture. In dealing with cultivation there are hundreds of variables that determine the quality of your product and we need to know immediately if the changes we make are increasing or decreasing the quality of our products. I propose that the CCB allow cultivation licenses to transfer small amounts of Lab Passing finished product to themselves out of Metrc so they can perform quality control on their products. I request that a definition be added called "quality control sample" that can be no more than one Ounce (28 grams) per lab passing lot. This quality control sample will need to be allowed to be transferred out of a cultivation facility in Metrc to an agent card holder of that same facility, or something similar to this. Currently the only sample procedure is that dispensaries will request samples (known as Testers) from cultivation facilities that they will allow their employees to sample the product so they can educate the consumer on the products. However, the cultivation facilities without a dispensary who produce the product have no legal access to

evaluate their own product prior to selling it to their customers. As a business we need to evaluate our different strains for marketing purposes, quality assurance, pricing, medicinal benefits and product performance. Imagine if a strawberry farmer had a harvest of strawberries that looked perfect, but they were not allowed to taste them prior to sale, and they ended up having no flavor or sweetness. They would not know that there was a problem with the strawberries until they were sold and got the negative feedback on them and by then it is too late. How can you build a brand with the current scenario?

Nick Puliz, General Manager

THC Nevada, LLC

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June 9, 2020

Honorable Michael L. Douglas, Chairman, Cannabis Compliance Board

Tyler Klimas, Executive Director, Cannabis Compliance Board

555 E. Washington Street

Las Vegas, Nevada 89101

Dear Sirs:

Scientists for Consumer Safety (SCS) is a Nevada association of cannabis laboratories dedicated to the safety of cannabis consumers through the establishment of appropriate, science-based regulations for cannabis laboratories. SCS has been advocating for increased oversight and transparency in the regulation of cannabis laboratories in order to protect the consumer from unsafe marijuana and fraudulently represented products. The recommendations provided below should be taken as comments submitted in response to the Nevada Cannabis Control (Draft) Regulations (NCCR) produced by the Cannabis Compliance Board, published May 29, 2020.

1. 6.085: This section requires several modifications and should exclude laboratories in many/most of the security personnel requirements.
    a. 6.085.1(a) – Single entrance. One single secure entrance of a facility is not practical, given the size of various pieces of equipment utilized by laboratory facilities and the incompatibility of such commerce with office entrances appropriate for staff and customers. In addition, facilities are required by fire code to have at minimum an Emergency Exit. Instead, the regulations could require that all entrances be monitored by security cameras.
    b. Cannabis laboratories should be exempted from 6.085.6 and .7, requirements for security director or manager, given that laboratories do not have large quantities of cannabis products or currency on site and thus pose a very small security risk. The other security provisions within these regulations (excepting 6.085.1(a), see above) are adequate for security requirements of cannabis laboratories.

2. 11.070: Needs the inclusion of an additional sub section that mandates: “On a weekly basis the Board will publish on their website all Certificates of Analysis issued to them in the preceding time.” This will include all COA’s including retests in their totality, without leaving out any identifying information or results. This is quality assurance

information that is necessary to inform cannabis dispensaries and the public they serve of the competence and attention to consumers' safety of cannabis laboratories.

3. 10. 11.010 Laboratory Director Qualifications listed in the proposed regulations seem to be taken or adapted from NAC 652 Medical Laboratories. Cannabis is tested for public safety, as such similar qualifications should be required for the director of a cannabis laboratory. As such, SCS believes cannabis laboratory director qualifications should mirror NAC 652.380 – 395. This would require the laboratory director to at minimum hold a doctorate degree in a chemical, physical, biological or clinical laboratory science field, and have at minimum 1 year post degree laboratory experience.

4. 11.055: Needs the inclusion of a Sub 2. Section stating: "All cannabinoids tested must be accurately reported on all Certificates of Analysis issued by laboratories and if that same product is retested in a test authorized by the CCB and found to be not within 50 percent, above or below, of the original cannabinoid test result, the original test shall be documented by the CCB as a false report." As reported multiple times in 2019 and published by Dr. James Macrae in his article "Are Nevada's Cannabis Testing Labs Counting the Cards," https://www.straightlineanalytics.biz/2019/12/are-nevadas-cannabis-testing-labs-counting-cards/, potency test results have been manipulated and/or falsely reported.

5. 4.105: Needs to include a Sub 6. Stating "Upon the issuance of a summary suspension or the closing of any facility for any reason, the Board shall issue a notice to all other cannabis license holders of the suspended facility's closure. Upon the reopening of a facility the Board shall issue a notice to all license holders of their reinstated status that includes the original summary suspension, the charges ultimately agreed to between the Board and the licensee and the plan of correction agreed to by the licensee to become reinstated." This is necessary in order to create and maintain a transparent cannabis marketplace wherein all participants – growers, laboratories, dispensaries – have complete information about which entities are full participants in that marketplace and under what conditions. Transparency supports consumer protection and reinforces peer accountability. It also reduces the liability of the CCB in its position as regulator of a product that affects consumer health.

6. 11.085 as presented should be replaced in its entirety with regulations that create a functional system of Random Laboratory Assurance Checks (RLAC). A functional RLAC shall randomly audit every cannabis lab in the state four times per year. The Board shall send agents to each laboratory, unannounced. Those agents will select at least 5 retained samples of products already submitted to the seed to sale tracking system with final Certificates of Analysis. With the board investigators present, the laboratory shall retest those same samples and provide the results to the investigator and report them to the CCB. Over an annual set (4 times per year) of at least 5 samples, 80% of the tests need to produce results within 20% of the original test result. All quality assurance test

results shall be the same as originally submitted on the COA. Taken in totality over the course of the 4 tests per year, any laboratory that fails the RLAC audit shall be classified as having submitted intentionally false statements. Two failed RLACs within 24 months shall qualify as a Category 1 violation and be accompanied by the revocation of the laboratory's license.

7. 11.075. Needs modification to ensure the quality assurance retesting process is undertaken in a way that produces the intended outcome.

   Currently, cultivators/producers can request a duplicate or backup sample be collected while a laboratory is gathering a sample of product for testing. This backup sample will be held at the cultivation facility in case the first test failed, and the cultivator wished to challenge that fail with a retest. While retesting should be an option, the current practice allows a second test to override an existing Certificate of Analysis that shows the cannabis product failing some portion of a quality assurance test.

   SCS believes this process should be expanded upon with the addition of a second sample, taken out of the same lot as the initial test, collected in conjunction with a laboratory's arrival at a cultivation or production facility for a retest. The initial sealed retention sample and the second retest sample, collected the day of the retest, shall be analyzed as two separate screenings of the previously failed lot. If BOTH retest samples pass all required safety tests, the previously failed test lot will be declared safe for consumption and will be cleared for sale. If either of the retest samples fail a quality assurance test, this lot will be considered a fail and must not be allowed for sale. If the second retest replicate results do not match the retention sample results for cannabinoid and terpene profiles, the retention sample will be considered tampered with and declared a fail.

8. 11.040. Proficiency Testing (PT), most programs sufficiently test a laboratory's instrumentation and their ability to detect analytes; however, matrix-based tests are best at evaluating all aspects of cannabis analysis. Changes in Regulations, Sub 5, add "whenever possible, a cannabis testing facility must analyze PT samples…". Sub 8, Delete "100%" and replace with 85 or 90%; there are stability issues with several analytes and it makes them difficult to accurately analyze in a PT sample. Sub, 9, reword (b), in order to reflect the reality that not all PT tests are available every 30 days; some are only held every 6 months.

9. 11.050. Removal of Aspergillus fumigatus, Aspergillus flavus, Aspergillus terreus, Aspergillus niger. All prove problematic to accurately and reproducibility test at a none detected in one-gram level given the heterogeneity of cannabis flowers. It is SCS's opinion that the safety provided by testing for Aspergillus is outweighed by the inaccuracy of current methodologies and the none detected per gram limit.

SCS insists on these inclusions as effective and appropriate methods to hold cannabis laboratories accountable for the tests they are issuing. Cannabis tests are used by cannabis license holders and the public to verify the safety and value of the cannabis being tested before purchase. Currently, the public and marijuana license holders are being left in the dark regarding the state of testing in Nevada. Over the last few years SCS has proven to cannabis regulators in Nevada that falsely reported testing data is a serious and relevant issue. SCS has collected a significant amount of documentation in this regard, which it had repeatedly shared with the Department of Taxation's Marijuana Enforcement Division and the CCB.

Cultivation facilities are still pressuring laboratories for higher THC results and with the COVID-19 crisis, this pressure has only been amplified. If the department does not add language to increase the transparency of the testing program including testing failures, violations and penalties invoked, then nothing will change. We request the additions to section 4 in response to the fact Nevada's regulators have failed to pursue any charges against cannabis laboratories whose actions clearly indicate a disregard for consumer safety. In addition to passing products that failed microbial testing, false THC potency results were reporting, demonstrating a complete disregard for public safety and prevention of consumer fraud.

SCS supports the CCB for increasing the terms of its penalties and for the compounding effect of multiple penalties over a three year, rather than a two year period. It is assumed that violations documented by MED during its period of oversight and enforcement will carry over into CCB's period of enforcement, given that it is the same license and the record needs to remain intact. If this is not accurate, SCS requests this to be added as a formal portion of the regulation.

SCS wishes to go on record supporting the additional language in:

- Scientific Directors. Subsections 1(a) and 1(c) and Subsections 4, 5, 6 of 11.010; however, an addition, 1(d) is needed indicating whether the scientific director is an employee or a part of the ownership structure of the license in order that ultimate responsibility rests with the licensee
- General Laboratory Standards. Subsections 3 and 7 of 11.025
- Sample Chain of Custody. Subsections 4 and 6 of 11.030
- Quality Assurance Tests. Subsections 3 and 5, and the addition of Subsections 7, and 8 of 11.050. See recommendation on adjustment of 11.050 Subsection 4 above
- Testing Selection. Subsections 1(c)and (d) of 11.070

SCS wishes to go on record noting concern at the removal of the provisions formerly found at NAC 453D.794. Without those provisions the Board will have no ability to audit failed pesticide tests or use the Nevada Department Agriculture labs for testing the Board deems necessary. Possibly the Board intends to create its own laboratory? If that is not anticipated, or if the SFY

2021 budget will not allow the creation of a CCB laboratory, SCS recommends including language that allows NDA to continue to support Nevada's cannabis regulation function in its current capacity.

Finally, an issue that is not directly addressed in these regulations, but has persisted since the start of the legal marijuana industry in Nevada, is the full payment of lab testing invoices in a prompt and timely manner. Traditionally, labs have had to balance a difficult relationship between themselves and the clients they serve. Laboratories are forced to broker their services across the state, yet have to also deliver the worst news when it comes to a failed quality assurance test. Labs are the only business in Nevada that have to sell their services to their clients while also holding their clients accountable to some of the strictest laws in the state; as such, it is frequently the case where cultivators and producers will pressure labs through nonpayment to receive better testing results. This is unethical but frequently the case, and can put the independence of cannabis testing laboratories at risk. It is SCS's opinion policies such as test results being delivered two days, plus a previous deafness of these issues from regulators, have jeopardized the independence and legitimacy of these labs. We ask the CCB to acknowledge this position and craft policies to assist in that situation including, but not limited to, making laboratory invoice payments a requirement for annual audits.

Respectfully,

Will Adler

Executive Director, Scientists for Consumer Safety

MedMen

Director Tyler Klimas
Executive Director
Cannabis Compliance Board
555 E. Washington Avenue, Suite 5100
Las Vegas, NV 89101
Submitted via email: regulations@ccb.nv.gov June 9, 2020

Dear Director Klimas,

On behalf of MedMen, thank you for considering the comments below in response to the proposed Nevada Cannabis Compliance Regulations ("NCCR") published on May 29, 2020.

**COMMENTS**

**Operations:**
Section 6.085(1)(b) states that the cannabis establishment must have no visible cannabis or cannabis products from outside the establishment. We respectfully request that the CCB define what "visible" mean. For example, if secured product displays are 15 feet from the retail establishment's frontage, would that be considered visible.

Section 12.040 and 12.045 require cannabis sales facilities to apply or include certain product labeling information that is already included on the product package. We respectfully request that sales facilities only be required to provide customers and patients information exclusive to the sales facility, not already required on cannabis and cannabis products. All sales facilities should reject any inbound product that does not meet regulatory requirement or match the COA As a result, the full requirement of these sections places undue burden and regulatory risk on the sales facility where the product labeling and disclosure responsibility is with the cultivator and producer.

**Reporting:**
Section 6.135, which requires certain quarterly reporting to be furnished by cannabis establishments, was updated to require reports to be produced on the 15th calendar day of January, April, July, and October. We respectfully request that the timeline of 30 calendar days be reinstated. Many operators with multiple licenses and license types, who have centralized operations, may require more time to produce such records accurately. We believe that a shorter timeframe may inadvertently impact quality of data provided to the CCB.

Respectfully,

Dan Edwards
SVP, Legal Affairs

## Amber Virkler

**From:** John Oceguera <johno@strategies360.com>
**Sent:** Tuesday, June 9, 2020 4:52 PM
**To:** CCB Regulations
**Cc:** Darian Stanford
**Subject:** CCB regulations

June 9, 2020

By email to regulations@ccb.nv.gov

This correspondence provides input in response to proposed Regulations 1-15 published by the Cannabis Compliance Board ("CCB"). There are two comments:

**Comment #1: Licensees should be explicitly permitted to sell-through previously-approved packaging and labeling prior to enforcing new packaging and labeling regulations.**

The proposed regulatory changes will have an adverse effect on bulk cannabis product manufacturers that purchase bulk packaging supplies in advance after such packaging has been pre-approved by a state entity. Any changes to packaging and labeling regulations force Cannabis Cultivators and Cannabis Product Manufacturing Facilities to retool their packaging and labeling orders and operations. The proposed regulations covering the transition between the Department of Taxation and the CCB modify the language required on the packaging and labeling of cannabis and cannabis products, raising distinct challenges for licensees.

If there is a grace period to allow licensees to sell-through packaging and labeling previously approved by the Department of Taxation, then licensees may adjust their packaging, receive pre-approval from the CCB, and appropriately modify their operations without disrupting the regulated cannabis supply chain. Please provide clear guidance on this concern.

**Concern #2: Maintain consistency in required language for packaging and labeling.**

There is a minor discrepancy in the regulatory language in Sec. 12.045(1)(n) in comparison with the example given, and the other similar language in the regulation. The rule itself requires a warning stating: "Caution: When eaten or swallowed, the intoxicating effects of this**drug** may be delayed by 2 or more hours." Contrarily, in the example shown, the warning reads: "**CAUTION**: When eaten or swallowed, the intoxicating effects of this**product** may be delayed by 2 or more hours." In comparison, the rule language in 12.045(1)(p), the required warning states: "This **product** may have intoxicating effects and may be habit forming."

The inconsistent language (drug v. product) causes confusion. Please maintain consistency and refer to any cannabis-infused products as a "Product" and not as a "Drug." Using the word "Drug" promotes inconsistency, indicates a treatment purpose (where used in adult-use cannabis products), and unnecessarily stigmatizes an otherwise legal, well-regulated product. Additionally, such a minor modification promotes consistency throughout the proposed rules, all of which refer to consumer products containing concentrated cannabis as cannabis "products" rather than "drugs".

Please amend Sec. 12.045(1)(n) to require that the exterior packaging of every regulated cannabis product sold in Nevada have a warning that reads: "**CAUTION:**When eaten or swallowed, the intoxicating effects of this product may be delayed by 2 or more hours."

Thank you,

John Oceguera

**JOHN OCEGUERA**
Executive Vice President

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**SIGN UP FOR OUR FREE WEEKLY NEWSLETTER**

Tyler Klimas
Executive Director Cannabis Compliance Board
555 E. Washington Avenue, Suite 5100
Las Vegas, NV
89101
Via: regulations@ccb.nv.gov.

June 9, 2020

RE: Proposed CCB Regulations

Director Klimas:

Please consider the following comments from Sierra Well, a vertically integrated, privately held, cannabis operation located in Northern Nevada.

We are aware that the Nevada Dispensary Association (NDA) has submitted comments on behalf of members. Sierra Well supports, and participated in the development of, the NDA comments.

**Agent Cards and Licensing**

Agent card and licensing provisions in the draft regulations appear to practically preclude ownership of cannabis operations by publically traded companies. We do not believe it is the CCB's intention to establish or to further promote policies that prevent public companies from participating in the Nevada cannabis market, through these regulations. We understand this topic is the subject of current litigation that may be settled, or that may be adjudicated to an unknown result. We suggest that CCB regulations should either reflect the outcome of this matter, when it is determined, or address this matter specifically through a separate process, rather than determining the outcome through this present CCB rulemaking process.

Existing precedent and operations suggest that effectively prohibiting public companies from owning cannabis operations through new licensing and card holder provisions may have unanticipated consequences to organizations that already own Nevada cannabis assets, and to companies that may wish to sell their operations to publically held companies.

Proposed NCCR 5.120(3) requires owners holding less than 5 percent interest to obtain an agent card, provide a background check, and provide other financial information. This provision is not consistent with publically traded companies, whose shareholders may change on a daily basis. It may, however, be reasonable to require majority-shareholders or officers and managers of public companies to pursue a vetting process that could include their establishment of agent cards.

With regard to disclosure requirements, please consider allowing an annual disclosure of all owners because it is not feasible for public and for some privately held companies to provide such disclosures in real time.

Similarly, it is not practical to require owners of less than 5% interest in public companies to be included in a license applications and renewal applications.

Thank you for the opportunity to review and comment upon the proposed regulations.

Sincerely,

Mike Livak

CEO, Sierra Well

June 9, 2020

**Via Email**

Honorable Michael Douglas, Chair
Nevada Cannabis Compliance Board
555 E. Washington Ave. Ste. 4100
Las Vegas, NV 89155

Cannabis Compliance Board
State of Nevada
1550 College Parkway, Suite 115
Carson City, Nevada 89706
**regulations@ccb.nv.gov**

Re: Comments on Proposed Regulations
of the Cannabis Compliance Board

Dear Chair Douglas:

On behalf of QualCan LLC, thank you for the opportunity to submit comments on the Cannabis Compliance Board's proposed regulations. We also adopt all of the comments submitted by the Nevada Dispensary Association (NDA).

We hope our comments below are helpful and we look forward to assisting the Cannabis Compliance Board in further refining the regulations. Our comments are identified in bullet points below.

QualCan LLC proposes consideration of the following regulation:

**NCRR 1.155 "Potentially hazardous cannabis products and ingredients" defined.**

- More Clarification on allowed and not allowed food items.

  **2. The term includes, without limitation:**
  **(c) Cut melons and tomatoes;**

- Section would eliminate sauces that can be safely homogenized.

**NCRR 1.163 "Private Residence" defined**

- Should include long term rental options with that exceed 30-day commitments.

**NCRR 1.220 "Single-serving edible cannabis product" defined.**

- Define the variance threshold. Example plus or minus 10%.

**NCRR 4.050 Category III Violations.**

**(6) Allowing disorderly activity;**

- Not clearly defined.

**(9) Unintentionally failing to pay taxes to the Department of Taxation;**

- Unintentionally defined? Unintentional failure would seem to require a cure period before imposing violation. Or perhaps the category of violation should start at category I and then scale up if not cured.

**NCRR 5.100 Grounds for denial of issuance or renewal of license; grounds for revocation of license; notice; opportunity to correct situation.**

- 5. Before denying an application for issuance or renewal of a license for a cannabis establishment or revoking such a license as a result of the actions of an owner, officer or board member of the cannabis establishment pursuant to paragraph (b) of subsection 1 or paragraph (b) of subsection 2, ~~***the Board may provide***~~ the cannabis establishment will have ~~***with***~~ an opportunity to correct the situation.

**NCCR 5.120(3) Policies and procedures for waiving requirement to obtain a cannabis agent registration card for any owner, officer and board member who holds an ownership interest of less than 5 percent.**

- Please modify to include; A less than 5% owner of a publicly-traded or privately held cannabis establishment shall be exempt from suitability requirements only as long as such owner's direct or indirect beneficial ownership interest in such publicly-traded or privately held company meets the less than 5% limit; provided, however, the Board may require any beneficial owner, regardless of the number of shares owned, to apply for a finding of suitability if the Board has reasonable justification for doing so.

**NCRR 6.070 Persons authorized on premises; visitor identification badge and other requirements for other persons; maintenance and availability of visitor log.**

**40(c) Must not handle any cannabis or money whatsoever; and**

- Non-Cannabis vendors who access the building signing in under the visitors log to receive payments, ie, Nevada Linen.

**NCRR 7.040 Delivery to consumer: General requirements.**

**The delivery is made by a cannabis establishment agent who holds a cannabis establishment agent registration card in the category of cannabis sales facility;**

- Recommend that it can be any agent card category to qualify as drivers. There are matching credentials for obtaining an agent card.

**4. The Board has received confirmation from the cannabis sales facility, before a person engages in the delivery process, including, without limitation, accepting an order or physically delivering cannabis or cannabis products, that the person is employed by, volunteers at or provides labor as a cannabis establishment agent at the cannabis sales facility and holds a valid cannabis establishment agent registration card in the cannabis sales facility**;

- Once submitted the person should be allowed to begin working on a "temporary" approval while waiting for state to review.

**NCRR 7.050 Delivery to consumer: Restrictions; duties of cannabis establishment agent making delivery.**

**1. A cannabis sales facility shall not deliver more than 5 ounces of cannabis or an equivalent amount of cannabis products to any combination of consumers within a single trip.**

- Consider increasing limit to better utilize labor and increase ability to deliver to consumer in a timely manner. Increase to 10 ounces.

**5. A cannabis sales facility shall not deliver cannabis or cannabis products to any person other than the consumer who ordered the cannabis or cannabis products. Before delivering cannabis or cannabis products to a consumer, the cannabis establishment agent delivering the cannabis or cannabis products for a cannabis sales facility shall:**
**(a) Confirm by telephone that the consumer ordered the cannabis or cannabis products and verify the identity of the consumer; and**
**(b) Enter the details of such a confirmation in a log which must be made available for inspection by an appropriate law enforcement agency, the Board and Board Agents.**

- What details need to be in this log. Can the 3rd party delivery system be considered adequate documentation? Identity is confirmed when the delivery driver scans and confirms the identification. How long does the company need to keep records of the transaction?

**NCRR 12.015 Requirements for edible cannabis products, products in solid or liquid form, usable cannabis and concentrated cannabis or cannabis products.**

- If having to change all packaging from “this is a Marijuana Product” to “this is a Cannabis product” at start of newly implemented regulations, a timeframe threshold where establishments can run through already produced packaging with previous approved verbiage. Please also see NDA comments regarding this.

- We would also ask the commission to consider allowing permanent drive thru windows. Drive thru for cannabis retail stores will be the safest, simplest, and most sanitary method of delivery.

Thank you for the opportunity to share our comments with the Cannabis Compliance Board. We appreciate your time and consideration.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

Michael V. Cristalli, Esq.

Mother Herb
6265 Saddle Tree Dr.
Las Vegas NV 89118
Craig Rombough 702.533.1833
President
6/9/2020

Impertinent Nevada Cannabis Issues
Cannabis Compliance Board
regulations@ccb.nv.gov

## Impertinent Nevada Cannabis Issues:

**Unfairness of Mandated Tax for Non-Vertically Integrated Operators**

This is an issue as the mandated tax does not reflect the true market value of wholesale cannabis in Nevada. Vertically integrated companies do not report a true market value for 280e tax and competitive purposes. Vertically integrated companies purchase little to no flower at all from non-vertically integrated cultivators and if they do it's usually for a lot less than the state mandated price. Non-vertically integrated cultivators are only able to sell their premium flower and flower at much lower rates than the mandated price. Non-vertically integrated cultivators are also unable to sell older and inferior grade cannabis. This creates an unfair tax advantage to vertically integrated operations. This can be easily verified by stand-alone cultivations as well as the data collected independently by Cannabis Benchmarks.

Mother Herb has been forced to pay over $200,000 in tax above and beyond the 15% threshold due to these factors. This makes it exceedingly difficult to operate. We have also been forced to destroy inferior product that does not warrant the large tax. This is not good for the state, it's citizens, cultivators or the mandate of question 2, and additionally helps the black market.

The solution is simple; the tax **must** be an actual percentage for stand-alone cultivation operations. This problem is also compounded for those without a production license. Product must be taxed on actual prices sold. It is in every non-vertically integrated cultivators' interest to sell their product for as much as they can.

Another solution would be to allow cultivators who are not vertically integrated a license to sell their own product. This is necessary for a free market as interpreted under question 2 and normal Nevada business practices. It is also what is most fair for the people of Nevada, all product available at market driven prices.

**Monopoly/Oligopoly Created by Limiting the Number of Dispensaries**

The dispensaries are licensed to grow as much as they want under one license and many do not buy from outside sources. For this reason, cultivators are facing extinction with no market to sell their product. Again, this is against question 2 and has created an unfair situation for stand-alone cultivators and Nevada residents. It also creates an oligopoly for the current licensees. It is also affecting the prices and ultimately the patients and consumers. Cultivators need to have a free market to sell their product either with their own dispensary or by not allowing dispensaries to be able to hold a cultivation license. The state cannot hand out licenses and then license other license holders in a way that makes the non-vertically integrated cultivators' business unviable. This is the current arrangement with new licenses going to the same small amount of license holders. These businesses clearly do not want competition and a free market of licenses and operate under these principles making it hard for the cultivators who are forced to operate in an imbalanced market. It also makes it difficult for Nevadans by limiting their available product selection.

Simple solutions:

1. Let every non-vertically integrated cultivator have a license to sell their own product.
2. Restrict dispensaries from having more than one dispensary license.
3. Do not let dispensaries grow their own flower.
4. Do not limit the amount of dispensary licenses.

**Unfair, Unrealistic and Tyrannical Audit Practices**

We have successfully been working as a partner with the State of Nevada since the inception of this program. We have reported and always paid all taxes. We have operated exactly as inspectors and the guidelines have outlined. We have paid well over a million dollars in tax and over paid $200,000 above the 15% wholesale tax we were expected to pay. However, we have still been aggressively audited by the State and Leslie Milana. Although she had never done a cultivation audit, she has tried to recategorize flower to add additional tax over and above the overpayment mentioned previously. She has also ignored paperwork on usage tax trying to add another source of revenue. Additionally, we have operated within the framework given to us by inspectors and State officials, yet the auditors are trying to tax us on air dried water weight that has been explained to her many times yet she continues to ignore the facts. Her only answer is to tell us to appeal her decisions.

The solution to this is also simple. The State of Nevada needs to continue working as a partner with the industry and not allow such unfair practices. It is very disconcerting. We have paid an incredible amount of taxes, see the state as our partner and should be treated fairly.

Let us work together and solve the issues so we all benefit from this new industry. It will only benefit everyone and our communities.

Regards,

Craig R. Rombough

McDONALD CARANO

**Joshua J. Hicks, Partner** **Reply to: Reno**
jhicks@mcdonaldcarano.com
**Laura R. Jacobsen, Partner**
ljacobsen@mcdonaldcarano.com

June 9, 2020

**Via E-mail**
Cannabis Compliance Board
1550 College Parkway, Suite 115
Carson City, Nevada 89706
Grant Sawyer Office Building, Suite 4100
555 E. Washington Avenue
Las Vegas, Nevada 89101
regulations@ccb.nv.gov

**Re: Proposed Regulations of the Cannabis Compliance Board**

To the Honorable Chair Douglas and Director Klimas:

We write now to submit comments to the proposed Nevada Cannabis Compliance Regulations ("NCCR") published by Cannabis Compliance Board (the "Board") on May 29, 2020. These comments are submitted with a reservation of rights to submit further, additional, or different comments as the proposed NCCR progress through the rulemaking process. We welcome the opportunity to provide further information or clarification that the Board may request.

**NCCR 2.065**. Please remove the following provisions which allows for inadequately maintained evidence to be used against a licensee in disciplinary proceedings: "A failure to comply with this subsection shall not render evidence inadmissible in any proceeding before the Board."

**NCCR 4.120**. Please remove subpart (1) which creates a rebuttable presumption that missing records, documents, and surveillance would be harmful to the licensee. These failures are already subject to penalty, and this standard is more punitive that what is already provided in Nevada law, which provides for a similar presumption only after a finding that such evidence was "willfully suppressed." *See* NRS 47.250(3). Alternatively, consider revising this provision to allow for the presumption only after it has been established by a preponderance that the missing evidence was "willfully suppressed" and/or by allowing the adjudicator, in his or her discretion, to infer that evidence that is missing because of a party's negligence would have been unfavorable

to that party. Finally, and also consistent with Nevada law, this presumption should be reciprocal. That is, if the Board "fails to create and /or maintain any documents, records, surveillance video, and/or any other items," then there should be a corresponding presumption or inference in favor of the licensee.

**NCCR 4.030; 4.035(2)(a)(1); 4.050(2)(a)(3), (4)**. The current regulations allow for a civil penalty of up to $35,000 per violation. *See* 453D.905(1)(a), (4)(a)(1); 453D.940(b). Please consider lowering the $90,000 limit in each of these proposed regulations to $35,000 or, alternatively, $50,000. In experience, the Department of Taxation ("Department") combines multiple violations into a single citation. While violations should be remedied, the Board should be required to seek and meet the standard for revocation instead of stacking multiple violations which have the cumulative effect of rendering the continuing operations of a licensee, especially a smaller licensee, commercially impracticable. In addition, please consider adding a provision to the NCCR that requires the Board to take a licensee's revenue into account when determining the amount of any penalty.

**NCCR 4.035(2)(a), 4.040(2)(a), 4.050(2)(a), 4.055(2)(a), 4.060(2)(a)**. The current regulations provide a two-year lookback period when the Board considers prior violations for determining an appropriate penalty for new violations, while the NCCR provides for a three-year lookback period. In experience, the Department already combines numerous violations related to single incidents and/or audits and, therefore, the two-year window seems appropriate relative to the newness and evolving nature of Nevada's regulatory framework.

With respect to revocation, these regulations presume that revocation of a license is an appropriate automatic penalty based upon the number of prior violations in the previous three years without respect to the seriousness of prior violations. Given that these penalties are presumed appropriate, and especially if the Board is inclined to expand the two-year lookback period to a three-year period, a requirement that the Board consider the seriousness of prior violations seems like a commensurate approach to capture the most egregious offenders versus examining the sheer number of violation, which may bear little relevance depending upon the gravity of the situation.

Finally, we encourage the Board to take this opportunity to revise the current structure of presumed penalties. Specifically, the Board should consider removing any presumption that a certain penalty is appropriate based upon the number of violations in the lookback period. Instead, the Board could add discretionary language which would allow it to take individual circumstances into account when determining whether the delineated penalties are appropriate.

**NCCR 11.015(b), (c)**. The proposed conflict of interest rules with respect to cannabis testing facility could be construed as impermissibly vague. Specifically, subpart (b) requires "independence" without any definition of the same and, problematically, in addition to other undefined independence requirements set forth in subpart (c). Subpart (c) itself is vague with

respect to the undefined terms "direct or indirect interest" and "direct or indirect financial interest." For example, it is not clear whether it is permissible for a testing facility to employ an individual who is related to an employee of another cannabis facility. That the independence requires also reach to any other undefined entity that "may benefit" from cannabis industry or the use of cannabis or cannabis products is also problematic and could be interpreted to reach any entity that provides services to a cannabis facility, such as a law firm, or any consumer who lawfully uses cannabis. In the event that the Board deems it appropriate to impose this independence requirement upon testing facilities, these standards should be clearly defined to ensure compliance and clarity. Examples of specific definitions that regulate relationships among interested parties may be found at NRS Chapter 116, NRS 281.210 and NAC 284.375.

In addition, depending upon the extent of prohibitions, we respectfully request that the Board consider certain allowances in the event of lower-level conflicts that allow a testing facility to perform testing if the conflicted employee abstains from the analysis of samples obtained from relevant entity with which that employee is associated, provided the relationship is disclosed to the Board. This arrangement may be similar to "ethical screens" that allow a law firm to take on a matter after isolating a personally disqualified lawyer from participation. *See* Nev. R. Prof'l Conduct 1.10(e); State Bar of Nev. Standing Comm. on Ethics and Prof'l Responsibility, Formal Opinion No. 39 (2008).[1]

**NCCR 11.025(3), (5)**. We respectfully request additional language that specifies any independent third party appointed to inspect and/or monitor a cannabis testing facility must also be accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization. *See* NCCR 11.020 (requiring congruent certification for cannabis testing facilities). Given the novelty of the subject matter combined with a lack of federal standards regulating cannabis testing, the Board may consider granting itself discretion to refer a testing facility to monitoring by a third party for a specified period of time in lieu of punitive discipline, akin to a suspended sentence in criminal law, where demonstrated compliance for a designated time period will result in the removal or lessening of charged and/or imposed penalties. This approach comports with the flexibility needed to ensure both safety in the industry and success of operators as the Board and NCCR strengthen over time and recognizes the unique role testing facilities play in the industry. For those same reasons, we respectfully request that the Board consider providing an avenue for a testing facility to seek the opinion of a Board agent, the Board, or a qualified independent third party with respect to questions related to analytical testing methodologies.

**NCCR 11.025(7)**. This provision represents an addition to the current regulations. We respectfully submit that the current regulations provide for adequate regulation of quality assurance testing without reference to additional outside standards that are not designed for the

[1] *Available at* https://www.nvbar.org/wp-content/uploads/opinion_39.pdf.

cannabis industry. Quality assurance requirements that are overly stringent will, unfortunately, benefit the black market at the expenses of regulated industry. The comments articulated above with respect to 11.025(3) and (5) further bolster the ongoing dialogue between the Board and industry to ensure utmost compliance and a better understanding of the standards.

**NCCR 11.040(8), (9)**. Current regulation defines successful participation by a testing facility in proficiency testing to include: (1) positive identification of 80% of the target analytes; and (2) achieving results that are within the limits of the acceptance range established by the proficiency testing provider. *See* NAC 453A.660(8), (12). NCCR 11.040 adjusts that definition to require positive identification of 100% of analytes and eliminates the provision for meeting the requirements of the testing provider. While the ability to retest somewhat remedies the issue, it is nearly statistically impossible for a laboratory to achieve 100% identification of all analytes every time. Some amount of error is inherent to all scientific testing. For example, it is well-recognized that COVID-19 testing is imperfect,[2] yet we nonetheless rely upon this imperfect testing to ensure public safety as we re-open the economy. In light of this, and the fact that NCCR 11.040 eliminates the option to meet the testing providers requirements in order to achieve a successful result, we request that the Board considering re-setting a passing test to 80 or 90%, in lieu of 100%. On a non-substantive note, the Board may consider referring to percentages, either by using a symbol "%" or writing out the word "percent" consistently throughout NCCR 11.040 and throughout the NCCR generally.

With respect to subpart 9(a), we respectfully request clarification with respect to the time period within which a testing facility must notify the appropriate Board Agent that it has not achieved the required score for a quality assurance test.

With respect to subpart 9(b), we respectfully request that the Board clarify that a testing facility that has not achieved the required score for a quality assurance test be required to repeat proficiency testing only as to the failed target analytes, not the entire proficiency test. This clarification aligns with the remaining language of this subpart, which states that the testing facility may be required to cease testing "for those analytes" in the event of two consecutive or two out of three proficiency testing events.

**NCCR 15.010(1)(b)**. Consider eliminating references to gaming establishments and businesses.

**NRS 678A.460(d)**. Please delineate a procedure for interested parties to petition the Board for the adoption, amendment or repeal of a regulation. In addition, we respectfully request that the regulations include a procedure for a person seek an advisory opinion of the Director and/or

[2] *See* Steven Woloshin, M.D., et al., *False Negative Tests for SARS-CoV-2 Infection –Challenges and Implications*, NEW ENGLAND J. MED., June 5, 2020, *available at* https://www.nejm.org/doi/full/10.1056/NEJMp2015897.

the Board, including clarification that a licensee may petition for judicial review of that opinion pursuant to NRS 678A.610 *et seq*. For helpful reference, please see the regulations that establish a procedure for any person to petition the State Board of Equalization or the Nevada Tax Commission for an advisory opinion, NAC 360.190 – NAC 360.200.

Thank you for your time and your consideration.

Sincerely,

Nevada Statewide Coalition Partnership

775.450.7333
lindalang1628@gmail.com

June 9, 2020

Cannabis Compliance Board
1550 College Parkway, Suite 115
Carson City, NV 89706

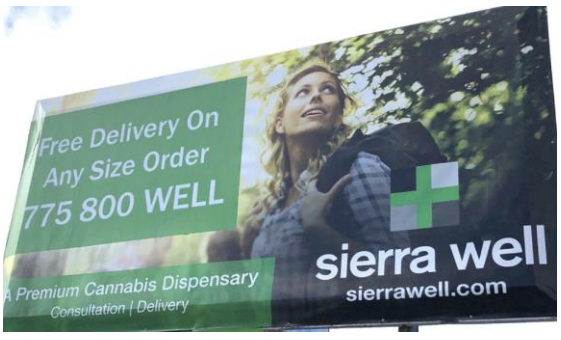
Dear Honorable Michael Douglas:

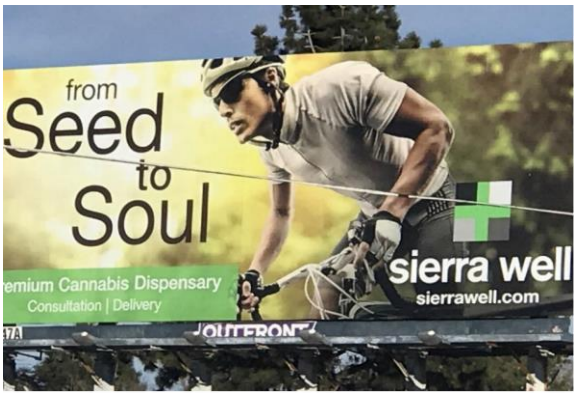
Nevada's substance abuse prevention structure is comprised of community level coalitions with a primary focus of prevention, education, and advocacy. Coalitions convene key stakeholders at the community level to address emerging issues and develop strategies to ensure the health and safety of citizens. Many of the coalitions were members of the Governor's Task Force on the Implementation of Question 2 and assisted in developing the initial recommendations.

Thank you for this opportunity to provide input to proposed regulations 1-15. This input is submitted on behalf of ten (10) coalitions.

Regulation 7.030
This regulation outlines restrictions on the sale of other products. CBD is an allowable product to sell but is also being sold at many other retail establishments in the state, at a lower tax rate. Revenue is lost to the state by not restricting the sale of CBD products to licensed dispensaries only.

Regulation 6.120
This regulation outlines restrictions on advertising and is very well written and comprehensive. #1e outlines what warnings must be included on all advertising. Enforcement of this regulation is important to send a consistent message to minors under the age of 21 and currently it is not always followed.



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Drive Through Windows

It is unclear as to whether establishments can offer sales at drive through windows. There are current businesses that offer this and regulations should be created to address how and if this can occur.

Regulations 4.040– 4.060

The category violations are very well written and protect public health and safety.

Respectfully Submitted By,

Mary Beth Chamberlain, Churchill Community Coalition – Serving Churchill County
Wendy Nelsen, Frontier Community Coalition – Serving Humboldt, Lander & Pershing Counties
Wendy Madson, Healthy Communities Coalition - Serving Lyon, Storey & Mineral Counties
Jennifer DeLett-Snyder, Join Together Northern Nevada – Serving Washoe County
Stacy Smith, NyE Communities Coalition – Serving Nye, Esmeralda & Lincoln Counties
Laura Oslund, PACE Coalition – Serving Elko, White Pine & Eureka Counties
Jamie Ross, PACT Coalition – Serving Clark County
Hannah McDonald, Partnership Carson City – Serving Carson City
Taylor Allison, Partnership Douglas County – Serving Douglas County
Linda Lang, NV Statewide Coalition Partnership – Statewide

Dear Cannabis Compliance Board,

Thank you for the opportunity to provide feedback for the proposed cannabis regulations. While Nevada continues to make significant strides to be the gold standard in cannabis regulation, we have some concerns and suggestions for a few sections of the proposed regulations.

**6.080 Subsection 8 (pg 61): 8 a and b**. Most facilities do not have the space to maintain records on site for 5 years. We request this be changed to have records on site for 1 year and allow records older than 1 year to be stored at an off-site location.

**7.025 pg 70:** This section says the maximum to purchase is 1 ounce usable, but this contradicts the amounts allowed by medical patients in Chapter 6, pg 52. Medical patients should be able to purchase a larger amount of product than an adult-use consumer.

**11.040 pg 95:** Proficiency testing is a vital part of evaluating laboratory capabilities, but this industry is too new and has some unique challenges that prevent it from having a gold standard PT program at this time. As such, we recommend making significant changes to section 11.040.

PT falls into 2 categories, matrix-based PT and an analyte in solvent PT. For matrix-based PTs, hemp bud or oil is provided which contains analytes of interest. The test evaluates both sample preparation and instrumental analysis. The second PT, analytes in solvent, does not factor in sample preparation and is only an evaluation of instrument performance. Additionally, the scoring systems for these two types of PTs are not equivalent. For the matrix-based PT, not all analytes are present, so none detected is counted as a correct evaluation. Solvent-based PT programs contain most to all analytes so more analytes must be correctly quantified.

Based on this information, we recommend changes to the following sections:

**11.040 section 5:** Add “when possible”. Not all PTs can be performed using the same procedures as normal sample analysis, specifically the solvent-based PTs.

**11.040 section 8.** There are numerous analyte stability and reactivity concerns with analytes present in PT samples. For example, Caryophyllene Oxide has solubility issues when other terpenes are present with it in solution. Likewise, pesticides Acequinocyl and Bifenazate are not stabile with other pesticides so they cannot be included in solvent-based PT samples. Given these concerns as well as other analytes not mentioned, we do not think it is practical to achieve a 100% for all analytes. We recommend keeping this at 80% (or reducing to 75% for assays with only 4 analytes), which is in line with other industries for quantitative reporting.

**11.040 section 9:** The matrix-based PT is only offered twice per year, so it is not possible to redo PT within 30 days. Solvent-based PT does not have the restriction of timing, but this deadline should not be applied only to a specific PT program. Therefore, we do not think 9b should be included. Failing proficiency tests should be repeated, but we do not think the 30-day limit is appropriate. We do not think a limit should be applied, rather the Board should verify that a passing PT score has been achieved each year.

**11.045 section 4:** We would like to remove the requirement to email R&D results to the state. R&D results may contain proprietary information that the cultivator/producer may not want public. As such, electronic mail is not a secure form of data transmission and we should not send potentially proprietary information through it.

**11.050:** We strongly support the Board's decision to move infused pre-rolls to the useable flower testing requirements and apply flower microbial testing limits. Infused pre-rolls often fail microbial testing since they currently have reduced microbial limits once the extract is introduced. It is unfair for the cultivator to pass micro testing for a flower to then fail it due to lower limits by adding an extract.

**11.050:** Please define "Pathogenic E. coli". Does this mean the "big six" plus O157? Please define this so commercial manufacturers can make more relevant and compliant products. Likewise, we think Salmonella needs to be further clarified to ensure all relevant species are analyzed.

**11.050:** Remove all mycotoxins from required testing. Ochratoxin A has significant stability issues making it difficult to keep high integrity QC standards. Ochratoxin and Aflatoxins are not commonly produced on cannabis. They are much more common in high starch products such as grains and corn. Therefore, they should be removed.

**11.050:** Edible products: we think microbial testing should be expanded to require Yeast/Mold testing of edibles. While water activity is a good method for predicting food spoilage, it does not replace Yeast/Mold testing.

**11.050:** Topical testing: we think microbial testing should be included in topical product testing. Why are we not looking at microbials for products that will interact with the skin and mucous membranes?

**11.050 section 4:** We strongly support this standardization practice.

**11.050 section 7:** Remove this requirement. Since all products and inventory are in Metrc, there is no need for this regulation. Several cultivators and producers have not paid laboratories for their work but received the certificate of analysis due to this regulation. Removing this section will allow laboratories to protect their work and not allow cultivators/producers to receive results without paying for the work.

Thank you for reviewing our feedback and concerns. If you have any questions or need additional information, please let us know.

Regards,

Ace Analytical Laboratory

Darryl Johnson, PhD, Scientific Director

Kate Boswell, Quality Assurance and Compliance Manager

Bruce Burnett, MD, Co-Founder

# Comments / Feedback on Cannabis Compliance Board Proposed Regulations

Trevor Low, Lab Director
Canalysis Laboratories, L017
June 9, 2020

Regarding Proficiency Testing

*11.040 (8) Successful participation includes an acceptable score for 100 percent of the target analytes that the cannabis testing facility reports to include quantitative results when applicable.*

Comment: For the purposes of licensure, do all analytes (including ones that are not required) need to pass? For example, per 11.055 (1b) ten terpenoids are required, but most labs report more terpenes to provide a more complete profile. If the one or more of the additional terpenes fails, but all ten of the *required* terpenes pass (i.e. 100% of required analytes pass), is that sufficient to meet the requirement?

Regarding microbiological sample portion

*11.050 (4) The analytical portion that is used for the purposes of any microbial test must be a minimum of one gram, unless otherwise approved by the Board.*

Suggestion: Change to "…must be a minimum of 1 ±0.1 gram, unless otherwise approved by the Board."

Regarding Potency Testing

*11.055 (1a) When performing potency analysis or terpene analysis pursuant to NCCR 11.050, a cannabis testing facility shall test for and accurately quantify the presence of the following:*

*THC, THCA, CBD, CBDA, CBN*

Suggestion: Include the calculation for total THC

Total THC = 0.877*Δ9-THCA + Δ 9-THC + Δ 8-THC

Regarding Random QA Compliance Tests

*11.085 (3) The cannabis cultivation facility or cannabis product manufacturing facility is responsible for all costs involved in screening or testing performed pursuant to this section.*

Comment: Getting cultivations and production facilities to pay for state-ordered QC testing has been challenging, especially when the samples are picked up from a dispensary. Our accounts receivable is constantly trying to collect payment for weeks, even months after sampling and results have been submitted. When invoicing cultivations for QC samples picked up from a dispensary, the cultivation often refuses to pay (e.g. "We didn't order that testing, so we're not paying for it.") Then it is weeks of back and forth communication between the lab, the state, and the cultivation to get it sorted out. As a lab, we want to help the state in any way we can, but at some point it is not worth it if: (1) we do not get paid, and (2) we lose a current or potential licensee as a client because of a bad QC sample experience with us.

Suggestion: Per the FY2019 State of Nevada Tax Revenue Worksheet (https://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/Copy%20of%20NV-Marijuana-Revenue-FY19.pdf), the state collected $99.1M in excise tax revenue, and another $9.8M in application and licensing fees. A portion of this revenue (say, $100K which is 0.1% of the FY2019 excise tax revenue) should be set aside for testing to include state investigations or random QC testing. The state can make a schedule of fees (or flat rate) and distribute to the labs, so that the state knows exactly how much testing will cost them and labs know exactly how much they will get paid for participating (don't make it too low, else labs may decline to participate). This way labs do not have to chase down payment from licensees who didn't ask for the testing, and the state is paying the same amount regardless of what lab they choose.

Regarding Retest samples (section 11.075)

Suggestion: Standardize the retest sample procedure – retest samples collected at the same time as the regular sample, but stored at a neutral, secure 3rd party location to ensure sample integrity. Alternatively, the state could provide a lockbox for retest samples, in view of cameras. These procedural steps would improve retest sample integrity, but must be evaluated for practicality and cost-effectiveness.

Hon. Michael Douglas, Chair
STATE OF NEVADA CANNABIS COMPLIANCE BOARD
1550 College Parkway, Suite 115 Carson City, Nevada 89706
Via: Email

Re: Comments Proposed Regulations of the Cannabis Compliance Board

I, Francis Mahoney, hold an Agent Card as a Volunteer and work mainly out of Northern Nevada. My comments specifically relate to NCCR 13.035 **Amount that may be transported by distributor; transportation by cannabis establishment agent; restrictions on transportation by vehicle** and Subsection 5 which is proposed to read:

5. If the value of the cannabis and cannabis products being transported by a cannabis distributor in a vehicle, as reported on the transportation manifest as the insured fair market wholesale value, exceeds $25,000, the cannabis distributor shall ensure not fewer than two cannabis establishment agents of the cannabis distributor accompany the vehicle.

I would propose that the draft regulation be redrafted too:

5. If the value of the cannabis and cannabis products being transported by a cannabis distributor in a vehicle, as reported on the transportation manifest as the insured fair market wholesale value, exceeds $50,000, the cannabis distributor shall ensure not fewer than two cannabis establishment agents of the cannabis distributor accompany the vehicle.

The $25,000 found in the draft puts an enormous additional expense on the transport of a small amount of product on the distribution entity with little additional value or safety provided with a second agent in the vehicle. The roundtrip distribution of cannabis from the Las Vegas region to the Reno area or to northwestern Nevada is normally a 16 to 20 hour roundtrip with deliveries. The attendance of the second agent places a severe strain on an already economically challenging cost of transportation. If expenses for the agent include three meals and then 8 hours straight time and 8 hours over time. Not including the meal expense and overnight accommodation the wages alone (on top of those of the first agent) are approximately $400.00 (8hrs*$20/hr + 8hrs*$30hrOT and at 20 hours round trip would be $580.00). Even using the lower $400 per trip, with 2 people that is $800/$25,000 of product or 3.2% of the value of the cargo in addition to amounts already spent in security with alarms and the lock box. Our profit margins are already very slim and this additional burden is hard to accept when the second agent has no real purpose in being in the vehicle – especially when you consider that the vehicle is emptied over the day and quickly has less than $25,000 of product and that is empty on the return trip.

There is little added safety with the second agent as we are well trained not to interfere if there is an attempted hijacking, that there is no work for the agent during travel or at delivery, or on the way back to the distribution site. During the vast majority of the trip the vehicle is mostly empty and there is almost no circumstance when the second agent is of any use. Especially considering the expenses, and the negative impact to consumers of those added costs, I would ask that the Board consider raising this limit to $50,000 or higher as the public will be better served with more competitive pricing in the marketplace.