

NEVADA TAX COMMISSION MEETING
MINUTES

TELEPHONIC MEETING

Nevada Department of Taxation
1550 College Pkwy
Carson City, Nevada 89706

February 13, 2020
1:30 p.m.

Members Present - Telephonically:

James DeVold, Chairman
Ann Bersi, Commissioner
Randy Brown, Commissioner
George Kelesis, Commissioner
Tony Wren, Commissioner
Sharon Rigby, Commissioner
Craig Witt, Commissioner

Members Absent:

Francine Lipman, Commissioner

Chairman DeVold called the meeting to order at 1:30 p.m.

I. Public Comment.

Mona Lisa Samuelson, representing medical marijuana patients in Nevada. This is an agenda item that medical patients are very interested in. The most important thing at this time of recreational glory in Nevada is that we still have a sense of corporate responsibility. The patients are on the line and they will be listening. Thank you very much.

Dr. Bruce Burnett thanked the Nevada Tax Commission for the opportunity to comment regarding the consideration for public approval for the recommended Settlement Agreement and stipulation related to Certified AG Labs, LLC. Dr. Burnett is an anesthesiologist and the founder and owner of a cannabis independent testing lab in Nevada. Dr. Burnett reviewed the agreement between the Nevada Department of Taxation and Certified AG Labs. Dr. Burnett respectfully requested that prior to consideration and potential approval of the Settlement Agreement, the Nevada Tax Commission consider the following: Nevada has been recognized as having a problem with fraudulent THC inflation and lab shopping. Individual cultivators knowingly gravitate toward labs that are providing false results. There are two types of such falsifications that routinely occur, artificially elevating THC levels which results in the lab gathering more clients, the cultivator selling its product to the unsuspecting consumer at an inflated price, and leaving the consumer the one that is financially defrauded. There are also serious potential health problems that occur when a consumer thinks he/she is capable of handling more THC than he/she actually is by smoking inflated THC results. Not failing samples that should fail QA testing is the other common type of fraud. This results in selling contaminated product to the consumer and can have serious potential risks and has been evident by the recalls that have recently occurred in the State of Nevada. In September 2019, the Nevada Department of Taxation was presented overwhelming statistical evidence that both types of falsification were occurring when Dr. Jim McCray from Straight Line Analytics presented an analysis of the State's Metrc data showing that certain labs were supplying results that were effectively and statistically impossible to achieve. The Settlement Agreement seems to be at odds with the charges, Exhibit A and the plan of correction. The Settlement Agreement notes that the licensee tested samples and filed certificates of analysis reporting

trusted THC levels to the State. The Settlement Agreement then notes that on the following day when the licensee followed its own procedures, the THC levels came in nine to ten percent lower. There is a massive financial benefit to such behavior for the lab, the cultivator and the dispensaries, while the entity that suffers is the consumer that overpaid for the product and thinks that he/she can handle more THC than they can actually consume. This endangers the consumer's wellbeing and defrauds them while enriching the lab, the cultivator and the dispensary. The plan of correction deals with the THC testing issue. The additional violations listed in Exhibit A, in and of themselves should warrant, in Dr. Burnett's opinion, revocation of the license of the licensee because fifth and subsequent violations in the immediate preceding two years can result in revocation of the license or marijuana established agent card. Each and every COA with these inflated THC levels represents a knowing or unknowing false statement made to the State and is a category one or category two violation of NAC 453D.905. The statistical analysis of the Metrc data presented to the State in September by Dr. McCray showed that hundreds, if not thousands, of such violations occurred by certain labs. These should result in license revocation of those labs. To allow the lab to inflate THC levels, and to only be shut down for a short time, and to pay a relatively small fine, makes a mockery of the regulations that the Legislature so carefully put in place to establish Nevada as the gold standard in cannabis testing. Dr. Burnett urged the Nevada Tax Commission to look very closely at the evidence, the charges and the circumstances surrounding the settlement. Fraudulent lab testing are the most gregarious violations that a lab could do and would not be tolerated in any federally regulated system. Nevada should take steps to make certain it is a highly regulated, honest system, protecting the consumer, tourists and locals alike, so that it can maintain its reputation as a highly regulated adult use cannabis market. Thank you.

Curtis Bunce stated he is involved with an independent lab in Nevada. He thanked the Nevada Tax Commission for allowing the opportunity to make comments regarding the approval and the recommended settlement related to Certified AG Labs. This should be a revocation. You are talking thousands and thousands of tests of inflated THC. It's fraud. This is affecting the consumers and it is very dangerous. As a brief example, if we all go out to have a beer and we get behind the wheel, we know exactly what we had. Mr. Bunce stated that if he has a shot, this is going to affect him differently. This is a public safety issue and this needs to be stopped. If he has a shot or two, he knows that he shouldn't be behind the wheel. What is happening now, is there is THC inflation out there and they may think they are getting something, and they really are not. All of a sudden, they think they are drinking Coors Light and they get behind the wheel and kill somebody. This is a public safety issue. Mr. Bunce stated, in his opinion, this needs to be stopped. There is documented evidence from Dr. McCray that shows that this has been going on for some time. Mr. Bunce stated this should be removed from the consent agenda and it needs to be discussed more. This is a revocation; this is not a small fine over the last several years. This is costing consumers and everybody hundreds of thousands of dollars, if not millions. Thank you.

Laura Jacobsen, an attorney with McDonald Carano LLP, representing Certified AG Labs. This settlement was the result of a protracted negotiation process with approximately four deputies Attorney General. Prior to reaching the settlement, Certified AG Labs was willing and able to present evidence to establish why its results were not inflated, why it did not mislead the Department and why there is no fraud, or any other misrepresentation involved in this case. If the Settlement Agreement is not approved, Certified AG Labs remains willing to litigate those issues. There is no admission of liability in that Settlement Agreement and Certified AG Labs categorically denies any misrepresentation or inflation of THC results. As far as the 9% to 10% difference in testing levels, Ms. Jacobsen pointed out, we don't believe that difference is statistically significant given the difference in the samples and the way we were prepared. This is an issue that we were prepared to litigate. It is important to note, we are not talking about something that contains 20% THC being reporting at 29% or 30%. Ms. Jacobsen stated she is talking about a 9% to 10% difference. Let's say 10% to make the math easy, 10% of 22% is 2.2, so we are talking about a range from approximately 18% - 22%. If the "true value", whatever that may be, is 20%, we are not talking about a giant swing. Ms. Jacobsen stated that she is not talking about a difference between a 10% and 20% beer, for example. Any other lab who might be commenting on this, of course has a vested interest in seeing that Certified AG Lab is put out of business. As the Tax Commission may be aware, there are only two labs in Northern Nevada. In effect,

when you pull one lab off the market for two or three months, you created somewhat of a monopoly in Northern Nevada which goes against some of the statutes, as set forth in 453A. Thank you.

Will Adler, with Silver State Government Relations. Mr. Adler stated he didn't have the meeting packet but did see part of it as well as the exhibits. Mr. Adler shared concern relating to the surveillance camera footage, lack of storage of data and things he saw in the agreements. Mr. Adler stated that he had never seen those before and would like to hear more about those. If this is on the consent agenda and is going to stay that way, he understands. Thank you.

Director Young administered an oath to all parties testifying.

II. CONSENT CALENDAR:

A. Consideration for Approval of the Recommended Settlement Agreements and Stipulations:

- 1) Lone Mountain Partners, LLC (C122 & P077)
- 2) Certified AG Labs, LLC

Commissioner Bersi stated that she had questions for both taxpayers.

Lone Mountain Partners, LLC and Certified AG Labs, LLC were pulled for further discussion.

Commissioner Bersi asked, if in the Settlement Agreement, Lone Mountain accepted a single violation of 453D.905.

Ashley Balducci, Senior Deputy Attorney General, stated that the exact violation was not specified due to if it is a category 3 violation, or another category. It is ultimately the same penalty.

Commissioner Bersi asked if this system has been utilized in the past, or if this is the first time.

Senior Deputy Attorney General Balducci stated that she does not see any reason not to follow this in the future.

Commissioner Bersi asked if this also pertains to Certified AG Labs.

Senior Deputy Attorney General Balducci stated it does.

Commissioner Kelesis moved to approve the Settlement Agreement of Lone Mountain Partners, LLC. Commissioner Rigby seconded the motion.

Roll Call Vote: Commissioner Bersi – Aye; Commissioner Brown – Aye; Commissioner Kelesis – Aye; Commissioner Wren – Aye; Commissioner Rigby – Aye; Commissioner Witt – Aye; Chairman DeVolld – Aye. All in favor. Motion carries.

Commissioner Wren stated that he understands there were several violations with the same fines, but the violations were not specified. What happens in the future if there are violations again? We will not know what we sanctioned them for. This could be a problem.

Senior Attorney General Balducci, stated that when you get a second penalty in a specific category, the regulations delineate what that penalty is. It does not matter what the specific facts are that led to a specific category. The category is only what really matters for progressive disciplinary practices.

Chairman DeVolld asked what the second penalties are. What is the escalation in their poor behavior? Is there an instant revocation?

Senior Deputy Attorney General Balducci answered that it depends on the category of the violation, however, they do over time get progressively worse depending if the prior violation occurred in the prior two years.

Curtis Bunce stated that this has already happened and believes that this is their third or fourth violation in the last two years.

Chairman DeVolld thanked Mr. Bunce, but asked to keep this discussion between the commissioners at this time.

Chairman DeVolld asked Ms. Balducci about the analogy regarding a beer versus a shot of whiskey. He asked that she tell him, in her opinion, if this is the case here. Is there that big of a disparity in the nine to ten percent?

Senior Deputy Attorney General Balducci stated that she doesn't have anyone to speak on this particular issue, and she would not be able to provide an adequate answer. The settlement agreements do say that it is the division's position that it was between nine and ten percent and that was contested by Certified AG Labs.

Chairman DeVolld shared that this does seem serious to him and shared his concern. The Chairman asked if there is someone from the Department with expertise relating to this topic.

Senior Deputy Attorney General Balducci suggested that she would get an inspector from the Department and asked for ten minutes to do so.

Elizabeth Perez, Inspector, and Kimberly Wayman, Inspector, were present on behalf of the Department of Taxation.

Director Young administered an oath.

Chairman DeVolld stated that one of the items in the agreement says that there is a differential of a nine to ten percent difference. One of the items in public comment compared this to drinking a Coors Light versus a shot of whiskey. Is nine to ten percent equivalent to something in that range?

Kimberly Wayman stated the nine to ten percent that was spoke of was regarding the variation in their instrument performance and the result that they were putting out a consistent nine to ten percent higher THC value than what the substance contained. If someone purchased marijuana that was tested by this lab and it was 30% THC, and they consistently used a product tested by this lab and they knew that it affected them in a certain way, and then they consumed product that was tested by another lab, that was testing accurately, and they consumed a 30% product, it would be a vast difference. Ms. Wayman stated that she is not sure if it would be comparable to a beer and a shot. Ms. Wayman stated she is not a doctor, but they have been inspecting labs and looking at test results for a few years now. We know what a normal range is for products.

Chairman DeVolld asked what the normal range is.

Ms. Wayman answered that it would depend on the product that you are speaking of. Variation is different than inflation. A laboratory, in the course of their normal work, is going to have some variation. You might have plus or minus a few percentage points, but this is a consistent nine to ten percent above what the result is supposed to be. The variation is in infliction form.

Chairman DeVolld asked if this is their first violation or have there been other violations.

Senior Deputy Attorney General Balducci stated that this information is confidential, and she is not at liberty to disclose, pursuant SB32.

Commissioner Witt stated that we were told by the Attorney General that the specific nature of the violation in this category meant that it really didn't matter what the specifics were. In general, there must not have been any other violations in this specific category, or we wouldn't be here, or we would have been talking about this sooner.

Senior Deputy Attorney General Balducci stated that if this was progressive, we would have noted it in the agreement.

Commissioner Kelesis motioned to approve the Settlement Agreement of Certified AG Labs, LLC. Commissioner Bersi seconded the motion.

Roll Call Vote: Commissioner Bersi – Aye; Commissioner Brown – Aye; Commissioner Kelesis – Aye; Commissioner Wren – Aye; Commissioner Rigby – Aye; Commissioner Witt – Aye; Chairman DeVolld – Aye. All in favor. Motion carries.

III. Next Meeting Date: March 9, 2020

IV. Public Comment.

Mona Lisa Samuelson, representing medical marijuana patients in Nevada. Ms. Samuelson stated she looks forward to seeing what the public is allowed to see on the businesses. We need to be looking at transparency, not taking the transparency out of it. You are allowing more terrible behavior to occur. We want responsibility. We think it is the job of the Tax Department if you want to be the head of the regulation for marijuana in Nevada. We ask that you take your responsibility very seriously. We hope that this is transparent too. I will be emailing each of you. You make it so hard for people to understand what is going on. We have far more situations that have to do with consumer safety than elevated THC levels. Thank you very much.

Will Adler, Silver State Government Relations, understands this is private, although it was emailed out publicly at the time. There were previous violations. Mr. Adler mentioned that it was not in the packet, and he would have stated it more explicitly in his comments. Thank you.

Curtis Bunce suggested that the Commission look at the history, past violations and suspensions prior to making this decision. This has all happened within the inside of two years, and per your statute, if there have been multiple violations within the two-year period, it is automatic revocation. You are allowing these guys to pay to play. \$70k is pennies compared to the amount of income made for inflating THC.

Stacy Gardalen, with DB Labs, stated you have made an injustice by making this vote without being fully transparent. It is sad and I would hope that in the future you would look at other violations that they would have.

V. Meeting adjourned at 2:18 p.m.