



CANNABIS CONTROL COMMISSION

PUBLIC MEETING MINUTES

August 23, 2018 1 p.m.
Massachusetts Gaming Commission
101 Federal St 12th Floor
Boston, MA

COMMISSION MEMBERS IN ATTENDANCE:

Chairman Steven Hoffman
Commissioner Kay Doyle
Commissioner Jen Flanagan
Commissioner Britte McBride
Commissioner Shaleen Title

COMMISSION MEMBERS ABSENT: None

LIST OF DOCUMENTS

1. [Presentation](#)
2. [Draft – Meeting Minutes | 08/09/18 |](#)
3. [Contract Hearing Officer Position](#)
4. [Medical Marijuana Regulatory Timeline](#)
5. [Executive Summary – Cultivate Holdings, LLC – \(MPN281305\)](#)
6. [Executive Summary – Northeast Alternatives, INC.- \(MRN281314\)](#)
7. [Executive Summary – Alternative Therapies Group, Inc. – \(MRN281255\)](#)
8. [Executive Summary – CDX Analytics, LLC- \(ILN281275\)](#)
9. [Executive Summary – MCR LABS, LLC- \(ILN281278\)](#)

Chairman Hoffman called the Cannabis Control Commission to order at 1:02pm on August 23, 2018. Chairman Hoffman put the public on notice that the meeting is being recorded. Chairman Hoffman reviewed the meeting agenda.

Chairman Hoffman turned to the approval of meeting minutes from August 9, 2018. Commissioner Title read her proposed edits to the minutes. Chairman Hoffman suggested reviewing Commissioner Title's edits and revisiting the minutes at the next meeting.

Next, Chairman Hoffman turned to the executive director's report. Executive Director Shawn Collins introduced Samantha Doonan, Research analyst and discussed her professional

background. Mr. Collins discussed the job description for Hearing Officer. Commissioner Title inquired if a hearing officer could hold another job. Mr. Collins said most likely this would be a hearing officer from another agency. Chairman Hoffman asked when this job will be posted. Mr. Collins said it will be posted in the next few weeks. Commissioner Doyle made the motion to approve the job description, seconded by Commissioner Flanagan. The motion is unanimously approved by the Commission.

Mr. Collins discussed licensing applications (slide 5); applications under review by category (slide 6); and where in the process the applications are (slide 7). Commissioner Title asked if Mr. Collins could give an update on lab applications. Mr. Collins noted there are two applications deemed complete. Mr. Collins discussed the map of applications (slide 8). Mr. Collins noted the RFQ for the social equity closes on September 7, 2018. Mr. Collins noted that Commission staff has been working on an RFP for the open data and hopes to present it to the Commission soon.

Chairman Hoffman thanked the Department of Public Health (DPH) in assisting the Commission on the transition of the medical marijuana program. Mr. Collins thanked DPH for all their assistance and their policy expertise. Mr. Collins discussed the regulatory timeline (slide 9). Commissioner Title asked if it would be possible access the public comments throughout the process. Mr. Collins noted that would be possible. Commissioner Title asked what was the process for developing the draft. Mr. Collins said we are working with DPH and will be assuming the program largely as it exists today. Chairman Hoffman asked when the commissioners will have a copy of the regulations draft. Mr. Collins said the hope is early next week.

Mr. Collins said how the Commission manages the personnel transfer is a very important issue, including collective bargaining agreements. In addition, there are contracts that the Commission may need to adopt or assume. Space for employees is another issue. There will be a transition of the Medical Marijuana Trust Fund. The Commission is looking at the transfer from a legal, HR, and IT perspective. Mr. Collins said the data of patients is also an important issue and work to protect sensitive data. Mr. Collins thanked individual members of the medical marijuana program.

Chairman Hoffman turned to the discussion of the Host Community Agreements (HCA). Mr. Collins discussed the staff report on reviewing HCA agreements during inspection, as the Commission had previously requested. (slide 11). He noted that inspectors would receive training on reviewing HCAs, as key elements of compliance or non-compliance may not be clear in reading the plain text of contract. He estimated that it would take approximately one hour to review an HCA. Inspectors would extract critical information from HCAs and include it as part of the inspection report. Commissioner Flanagan asked who will be providing the training to our inspectors and is there a program. Mr. Collins said the training would be developed by the appropriate staff. Commissioner Flanagan asked what is considered critical information for the inspectors to extract. Mr. Collins said the intent would be information that needs to be evaluated for compliance, the terms of the contract, the stipulations, and the 3% Community Impact Fee. Commissioner Flanagan asked if the inspectors have legal backup. Mr. Collins said the

enforcement counsel will be there to advise inspectors through the course of their work. Chairman Hoffman asked for Commissioner feedback. Commissioner McBride asked how the Commission will evaluate this information, considering not everyone has a background in municipal finance. Mr. Collins said the Commission would evaluate the terms provided in the contract. Commissioner Doyle said the staff will extract the information, give the information to the Commission, and asked if the Commission could ask for additional information. Mr. Collins said the staff would try to get additional information, possibly from the potential licensee. He added that if there was a request to develop a recommendation based on that information, the staff would be prepared to do that. Commissioner McBride asked if this would be done through a public records request. Mr. Collins said we would use what tools are available to seek to the documents to the best of our availability. Commissioner McBride asked how long it would take to collect this information to evaluate. Mr. Collins said it is dependent on the information sought, it would be on a case by case basis. Commissioner Doyle noted we would need to develop a standard for the information we are going to accept. Chairman Hoffman noted this is a complex issue and we would have to develop a process. Commissioner Title thanked the staff for their hard work and recognized the time and effort they had put into preparing. She asked who performs the review of other legal documents in applications, such as leases or management contracts and who developed the training. Mr. Collins said the Director of Licensing performs the review, and training was developed by members of the staff to create a check list. Commissioner Title asked if the Commission has the right under our statute and regulations to ask for contracts that the licensee has signed. Mr. Collins said we can inspect documents during our inspection process. Commissioner Title asked how long the inspection process will be. Mr. Collins said that is largely dependent on the license type. Commissioner Title asked if we would need to hire additional staff to perform this role. Mr. Collins said no, it will be performed during the course of the regular inspection process.

Commissioner Title asked if any concerns have been raised about non-attorneys reviewing other legal documents. Mr. Collins said not that he is aware of. Commissioner Title asked if our investigative team is capable of looking at the contract to determine if the community impact fee is over 3%. Mr. Collins said the skill and ability of each investigator is going to differ. Commissioner Title asked if the investigator could evaluate a term of 5 years or over 5 years. Mr. Collins said he is not sure the contracts are that clean to include the contract end on this date. Commissioner Title asked if Mr. Collins would be comfortable with the investigators extracting the relevant information. Mr. Collins said yes.

Chairman Hoffman asked Commissioner Title to present her proposal. Commissioner Title said the proposal is that the Commission will require applicants to submit signed host community agreements and will review them as part of its licensing process. The scope of review will be limited to ensuring that licensees are compliant with M.G.L. Chapter 94G § 3(d), including that the community impact fee is: (1) reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center (2) not more than 3% of the gross sales of the marijuana establishment or medical marijuana treatment center, and (3) limited to a term of 5 years, and that the host community agreement includes

all stipulations of responsibilities between the host community and the marijuana establishment or a medical marijuana treatment center.

Commissioner Doyle said the controversy is what is outside the community impact fee, it is the donations, how would we address that in this process. Commissioner Title said that, under the staff's proposal, that information would be extracted and presented to the Commission. Commissioner Doyle asked if the Commission is just looking at the community impact fee, and the concern is the donations that fall outside of that, she is trying to understand how the Commission is going to review the agreements. There is a tension between applicants who say 3% is all encompassing and municipalities who are saying the community impact fee is one part, but other donations are allowed. Commissioner Title suggested adding community impact fee definition to the motion. Commissioner Doyle said some of the donations have to do with public health education, is this an impact to the town or a global impact to the state now that we have adult use marijuana. Commissioner Doyle said that she having a hard time finding a standard of review. Commissioner Title suggested expanding community impact fee section, referring to cost imposed upon the company. Commissioner Doyle said she is not sure that will help.

Chairman Hoffman said one option is Commissioner Title's proposal. Chairman Hoffman said there are issues with the host community agreements, there is ambiguity, and does the Commission have the right to review and deny based on these HCAs. With all due respect to the legislature, when you have many lawyers arguing on each side, there is ambiguity in the legislation. Chairman Hoffman proposed collecting as many documents as the Commission can. If the conclusion is there is a problem, the Commission may need to consider going to the legislature. Chairman Hoffman does not feel we can intervene right now because there is such disagreement between lawyers. Chairman Hoffman would like to review, study and if there is a problem, bring it to the legislature for a fix.

Commissioner Flanagan thought this is a messy issue, and our role is to be regulators in Massachusetts. Commissioner Flanagan asked where we are going in this process. Chairman Hoffman said was happy to discuss Commissioner Title's proposal.

Commissioner Title asked what more information the Commission needs to determine if there is a legislative fix. Commissioner Flanagan said when the Commission talk about impact fees, we are forecasting. The Commission does not know what the impacts will be now because of how early it is. Commissioner Title said the legislature laid out the process, laying out the potential costs, not being more than 3%. Chairman Hoffman he said from what he has seen, there are problems with the host community fee.

Commissioner Flanagan discussed the legislative timeline, with bills not moving in the legislature before March at the earliest. Chairman Hoffman said we have the time, so the Commission should study the issue. There is a potential bias in the sample right now. Commissioner Title asked what the Commission would do about licensees until March if it waited for a legislative fix until then. Chairman Hoffman said we stick with what we are doing, which is only certification that an agreement is in place.

Commissioner Doyle said she is concerned that the Commission will be holding people up and where looking at the area of monetary transfers that does not neatly fit into the community impact fee, there is not clear law saying what is okay and what is not. Without asking from help from the legislature, the Commission will potentially delay people and could be accused of going beyond our statutory authority. Commissioner Doyle is open to working with the legislature to have a clear legal footing with a time period to allow contract reform after legislative fixes.

Commissioner McBride said she has concerns about our authority, delays, and people's expectations if the Commission reviews them. Commissioner McBride said the Commission is a regulatory agency and it is our job to establish a balanced regulatory process. Commissioner McBride said that regulated process is different than a government-run process. Commissioner McBride expressed concerns about our ability to undertake a review, on based her experience and the law.

Commissioner McBride stated that we have no authority to require a municipality to do anything. Commissioner McBride said I reiterate that given the limits of our authority, the only action we can take is against the applicant, who presumably will need to approach the municipality to renegotiate the contract. That may happen. It may not. Commissioner McBride said I have concerns that reviewing these will result in delays in licensing decisions, and these circumstances will be different than other circumstances because this one will be of our own making. Commissioner McBride said we can't force a bank to come to the table to bank Marijuana Establishments; we can't force someone to apply for an independent testing lab license. And, we can't force a municipality to renegotiate a contract with an applicant. We will be making a choice, with eyes wide open, to delay the process we have started for everyone.

Commissioner McBride said go ahead and Google "Massachusetts" and "agency" and "backlog." Commissioner McBride said I got over 400,000 hits, many of them news stories about other Commonwealth administrative agencies over the course of several years. In case anyone has any doubt about how a delay will be perceived—how it will be covered by some of the very same people sitting in this room—you'll see it there. Now, if I truly didn't care about delaying this process, I'd vote for this review. We don't have the legal authority. We have no certainty of a beneficial outcome if we even identify a problem. And it will cause delays that we will own. Let's move forward and establish the responsible industry we've promised.

Commissioner Title recalled the discussion on background checks and noted that when she voted against certain background checks, she was honest and up-front about why she believed that was the right decision instead of focusing on possible bureaucratic delays or cost. Commissioner Title said this is a very important decision to make, possibly the most significant decision in terms of what happens with the industry. Commissioner Title said that she is trying her hardest to change the process. Commissioner Title said she was concerned about relying on the legislative fix given that the previous suggested legislative fix did not pass.

Commissioner Title said the local process is very difficult in Massachusetts; she said this was a primary factor in the delay in the medical program and noted that we are setting ourselves up for the same process now. She explained that this is the greatest barrier to entry and could make

moot all of the other measures the Commission has taken toward fairness and equity. She noted that between the decision in December and now, we obtained several agreements that include payments exceeding the limits in the law, and that we can't pretend we haven't seen that evidence.

Commissioner Title said if we do not set parameters now, and if we issue licenses to businesses that have noncompliant contracts, we will not have the authority to fix it later. She asked, what would stop a "Big Marijuana" company from coming in and paying a 1-million-dollar flat fee, for an indefinite term? She noted that the idea of the problem getting worse is not hypothetical; municipalities are already asking applicants for "voluntary donations" that are not in fact voluntary.

Commissioner Title said that she saw a reopen clause in almost all these contracts, which will make the adult use market more limited than the already limited medical marijuana program. If a company has an agreement with one municipality and agrees to make larger payments to another municipality, then under this clause it has to make the larger payments to all of the municipalities it has agreements with. She noted that the municipality would then likely charge all businesses it works with the same amounts to be fair, causing a chain reaction around the state and knocking out the smaller players.

Commissioner Title said her job is to make this industry inclusive. The law says there are limits to payments in this industry. She noted the Commission's obligations in the law to include farmers, microbusinesses, people of color, women, veterans, and people with disabilities, and that the Commission has now issued 19 provisional licenses, none of which went to those groups. She noted that we could choose to remove this gigantic barrier to entry, or to willingly look the other way, and that either way, this would be a historic decision.

Commissioner Flanagan thanked Commissioner Title for her hard work. The Commission have made a lot of decisions over the past 12 months, trying to do our best for what is in Massachusetts. Commissioner Flanagan said that the reality is you need money to be part of this industry, and while not everyone is going to own the businesses, people have an opportunity to work in the businesses being licensed. The Commission cannot be everything to everyone all the time, we are a regulatory agency. The Commission must work within the legislation. She said she has concerns that if we start going through the agreements, we are going to be sued and delay the process. Commissioner Flanagan understands there are criticism of the cities and towns, but that can be said through many industries. She said she wants the little guy to be able to succeed, but at the same time, it can't all be handed to the person, there has to be parties negotiating and we have to be able to trust that process whether we agree with it or not because it's here.

Commissioner Doyle said her concern is still the fees outside the community impact fee.

Commissioner Doyle said she supported the Chairman's proposal to study this further as well as Commissioner Title's point of studying what is slowing applicants down, and to include that in the Commission's research agenda. Commissioner Title added on the subject of being sued that she does not make decisions based on threats of being sued, but if she did, she would note that we have a letter from the two legislators who wrote the law reiterating their intent for the Commission to review this and also that the Commission issued our own host community

agreement guidance. A court would look at both of those in addition to the law. Chairman Hoffman said he does not feel there is legal clarity to intervene.

Commissioner Title clarified that her motion did not suggest intervening in any way with any contract. Chairman Hoffman said he is not sure the Commission has the authority to deny a license based on an HCA. Commissioner Doyle asked if the Commission could circle back to the motion.

Commissioner Title said there is no evidence there would be a delay on our end, it appears to take an hour of review and then go before the Commission. Commissioner Title believes the municipalities and businesses are not going to hold out and will comply quickly.

Commissioner Title made a motion that the Commission will require applicants to submit signed host community agreements and will review them as part of its licensing process. The scope of review will be limited to ensuring that licensees are compliant with M.G.L. Chapter 94G § 3(d), including that the community impact fee is: (1) reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center (2) not more than 3% of the gross sales of the marijuana establishment or medical marijuana treatment center, and (3) limited to a term of 5 years, and that the host community agreement includes all stipulations of responsibilities between the host community and the marijuana establishment or a medical marijuana treatment center. The motion was seconded by Commissioner Flanagan. Commissioner Title voted aye. Chairman Hoffman, Commissioner Flanagan, Commissioner Doyle, and Commissioner McBride voted nay. The motion is denied by a vote of 4-1.

Chairman Hoffman directed the staff to study the issue of the HCAs further. Chairman Hoffman said we will make a request of all applicants to share the HCA, but that is not a requirement or reviewed as part of the licensing process. Commissioner Doyle noted that we are in the process of a municipal survey, which includes HCAs. The deadline to submit responses August 24, 2018 at 5pm.

Commissioner Flanagan asked what the end goal is of collecting these HCAs. Chairman Hoffman said the staff will review and then the Commission can decide. Commissioner Flanagan is concerned that the Commission will have this conversation again. Chairman Hoffman said going to the legislature and analyzing these agreements will strengthen our argument.

Chairman Hoffman recessed at 2:51 pm. Chairman Hoffman called the meeting back to order at 3:03pm. Chairman Hoffman turned to the staff recommendations for the issuance of a provisional license.

Mr. Collins discussed CDX Analytics #ILN281275 Independent Testing Laboratory application. Commission staff recommend issuing a provisional license with the following conditions:

(1) Final license is subject to the applicant obtaining certification as an ISO/IEC 17025:2017 accredited laboratory; (2) Final license is subject to certification that applicant remains in compliance with DPH regulations, 105 CMR 725.000; (3) Final license is subject to inspection

and audit to ascertain compliance with the requirements listed in 935 CMR 500.105 through 935 CMR 500.160 as applicable; (4) Final license is subject to inspection and audit to ascertain that its facilities are compliant with all applicable state and local codes, bylaws, ordinances, and regulations; (5) The applicant shall cooperate with and provide information to Commission investigators, agents, and employees upon request; and (6) Provisional license subject to the payment of the appropriate license fee pursuant to 935 CMR 500.005. This recommendation was based on the applicant's demonstrated compliance with the laws and regulations of the Commonwealth, suitability for licensure, and upon the evaluation of the thoroughness of the applicant's responses to the required criteria. Commission staff certify that a due diligence review of the application was performed. As of this date, the applicant has demonstrated compliance with the laws and regulations of the Commonwealth and suitability for licensure. Accordingly, the applicant is recommended for provisional licensure with the previously mentioned conditions.

Commissioner Doyle asked if the hours of operation were 5 or 5:30pm? Mr. Collins said 5:30pm.

Commissioner Doyle made a motion to approve the staff recommendation for the issuance of a provisional license, seconded by Commissioner Flanagan. The motion is unanimously approved by the Commission.

Mr. Collins discussed MCR Labs, LLC #ILN281278 Independent Testing Laboratory application. Commission staff recommend issuing a provisional license with the following conditions: (1) Final license is subject to the applicant obtaining certification as an ISO/IEC 17025:2017 accredited laboratory; (2) Final license is subject to certification that applicant remains in compliance with DPH regulations, 105 CMR 725.000; (3) Final license is subject to inspection and audit to ascertain compliance with the requirements listed in 935 CMR 500.105 through 935 CMR 500.160 as applicable; (4) Final license is subject to inspection and audit to ascertain that its facilities are compliant with all applicable state and local codes, bylaws, ordinances, and regulations; (5) The applicant shall cooperate with and provide information to Commission investigators, agents, and employees upon request; and (6) Provisional license subject to the payment of the appropriate license fee pursuant to 935 CMR 500.005. This recommendation was based on the applicant's demonstrated compliance with the laws and regulations of the Commonwealth, suitability for licensure, and upon the evaluation of the thoroughness of the applicant's responses to the required criteria. Commission staff certify that a due diligence review of the application was performed. As of this date, the applicant has demonstrated compliance with the laws and regulations of the Commonwealth and suitability for licensure. Accordingly, the applicant is recommended for provisional licensure with the previously mentioned conditions.

Commissioner Title said that she has previously made public comments in favor of how they run their business. General Counsel Christine Baily sees no issue with Commissioner Title's previous comments.

Commissioner Flanagan made a motion to approve the staff recommendation for the issuance of a provisional license, seconded by Commissioner McBride. The motion is unanimously approved by the Commission.

Mr. Collins discussed Alternative Therapies Group, Inc. #MRN2811255 retailer application. Commission staff recommend issuing a provisional license with the following conditions:

(1) Final license is subject to certification that applicant remains in compliance with DPH regulations, 105 CMR 725.000; (2) Final license is subject to inspection and audit to ascertain compliance with the requirements listed in 935 CMR 500.105 through 935 CMR 500.160 as applicable; (3) Final license is subject to inspection and audit to ascertain that its facilities are compliant with all applicable state and local codes, bylaws, ordinances, and regulations; (4) The applicant shall cooperate with and provide information to Commission investigators, agents, and employees upon request; and (5) Provisional license subject to the payment of the appropriate license fee pursuant to 935 CMR 500.005. This recommendation was based on the applicant's demonstrated compliance with the laws and regulations of the Commonwealth, suitability for licensure, and upon the evaluation of the thoroughness of the applicant's responses to the required criteria. Commission staff certify that a due diligence review of the application was performed. As of this date, the applicant has demonstrated compliance with the laws and regulations of the Commonwealth and suitability for licensure. Accordingly, the applicant is recommended for provisional licensure with the previously mentioned conditions.

Commissioner Doyle made a motion to approve the staff recommendation for the issuance of a provisional license, seconded by Commissioner McBride. The motion is unanimously approved by the Commission.

Mr. Collins discussed Cultivate Holdings, LLC #MPN281305 Product Manufacturer application. Commission staff recommend issuing a provisional license with the following conditions:

(1) Final license is subject to certification that applicant remains in compliance with DPH regulations, 105 CMR 725.000; (2) Final license is subject to inspection and audit to ascertain compliance with the requirements listed in 935 CMR 500.105 through 935 CMR 500.160 as applicable; (3) Final license is subject to inspection and audit to ascertain that its facilities are compliant with all applicable state and local codes, bylaws, ordinances, and regulations; (4) The applicant shall cooperate with and provide information to Commission investigators, agents, and employees upon request; and (5) Provisional license subject to the payment of the appropriate license fee pursuant to 935 CMR 500.005. This recommendation was based on the applicant's demonstrated compliance with the laws and regulations of the Commonwealth, suitability for licensure, and upon the evaluation of the thoroughness of the applicant's responses to the required criteria. Commission staff certify that a due diligence review of the application was performed. As of this date, the applicant has demonstrated compliance with the laws and regulations of the Commonwealth and suitability for licensure. Accordingly, the applicant is recommended for provisional licensure with the previously mentioned conditions.

Commissioner Flanagan made a motion to approve the staff recommendation for the issuance of a provisional license, seconded by Commissioner McBride. The motion is unanimously approved by the Commission.

Mr. Collins discussed Northeast Alternative, Inc. #MRN281314 retailer application. Commission staff recommend issuing a provisional license with the following conditions:

(1) Final license is subject to certification that applicant remains in compliance with DPH regulations, 105 CMR 725.000; (2) Final license is subject to inspection and audit to ascertain compliance with the requirements listed in 935 CMR 500.105 through 935 CMR 500.160 as applicable; (3) Final license is subject to inspection and audit to ascertain that its facilities are compliant with all applicable state and local codes, bylaws, ordinances, and regulations; (4) The applicant shall cooperate with and provide information to Commission investigators, agents, and employees upon request; and (5) Provisional license subject to the payment of the appropriate license fee pursuant to 935 CMR 500.005. This recommendation was based on the applicant's demonstrated compliance with the laws and regulations of the Commonwealth, suitability for licensure, and upon the evaluation of the thoroughness of the applicant's responses to the required criteria. Commission staff certify that a due diligence review of the application was performed. As of this date, the applicant has demonstrated compliance with the laws and regulations of the Commonwealth and suitability for licensure. Accordingly, the applicant is recommended for provisional licensure with the previously mentioned conditions.

Commissioner Doyle made a motion to approve the staff recommendation for the issuance of a provisional license, seconded by Commissioner Flanagan. The motion is unanimously approved by the Commission.

With no unknown business before the Commission, Chairman Hoffman said the topic of staff delegation Commissioner McBride suggested last meeting will be on the next agenda. Commissioner Title asked the staff to provide additional data regarding participation in the industry with regard to the diversity statistics that already need to be tracked under the law. Mr. Collins said the staff can do that. Chairman Hoffman noted the next public meeting will be August 23, 2018 at 1pm. Chairman Hoffman asked for a motion to adjourn. Commissioner Flanagan made the motion to approve, seconded by Commissioner Doyle. The motion is unanimously approved by the Commission. The Commission is adjourned as of 3:31pm.