

Cannabis Control Commission Public Meeting Minutes

June 25, 2019

10:00 a.m.

State Transportation Building
Boston, MA 02110

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:

Chairman Hoffman called the Cannabis Control Commission to order at 10:00am. Chairman Hoffman put the public on notice that the meeting is being recorded. Chairman Hoffman reviewed the meeting agenda. Chairman gave an overview of the regulatory process.

General Counsel Christine Baily discussed the issue of ownership and control. Chairman Hoffman discussed the importance of clear definitions of ownership and control for Commission staff and cannabis industry guidance. Chairman Hoffman explained language regarding the definition of direct or indirect control of a licensee and how that is used consistently throughout the regulations. Commissioner McBride asked a question about how the changes jive with what is currently in the regulations, specifically the right to appoint more than 50% of directors – is there a component in here that addresses that qualification. Chairman said he thinks that is something that can be added back in. Commissioner Doyle noted the special regulations for the islands for ownership or control of independent testing labs. Commissioner Title suggested an edit to the definition of direct or indirect control to encompass potential different ways an establishment might be controlled, by “including but not limited to.” Chairman asked whether the specificity of an exhaustive list was better. Commissioner Title expressed the concern that unforeseen circumstances could arise that we do not fit the definition. Commissioner Title also discussed void marijuana establishment license language and recommended going back to the original language. Chairman Hoffman asked for a motion to approve the policy and language discussion, subject to edits.



Commissioner Title made a motion to approve, seconded by Commissioner McBride. The Commission unanimously approved the motion.

General Counsel discussed the topic of delivery and some of the ongoing questions with respect to operational requirements including period and scope of exclusivity. Commissioner Title suggested an edit to the language on delivery company ownership adding the phrase “controlled by.” Commissioner Title suggested an edit for consistency regarding the secure compartment in delivery vehicles. Commissioner Title suggested that data storage costs justify reducing the length of time that delivery establishments be required to retain body camera videos, unless there was an incident, in which case it is kept indefinitely. Commissioner McBride commented on the data storage amounts and costs of the proposed regulation. Commissioner Doyle noted that a minimum requirement is only setting a floor and that licensees could opt to keep video for longer than is required. Chairman Hoffman noted the discussion and said that the existing language would stay but would be re-examined after the public comment period. Commissioner Title proposed an edit to the language on retaining consumers’ personal information. Commissioner Title stated that she believed the geographical limitation on delivery-only companies’ delivery area and the requirement that medical-use delivery vehicles contain video cameras exceeded the Commission’s authority. General Counsel addressed the issues of the Commission’s authority to promulgate regulations and suggested that M.G.L. 94I § should be construed narrowly to apply only to medical use. Commissioner Doyle asked whether the security requirements for medical use delivery corresponded to adult use requirements. Enforcement Counsel Paul Payer responded that they did. Commissioner Doyle stated that colocated adult-use and medical-use facilities would need to follow the adult use regulations. Commissioner McBride asked whether the proposed medical-use regulations were consistent with current operational protocols used by medical-use delivery services. Enforcement Counsel responded that the current guidance on marijuana transportation for medical use does not meet the security requirements for adult use. Commissioner McBride then asked if any current marijuana delivery services utilized video cameras, to which Enforcement Counsel answered that he was not aware of any. Commissioner McBride asked if it would be a substantial change for medical-use delivery to add video capability to their vehicles. Commissioner Title expressed her view that the video requirements would add unnecessary costs and burdens to delivery businesses, given the lack of incidents to date and patients’ complaints with respect to the high cost of delivery. Chairman Hoffman said that he wanted a consistent approach to public safety concerns for both adult-use and medical-use deliveries. Commissioner Flanagan asked whether there were any reports of security breaches during medical-use deliveries, and Mr. Payer responded that while there were no reports, that may not mean that there was no diversion of marijuana. Commissioner Flanagan said that the Commission should err on the side of higher safety, given the Commission is a relatively new agency. Commissioner Doyle pointed out that the statute expressly provided for video cameras to monitor areas containing marijuana. Commissioner Title noted protections already in place for marijuana security. Commissioner McBride said that the security precautions served as a deterrent for bad actions and that deterrent effect should be a consideration as the Commission builds security measures.

Commissioner Title said that the ban on marijuana delivery to dorms, hotels, etc. should be lifted for patients who may need deliveries of medical marijuana in those places due to a



debilitation illness. General Counsel said that restrictions on patient access should be scrutinized carefully by the Commission during the regulatory review process. Commissioner Title said that the pre-verification process for patients to receive medical-use delivery was unnecessarily burdensome given the process they had gone through to receive a medical registration and requiring physical presence at an MTC would negate the purpose of medical delivery. Enforcement Counsel agreed that changes should be made to clarify alternative ways of verification for delivery that would be less burdensome to patients. Commissioner Flanagan pointed out that using the word “disabled” for medical-use consumers receiving an accommodation for pre-verification was narrowing the scope of that population because one could have a debilitating disease without technically being disabled. Commissioner McBride expressed support for an alternative method of pre-verification for medical patients other than in an in-person process at the physical location of an MTC, including a video pre-verification.

Chairman Hoffman summarized changes to the draft regulations proposed thus far and asked for motions to vote on three changes in particular. Commissioner Title made a motion to remove the requirement that medical-use marijuana delivery vehicles contain a video camera, seconded by Commissioner Flanagan. The motion was denied by a vote of one in favor (Title) and four opposed (Doyle, Flanagan, Hoffman, McBride.) Commissioner Title made a motion to remove the restrictions on medical-use delivery to hotels, motels, bed-and-breakfasts and other commercial hospitality locations, seconded by Commissioner Flanagan. The Commission unanimously approved the motion. Commissioner Title made a motion to remove the pre-verification requirement for medical-use delivery to patients, seconded by Commissioner Doyle. The motion was approved by a vote of three in favor (Doyle, Hoffman, Title) and two opposed (Flanagan, McBride.) Chairman Hoffman asked for a motion to approve the staff memo on marijuana delivery, subject to the changes from the Commission’s discussion. Commissioner Doyle made the motion to approve the staff memo, seconded by Commissioner Title. The motion was approved by a vote of four in favor (Doyle, Hoffman, McBride, Title) and one opposed (Flanagan.)

After a brief recess, the Commission turned to the topic of social consumption of marijuana. General Counsel presented a general overview of the issues involved. Commissioner Doyle made a motion to defer discussion of social-consumption event licenses to the fall regulatory meeting, while discussing brick-and-mortar social consumption locations in during the meeting. The motion was seconded by Commissioner Flanagan. The motion was approved by a vote of three in favor (Doyle, Hoffman, Flanagan) to two opposed (McBride, Title.)

Commissioner Doyle requested consistency of terminology throughout the regulations. Commissioner Doyle raised a question as to why “Third-Party Transporter” was included in the fee schedule. Enforcement Counsel said that it was only included with respect to fees, but Third-Party Transporters do not have other involvement. Commissioner Doyle brought up the changes in pre-certification and provisional certification and how to integrate those with the current application procedures, so that applicants are aware of how they should apply. Chairman asked Licensing and Enforcement whether they are comfortable with the changes. Enforcement Counsel responded that Licensing and Enforcement would be able to make those changes. Commissioner Doyle proposed consolidating required community certifications into a single



document and streamlining the provisional application process to avoid redundant submissions. Commissioner Doyle also suggested that the server training program for social consumption establishments be clarified as to whether it is different or the same as the responsible vendor training required in other parts of the regulations. Enforcement Counsel said it is part-in-parcel of the responsible vendor training but is geared specifically toward serving in the social consumption context. Commissioner McBride proposed additional language relating to possible overserved customers, requiring procedures for the inter-personal interaction with an overserved consumer. Commissioner Doyle proposed that edible marijuana products sold in social consumption establishments be pre-packaged and shelf-stable. Commissioner Doyle proposed that the regulations be clear that social consumption establishments could sell other items, such as baked goods so long as they are not infused with marijuana and make it clear that such establishments cannot sell alcohol or tobacco products, which can help establish a more sustainable business model. Commissioner Title proposed removing the condition that a majority of a social consumption licensee's revenue come from marijuana product sales. Commissioner Doyle stated that the separation of sales and consumption area should not apply to an establishment selling only edible marijuana products. Commissioner Title proposed that with respect to exclusivity, social consumption licensees "be controlled" by economic empowerment or social equity program participants. Commissioner Title suggested a change to clarify that applicants have 12 months to file an application for a provisional license following pre-certification rather than "upon" completing the pre-certification process. Commissioner Doyle suggested starting the 12-month clock "within 12 months of receiving notice" of completing the pre-certification process. Commissioner Title proposed that a card warning of the impairment effects of edible marijuana products be limited to edibles, not all marijuana products. Commissioner Doyle discussed the card design and to avoid it becoming too cluttered but does not see a problem with having one side about edibles and the other side giving other information. Commissioner McBride added that the non-edible side of the card could include a warning for impaired driving. Commissioner Flanagan suggested that consumer education is crucial.

Commissioner McBride asked a question about the pre-certification process for social consumption establishments, particularly with respect to determination of completeness and when is the commission determining the management and operation summaries are complete? Commissioner Doyle responded that the pre-certification and provisional licensing procedures would work in concert to determine when an application would be deemed complete. Commissioner McBride raised a concern about whether licensees who find someone smoking tobacco products or using alcohol on their premises should be required to notify the police as well as the Commission. Enforcement Counsel replied that if it is not a public safety issue, then the requirement could be modified. Commissioner McBride suggested we make such a modification. Commissioner Title commented that in both social consumption and delivery that the Commission did a good job of merging the goal of each commissioner. Commissioner Doyle asked that alcohol be added to the substances prohibited from being consumed at a Social Consumption Establishment.

Chairman Hoffman reviewed the proposed changes and added language from Commissioner McBride to the definition of responsible server training. Commissioner McBride made a motion to adopt the modifications to the proposed policy memorandum proposed,



seconded by Commissioner Doyle. The motion was unanimously approved by the Commission. Chairman Hoffman asked for a motion to approve the staff memo on brick-and-mortar social consumption establishments subject to the approved modifications. Commissioner Doyle made the motion to approve the modifications discussed with respect to brick and mortar social consumption and not event-licenses with the understanding that event licenses will be considered in the next round. The motion was seconded by Commissioner Title. The motion was approved by a vote of three in favor (Doyle, Hoffman, Title) and two opposed (Flanagan, McBride).

The Commission next turned to the topic of the suitability review process. General Counsel presented an overview of the policy memo and the role of the suitability review committee. She pointed out that the proposed regulations would apply to medical-use license applicants as well as adult-use applicants. Commissioner Title asked why the suitability process considered continuances without a finding (CWOFF) as equivalent to convictions. Enforcement Counsel replied that there was a language change that would define “offenses” as trial convictions, guilty pleas, pleas to sufficient facts and CWOFFs, but exclude any other non-conviction. Commissioner Title proposed that CWOFFs be removed from the definition of “offense.” Chief of Investigations Yaw Gyebi, Jr. responded that in cases such as an OUI proceeding, considering a CWOFF as equivalent to a conviction would be helpful to the suitability determination. Commissioner Title made a motion to remove CWOFFs from the definition of an offense, except for a CWOFF for impaired driving. The motion was seconded by Commissioner Doyle. The motion was voted down by a vote of one in favor (Title) and four opposed (Doyle, Flanagan, Hoffman, McBride). Commissioner McBride made a motion to approve the recommendations in the policy memo, seconded by Commissioner Flanagan. The motion was approved by a vote of four in favor (Doyle, Flanagan, Hoffman, McBride) and one opposed (Title).

The Commission next turned to the topic of removal of product. General Counsel presented an overview of the topic involving new tools for regulatory enforcement. Commissioner Doyle asked where seized products would be stored. Enforcement Counsel responded that the product would most likely be quarantined or destroyed, so the Commission would not hold it. Commissioner McBride said that an order of removal would involve removing the product from a marijuana establishments shelves, and then enforcement would determine what to do with the product at that point. Commissioner Doyle sought further information on how removal would differ from the existing quarantine order. Enforcement Counsel explained that the removal order was envisioned as applying to products potentially sold in multiple establishments, and having a permanent effect, as opposed to a temporary quarantine. Commissioner McBride asked about the process for ordering a single licensee to remove and potentially destroy a product. Enforcement Counsel described that process. Commissioner McBride then asked what the process would be to remove and destroy a product for multiple licensees; would each licensee be responsible for that or would the Commission take custody of the product. Chairman Hoffman agreed that the responsibility to comply would be with the individual licensees. Commissioner Doyle asked how this would differ from the existing regulations governing product recalls. Commissioner McBride discussed how the procedure might function to identify products that should be removed. Commissioner Title commented on the need for the Commission to deliberate before announcing a removal order. Commission



Flanagan expressed her view that a removal order would be an important tool for the Commission to protect public health and safety. Commissioner Title proposed an addition to the regulations to require hearing officers and adding language that requires a hearing officer would “have the expertise to evaluate scientific evidence.” Commissioner Title proposed further changes to the language of the regulation to read that “if credible and reliable evidence has been evaluated and found to meet the standard of a substantial risk” in order to ensure there is a standard being used. Commissioner Doyle asked if there would be discussion about the standard that the enforcement staff would use to determine whether a removal order would be necessary. Enforcement Counsel explained that the Commission could use existing quarantine capability prior to final resolution of a removal order. Commissioner Title proposed removed the term “franchise” from the regulation. Commissioner Title requested clarification on the distinction between “specific product type” and “category of product types.” Enforcement Counsel agreed that they could be combined. Commissioner McBride said that “category of product type” ought to be kept as the highest tier of what the Commission could remove. Commissioner Title responded that the examples of “category of product type” could be changed or deleted, but that as written the regulation was too broad. Commissioner Flanagan said that a broad classification could be necessary due to future potential marijuana products entering the market. Commissioner Doyle said that the ability to remove an entire category of products would be highly unlikely to use, but it does not fully limit the Commission to remove “category of product types.” Commissioner Title said that the ability to remove an entire category would be similar to un-passing the marijuana legalization law. Commissioner Doyle responded that preceding language in the regulation would protect against that possibility, because such future commission would have to back up a decision and that would be difficult to reverse legalization. Commissioner Flanagan said this category language gives the Commission a tool to keep communities safer. Commissioner Title said that a future Commission could use the broad language to roll back legalization. Commissioner McBride said that it is impossible to predict what new marijuana products may be developed within a category, so a broader view with a high standard of evidence and deliberation ought to be included. Chairman Hoffman allowed everyone one final comment. Commissioner Title posed the question of when it would be appropriate to use the removal process on a broad category such as edibles or beverages. Commissioner McBride put forward “flavored vape cartridges” as a possibility. Chairman Hoffman asked for a motion regarding the category of product type language. Commissioner Title made a motion to strike the “category of product type” language, with examples, seconded by Commissioner Flanagan. The motion was voted down by the Commission with two in favor (Hoffman, Title) and three opposed (Doyle, Flanagan, McBride). Commissioner Title made a motion to remove “marijuana seeds and marijuana clones” as examples of “category[ies] of product types,” seconded by Commissioner Doyle. The Commission approved the motion by a vote of four in favor (Doyle, Hoffman, McBride, Title) and one opposed (Flanagan). Commissioner Title made a motion to adopt the other proposed modifications, seconded by Commissioner Doyle. The Commission unanimously approved the modifications suggested. Commissioner Flanagan made a motion to approve the staff recommendation on removal of product, with modifications, seconded by Commissioner McBride. The Commission approved the motion by a vote of four in favor (Doyle, Flanagan, Hoffman, McBride) and one opposed (Title).



With no further business before the Commission, Chairman Hoffman noted the next Commission meeting will be June 27, 2019. Chairman Hoffman asked for a motion to adjourn. Commissioner Flanagan made the motion to adjourn seconded by Commissioner McBride. The motion was unanimously approved by the Commission. The Commission is adjourned as of 1:18 P.M.

