



To The Committee on Veterans and Legal Affairs,

February 7<sup>th</sup>, 2024

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## LD 2185: VLA PROPOSED MEDICAL CANNABIS RULES HEARING

### OUGHT NOT TO PASS

#### General Comments

The Maine Craft Cannabis Association recommends this Committee vote 'Ought Not to Pass' on LD 2185 which would move forward the Office of Cannabis Policy's Proposed Rule for the Medical Cannabis Program. Alternatively, we support the Committee replacing the language to reflect the VLA subcommittee's findings. That report outlined the need for clarifications of permitted activities in the program that OCP has 're-interpreted' as illegal, such as delivery to patients, participation in farmer's markets, private events where all participants are medical cardholders and consenting adults, and so on. Either way, this rule represents major changes to the program which won't reflect possible statutory updates.

The Office held a hearing on this Proposed Rule last year, and despite significant pushback, hours of testimony, and constructive comments, it appears almost none of the industry's or patients' concerns were recognized in this updated version. Taken at large, it is apparent to us that these revisions are not driven by a compelling or even articulated rationale. While there is an organizational update here, most of the proposed changes are substantive policy and transparently harmful for participants in this program.

This proposal doubles down on some of what we view as the most egregious attempts to 'punish' participants in the legal cannabis industry: expensive, impracticable, and unnecessary fencing and surveillance requirements; restrictions that essentially outlaw the delivery of medical cannabis to a patient by any participant but *especially* by caregivers without retail stores or dispensaries; restrictions on routine operations with no credible impact to public safety that would add significant expense and complexity to medical cannabis operations; fines for new and victimless violations that would put most small businesses under; endless 'investigatory' police powers afforded no other regulatory body; economic gatekeeping of winners and losers based on clearly unfair criteria; and throughout all of this



document, a clear goal of shrinking the medical cannabis program and making medical cannabis both less affordable to provide and less accessible for patients.

This is a saga that has wasted significant taxpayer dollars, sucked up huge amounts of registrants' time, and frankly come at significant cost to our operators' mental health. It has gone on now for nearly four years—notably, since the re-creation of the Adult Use market. As this Committee is likely aware, Adult Use regulation is suffused with a 'War on Drugs' mentality, arbitrary legal liabilities and infringement of basic civil rights, and cost-prohibitive regulation that makes it impossible for small businesses to participate without millions of dollars of investment backing. All because of one oft-repeated but never substantiated lie: 'cannabis is dangerous', and by extension 'cannabis businesses and users are dangerous'. This regulation is guided by that same philosophy.

Thousands of peer-reviewed studies have been undertaken showing therapeutic potential from preparations of the cannabis plant, tens of thousands of years of human cultivation and use of the cannabis plant have preceded us, and millions of Americans and users in other countries have smoked or otherwise ingested cannabis regularly—never once has there been a death attributed to its use. Its safety profile is better than hundreds of over the counter medicines, and vastly better than nearly all pharmaceuticals. Where is the data to justify the way we regulate or in this case propose to regulate this plant?

Please find below a list of specific issues we'd like to highlight for the Committee:

#### Specific Issues in Rule

##### DEFINITIONS

P. 6: Medical cannabis: seeds not defined within a controlled context; they are 100% federally legal and contain no THC. Seeds are not regulated in Title 22, nor should they be anywhere.

P. 6: Paraphernalia: remove containers for storing—it's a container.

P. 7: Records: strike video recordings, these are not mandatory in medical.

P. 7: Registered caregiver: definition must include business entity not just individual person—statute clearly states caregivers may:

*'Be organized as any type of legal business entity recognized under the laws of the State;'*



P. 7: Trip ticket: remove 'provided by Dept' as POS records and invoices already include this info, adding in another bureaucratic step for every patient transaction is costly, wasteful, duplicative, and aimed at making business more difficult.

#### SCOPE AND PROTECTED CONDUCT

P. 8: 1.C: the blanket term 'contractors' must be removed, OCP can't require everybody who does business with medical registrants to have registry cards—how can we have any non-cannabis work done? If the goal is to ensure 1099 employees who are performing cannabis-touching work are covered, then that should be very explicit.

#### CULTIVATION

P. 10 Security: The arbitrary 'commercial grade' language requiring fencing be permanent and requiring it to 'deter or prevent theft' are both unreasonable financially for most farmers and totally impractical. Want to advertise there's high-thc cannabis on the farm? Require this kind of fencing. No fence can 'prevent theft', that just sets up a registrant for fines if they're burglarized. There is no way that a taller or thicker fence deters theft any more than a well designed security camera system, or a guard dog, or alarms—whatever the registrant chooses to protect themselves. There is no credible public safety argument for requiring these security measures. Furthermore, this also requires patients to comply with fencing, making their legal home grows impossible because the fencing will cost thousands of dollars. This is a stricter standard than Adult Use homegrow:

Title 28-B, S1502.2.B: *"Take reasonable precautions to prevent unauthorized access by a person under 21 years of age, [unless that person is a medical patient]"*.

#### MEDICAL PROVIDER

P. 10: 4) Telehealth: We simply can't understand why OCP continues to put obstacles in rule, telehealth is permitted, OCP has no authority over other laws or rules governing medical practitioners.

P. 11: 1) Certificates are allowed to be sent digitally, clarify they are sufficient proof to purchase. A caregiver or dispensary does not need to review the physical copy.



## QUALIFYING PATIENTS

We recommend that certifications extend to 2 years from 1 year. Improve access to medical cannabis rather than restrict.

## CAREGIVERS

P. 13 1 A): Assist and cultivate should not be limited to providing education. This is specifically aimed at shutting down currently legal consumption and access to medical cannabis.

P.14 3 B) Strike 2

P. 14 3 C) Strike, tax laws already apply, OCP has no authority

P. 14: Retail store: This is worded so as to restrict sales to 'municipally-approved' retail stores, this makes delivery illegal and completely reshapes the medical program in a way that is hostile to small business and especially to patients. Continues throughout rest of Proposed Rule.

## DISPENSARIES

P. 15 A): Again, why is assistance limited to 'education'?

P. 16 6): Annual inspections probably unreasonable, save money by making it 2 years. Have heard complaints about not being able to inspect annually from OCP over and over, Iso why not have less cost to the state, less burden to operators. Have investigators ever uncovered real threats to public safety in either program?

P. 17: A) Still the OCP won't remove the on-site parking requirement in order to have a dispensary license. The only reason to include this is to limit who can have dispensaries and therefore patient access.

P. 18: E) Is it the OCP opinion that dispensaries can legally be co-located with AU retail, but not caregiver retail stores?

P. 45 12) Clarify language such that required SOPs and changes requiring notification must be material and impact security, patient safety only. It's extremely onerous to require notifications of hours open / new staff roles etc and could lead to penalties under the fine structure proposed. It's also none of the OCP's business how individual registrants run their day-to-day business within the scope of legal activities.



P. 18 B) Contradicts the prohibition on making health claims, as this education material cannot 'assist... in the selection of cannabis...appropriate' without making health claims. Let patients choose shops that provide the info they want.

P. 19 C) Strike personnel files beyond I-9s, W-2, 1099s, registration cards; everything else is irrelevant to the OCP unless there has been a violation of statute/rule which already requires disclosure. Why does the government need references, training documentation, evaluations, etc? Police state intrusion.

P. 19 D) These business records requirements are a massive overreach, strike all but the enumerated documentation in 1-3. OCP cannot compel attachment of patient name/info for privacy—have we forgotten the state of Maine's recent massive data breach? Department should have no compelling need for tax records, journals, vouchers, board minutes, contracts, balance sheets, or any financial records. Other agencies are responsible for this, it's not OCP's mandate or business. This represents pure stigma and a Drug War mentality towards operators.

P. 20 13) Strike 'required by the Department', this would be duplicative and wasteful, and further can't require providing patient information. Digital transaction records and invoices can satisfy all of these. Strike all language in 13-A, stigma, digital transaction record/trip ticket info sufficient.

P. 20 15) Requiring next biz day reporting of issues is punitive and arbitrary, especially for minor issues which could lead to massive fines and violations based on this proposal. Same with (16) 'suspected' reported within 24 hours.

P. 21-22 17) As there is no process to select limited licenses between applicants, these are obsolete, strike all of 'Criterion 2' and strike item 7 from 'Criterion 1' while significantly relaxing the language in item 6 which was designed to ensure out-of-state entities didn't control the dispensary—which, by the way, happened anyway. Money is all that's needed to dodge any of this overbearing 'disclosure'. Criterion 2 is a set of open-ended loops of inappropriate disclosures, long hours of expensive and pointless preparation, violations of business confidentiality, onerous legal expenses, and for what? To pre-prove an operator '*demonstrates the knowledge and ability to manage a non-profit organization or other business*'? In what other context would we even consider this for licensing?

P. 22-23 18) Remove operating agreements from D, remove F (employee lists, these change all the time), I-K. OCP has no business obtaining business plans, 'narratives', or 'any and all other information we want'; this is discriminatory economic gatekeeping in plain view.

#### REGISTRY CARDS

P. 27 6) Strike language about surrender of old cards, they're useless if they've expired.



P. 27 7 A 3) Strike 'employees', these change all the time, employees already required to be registered

P.27 8) Recommend extend to 2 years for work authorization for employees

P. 27 9) See why we shouldn't include employees? Fined \$150 every time we don't report employee leaving or new hires. Why?

## COMPLIANCE

P. 28 10 1) No government entity local, state or federal but especially not the OCP may prohibit activities 'unless explicitly authorized'. Strike all such language from rule.

P. 28 3) Strike 'is responsible', those registrants are responsible for themselves. If needed for 'shared liability' for serving children, make that explicit. Otherwise this leaves registrants open to punishment for acts they didn't commit.

P 29 9) strike a-e

P 29 10-12) Creating more 'double jeopardy'

P. 30 13) This means if we open 30 mins late, move an employee from trimming to retail POS, and so on without submitting and receiving approval we're in violation.

P. 30 C 3) OCP has no statutory authority to mandate CG stores follow dispensary statute.

P. 30 D 1) Strike. What does this mean?

P. 31 2 E 5) It is inappropriate for OCP to ever access financial records of registrants, OCP has no authority to compel, only cannabis purchases, sales / transactions, inventory.

P 31-34 Enforcement actions: this entire section is riddled with linkages to other rules not based in statute that OCP is proposing; it will have to be fully re-drafted after removing those items to ensure protection from arbitrary and hostile enforcement without cause.

## VIOLATIONS

P 34-37 These should be revised completely to focus on real, credible safety issues that affect patients and the viability of the medical cannabis program. Enforcement actions should be graduated progressively, with the goal being to get the caregiver back into compliance. The penalties proposed in this draft are totally unreasonable and would put most small operators out of business. This section warrants a deeper dive:



### 'Public Safety'

- iii : We all support consequences for selling to minors, but what does 'marketing or advertising' to minors mean? Must have a reasonableness standard.
- v : Adding an additional \$7,500 on top of violations that don't actually affect public safety is just designed to increase the damage to a business. Such a rule can't function without clear agreed upon definitions of what is a true public safety threat.
- vii : Revise to clarify this is only an issue if you combine the product to then transfer or sell in the program etc. otherwise it's a \$7,500 fine to buy a neighbor's weed and roll it up with one's own medical stash.
- viii: Not a public safety issue at all. A registrant financial issue, strike.
- ix: This should be the most minor of violations. Dispensary licenses can cultivate unlimited, and many are blocked by OCP or munis from getting them. Grossly unfair. Cannabis plants don't affect public safety.
- x: Arbitrary policing. Unless it's a true and fully enunciated threat to public safety outlined in statute or rule, no punishment. OCP may not serve as judge, jury and executioner.

### 'Major'

- b ii: Minor, if the issue the records pertain to is major or public safety, maybe this is reasonable, otherwise no. Especially as OCP claims it can require 'any other records' at any time.
- iii: Undefined and impossible to enforce without explicit definitions.
- v: Minor violation: beware the 'requirements' that could be 'needed' to enforce this.
- vi: See above, not major. Shouldn't be a fine, just need to destroy.
- viii: Caregivers' activities to provide medical cannabis to patients are not restricted except for cultivation areas, if there are licensed kitchen activities, or manufacturing that requires a certificate. Designed to block delivery.
- ix: See above, unreasonable except in extremely tight language and should depend on the specific activity and issue.



- xi: OCP may not enforce other department's licenses, this is double jeopardy.
- xii: Any framework for fines and penalties should be graduated and based on plans of correction, not numerical 'strikes'.
- xiii: Confusing, as proposed rules require dispensaries to make these claims elsewhere, and it is prohibited by federal and state law already. Strike.
- xiv: We've long battled such broad terms such as 'permitting' etc, aggressive policing tactics showing up in civil regulation. At best a minor violation.
- xvi: Unrestricted policing powers at OCP discretion. Strike.

#### 'Minor'

- b.i: So a \$1,000 fine if your staff doesn't notice a patient card is expired?
- iii: This is messy, doesn't align with statute, and would block Weedmaps, Leafly, Dutchie, et al, services that medical patients utilize to find the products they need or want.
- vii: Ultimately it seems unreasonable to prevent if a company has both types of licenses / products.
- viii: Without concrete definitions, unenforceable and arbitrary.
- X: Unrestricted policing powers at OCP discretion. Strike.

#### FINES

P. 37: Generally, any fine should only come after a plan of correction unless the violation had a true, demonstrable impact on public safety like providing cannabis to a child, poisoning / deliberately adulterating product, or operating in a manner unsafe for employees or neighbors. The whole structure of this reflects a police state mentality and is unwarranted for a product that's legal and safe.

We flatly reject the dollar amounts of these fines. Even if the rules and violations weren't so open-ended, unreasonable, arbitrary, and based in a 'Drug War' mentality, these numbers are incredible by any standard.

#### Reference examples:

- Serving alcohol to a minor in Maine: \$500 per violation. Alcohol can kill.





- Selling liquor without a license: \$300-500, up to 30 days in prison
- Bringing 40 liters of liquor into Maine illegally: \$500 max
- Withholding ID from police after violation: \$500 max
- Underage sales of tobacco / illegal sales: not less than \$300/600/1,000
- Liquor and tobacco sellers have affirmative defense if fake ID used, so should cannabis operators

P. 38 2): There should be absolutely no difference in fines for folks with stores or without, some of the largest caregiver businesses have no stores or manufacturing licenses. The nature of the violation is what matters—if any standard is applied, it should be based on sales volume at the very least.

Thank you for taking the time to review our commentary on this Proposed Rule. We hope that it is clear that this is not the direction we should be taking our regulated Medical Cannabis Program. We look forward to working with this Committee and with the Office of Cannabis Policy to develop rules that actually provide meaningful improvements to this Program for all its participants.

Sincerely,

Mark Barnett

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Maine Craft Cannabis Association