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May 8, 2025

Re: LD 1320, An Act to Prevent Illicit Cultivation and Trafficking Within Maine's Regulated Cannabis Industry

LD 1455, An Act to Prevent Illegal Cannabis Growing Operations in the State

LD 1608, An Act to Counter Unlawful Cannabis Cultivation

LD 1609, An Act to Prevent the Participation of Individuals and Companies Linked to Federally Recognized Criminal Organizations in the Medical and Adult Use Cannabis Programs

LD 1717, An Act Regarding Background Checks for Medical Cannabis Providers

Senator Hickman, Representative Supica, Members of the Joint Standing Committee on Veterans and Legal Affairs:

I am Vern Malloch, Deputy Director of Operations at the Office of Cannabis Policy (OCP) and we are submitting the following comments neither for nor against LDs 1320, 1455, 1608, 1609, and 1717 to inform the committee's consideration of how to stop the revolving door of individuals associated with illicit cannabis cultivation facilities applying for, and in some cases obtaining, credentials to operate as registered caregivers in the Maine Medical Use of Cannabis Program. OCP strongly supports legislative action to curb the participation of these illicit operators in the State's regulated cannabis market, but the approach taken by these bills raises both practical and constitutional due process concerns. That is not to say the problem is insurmountable, but instead to recommend a different method for preventing illicit operators from cultivating cannabis under the guise of Maine's medical cannabis program. We deeply appreciate the Legislature's interest in resolving these issues, because the current standards for determining who is qualified to hold a registration to operate in the medical cannabis program is a challenge that stems from the limited statutory reasons we are permitted to exclude an individual from the medical cannabis program.

Several of the proposals before you take a multi-pronged approach to prohibiting certain individuals or addresses associated with illicit cannabis operations from obtaining from the Office a registry identification card or registration certificate (and in some cases, an adult use individual identification card or license). While these proposals cut right to the heart of the issue of illicit grow locations being used by registry identification cardholders to cultivate medical cannabis, they do so in a way that denies an individual, or in the case of real estate, a property owner, their right to due process under the law *before* they are deprived of their ability to obtain a registry identification card or use their real estate in whatever lawful way they choose. These proposals would likely be enjoined by the courts and would leave the State in the same position it finds itself today.

This means that OCP cannot enforce any law that would prohibit the issuance of registry identification card or registration certificate to an individual or location simply because the individual or location is “under investigation” or “known to be associated with” illicit activity or “organized crime”. On the other end of the spectrum are proposals to update the definition of “disqualifying drug offense” to include convictions for cannabis-related crimes or to implement federal criminal history record checks for medical cannabis registrants and their employees. While these proposals may not run into constitutional challenges, they do not address the practical challenge that prosecution of illicit operators, if it occurs at all, can often take several years to resolve and OCP cannot deny an application for a registry identification card or registration certificate simply because an applicant may be or has been indicted for conduct related to illicit cannabis cultivation operations.

Given these constitutional and practical concerns, it is advisable then to zoom out from the particular problem of illicit operators obtaining credentials to operate in the state’s medical cannabis program and instead ask: What is it that makes the medical cannabis program a haven for illicit multistate organizations? The answer is: a complete lack of transparency into the origin of, and chain-of-custody for, cannabis offered to patients in the medical cannabis program. Illicit cannabis operators are not applying in droves to the Adult Use Cannabis Program and it is clear that is because the cannabis that is cultivated, manufactured and sold to consumers in that system is subject to comprehensive, closed loop inventory tracking that gives licensees and regulators real time visibility into the origin of, and chain-of-custody for, all cannabis and cannabis products offered to consumers. That visibility, paired with the State’s robust mandatory testing program for adult use cannabis, makes participation in the adult use program untenable for illicit operators that apply prohibited pesticides by the gallon to their cannabis plants and produce cannabis flower covered in filth, foreign material and microbial contaminants.

Closing these regulatory chasms in the medical cannabis program is the primary focus of the Office’s department bill, LD 104, presented by Representative Malon. Implementation of the mandatory testing and inventory tracking contemplated by that bill will have an immediate impact on the Office’s ability to identify and remove from the medical cannabis program any operator who is cultivating cannabis in excess of their authorized limits, using prohibited pesticides or otherwise cultivating or offering cannabis to qualifying patients that contains unsafe levels of harmful contaminants. The transparency that tracking and testing will bring to the medical cannabis program will eliminate illicit operators’ ability to launder the proceeds of their illicit activities through the regulated medical cannabis market. LD 104 represents this Legislature’s best opportunity to swiftly and effectively eliminate the pervasive impact of illicit multistate operators on Maine’s medical cannabis patients and the caregivers and dispensaries that serve them.

We thank the committee for its consideration and we would be happy to answer any questions you may have.