

Nevada Cannabis Compliance Board

Meeting Minutes August 7, 2020

The Nevada Cannabis Compliance Board (CCB) held a public meeting on August 7, 2020, beginning at 2:00 p.m. In compliance with the Governor's Emergency Directive #006, dated March 22, 2020, the Meeting was conducted by means of electronic communication.

Cannabis Compliance Board Members Present:

Michael Douglas, Chair
Jerrie Merritt - telephonic
Dennis Neilander - telephonic

Chair Douglas called the meeting to order.

I. Public Comment. Public Comment was read into the record by Tiana Bohner, Public Information Officer.

Public comment was submitted by John Hunt. Mr. Hunt made a demand for copies of any and all public documents and associated supporting materials which have been or will be reviewed by the Board in deciding Agenda Items II (A). The documents were not required to be attached to the public meeting notice, but the public can request copies before or during the meeting. In the event, the Board is unable to provide the requested documents prior to the meeting, Mr. Hunt requested the Board defer action on proposed settlement.

Public comment was submitted by Keith Capurro of Deep Roots Medical. Mr. Capurro noted that Deep Roots and other successful licensees did not participate in the settlement and remain in litigation defending the state's licensing process. There was a provision in the settlement granting a 14-month extension to the settling parties. Deep Roots supported the overall goals of the CCB and requested the same 14-month extension to be granted to Deep Roots and other non-settling licensees.

Public comment was submitted by Barry Fieldman. Mr. Fieldman hoped that the purpose of the CCB was to have the same effect on the marijuana industry as the Gaming Control Board has on gaming. The CCB should want to get to the bottom of the issue and not approve a partial settlement that appears to be rushed. The CCB should conduct a full open public hearing before it rules on the partial settlement.

Public comment was submitted on behalf of A. William Maupin, Dominic P. Gentile, and Ross Miller. TGIG Plaintiffs' objected to the approval of the partial settlement. The comment provided background information on the legalization of marijuana. The promises included in Ballot Question 2 were broken by the regulatory authority when applications were approved based on favoritism, investigations that did not include all owners or members of applicant entities, and other numerous regulatory infirmities. The problems resulted in a series of suits against DOT. The settlement merely reshuffles a few enjoined licenses and dismisses the settling plaintiffs' actions against the state and intervenor defendants.

Public comment was submitted by Phillip Peckman, an owner of Thrive Cannabis Marketplace. The proposed settlement is the result of give and take among the majority of the applicants, the Office of Attorney General, and representatives of Nevada Tax Commission and the CCB. The NTC has approved the settlement and CCB committed to executing its obligations. Contrary to previous statements, all litigants were invited to participate in mediation proceedings before Judge Togliotti. No applicants were prevented from participating in settlement discussions.

Public comment consisted of the same comments submitted by Chris Olsen, Emma Anderson, Lindsey Noll, Joanna Sanchez, Christopher Francis, Elysha Wickman, William Napoles, and Kennedy McKinney (identified as working in the cannabis industry) and June Mead (advocate for cannabis industry). All were opposed to the settlement agreement. Nevada's merit-based system for licensing is a source of pride. This settlement awards licenses based on no specific criteria. If approved, the dynamic of the litigation will change so that a fair resolution may be impossible to reach. There is no reason to accept the settlement today. Let the litigation conclude without the settlement interfering with pursuit of justice.

Public comment was submitted by Lisa Mayo-DeRiso. Ms. Mayo-DeRiso urged the Board to hold or delay agenda item II. Stakeholders and the public need more time to prepare public comments than the three-day notice allowed under the guidelines of open meeting law. Emailed public comment is not effective or desirable. Requested to consider holding in person public comment.

Public comment was submitted by Brandon Wiegand of Nevada Organic Remedies, LLC (NOR), one of the parties of the settlement agreement approved by the Nevada Tax Commission. NOR has been ready for months to open stores in Reno and Southern Nevada, but it has been delayed by litigation. NOR was one of the first to intervene on behalf of the State to support the licensing process. The settlement provides a reasonable compromise. NOR agreed to contribute 2 of its validly awarded licenses to the settlement. The settlement will bring jobs and revenue to the state.

Public comment was submitted by Allen Puliz of THC Nevada, LLC, one of the applicants who was denied a dispensary license from the 2018 application process. Mr. Puliz hoped that the CCB will reject the partial settlement agreement. Mr. Puliz stated he testified before the Legislative Commission that he thought the rules/regs would result in preferential treatment of certain classes of applicants. He hoped that Judge Gonzalez would uphold prior findings that Dept. of Taxation did not follow the law. The CCB should not sanction a flawed and erroneous process.

Public comment was submitted by Jo Ann Abajian, an active majority owner-officer in a cannabis concern. Dept. of Taxation obfuscated the will of Nevada voters. The DOT did not have a complete set of guidelines by which to score applicants, and did not bother to follow those. There was a list of misdeeds resulting in misappropriation of the 61 cannabis licenses. The settlement will hurt their business and create monopolies that would make it difficult for them to compete. Let the courts decide the lawsuit.

Public comment was submitted by Theodore Parker on behalf of Nevada Wellness Center (NWC), a settling party under this agreement and in support of the settlement. NWC is the only dispensary in Nevada that is 100% owned by African-Americans. The settlement allows the parties to move forward, create jobs and tax revenue for the State. NWC spent a lot of time negotiating with many parties and did not stop anyone from taking part in negotiations. The settlement does not prevent other conditional license holders from asking the CCB for similar treatment; it simply asks the CCB to govern the transfer of licenses.

Public comment was submitted by Szelina Kira Kiss in opposition of the proposed settlement. Ms. Kiss has ownership in a cannabis dispensary. This settlement awards dispensary licenses not based on objective criteria but based on no specific criteria. If approved, the dynamic of the litigation will change so that a fair resolution may be impossible to reach. There is no reason to accept the settlement today. Let the litigation conclude without the settlement interfering with pursuit of justice.

Public comment was submitted by Elaine Sanchez, Dr. Luis Valera, Sr. and Otto Merida of Nevada Holistic Medicine. Request that the CCB allow the judicial process to proceed regarding the conditional approval by the Dept. of Taxation. There should be no settlement until all witnesses and allegations are investigated. Uniformity of the process is imperative as is the transparency of those agents making decisions on behalf of the state.

Public comment was submitted by Daniel H. C. Brasov. Mr. Brasov stated that as a business owner and member of the community, he was receptive to the implementation of the Cannabis Compliance Board. He felt the issue of the settlement should be given careful and thoughtful attention before a decision is made. The marijuana industry is nascent to Nevada and should be held up to the same gold standard as gaming.

Public comment was submitted by Jessica Nelson. Ms. Nelson stated that while a settlement to resolve the distribution of cannabis licenses is an attractive option, it is not in the best interest of the community, industry, or the CCB. A settlement would be beneficial to parties that do not have an interest in the future of the industry, and it does not mitigate the formation of monopolies. Ms. Nelson hoped the CCB would uphold its mission statement.

Public comment was submitted by Dani Baranowski. Ms. Baranowski stated concern for finalizing a rushed settlement and the CCB should take more time to understand that licenses were not dispersed fairly by the Dept. of Taxation. Providing licenses to heavy-handed stakeholders will increase lack of diversity and limit or inhibit opportunity for small businesses to have a fair chance in the industry.

Public comment was submitted by Chad Christensen. Mr. Christensen commented that Nevada has been under scrutiny since the details of the application process were made public, and the publicity has not been favorable. He encouraged thoughtfulness and clear understanding of the all the issues surrounding the details so that the public can be assured that the CCB is deliberative and contemplative.

Public comment was submitted by David Goldwater of Inyo Fine Cannabis Dispensary. Mr. Goldwater quoted Melanie Young that there are no provisions in the law to issue licenses to low-scoring applicants. He stated settlement violates the spirit of the law. Nevada has a merit-based system of awarding licenses, and if the application process was fair there is no

reason for the random distribution in the settlement. The process was supposed to be based on objective criteria scored by independent evaluators in a fair and uniform matter. This settlement abandons that concept.

Public comment was submitted by Mark Bradley of Green Leaf Farms Holdings. Mr. Bradley commented that non-vertically integrated license holders have a substantial disadvantage in building a business without a retail outlet. There were public comments against the regulations at Department of Taxation meeting and oversight committee meeting, but there was no deliberation or consideration of the comments. The regulations were adopted with incorrect and unfair language. Mr. Bradley asked the Board to consider the opposing comments and not allow a partial settlement.

Public comment was submitted by Ashley Marquand of Inyo Fine Cannabis Dispensary. Ms. Marquand stated the settlement is insulting to the staff at Inyo and its customers. To give licenses to dispensaries that are sub-par and do not meet objective scoring criteria is doing a disservice to those who use cannabis. As a medical cannabis user, Ms. Marquand needs to feel confident the dispensary provides accurate information and is knowledgeable. There is no reason to accept the settlement.

Public comment was submitted by Cole Christensen. Mr. Christensen wanted to sway the Board's decision to quickly grant approval of the settlement offer to less than all of the applicants involved. He hoped that decision makers would want to ensure Nevada is known for fair and unbiased regulation.

Public comment was submitted by Leighton Kohler on behalf of MM Development Company in support of the settlement. The settlement allows licensed marijuana operators to move forward with opening, greater citizen access to product, more jobs, and increased tax base. The industry and State have come together to propose this solution. It is in the best interests of Nevada and the cannabis industry.

Public comment was submitted by Sigal Chattah on behalf of Herbal Choice in opposition to the settlement. Chattah questioned whether the settlement could be reviewed by the CCB. Chattah stated that the proposed settlement should go through a good faith settlement review with the Court, be approved by the Court, and only then be presented to this administrative body. The appearance of impropriety that encompassed this licensure process would be compounded by an even more improper collusive partial resolution. While NTC issued a conditional approval based on final determination by CCB, it is imperative that a complete analysis of the terms of the settlement be engaged.

Public comment was submitted by L. Christopher Rose on behalf of Wellness Connection of Nevada LLC (Wellness), a defendant in the litigation and not one of the settling parties in the settlement agreement. Wellness expressed concerns and objected to the approval of the settlement agreement. Wellness received one license in the 2018 application process. Given the allegations of favoritism towards certain licensees and applicants, it is concerning that the litigation could be partially resolved through a contract that shows favoritism to certain licensees.

Public comment was submitted by Tommy Rayl and expressed concern regarding the proposed settlement. The voters elected to bring cannabis into the community and the economy with the understanding that locals would be the stewards of the privileged licenses. Approving the settlement before the discovery is complete would dishonor the citizens. Postpone the decision until the Board has the opportunity to weigh all evidence before them in a public hearing.

Public comment was submitted by Sarah Barton in opposition to the settlement agreement. Ms. Barton stated that the only way to resolve the mess created by the Department of Taxation is to issue a license to all the groups that met the minimum qualifications. Las Vegas Medical Marijuana Association has suggested that this is the best way to resolve litigation and benefit the state's economic recovery. This will unleash capital and jobs. Nevada needs hundreds of dispensaries to bring diversity to the industry.

Public comment was submitted by Jared Kahn on behalf of Helping Hands Wellness Center Inc., a settling defendant intervenor, in support of the settlement. Helping Hands was awarded three dispensary licenses in 2018. The main desire was a global settlement if possible. Extensive efforts were made, however demands made by certain non-settling plaintiffs were uncompromising, unreasonable and unrealistic. Thereafter, a partial settlement among certain reasonable settling defendants and plaintiff groups was pursued. This was enticing for a variety of business and litigation strategy reasons.

Public comment was submitted by Duke Fu of Green Therapeutics in opposition to the settlement. Fu was awarded a license but believed the selection process was unfair. There should be a global settlement, not individual settlements. It is not fair to selectively benefit certain groups in the settlement because it is the same issue of why the lawsuits happened in the first place.

Public comment was submitted by Margaret McLetchie on behalf of GreenMart of Nevada NLV, LLC in support of the settlement. GreenMart is one of the settling parties and intervened in the actions to defend the process. The litigation has

been dragging on for over a year and a half, costing the State potentially millions of dollars in lost revenue. This settlement is the product of months of efforts by parties on both sides to resolve their disputes so that the industry can grow and provide Nevadans with employment, tax revenue, and access to safe, legal, recreational products.

Public comment was submitted by Dr. Nick Spirtos. Dr. Spirtos stated that changes made in the application in that went against the will of the people as expressed in Question 2. In Question 2, a physical address is required for the proposed retail location. Dr. Spirtos asked if all applicants that used a P.O. Box received the same score. Entities with different names but the same group of people received more than 10% of the allocable licenses. Don't allow this partial settlement to benefit those who did not follow the rules.

Public comment was submitted by W. Bradley Wendel, tenured Professor of Law at Cornell Law School and retained by certain settling parties to review allegations that some parties have made about the settlement negotiations. Wendel reviewed the settlement agreement and filings and stated that in multi-party civil litigation, partial settlements are routine and important part of helping to settle matters more globally. It allowed parties to resolve litigation without being extorted by holdouts who make unreasonable demands. The settlement process was consistent with his understanding of resolving civil litigation with a public body in Nevada and every other state.

Public comment was submitted by Tisha Black on behalf of Clear River, LLC dba Nevada Made Marijuana. Nevada Made was awarded three conditional licenses in 2018 and has spent resources in the litigation advocating on behalf of the state's application and scoring process, as well as defending against the plaintiffs' call for Nevada Made's awarded licenses. Nevada Made was not enjoined pursuant to the preliminary injunction, but has been consistent in its efforts to assist in the settlement.

Public comment was submitted by Clarence Gamble on behalf of Rural Remedies, LLC (Rural), a litigant in the case and not a participant in the partial settlement. While Rural is in favor a global resolution of the ongoing litigation, the proposed partial resolution will remove any remedy the non-settling litigants are seeking. Rural seeks the district court's judgment vacating the award of licenses and remanding for a re-administration of the process. The proposed settlement would prejudice Rural.

Public comment was submitted by Nicholas Thanos, a cousin of Dr. Spirtos and part of the Apothecary Shoppe Team. They were profitable but after a failure to obtain additional licenses, it did not have the financial resources to compete with companies that were given more licenses than allowed by law. They procured leases for three proposed retail sites and had site specific plans drawn up by an architect, but received lower building construction scores than some of the successful applicants that used a PO Box as an address.

Public comment was submitted by Amy Sugden on behalf of THC Nevada LLC. Ms. Sugden stated that THC Nevada and other remaining parties are unfairly prejudiced by the partial settlement and detailed five terms that are of concern. 1. Paragraph 2 with LivFree reserving right to keep Henderson moratorium in place. 2. Dissolution of Bond and Injunction. 3. Timing of Transfers, providing preferential treatment. 4. Agreeing to release and dismissals, which must also be decided by the Court. 5. Additional terms relating to Licenses and Transfer, with CCB expediting final inspections for settling parties and extension of current deadline for final inspection. Sugden made public records request for additional documents between Department of Taxation and CCB.

Public comment was submitted by Mark Hesiak, a Nevada licensed attorney that has represented clients in the marijuana industry since 2014. Mr. Hesiak stated that numerous flaws have come to light during the litigation, and the most concerning is the decision to remove the requirement that applicants provide a physical address. The Nevada Tax Commission did not have authority to make that change to the application. The omission of a physical address rendered those applications incomplete and they should not have been scored. The NTC's actions should render the entire process null and void.

Public comment was submitted by Richard Perkins. Mr. Perkins stated there have been allegations of favoritism, questionable ethics and obfuscation of some participants' records to give them higher scores. Recent litigation has shown the process was not fair. The CCB was modeled after the Gaming Control Board and should be committed to upholding the highest standards. A full hearing should be allowed. Approval of this settlement will create more litigation.

Chair Douglas stated that all of the public comment received will be posted to the Cannabis Compliance Board website and requested that a link to the YouTube video of the Nevada Tax Commission meeting also be posted to the website, as it was also provided to the Board members for review.

II. Consideration of the Proposed Settlement Agreement Approved by the Nevada Tax Commission on July 31, 2020.

Chair Douglas stated that before the Board is the proposed settlement agreement negotiated between several of the parties through their counsel and the Department of Taxation through the Attorney General's office that the Nevada Tax Commission conditionally approved at their July 31st meeting. The Cannabis Compliance Board has been requested by the Nevada Tax Commission to approve this settlement. The CCB did not initiate this settlement and did not have authority until July 1, 2020. The CCB assumed responsibility for the industry that was previously with the Tax Commission. The CCB did not draft the settlement, which is between the named parties, none of which are the CCB. Any action to approve the settlement simply constitutes recognition of the terms and commitment by the Board to carry out those obligations contained within the settlement that the Board is legally allowed to carry out. Despite the statements that the Board will rubber-stamp anything that comes before it, that is not the case. The Tax Commission has agreed to a partial settlement to resolve much of the litigation and has asked the CCB to bless their action, which was made part of their motion. Regarding the comment about awarding licenses, for the most part the license transfers are actions between private parties, which the CCB was not involved with. The transfers will come to the CCB to review pursuant to regulations. The CCB is bound to look at the backgrounds of the parties. The word "expedited" is used in the settlement, however, this does not overshadow the requirements of the NRS and the regulations.

Chair Douglas requested comment from Attorney General Steve Shevorsi prior to any questions from the Board.

Steven Shevorsi is Chief Litigation Counsel for the Attorney General. Shevorsi made a presentation that consisted of the following: discussion of the underlying case and how we got here; the proposed settlement agreement approved by the Tax Commission; the proceedings before the Tax Commission including vigorous public comment and debate; the recent efforts to achieve a global promise with Judge Togliotti; and recommendation of approval of the proposed settlement agreement.

Shevorsi stated the settlement agreement came after long process of negotiation and litigation before Judge Gonzalez. The consolidated cases before Judge Gonzalez were brought about by the applicants in September 2018 retail marijuana competition. There were diverse entities but with a common set of claims. They sought monetary damages, equitable relief, attorney fees and costs. The monetary damages exposed to the state of Nevada include value of lost licenses, recovery of application fees, lost profits. Permanent injunctive relief to vacate the conditional licenses awarded, administrative relief before the NTC and CCB to litigate appellate rights arising from denial of licensure for the settling parties.

The parties have litigated in open honest fair manner over course of year, through depositions of Department of Taxation employees who have appeared without subpoena, and in trial without subpoena. The Department of Taxation produced over 50,000 pages of documentation. The trial pending before Judge Gonzalez is in three phases: judicial review, legality of retail marijuana process, and writ of mandamus. Shevorsi stated that they were in phase two but have not gone begun phase one.

The settlement agreement has been the product of countless hours of effort by the settling parties. State of Nevada is open to all parties for settlement. This agreement does not deny anyone their day in court and the settlement is still subject to Judge Gonzalez' decision. The right to pursue justice existed before the settlement agreement and exists now. The settlement agreement requires the processing but not approval of transfers. The parties must comply with Nevada law fully to obtain approval. Settlement does not guarantee approval of the Cannabis Compliance Board, but rather consideration of approval of items sought, particularly in paragraph 15. The parties expect to comply with Nevada law and that is what the CCB expect. The settlement agreement does not demand favoritism. The settling parties are asking to have their terms processed. Shevorsi recommended the settlement for approval.

There was vigorous public comment heard regarding this lawsuit and partial settlement, and this was not the first time this has been heard. There was a Tax Commission meeting to appoint Chair Devolld to negotiate a settlement. A partial settlement was achieved and submitted to the Nevada Tax Commission. There was vigorous comment and debate and the Nevada Tax Commission voted in public hearing and conditionally approved the settlement 8-0, subject to condition that the settlement agreement comes to the CCB in terms of processing various requests of settling parties. In light of the debate, Shevorsi recommended approval of settlement. It was a process of negotiation and compromise. The parties believed it was in their best interest. Shevorsi believed it was in the best interest of the State of Nevada. The parties do not seek special or favorable treatment, and but seek to come to the CCB for consideration of their request, expect Nevada law to be applied to them. It was with sadness that a complete settlement was not reached, but not due to lack of effort. Judge Togliotti was available the entire day and met with everyone who came to her. Shevorsi recommended the settlement agreement for the approval of the Board.

Chair Douglas asked if the agreement was reviewed by Judge Gonzalez.

Shevorski responded in the affirmative. There was a motion for preliminary injunction filed by two of the non-settling parties prior to the Nevada Tax Commission meeting, stating that Judge Gonzalez had a duty to approve the settlement. Judge Gonzalez denied the motion. The settlement agreement was an exhibit in that motion.

Chair Douglas asked if Member Merritt or Member Neilander had questions for Shevorski. Member Merritt did not have questions.

Member Neilander asked if we accept the terms of agreement, what is the next step for Judge Gonzalez. Would she dismiss those claims from the settlement, and by so doing agreeing that the settlement was appropriate and not in violation of state law?

Shevorski responded that Judge Gonzalez would not be approving the settlement agreement as she has ruled that this is not appropriate for her in the context of this case. There will be further matters before Judge Gonzalez concerning actions that are required to be taken by the Department of Taxation regarding the settlement. For example, one is to file a notice the Department of Taxation is removing the four preliminarily enjoined entities from Tier 3. That will be subject to Judge Gonzalez's consideration. She may rule on appropriateness of the settlement agreement. The settlement agreement arose from litigation where there is a preliminary injunction supported by a bond. There will be a motion to release bond due to preliminary injunction. Judge Gonzalez will not be ruling on the validity of the settlement agreement. Judge Gonzalez would rule on the motion to dismiss. Neilander thank for answer.

Chair Douglas asked Executive Director Klimas if there was anything in the settlement that would violate CCB's obligation?

Executive Director Klimas reviewed the transfers with staff. Considering they would have to go before the Board for final approval, there was nothing outside the parameters of what the CCB normally does now that it has taken ownership of cannabis oversight in the state. There is nothing in the settlement that the CCB is not able to do.

Chair Douglas asked for additional questions. Member Merritt and Member Neilander had no additional questions.

Chair Douglas asked if any members would like to make a statement prior to hearing a motion. Member Neilander stated this is an unusual circumstance. As a new board, the CCB is trying to get a fresh start and have done that with the passage of regulations that will help to oversee the industry. But have inherited issues and he is aware from public comment of the issues that led to the litigation. The CCB is not a party to the litigation and it began before the CCB was invented. The Board is not a court of law, but it is being asked to carry out a function of the litigation. The Board may be asked to deal with legacy issues from time to time. The industry can't grow and mature when this type of litigation is prohibiting things from going forward. Neilander questioned how can the Board or Board member second guess the agreement between the Department of Taxation and other litigants. Neilander is prepared to carry out the CCB's responsibilities in the settlement. The CCB staff's time has been caught up in the litigation and it should be dealing with the core issues as regulators. Neilander supports the motion to accept the terms of the settlement agreement.

Merritt agreed that the Board is handicapped in this situation. Everything happened before we came together as a Board. However, there is the understanding that the Board was being asked to have fiduciary responsibility.

Chair Douglas asked for a motion to approve the proposed settlement.

Member Neilander made motion to approve the settlement agreement in respect of those provisions in the agreement that require the Cannabis Compliance Board to carry out its obligations with respect to those provisions that relate to the Board.

Member Merritt seconded the motion.

Chair Douglas asked Deputy Attorney General Bhalla if the motion was appropriate.

Deputy Attorney General Bhalla stated the motion was appropriate.

Member Neilander, Member Merritt and Chair Douglas voted aye. Motion carries.

III. Public Comment. Public comment read into the record by Tiana Bohner.

Public comment was submitted by Mona Lisa Samuelson. Ms. Samuelson stated that it should not go unmentioned that today's meeting took place because Nevada's gold-standards have once again proven themselves to be nothing more than a sad ruse. Everything the medical cannabis patients lost in the marijuana money grab is so immense, it's not even calculable.

IV. Adjournment.

Member Neilander made motion to adjourn.

Meeting adjourned.