

Cannabis Compliance Board Regulatory Workshop

Meeting Minutes – June 15, 2021

The Cannabis Compliance Board (CCB) held a public meeting at 555 E. Washington Ave, Room 2450, Las Vegas, Nevada on June 15, 2021, beginning at 10:00 a.m.

Cannabis Compliance Board Members present in Las Vegas:

Michael Douglas, Chair
Jerrie Merritt
Riana Durrett

Dennis Neilander present via video conference.

Tyler Klimas, Executive Director, called the meeting to order at 10:00am.

I. Public Comment

There was no public comment made in Las Vegas.

II. Proposed Amendments and Additions to the Nevada Cannabis Compliance Board Regulations

A. Regulation 1. Issuance of Regulations; Construction; Definitions

Deputy Director Michael Miles stated there was one proposed change to Regulation 1. Due to some potential confusion, NCCR 1.135 was being updated to further clarify what packaging means.

There was no public comment. Member Durrett asked if this would cause confusion with the exit bag. Deputy Miles responded that it only applied the packaging on the item itself, for example a candy bar wrapper. Member Durrett recommended adding language that it did not apply to the exit bag.

B. Regulation 3. Cannabis Advisory Commission: Organization and Administration

Deputy Miles stated there were two proposed changes in NCCR 3.020 and 3.025 and the addition of NCCR 3.030 regarding the Cannabis Advisory Commission. The changes govern how the Commission handles its agenda and appoints subcommittees.

There was no public comment. There were no questions or comments from the Board.

C. Regulation 4. Disciplinary and Other Proceedings Before the Board

Deputy Miles stated Regulation 4 governs discipline and disciplinary proceedings. The proposed changes add violations and penalties to various category violations. NCCR 4.035 added that the transporting or storing of cannabis from an unlicensed source and diversion of cannabis to a Category 1 violation; and added a presumption that one violation of diversion of cannabis requires revocation of license, certificate, and/or cannabis establishment agent registration. NCCR 4.040 added any violation of NCCR 11.070 to a Category 2 violation. NCCR 4.050 added a prohibition of using unauthorized ingredients to a Category 3 violation. NCCR 4.055 added a violation of a testing facility's business practices regarding failed lab testing to a Category 4 violation. NCCR 4.135 was amended the procedures on arguing disciplinary recommendations in front of the Board.

Ben Chew from DB Labs provided public comment regarding NCCR 4.035. Mr. Chew stated they had been told that labs were allowed to test recreational samples from the general consumer. These samples may not be patient samples, but samples that a general consumer would like tested.

Member Durrett had a comment regarding NCCR 4.035(2)(b). Member Durrett preferred that "shall" be changed to "may." Member Durrett asked if the Board still had the latitude to determine when there was a violation. Deputy Miles responded affirmatively.

No further questions from the Board.

D. Regulation 5. Licensing, Background Checks, and Registration Cards

Deputy Miles stated the change to NCCR 5.140 was to decrease the fee to obtain a replacement cannabis registered agent registration card.

There was no public comment. There were no questions or comments from the Board.

E. Regulation 6. Production and Distribution of Cannabis

Deputy Miles stated Regulation 6 covered the production and distribution of cannabis. NCCR 6.035 updated the confidentiality provisions from Nevada Department of Public and Behavioral Health (DPBH) to the CCB. NCCR 6.040 was deleted in its entirety due to DPBH's handling of attending provider health care. NCCR 6.065 was updated to require proof that a licensee had a right to operate at a new location. NCCR 6.080 allows cultivation facilities to combine different lots of kief that have passed testing. NCCR 6.120 clarified that all advertising by the cannabis establishment contain visible and legible required warnings.

There was no public comment. There were no questions or comments from the Board.

F. Regulation 11. Cannabis Testing Facilities

Deputy Miles stated Regulation 11 covered cannabis independent testing laboratories. NCCR 11.010 was amended to state that if the required scientific director is no longer employed by the laboratory, a qualified interim director can be appointed for no more than 90 days. NCCR 11.015 required the implementation of business structured to safeguard impartiality. NCCR 11.025 clarified that Board Agents can inspect all records maintained by the laboratory. NCCR 11.040 was amended to require the facility to maintain documentation and corrective actions for a minimum of 5 years. NCCR 11.050 clarified the requirement that all samples must be homogenized by the laboratory before testing. NCCR 11.070 clarified an existing requirement that cultivation facilities must present the entire lot to the laboratory representative when collecting a sample. NCCR 11.075 was amended to allow cultivation and production facilities to request permission from the Board for an additional 50 retests per calendar year and may also request to remediate failed product.

THC Nevada, LLC filed a petition with the Board to amend NCCR 11.075 and were allowed to address the Board. Steven Cohen, Nick Puliz, and Amy Sugden appeared on behalf of THC Nevada. Mr. Cohen stated that the regulation is close but there are unintended consequences. Mr. Cohen understood that the State did not want bad actors, but that was not the case with THC Nevada. Over 80% of THC's retests passed, but they do not get those numbers back for additional retests. Mr. Cohen questioned which results should be used for the product on the packaging and which tests should be performed for the retest, whether for a broad panel retest or only on what failed.

Nick Puliz, general manager for THC Nevada, stated they have used 45 of their 50 allowed retests, but have held off on additional retests. Mr. Puliz stated 82% of their retests have passed, and the majority of false positives came from microbial aspergillus. Per NCCR 12.030 and 12.035, there are 7 items required to be on the packaging labels which come from the certificate of analysis (COA). The lab results are never exactly the same. It is unclear what lab results to use on the labeling. It does not make sense to retest for things that are not a safety concern. Mr. Puliz recommended only retesting for a failed result and have the re-testing facility send the results to the original testing facility to amend the COA. Mr. Puliz stated there is human error and recommended that the retests that have passing results should not count towards that allowed amount of retests per year. Mr. Puliz recommended allowing a choice of three labs for retesting to allow for competitive pricing. Mr. Puliz recommended removing the limit of one request for an additional 50 retests as that is unfair to larger facilities that produce a high volume, and the Board can still deny the request.

Member Durrett asked if the limit of 50 retests was a problem if the process to request retests was streamlined. Mr. Puliz responded no and that the process to request retests was easy. Mr. Cohen added that the issue was the difference in the volume that larger facilities have. Mr. Puliz stated the problem was the limit of one request for an additional 50 retests.

Amy Sugden, counsel for THC Nevada, provided a recap of why they were there. THC Nevada is one of the larger producers and there was a disproportionate limitation placed on THC. The same amount of retests are allowed for a 40,000 square foot facility and a 5,000 square foot facility. If over 80% of retests pass, the cultivators should not be punished for inconsistent testing results. Ms. Sugden recommended only retesting for what failed, limit to one retest and not two, not being limited to use of one lab, and re-tests that subsequently pass should not count against the limit.

Kimberly Maxson-Rushton, attorney from Cooper Levenson, appeared on behalf of RSR Labs in reference to NCCR 11.015(2). Ms. Rushton recognized that labs should be impartial. Ms. Rushton asked what the intent was behind the new language because it read like a business decision. If the objective is impartiality, there are several standards in Nevada law, for example in Gaming where there are also independent labs, that define the independence of the operations and impartiality of the standards. Ms. Rushton asked how this is not a subjective determination and one that is otherwise not a business decision that should be held and retained by the lab.

Chair Douglas responded that there was a need for an industry standard and not the standard of the testing facility. Everyone should be playing on the same field. Ms. Rushton replied that the importance was the impartiality of the testing but the business decision relative to pricing should be retained by them. Chair Douglas added that the Board is charged with looking at the public interest and must balance that with the business interest. The comment to have more than one lab allowed for retests made sense to keep the prices in check but there needed to be industry standards. Ms. Rushton asked how it demonstrates impartiality if a testing facility wants to offer a refund if there may have been an error. The industry will have to follow standards and those may be called in to question in disciplinary proceedings. There needs to be clarification in those matters.

Chair Douglas asked if CCB staff had any comments. Deputy Miles asked Kara Cronkhite to address the Board and added that the 50 retest limit was intended for large cultivators. Ms. Cronkhite made a few clarifying points. Retesting was solely for the purpose of challenging the results of the lab. What the CCB sees is that several lots will fail for the same thing, and one can assume the results are accurate. But several requests for retests will be submitted in order to get a passing result in the hope to get the product on the shelves. The limit of 50 was approximately one challenge to a lab per week. In addition, the ability to remediate product was included to decrease the amount of retests submitted. The facility could request to remediate product to remove contaminants and request to retest, which would not count toward the 50 retests allowed per calendar year. Deputy Miles added that there had been discussion of requiring two passing tests because if there was one fail and one pass, why would the one passing result be accepted over the failure. Deputy Miles stated that Chair Douglas was correct in his reference to his comments on business practices. The intent was to prevent lab shopping and any encouragement a testing facility might have to provide passing results.

Member Durrett asked what the process would be to request any changes to the current language in response to recommendations by THC Nevada. Director Klimas responded that THC Nevada may submit additional language changes to the CCB which would be posted online as additional public comment received after the meeting. It could be addressed at the next meeting or moved to an additional workshop if needed. Deputy Miles reiterated that the limit of 50 retests was considered with the large facilities in mind. Chair Douglas commented that the regulations are a work in progress and the limits could be reconsidered. Member Durrett added that safeguards could be implemented to ensure impartiality would help avoid lab shopping.

G. Regulation 12. Packaging and Labeling of Cannabis Products

Deputy Miles stated that due to some confusion, NCCR 12.015 was amended to clarify what has been in effect since January 2019. Each serving of an edible cannabis product shall either be demarked with the dose in milligrams of THC or individually wrapped. NCCR 12.045 was amended to clarify that this regulation was only applicable to edible cannabis products.

Amanda Connor appeared on behalf of Curaleaf. Ms. Connor stated there has been confusion regarding packaging and labeling requirements. Senate Bill 168 was passed allowing the Board to adopt regulations surrounding packaging and labeling and Senate Bill 49 clarified a warning that must appear on labeling. Curaleaf suggests that the Board consider a more comprehensive review of packaging and labeling regulations, to create clear requirements and to remove redundancies of the warnings required to be provided by the various cannabis establishments.

Deputy Miles stated that a workshop will be planned for packaging and labeling.

Chair Douglas asked if these were interim changes. Deputy Miles responded that these were clarifying changes to tide things over until the workshop.

H. Regulation 13. Cannabis Distributors

Deputy Miles stated NCCR 13.020 was amended to allow storage at a cannabis distributor for purposes of sorting cannabis and cannabis products for no more than 72 hours. NCCR 13.025 was amended to only require two drivers if the distance travelled between establishments was greater than 50 miles. Blackbird Logistics submitted petitions to amend NCCR 13.020 and 13.025.

Jennifer Gallerani appeared on behalf of Blackbird and also as the Chair of the Cannabis Distribution Association. Ms. Gallerani had discussions with other cannabis distributors and submitted a consolidated public comment via email. They are in full support of the amendment to NCCR 13.020 which reflected the cross-docking processes in the wholesale distribution of cannabis goods. In regard to NCCR 13.025, they did not see that the limitation of adding distance to the value solved the issue that the two-driver rule presents in a cost-effective way. Ms. Gallerani presented five reasons why the two-driver rule was not necessary. 1. Parity with other industries: Outside of armored cash transport, team driving decisions are set by the business and not the regulating body. 2. Parity with other cannabis operators in Nevada: there are no requirements that mandate two agents in other segments of the cannabis supply chain in Nevada. 3. Parity with other legal cannabis markets: Only four states require two drivers (Pennsylvania, Florida, Illinois, and Massachusetts) and the adjacent states (California, Colorado, and Oregon) do not set regulations for team driving. 4. No net benefit to security: the industry standard is for distribution agents to be trained to be observant of surroundings and to forfeit all product and/or cash on board in the event of a robbery. Deliveries are conducted within secure areas under guard. The most common theft is of the entire vehicle. It was recommended to repeal the two-driver rule in its entirety and add security retrofit requirements for transport vehicles such as GPS and security cameras. 5. Added costs to the supply chain: the current value and proposed distance thresholds that require two agents accompanying the cannabis transport represent nearly 75% of all transfers in Nevada and this cost would be passed on to the consumer. It was also unclear where the distance requirement would be measured from.

Chair Douglas asked what the average amount was in the van. Ms. Gallerani responded that for Blackbird, 50% of the trips have more than \$50,000 in product value and 10-15% of the trips carry more than \$75,000 in product value.

Member Durrett as a suggestion asked if someone outside of the industry (for example, from a security firm or former law enforcement) could back up the statements that having an additional driver does not add safety.

There were no additional public comments. Chair Douglas asked where the initial value of \$25,000 came from. Ms. Cronkhite responded that the figure came from staff of Blackbird at the time and was probably determined by insurance.

III. Public Comment

Mike McHugh stated he supported agenda item E for Regulation 6 and agenda item H for Regulation 13. Mr. McHugh added that he worked for Safe Arbor which sells Amazon-style digitized pick-up lockers.

Chair Douglas stated that the Board is reviewing what the Nevada Legislature provided in regard to consumption lounges and the CCB will work to avoid the debacle that occurred during the last licensing round. The CCB will be transparent, will hold workshops on the proposed regulations, and all advice will be given in a public forum.

Member Neilander commented in regard to NCCR 4.035(2)(b) and that it created a presumption with respect to the violation. Member Neilander assumed there would be a rebuttal to the presumption and shift the burden of proof. Director Klimas responded that the Attorney General's office would look into this.

IV. Adjournment

Meeting adjourned at 11.14 a.m.