Nevada Cannabis Compliance Board
Special Meeting Minutes February 15, 2023

The Nevada Cannabis Compliance Board (CCB) held a public meeting at 555 East Washington Ave, Room 2450, Las Vegas, Nevada beginning at 9:02 a.m. on February 15, 2023.

Cannabis Compliance Board Members Present:

Michael Douglas, Chair
Jerrie Merritt
Riana Durrett
Bryan Young
Adriana Guzmán Fralick

Chair Douglas called the meeting to order, and Director Klimas took roll. Chair Michael Douglas and Member Durrett, Member Merritt, and Member Fralick were present in Las Vegas. Member Young was present via video conference.

Chair Douglas welcomed new Board Member Fralick and noted that Member Neilander had moved on.

I. Public Comment.

There was no public comment.

II. Adjudication of Disciplinary Action

A. Cannabis Compliance Board vs. Cannex Nevada, LLC now known as Lettucetest, LLC (Case No. 2020-27)

Chair Douglas introduced the matter and thought that the best way to handle the hearing is that the Board would make a decision today or following meeting that would deal with only the issues as to whether or not violations have been committed. Once that decision is made, the Board would proceed to what type of disciplinary action is appropriate. Chair Douglas noted that there was a large stack of documents placed before the Board.

Kimberly Maxson-Rushton appeared on behalf of Lettucetest, LLC, otherwise known as LTL. Owner/operators Ric Rushton and Rob Richardson were present, as well as scientific lab director Dr. David Luttrull. Ms. Rushton stated that she prepared a hearing exhibit packet and wanted to present those 13 exhibits to the Board.

Chair Douglas stated that this was not a hearing where the Board would accept documents, especially since they were not previously provided to the Board for review. Ms. Rushton argued that several exhibits were public notices which were an integral part of the summary suspension. Chair Douglas responded that the rules are clear in terms of the Board dealing with the information that is provided. Chair Douglas added that Ms. Rushton was objecting and wanting to present her review and errors to Board; if the material was not presented in the hearing, that is problematic in terms of coloring. There was adequate time prior to this hearing to send this information. Chair Douglas asked Ms. Rushton to confine the record to things put in evidence to the hearing officer.

Ms. Rushton noted that they argued in the objections that the record was incomplete and the hearing officer did not include procedural history relative to the summary suspension that initiated the case. The documents provided to the Board deal primarily with the summary suspension, are referenced in the case materials, and can't be separated from the complaint.

Chair Douglas noted that the summary suspension and complaint are intermixed. There was a summary suspension and resolution as Cannex was allowed to open and operate; that ended the summary suspension. It did not preclude the agency from going forth if it saw fit with alleged disciplinary infractions. Chair Douglas did not recall specifically what was not allowed in the record by the hearing officer.

Ms. Rushton noted that it was detailed in their lengthy objection that included procedural errors. Ms. Rushton added that it was the Board's decision that res judicata did not apply. The corrective action plan was included in the summary suspension. Ms. Rushton stated that they came to the hearing for the summary suspension, were asked if they wanted to settle, and the matter was settled to lift the summary suspension.

Chair Douglas interjected that the document was clear on what it stands for; it allowed Cannex to go back into operation. It was not a settlement of potential violations. Chair Douglas asked Ms. Rushton to note for the Board's reference, something that was not part of the record that was offered. Chair Douglas wanted the exhibits clearly marked so there was no dispute what was and was not part of the record before the hearing officer.

Ms. Rushton stated she requested to see the Board materials and those were provided a few weeks ago and noted the volume. Chair Douglas reiterated that there has been adequate time to review and did not like getting materials last minute to sort through and taints the process.

Chair Douglas asked to hear from counsel for the State.

Senior Deputy Attorney General L. Kristopher Rath stated there were objections to many of the new exhibits that were added. Mr. Rath noted 700 pages were produced at the last minute, about 280 pages were California regulations that don't have any relevance in Nevada. Mr. Rath objected to exhibits 1, 2, and 5. There were unadmitted exhibits; Mr. Rath preserved the objections made at the hearing on those. There is a lab accreditation document that was not in the record; regulations specifically state inspection by an accrediting agency is not a substitute for inspection by the department. Chair Douglas asked Mr. Rath to keep those objections as the documents come in.

Mr. Rath added that the CCB provided an exhibit package that included the hearing officer's findings of fact and conclusions of law that is in the record, a statement of deficiencies letter from June 24, 2022, and response to the accreditation certificate.

Chair Douglas noted if the exhibits were not part of the record, they would not be allowed in unless the others were. Exhibits will need to be clearly marked so they are noted as distinctly part of the record or not part of the record.

Chair Douglas proceeded to move forward and asked Ms. Rushton to go first as objecting to the decision. Mr. Rath stated that the CCB has the burden of proof. Chair Douglas responded that the CCB has the burden and this is objections to the record of the hearing officer and would be appropriate to hear those objections and for the state to thereafter comment with Ms. Rushton allowed a certain amount of rebuttal.

Ms. Rushton presented the objection to the Board on behalf of Lettucetest, LLC (LTL). Ms. Rushton stated that record before the Board was not complete and the violations in the complaint are not reflective of the licensee. Ms. Rushton objected to the ALJ's not allowing certain witnesses to testify including LTL's current scientific director Dr. David Luttrull, Chief Kara Cronkhite, and Director Klimas and explained the relevance of those parties. Ms. Rushton stated they were denied the ability to present relevant evidence; if you missed the date to present witnesses and evidence, it was not allowed.

Ms. Rushton added that they repeatedly asked to submit evidence in response and were denied. Ms. Rushton stated they were not allowed to determine what the basis of the summary suspension was. The record does not include the procedural history.

Ms. Rushton stated that licensees should not fear regulators but should respect the. Licensees will get out of line; what is important is that they are acknowledge and corrected when brought to the licensees attention. Dr. Luttrull would have explained that the actions and findings were not significant. Ms. Rushton added that the regulations and the findings of the judge do not match and discussed the training requirement. Ms. Rushton added that they asked for an expedited hearing and learned at the hearing the relevance of the evidence. Ms. Rushton alleged that they were not allowed to review the states files and thought that there was exculpatory evidence in the state files that would explain the complaints.

Ms. Rushton stated that during the three-day investigation, the witnesses from LTL stated that they were recorded, interrogated, and intimidated. A lot of emphasis was put on the testimony of Ozzy Ruiz, a technician that had been there less than six months and was training. Kelly Romolino, a scientist, set up the machine, helped draft the SOP, and trained on Delta-8. LTL received notice that Delta-8 was a required to test, proficiency tests were ordered and the machines were calibrated, supervision and training were done. Ms. Rushton thought that Dr. Luttrull's testimony and access to state's files would have changed the course of the hearing.

Ms. Rushton stated she could easily resolve the case and propose where the case should land and best course of action going forward. Regulators want to see compliance and a licensee that understands the obligation and commitment to become compliant. Ms. Rushton added that the recent ANAV review from this past October was important. Mr. Rath objected. Chair Douglas sustained the objection. Chair Douglas noted that as cited in the list of alleged deficiencies, what is before the Board is what was going on in the facility on the date in question; the Board is looking at that point of time. Ms. Rushton continued to explain the lab's requirement to be ISO certified. Chair Douglas interjected that was something on the back side of her going through this and asked to hear from the front side specifically.

Ms. Rushton explained the alleged violation in paragraph 83 relating to the requirement of 16 hours of independent training relative to security; this was done 13 days after it was brought to their attention. This requirement was never brought up in previous audits. The law states the training was to be completed within a period determined by the CCB. Member Durrett asked for the citation. Ms. Rushton replied that it was NAC 453D.434(7)(g)(f). Ms. Rushton provided the timeline of events relating to the training.

Ms. Rushton stated there was no violation found for paragraph 84. Paragraph 85 alleged a violation of 453D.745(4) for failure to close out the disposal of samples in Metrc. Ms. Rushton stated they acknowledged during the hearing that it was not done; all other necessary documentation was done. Ms. Rushton argued that it was not done, but did not believe it rose to the level of 10,000 violations, but one single act and Category III violation and fine of $2,500.

Ms. Rushton asked if she should continue to go through these noting what they believe the applicable fine would be for the offense. Chair Douglas preferred that she stayed with it and deal with whether it was compliance or non-compliance, or another reason something didn't get done.

Ms. Rushton continued with paragraph 87 and the alleged violation of 453D.776(4) for the failure to add red border around the term R&D on a certificate of analysis. LTL failed to do that on nine occasions. Ms. Rushton explained the ALJ's findings in regard to disciplinary proceedings and categories. The ALJ found the violation for failing to put the red border around R&D constituted a category III violation for failing to keep required records. Ms. Rushton disputed this. The ALJ also found a violation of subsection 8, allowing any activity which violates the laws of the state, and subsection 13 for violating packaging and labeling requirements. Ms. Rushton claimed this do not have anything to do with packaging or labeling

but acknowledged that the border was not on nine of the certificates of analysis.

Ms. Rushton stated paragraph 88 alleged violation of 453D.788(9) in the fact that LTL reported partial results to cultivators prior to the issuance of the COA. Ms. Rushton stated there was nothing in the law that precludes that. The testing process ranges from three to seventy-two hours. Ms. Rushton alleged it was common practice to discuss the status of the lab results prior to issuing the COA; it is not precluded because you can't do anything without the COA. The specific finding was a violation of the requirement that a certificate of analysis be completed and submitted to the state simultaneous to being submitted to the cultivator. Ms. Rushton stated there was no violation of 453D.78(9) as there is nothing that prohibits a lab from having a discussion with its customers during the process.

Paragraph 89 alleged a violation of 453D.905(3)(a)(3), a category I violation for intentionally misleading the CCB. Ms. Rushton stated there was nothing in the law that required a certificate of analysis to designate the flower or product being sampled. Ms. Rushton explained the process for sampling. Ms. Rushton described documents in the summary suspension. Mr. Rath objected that reference to documents outside of the hearing should be precluded. Chair Douglas noted the objection. Ms. Rushton stated that what was required at pickup was to identify the condition of the sample and ensure the measurement. The significance of identifying the sample was for tax obligations. Ms. Rushton alleged there was no violation because the cultivator identifies the sample; the law doesn't require the lab to ask the cultivator to change the sample identification. The type of sample does not change how it is tested, the results, or the cost.

Paragraphs 90, 91, and 92 alleged violations of 453A.650(1) and 453D.755(1) for failure to ensure quality standards of practice and supervision of staff. Ms. Rushton disputed the objective determination that lab staff had not been properly trained and supervised when the inspection occurred in December 2019. Ms. Rushton added that there was ISO certifications from 2019 in the materials. Mr. Rath objected as those documents are not in the record. Ms. Rushton stated they were. Chair Douglas directed Ms. Rushton to move on. Ms. Rushton explained the ISO certification requirements related to training and supervision.

Paragraph 93 alleged violation of 453.782 regarding the type of testing to be performed by the lab and that LTL failed to properly test for Delta-8. The complaint alleged there was not a proficiency test. Ms. Romolino testified that they could not get the standard. Ms. Rushton claimed that Ozzy's ambiguity was due to being interrogated and because the lab director was not allowed to explain to the investigators. Ms. Rushton stated the objective, the SOP, the instrumentation calibration, and the COA's show Delta-8 testing.

Paragraph 94 alleged violation of NAC 453D.405 and 45.764(1) for discarding key laboratory information. The complaint alleged the use of post-it notes that appeared to direct testing and so qualified as key laboratory information. Ms. Rushton acknowledged it was important to maintain documentation and logs relative to the operations and testing. Ms. Rushton argued there was no law that prohibits utilization of post-it notes; post-it notes were not utilized to maintain key laboratory information.

Paragraph 96 alleged violation of 453.405 and 453D.764(1) and was a catch-all relative to training, supervision, and maintaining a quality lab. Ms. Rushton noted that there is requirement for the lab to follow certain treatises. The violation did not specify which treatises were violated. Ms. Rushton stated that this lab is the only one in Nevada identified as an AOAC research institute lab. Mr. Rath objected as that was not done until May 2021 and was not in the record. Chair Douglas noted the objection. Chair Douglas noted that there were documents in the record as to SOPs and processes but Ms. Rushton had the right to put her position on the record. Ms. Rushton continued that there was no specific reference to what treatise was violated and therefore did not believe there was a violation.

Paragraph 97 alleged violation of NRS 453A.368 for the requirement that labs test for pesticides and mycotoxins. This pertained to LTL's instrumentation and how the lab responded to the equipment while running blank samples. Ms. Rushton claimed that the MED staff did not like the way that LTL staff identified errors with the instrumentation, and it was their opinion that the ranges were too high. Ms. Rushton stated staff made a subjective determination that it was a violation, and the scientists were saying they were comfortable with what was happening.

Chair Douglas stated the administrative law judge made representations as to SOPs that were drawn up but not followed in certain cases. Chair Douglas asked Ms. Rushton to respond to that. Ms. Rushton stated that the SOP said they would test every ten and they were running it every twenty. The blank standard should be run after every ten tests and the lab director was doing it after twenty. The lab wanted to modify the SOP to twenty but left it at ten at staff's recommendation.

Ms. Rushton stated paragraph 98 and 102 alleged violations of 453D.788 and 453.790 for the rerunning of the microbial samples. Ms. Rushton added that if Dr. Luttrull was able to testify, he would explain the difference between a retest and rerun. Ms. Rushton stated the scientist at the time would rerun the sample as to determine whether there were any errors with respect to how it was handled. During the inspection, staff stated they were doing the reruns too much and so they stopped. Ms. Rushton claimed that the scientists should have the discretion to do their jobs and rerun the sample; the scientist should have the discretion to report what he/she believes are the most accurate results based on the testing. Ms. Rushton referred to the summary suspension and public notices. Mr. Rath objected to the referencing of documents not in the record and that are irrelevant. Chair Douglas noted the objection.

Chair Douglas asked Ms. Rushton when testing is done and there is a result one way or the other and it's rerun or retested, depending on the verbiage used, is a record made of the anomaly? Ms. Rushton replied that it should be. In the instance of microbials, she would write things such as "questionable" but would not expand on that. Chair Douglas noted there were concerns about the rerun and retesting, whether they took the majority yay or nay. Chair Douglas asked if there was a record of what was found. Ms. Rushton responded that it was not done in every instance. Ms. Rushton stated it was not a subjective decision but the scientist looking at the instrumentation. Chair Douglas asked with the SOP of the lab as that. Ms. Rushton replied it does not speak to that. After December 9th, the SOP was revised to talk about internal retesting and rerunning. Ms. Rushton addressed the SOD that was issued in June for rerunning tests. Ms. Rushton stated they scientifically disagreed with the inability to rerun tests, and they stopped when they were told to stop. Ms. Rushton thought it should have been brought up at a workshop for a regulation change regarding this but that could not happen due to the complaint on file.

Member Young asked if samples that passed were ever retested or rerun; he only saw the samples that failed. Ms. Rushton replied that the majority of the reruns were done with respect to failing. There was testimony that that there were retests done of passing to ensure it wasn't a false positive, but not to the extent with respect to the failures.

Member Durrett noted that it appeared there was retesting of positives for heavy metals, but a trend to retest negatives with aspergillus, yeast and mold. Ms. Rushton responded that the majority of them were with respect to the failed test and microbials; there were reruns done of positives but not to the extent there were for failures. Ms. Rushton submitted the California regs because they encourage labs to rerun samples when anomalies are found.

Paragraph 99 alleged violation of 453D.788 and 453.797 for rerunning of the heavy metal sample. Ms. Rushton explained in this instance, a cultivator requested R & D testing specific to heavy metals. The retesting was done to ensure accuracy of results as they had problems with cadmium before.

Paragraph 100 alleged violation of NAC 453D.783 and 453D.790 for the utilization and development of trend logs. Ms. Rushton stated there was nothing in the law that prohibits a lab from doing this; the logs were based off of COA results. The claim was that they utilized the trend logs for the purpose of manipulating the potency or inflating. Ms. Rushton claimed the used of trend logs was good practice and they were familiar with their customer's business. Labs interact regularly with their customers and the objective is to ensure the accuracy of results and protect the consumer.

Paragraph 101 alleged a violation of 453.764(1), (4), (6), and (7) for the utilization of chem sample for microbial testing. Ms. Rushton stated the ALJ did not state which treatise or provision was violated by the utilization of a chem sample. LTL's internal practice was to separate the sample into a chem sample and microbial sample to ensure integrity and move them through the lab without having to wait. Ms. Rushton stated that the law does not say you can't have the two samples or that the microbiologist may not use the chem sample. Ms. Rushton claimed there was no violation because there was no obligation to do it and there was not a finding that the internal practice skewed or changed the lab results.

Paragraph 103 alleged violations of 453D.405 and 453.764(1). This was a catch-all relative to paragraphs 98, 101, and 102 for the rerunning of microbial samples. Ms. Rushton stated she was not sure how the facts showed a violation of 453D.405.

Ms. Rushton encouraged the Board to ask scientific questions of Dr. Luttrull for an explanation. Ms. Rushton added that when the issue was brought to the attention of LTL, the complied even though they disagreed.

Member Durrett asked for clarification on the potency issue and how much it diverged; Member Durrett asked if 10 percent was significant or not. Ms. Rushton responded that it was not significant; the medium range is thought to be 20 percent. Ms. Rushton added that the 2016 round robin from the Department of Agriculture explained the differences in potency. A sample tested on Monday will likely not have the same potency if tested on Friday. Ms. Rushton explained that LTL had a superior process.

Member Durrett asked about warnings on packaging that an edible product can have a 15 percent variance in potency of THC and asked if that was similar to what was being talked about here. Ms. Rushton asked if Dr. Luttrull could respond. Mr. Rath objected to new testimony. Chair Douglas stated there wouldn't be an answer at the meeting.

Member Durrett asked why the regulations would allow the lab to communicate the results of the test and then run a retest to allow for a loophole; what was the intent of the regulations and is that in violation of the spirit of the regulations. Ms. Rushton responded that retesting at the request of the cultivator was hearsay. There are discussions but not manipulation of tests to appease a customer. Ms. Rushton maintained that tests were redone to ensure accuracy.

Member Durrett asked why that would happen after failure for aspergillus but not after passing results; it seems like the motivation was to get passing results. Ms. Rushton replied the motivation ensure that the results are accurate. A business doesn't want to fail something that shouldn't otherwise fail, but the scientist's objective is to ensure accuracy of the results. With the public notices that went out, it was known that MED [Marijuana Enforcement Division] was sensitive about microbials. There is documentation that demonstrates that the scientist was rerunning them and why.

Member Durrett asked how do you handle following all of the treatises. Ms. Rushton responded that you can't; most of them are generic and apply in part to cannabis, but really apply to good lab practices. ISO certification and AOAC are very high standards for labs to meet. Ms. Rushton added that a lot of the treatises are dated including the Pharmacopeia from 2014.

Member Durrett stated that there are parts of this that would be glaring violations of lab practices if not followed and that would be a violation of .788. Ms. Rushton argued the importance of regulations to give guidance. When you list a significant number or handful of treatises and don't identify what parts you want the lab to follow, how do they know. Labs look to the ISO certifications. Ms. Rushton stated you need to have regulations that specify what the expectations are otherwise it is a matter of interpretation. If you disagree, you can ask for an advisory opinion or workshop; you do what you're told until you get clarification. Ms. Rushton thought that the complaint served as notice to the industry as to the interpretation and application of the law.

Chair Douglas stated that cannabis compliance also relies upon the SOPs the licensees put forth that that they say they are going to follow. Chair Douglas asked if that was appropriate or inappropriate; the lab did not adhere to some of the SOPs they put forward. Ms. Rushton responded that there was an obligation to follow the SOPs. Ms. Rushton added that there are times when the science or instrumentation changes and the SOP doesn't change fast enough. What degree of being out of specification constitutes a violation, acted with impartiality and endangered the public. Chair Douglas asked how the Board is to view if the Metrc policy and SOPs aren't followed; what is a danger or not a danger. Ms. Rushton responded that it was a matter of looking at the weight and determining the seriousness. Ms. Rushton submitted that the mycotoxin and pesticide testing was done properly; the response of the staff was objected to. Ms. Rushton added that they explained how they handled anomalies and the instrumentation.

Chair Douglas commented that labs rely upon information that's produced by the retesting; the agency relies upon the information produced by following certain rules and reporting systems to make judgments for the protection of the ultimate consumer. That is a concern. Chair Douglas asked for closing remarks.

Ms. Rushton stated that today there is a much better set of regulations and standards. From 2014 through 2019 there were different sets of regulators, laws, and little guidance. There was a lot more discretion and interpretation. Ms. Rushton did not think the anomalies posted a threat to the public or endangered safety.

Chair Douglas called for a recess. The Board came back on the record and Chair Douglas asked Mr. Rath for his presentation.

Mr. Rath stated that objections were made to the hearing officer's findings. However, the CCB would be fine if the Board adopted the hearing officer's findings and recommendations in whole as written. Mr. Rath stated the hearing officer's findings of fact and conclusions of law should be granted great deference as she is an experienced senior administrative law judge with the Department of Taxation. The findings are 90 pages long and contain about 350 footnotes which pinpoint what evidence, testimony, and exhibits support her findings.

Mr. Rath explained how he would present his case and encouraged the Board to look thoroughly at the hearing officers finding's, the objections, and the responses. Mr. Rath asked the Board to keep in mind three themes: compliance, honesty and integrity, and public health and safety. Respondent's counsel asked the Board at the last meeting on this case how much compliance does the Board expect from its licensees. The Board must expect full compliance or close to that. The Board received very little compliance from its licensee. Honesty and integrity is the key for all cannabis labs as they are the gatekeepers of the industry and ensure the public health and safety by accurately testing cannabis and cannabis products; they are in place for public trust and confidence. Mr. Rath stated all labs must be unbiased, strive for accurate results, and put accuracy over aiming for higher profits. Mr. Rath added that with retesting cannabis samples multiple times after failing results, no one really knows how much of any microbe or potentially dangerous material is in their cannabis; there is potential for harm. There are a lot of category III violations that create potential threat to public health and safety. Mr. Rath stated the public needs to be able to trust test results; retesting until you get the results your clients want can be dishonest and dangerous.

Mr. Rath stated there were intentional false statements. False and misleading statements must not be permitted if public trust is to remain. Strict regulation does not mean a slap on the wrist for putting forth a plan of correction and then not following through with it.

Mr. Rath stated the hearing officer sat through 20 days of a lengthy hearing and was able to assess the credibility of the multiple witnesses. The respondent had their two scientists testify; the CCB had its two scientists testify. A third scientist, respondent's senior microbiologist, Yin Zhu testified.

Mr. Rath discussed the hearing officer's findings. Under I, the hearing officer found by a preponderance of evidence that the CCB had proven the respondent did not have a designated security manager or director, did not follow a security plan and concluded the Board should find one Category II violation. CCB agreed. The respondent's objection is not valid as the licensee was not compliant and hadn't complied for three years. Mr. Rath added the failure to have required security measures shows lack of compliance and impacts public health and safety by allowing for cannabis diversion and other crimes. Chair Douglas asked about the section on training that Ms. Rushton referenced. Mr. Rath replied that it mentioned a reasonable time. Mr. Rath argued that three years is not reasonable. There was discussion on when that regulation was put in place. Member Durrett stated it was 2018. Mr. Rath did not think over a year was a reasonable time. Chair Douglas noted that the purpose of the question was whether the onus was on the Board. Mr. Rath did not think so; the onus was on the licensee to follow regulations.

Mr. Rath stated the next violation addressed blockage of security camera. The CCB did not prevail and had no objection to the finding.

Mr. Rath stated the second section of the findings involved record keeping and documentation. The hearing officer found that the respondent failed to comply with Nevada law by improperly inputting data in Metrc on over 10,000 separate occasions and recommended a Category III violation. Mr. Rath stated the respondent minimized the issue by indicating they forgot to push a button; the respondent did not explain how they forgot to do this over 10,000 times. Mr. Rath stated they ignored that they had to update their cannabis inventory in Metrc. The CCB agreed it was a Category III violation but had issue with how many Category III violations. The Board may decide if it is one or 10,374 violations.

Mr. Rath stated the next recommendation involved the research and development banners and certificates of analysis. It is required by Nevada law and respondent admitted to the nine omissions and tried to minimize them. The hearing officer recommended one Category III violation. The CCB agreed. The banners alert consumers and other cannabis facilities that the testing was only done for R & D, and in this case was not complete. The CCB argued it should have been nine violations. Mr. Rath added that it was very important that seed-to-sale tracking requirements are followed; when cannabis goes missing it leaves it open to diversion.

Mr. Rath stated the third issue under II was the COAs misrepresenting the testing results for samples of flower when they were trim. The hearing officer stated the correct reservation of product was important for chain of custody and test sample identification; trim is collected in lots three times the size of flower therefore it costs more to test. The taxes for flower are higher and so misrepresentations have an impact. The respondent alleged it made no difference. Mr. Rath noted that it lowers the cost for their clients as they don't have to pay as much for testing. Their SOPs require verification of the type of cannabis being tested. The hearing officer found one Category I violation for intentionally issuing false statements to the department. The CCB agreed and argued that it could be five category I violations.

Mr. Rath stated the fourth issue under the hearing officer's findings was the respondent's failure to maintain records of laboratory testing information; this is the post-it note issue. Mr. Rath stated the post-it notes were used to instruct staff to conduct retests and then discarded and not kept in the lab files as required by Nevada law. The hearing officer found these records constituted technical records which had

to be retained. Mr. Rath stated the respondent did not want to retain them because their retesting was improper and illegal.

Mr. Rath stated the violations in this section demonstrate compliance failures, dishonesty, and impact public health and safety.

Mr. Rath stated the third section of the findings involved improper laboratory practices, including improperly providing test results to clients prior to reporting it to the department which is not permitted under Nevada law. The respondent stated they gave a status report of where the test was in the process. Mr. Rath stated this was not what happened and encouraged the Board to read the findings and look at the evidence. NAC 453D.788(9) states the electronic copy of the certificate of analysis for all tests performed must be provided at the same time it transmits those results to the facility which provided the sample. Mr. Rath stated they don't get away with it by calling a retests a rerun or preliminary test and only do that for failures. The hearing officer found that that the respondent intended to allow its clients to have possession of test results that it did not provide to the department and found a category I violation. The CCB agreed.

Mr. Rath stated the second issue addressed involved the respondent's failure to maintain required standards of practice and failure to adequately train its lab staff. The respondent staffed the lab with employees fresh out of school or early in their career but they did not have proper supervision or training. The hearing officer found one Category III violation. The CCB agreed. Mr. Rath added that the violation implicates public health and safety. The training documents provided were incomplete.

Mr. Rath stated the third issue addressed the respondent's ability to actually report results of Delta-8 THC levels due to the employees failure to follow the lab's standard operating procedures (SOPs). The evidence demonstrated the key employee could not properly read and interpret the machine's results; this was not a one-time issue. The hearing officer recommended a category III violation. The CCB agreed with that finding as it indicates a threat to public health and safety.

Mr. Rath stated the fourth issue addressed was the unsanitary methods used for homogenization of cannabis which was then used for microbial testing. Mr. Rath explained the technique that included not changing gloves between several samples, use of isopropyl alcohol which can destroy microbials, and contamination of samples. The issue was that the chem samples were used to test for microbials at a certain time; the hearing officer found this to be potential for contamination that could lead to inaccurate or false results. The hearing officer found it to be a category III violation. The CCB agreed as inaccurate results can impact public safety.

Mr. Rath stated the fifth issue addressed involved the respondent's continued reporting of test results for pesticides and mycotoxins where there had been quality control failures that were never properly investigated or corrected. The instruments exceeded quality control tolerance limits. The lab did not follow its own SOPs on this issue. This issue was identified in the respondent's 2017 summary suspension and again at the 2018 inspection. The hearing officer found a category III violation. The CCB agreed.

The fourth section of the findings involved the respondent's unauthorized retesting of samples. Mr. Rath read from the hearing officer's findings that concluded that the respondent performed the retest with the goal of obtaining passing results to report to the department and its clients. The evidence for the hearing officer's conclusions was documented through lab records, e-mails, and testimony. The lab's senior microbiologist testified and was so disturbed by the ethics of the practice that she resigned. The hearing officer found that respondent committed one violation of NAC 453D.905(a)(3) for making an intentionally false statement to the department and found it to be a category II violation. Mr. Rath added that the statute clearly indicates you do the test, get the results, and report them. Yin Zhu testified that only failed samples were requested to test. Mr. Rath objected to the category II violation and thought it should be a category I violation for intentionally making a false statement. Mr. Rath stated there were 232 separate

intentionally false statements; this amount was a snapshot from three months. There may be more as Ms. Zhu testified that the practice started in 2018. Mr. Rath encouraged the Board to look at Yin Zhu's testimony. Mr. Rath added that the respondent attempted to besmirch Ms. Zhu's testimony and to belittle Ms. Zhu by claiming she needed a translator to fully understand some of the complicated questions by counsel. Mr. Rath stated that was disparagement and does not call the witness' credibility into question.

The section also addressed other unauthorized testing; there was a similar issue with retesting of heavy metals with multiple retests done until a passing result was achieved. Mr. Rath stated the hearing officer found one violation for the intentionally false statements and that it was a category II instead of a category I. Mr. Rath objected and that it should have been 22 category I violations. The retesting issue is serious, shows lack of compliance and impacts public health and safety.

The section also addressed respondent's unauthorized retesting for THC potency results. Mr. Rath stated the respondent utilized trend logs for cannabis potency testing, conducted unauthorized retesting of potency, and contacted clients to "discuss" preliminary testing results prior to notifying the department of the findings. The hearing officer stated the actions showed the respondent was working with its clients to increase the potency reported. The issue was the manner in which the trend logs were used. Mr. Rath added that the same issues were reported in the 2017 summary suspension and they continued. The hearing officer found a category II violation. Mr. Rath objected that it should have been 56 separate category I violations.

Mr. Rath summarized that the multiple testing violations showed non-compliance, lack of honesty and integrity, and disregard for public health and safety. Lab testing should strive for accuracy not results-driven to satisfy customers. The hearing officer evaluated the testimony of each side's two scientists and the scientist that no longer worked there.

Mr. Rath stated the fifth section of the findings involved the respondent's quality control and quality assurance program. The hearing officer addressed five practices showing respondent was not adhering to required QA/QC programs. Mr. Rath listed some examples including failure to take correction actions when the HPLC machine exceeded tolerance limits in pesticide testing, use of incomplete spreadsheets to communicate potency testing results, and failure to conduct proficiency testing for Delta-8 THC and CBD-A. The hearing officer found one category III violation. The CCB agreed as the violations demonstrate lack of compliance and potential threat to public health and safety.

Mr. Rath stated the sixth section of the findings involved respondent's failure to act impartially in the testing and reporting of results for five clients. Mr. Rath read from the hearing officer's decision where it stated the respondent's practices with the five clients show it was not acting impartially and objectively in its testing. The evidence established the respondent used unapproved retesting practices, did not charge separately for retests indicating that the testing for desired results was an integral part of the services provided, and its clients financially benefitted. The hearing officer found a violation of NAC 453D.905(3)(a)(3) for intentionally making a false statement to the department. Mr. Rath stated the only objection was that it should have been a category I violation and five separate violations.

Mr. Rath stated that even if the Board overruled the CCB's objections, they were fine with the hearing officer's results. Mr. Rath addressed other issues raised. Mr. Rath argued there was a complete record in the case and the Board has everything that went before the hearing officer. Mr. Rath stated the hearing officer excluded only two or three of the respondent's exhibits. Mr. Rath added that Dr. Luttrull was properly excluded; the respondent didn't comply to the agreed deadlines. Dr. Luttrull was disclosed late and the scope of his testimony was not timely disclosed. Mr. Rath added that Dr. Luttrull did not work at LTL during 2019 and had no direct knowledge of the violations.

Mr. Rath stated the law does not allow for full discovery of an investigative file; discovery is not required in administrative law cases. Mr. Rath stated the CCB was not unfair with the employees. If Ozzy was there only a few months, why was he given so much responsibility on the machine without any supervision. Correction or promise of correction does not absolve them of all the violations in the complaint. The respondent pledged to correct 2017 issues when it was summarily suspended and did not do that; the respondent had other violations in 2018 and 2019. The respondent claimed they were compliant but continued to repeat serious violations. The respondent was issued a statement of deficiencies letter on June 24, 2022, for multiple violations included unapproved retesting of heavy metals, failing to follow SOPs and reporting pesticides and heavy metal results when failing quality controls. Mr. Rath added that correction of issues does not absolve them for any of the penalties of the violations.

Mr. Rath addressed the stacking issue and stated that the respondent's position was that progressive discipline cannot occur until a violation has been fully adjudicated. Mr. Rath explained how that would be applied and stated that would be a waste of resources. More violations within a certain time frame are meant to be progressive because it demonstrates the licensee has pervasive issues in operating its cannabis business. Mr. Rath added that there is separate stacking issue for multiple violations that are the same, for example when the same mistake is made 10,000 times. Mr. Rath argued that those should also be progressive. If they are separate and distinct category violations, it should be progressive. The statute doesn't say that it's not.

Mr. Rath addressed the issue of the labs who retested the cannabis that LTL had repeatedly retested which occurred during the summary suspension. Mr. Rath argued that it was irrelevant; the only issue in the complaint was the illegal retesting in colluding with clients to get the best results. Mr. Rath stated it did not matter whether other labs got different results.

Mr. Rath addressed the respondent's claim that accreditation by an agency means they were in compliance. Mr. Rath explained that the NAC and the NCCR state that inspection by an accrediting organization is not a substitute for an inspection by the department. Accrediting agencies are new to cannabis, may not know all of the regulations, and often schedule the visit. Mr. Rath added that the accreditation that happened in 2022 was after the events. Chair Douglas commented that as to 2022 accreditation issues and allegations in 2022, those were not appropriate for discussion at this time.

Mr. Rath addressed the issue of the way the hearing was held and supposed bullying by staff. Mr. Rath stated that did not occur. The inspectors did their job and in the disciplinary action, the parties are going to disagree. Mr. Rath added that the CCB's examination of Ms. Wayman took one day; the respondent's cross-examination took four days with the same questions being repeatedly asked until objected to.

Mr. Rath stated it was important to remember the licensees past history of suspension and other violations. There are systemic issues with non-compliance, a culture of satisfying customers and maximizing profits at the sacrifice of compliance and safety; this is why the administrative law judge found the violations she did in this case.

Member Durrett asked if every time equipment runs a test and there is a valid result, that has to be reported as a COA or is there ever an occasion where they could redo it without reporting it? Mr. Rath responded yes, if there was a clear anomaly that was documented. Member Durrett asked if there was an occasion where there is no anomaly but it's okay to do the retest, where they do a retest without reporting it as a final COA? Mr. Rath responded no; they can test their equipment with quality control procedure and check the variance.

Member Durrett asked if Ms. Wayman looked in the two-month period to see if there were any times that they did retest something that had already passed with regards to aspergillus or yeast and mold. Mr. Rath responded that she did and did not note any passes that were retested. There were instances with the heavy

metals that were randomly retested. This was generalized retesting, no anomalies, and was not in their SOPs. Member Durrett asked if retesting was an issue in 2017 or 2018. Mr. Rath responded that he did not have that in front of him but thought it was for potency.

Member Durrett asked if a violation was substantiated as a Category III now, how would it work for enhancement purposes in a separate case down the road. Mr. Rath responded that under the NAC, there was a two-year look-back period and under the NCCR there is a three-year-look-back period. In this case the NACs were being applied; on the dates it is adjudicated, if they have another category III within two years from that date and its adjudicated.

Member Durrett asked about the trend logs and was the idea that the lab would want to show that the potency was going higher. Mr. Rath responded that was one way of using them and they would also retest when the potency was not falling within those trend logs.

Member Durrett asked about good lab practices and the enforcement of treatises. Mr. Rath replied that the issue was standard of care, and what would a reasonable chemist do the same way. There was different testimony on what the standard of care was; the hearing officer assessed that for all of the witnesses that testified. Member Durrett thought that there needed to be further discussion and development on this.

Member Durrett asked for additional information on the mislabeling of trim versus flower and if inspectors looked back to see if that occurred more than outside of these instances. Mr. Rath stated there were dates on the manifests and thought they were all around the same time.

Member Durrett asked about the concern regarding banners for the R & D. Mr. Rath responded that it alerts staff that it is R & D and can't be sold to the public; thousands of these come in and that red flag is needed. Mr. Rath stated that he did not know if those got sold to the public.

Member Durrett asked why the CCB wanted 10,000 violations imposed; if $2,500 was imposed, it would be $30,000,000. Mr. Rath replied that the Board had the discretion and could impose $1.00 fine. Member Durrett asked what was the public interest in imposing 10,000 violations. Mr. Rath responded that if you don't do that, they will keep making the mistake and know there is only one violation at the end of the day. Mr. Rath added that this was an issue in 2017 as well.

Chair Douglas asked Ms. Rushton if she had any comments.

Ms. Rushton addressed the issue of Ms. Yin leaving LTL. Ms. Rushton responded that she retired and did not leave because of this. Ms. Rushton stated that Mr. Rushton gave testimony that Ms. Yin asked him to change the designation of her employment status to fire for DETR. Ms. Rushton added that Ms. Yin worked for the company for a number of years and never used an interpreter. Ms. Rushton stated she also socialized with her and she never had an interpreter. Ms. Rushton stated that Ms. Yin was not clear when asked about when she was told to retest; she was clear that she did not fabricate results and stood by her scientific accuracy.

Ms. Rushton explained about the value of the ISO certification and that it is an objective standard that mandates that you demonstrate quality assurance and quality control standards against SOPs and against the State of Nevada cannabis standards. The one specifically obligated is 17025, and it obligates labs to maintain control charts. Ms. Rushton stated that control charts are the equivalent of a trend log. Ms. Rushton added that there were never any financials demonstrated; it was a snapshot of a dispensary's pricing sheet that showed that higher THC content sells better. Ms. Rushton stated the pricing sheet, control charts, trend logs, and a complaint by a competitor relative to the potency inflation led to the conclusion that it was done for financial reasons but that was not correct. Ms. Rushton stated that ISO mandates controls parts be maintained and so they did.

Ms. Rushton addressed potency inflation and stated there was no such thing as potency inflation; it is the potential potency for the consumer to know the potential potency of the product they are going to consume. Chair Douglas interrupted and noted that potency was an open subject going on with this issue in the country. Ms. Rushton stated she was aware of the cases taking place, but that was not what happened here. Ms. Rushton stated the assumption was that the higher the potency, the greater it sells; Ms. Rushton argued that was not the case. Ms. Rushton argued there were a multitude of factors, such as terpenes, that motivate a consumer to choose a specific product. Ms. Rushton added that it was a misstatement relative to the 2017 summary suspension.

Ms. Rushton stated she relied on the ISO certification because it is objective; the ANAV certification is objection. Chair Douglas asked for the date of the certification. Ms. Rushton responded that there was one from 2019 during the applicable time of the inspection. Ms. Rushton added that there was a latter one in October 2022. Mr. Rath objected to counsel testifying to the CCB filing a complaint with the accrediting agency; that did not happen. Ms. Rushton disagreed.

Ms. Rushton claimed that the CCB was not unbiased. The 2022 SOD is still open and has nothing to do with this issue. Ms. Rushton addressed the stacking issue and said that it can't be done. Mr. Rushton compared it to DUI cases where multiple people are injured. Ms. Rushton stated the progressive discipline is founded in employment law and consistent with 233B; instead of firing someone for violation of terms of employment, they are given progressive discipline. Ms. Rushton argued that you can't stack the violations found in the three-day period because they had no notice.

Ms. Rushton noted the 2017 summary suspension was based on potency and the 2018 statement of deficiency addressed Metrc issues. Ms. Rushton recognized the reasons for seed-to-sale tracking and argued there was adequate documentation.

Ms. Rushton stated that if you remove stacking from the hearing officer's findings, then the fine is about $122,500. Ms. Rushton disagreed with that amount because they believed there were things that were matters of interpretation and as a mitigating factor that when complained about it, they were corrected. To talk about anything further than that is inconsistent with 233B. Ms. Rushton stated the section of 233.127 stated you may not suspend or revoke without giving a licensee the opportunity to demonstrate compliance; only then when compliance is not demonstrated can you go forward with more punitive actions. Ms. Rushton added that this is not a criminal case but a disciplinary administrative action. Ms. Rushton thought that CCB was asking for punishment.

Ms. Rushton claimed that counsel told her there was no settlement because of the animosity between the parties. Ms. Rushton thought that this demonstrated why the corrective action plan should have been sufficient and why there should have been discussion of settling the matter before the hearing. Ms. Rushton asked the Board to look at the facts and the integrity of the ISO certification, it demonstrates that this was a matter of interpretation. Ms. Rushton stated that they changed the practice whether they agreed or disagreed.

Chair Douglas asked if Ms. Rushton ever made a request for a settlement conference during the process before the administrative law judge, or did she believe the animosity was too great to have a settlement conference. Ms. Rushton responded that they did not tender a settlement offer due to Ms. Balducci's response that the offer was rescinded and the investigation was going forward.

Chair Douglas asked if a request was made as to the proceedings we were in now. Ms. Rushton responded no, not before the hearing; the law required the hearing officer to ask. Ms. Rushton added that there was no settlement offer made until last week and was reviewed. Mr. Rath objected to settlement discussions.

Chair Douglas noted the opportunity was available and did not go forward, and that the hearing officer did not ask the question.

Ms. Rushton noted that in response to Member Durrett's questions about retesting, there was testimony in the record from the state's agents about when retesting is allowed. It is consistent with what was stated and it was matter of documentation. In the state's opinion, the documentation done by Ms. Yin should have been more specific. Ms. Rushton thought the Board could consider defining parameters of reruns or reanalysis for the lab industry and differentiate between the retests.

Ms. Rushton objected to summaries that were provided in the materials. Ms. Rushton stated they objected to those during the hearing. Ms. Rushton did not receive the materials that were used to prepare histograms that were presented in the hearing. Ms. Rushton added that they were not provided the samples that were used for the suspension; they requested to have the information suppressed and it wasn't.

Chair Douglas noted that Ms. Rushton was getting far outside what was stated. Mr. Rath objected to the time; Ms. Rushton was thirty minutes over the allotted hour. Chair Douglas allowed Ms. Rushton to go through points in her rebuttal.

Ms. Rushton discussed the rules of evidence and errors, disputable presumptions, and relevant evidence generally admissible. Ms. Rushton alleged that they were not able to present their case and that Dr. Luttrull could explain it in 30 minutes.

Member Young asked if there were specific examples where a pass test was retested. Ms. Rushton responded no that it was possibly limited to heavy metal retesting. Member Young stated that he understood that when there is an anomaly, you rerun the test. Member Young was concerned that it seemed that the only times things were rerun was when they failed and was looking for the anomaly that was mentioned. Ms. Rushton replied that she did not know if that was documented in the files or evidence. Ms. Rushton stated she could look back through the evidence but could not say with absolute certainty. Member Young noted that it seemed the only anomaly is the failed test. Ms. Rushton stated she did not know if that was true, but it could be that when a scientist looks at something and they are confident about the pass, then they pass it. But if something fails, then they believe it needs further examination.

Mr. Rath stated he would object to further new evidence coming in at this time. Ms. Rushton stated that she would look through the evidence that is in the record.

Member Durrett asked if there were instances from the record that can be cited to establish that Mr. Ruiz's training was sufficient. Ms. Rushton stated that he was a technician in training and Ms. Romolino gave testimony on the training process. Ms. Rushton added that they explained that Mr. Ruiz was in the process of learning the machine on that particular day; the fact that he could not answer the full spectrum of questions about the instrumentation was not due lack of training. Ms. Rushton provided information on the steps of training.

There were no further questions from the Board.

Chair Douglas noted that the supplemental documents that were offered to the Board should also be provided to CCB counsel.

Chair Douglas asked the Court Reporter how long it would take to get the transcript and the reply was three weeks.

Chair Douglas stated that he would like view the transcript and asked the Board Members if they will rely on notes or would they like to see the transcript. Member Fralick noted that she would look back on the recording until the transcript is ready. Member Durrett was willing to wait for the transcript. Member Young and Member Merritt also wanted to defer until they had the transcript. Chair Douglas noted that the Board will not reconvene until the transcript has been provided for review and then will come back in for deliberation. The hearing will stand in recess.

III. Public Comment

There was no public comment.

IV. Adjournment

Meeting adjourned at 12:37 p.m.