

Nevada Cannabis Compliance Board

Meeting Minutes May 23, 2023

The Nevada Cannabis Compliance Board (CCB) held a public meeting at 555 East Washington Ave, Room 2450, Las Vegas, Nevada and 1919 College Parkway, Meeting Room 100, Carson City, Nevada beginning at 9:00 a.m. on May 23, 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 Executive Director Tyler Klimas took roll.

Chair Douglas, Member Durrett, and Member Merritt were present in Las Vegas. Member Young and Member Guzmán Fralick were present in Carson City.

I. Public Comment

Rachel Lee of Sunflower Compassionate Company thanked the CCB for their work and dedication in regard to safety in the practice of cannabis use, sales, and consumption. Ms. Lee resigned from a cultivation facility after receiving a public health and safety bulletin regarding the use of an unapproved pesticide. Ms. Lee encouraged research into the effects of the pesticide. Ms. Lee supported A'Esha Goins' work on social equity and disagreed with comments made by Eli at the CCB workshop regarding CEIC. Ms. Lee asked for the definition of "asset" for the consumption lounge requirements. Ms. Lee asked for lounges to be able to first find a location and then be approved for that jurisdiction. Ms. Lee asked if social equity applicants can be granted funds which can be repaid later and would like to petition to change a location. Ms. Lee was looking for investors.

Abigail Kaufmann, Secretary of the Chamber of Cannabis, applauded the CCB for the workshop held pursuant to the Governor's Executive Order and asked that the list of regulations proposed for repeal to be posted publicly.

Robert Kurilko, CEO of Silver Lions Farms, was pleased that the Board was moving forward with the regulations for a medical licensing round in rural Nevada and detailed the concerns he had with the use of a random number generator as part of the application process and the issuance of cannabis licenses in counties that had moratoriums in place. Mr. Kurilko was concerned that a cannabis license would be awarded to an entity that will sit on the license. Mr. Kurilko did not think a lottery should be allowed for rural counties, but the licenses should be awarded based on merit. Mr. Kurilko accused licensees of squatting on the licenses. Mr. Kurilko asked the Board to issue a license without a new regulation.

Armand Bennett stated that there are seed cultivators in the state of Nevada: Technical Cultivators and Sin City Seeds. Cannabis seeds and clones are able to be purchased online. Strainly sells clones online. Mr. Bennett did not know if those websites were checking to see if the purchases were made

by authorized licensees.

Bri Padilla, Executive Director of the Chamber of Cannabis, asked the Board to hear and respond to the struggles and concerns voiced by the industry especially as it relates to the Governor's order and looked forward to furthering collaboration with the CCB.

Shaun Szameit appeared on behalf of Encore Labs, an ISO certified lab testing company in California and Arizona. Mr. Szameit urged the CCB to open the licensing window for cannabis lab testing. Opening the licensing window will drive competition ensuring rigorous standards, accurate labeling, increased consumer trust, and expand testing capacity for faster turnaround times and enhanced product safety. This will stimulate economic growth.

Will Adler spoke about the Sierra Cannabis Coalition's petition that was submitted in October 2022 and heard in November 2022. Mr. Adler stated it was on the CCB to put a workshop forward which could be held later this year. Mr. Adler would like to have the workshop and would be willing to submit a more focused petition if that was needed.

II. Meeting Minutes

- A. Consideration for approval of the April 14, 2023, Cannabis Compliance Board Workshop minutes.**
- B. Consideration for approval of the April 25, 2023, Cannabis Compliance Board Meeting minutes**

Chair Douglas asked for a motion on the meeting minutes. Member Durrett made a motion to approve the meeting minutes under agenda items II A and II B. Member Merritt seconded the motion. There was no additional discussion. All Members said aye. Motion carried.

III. Request for Transfer of Interest

Chief of Investigations David Staley presented the transfers of interest to the Board.

A. Dune Operating Holdings, LLC (C175, RC175) Addendum to TOI# 2200001

Chief Staley stated that TOI 2200001 was heard at the January 2023 meeting and the Board approved the transfers. Dune did not request waivers of NCCR 5.110 at that time. As an addendum to that TOI, Dune has requested a waiver of NCCR 5.110 pursuant to NCCR 5.125. If approved the agent card requirements for owners of less than 5% will be waived. Dune has adequately addressed the items required. Staff suggest that if approved, the waivers be set to expire on Dune's next TOI agenda date. No areas of concern were identified.

Jeremy Holmes appeared on behalf of Dune Operating Holdings. Mr. Holmes stated there was a change in counsel during the TOI process and the waivers fell through the cracks. The requested waivers were for silent, passive investors with no control over the operations. Connor Yee, manager, was available for questions.

There were no questions from the Board. Member Durrett made a motion to approve agenda item III A relating to Dune Operating Holdings with the waiver set to expire on its next TOI agenda date. Member Guzmán Fralick seconded the motion. All Members said aye. Motion carried.

B. JDW Nevada, LLC (C066, RC066, P029, RP029) (TOI# 2300006 – 2300009)

Chief Staley stated JDW held conditional and non-operational cultivation and production licenses in Clark County. The TOIs were filed to transfer 84.85% of JDW membership to Kathleen Watson after the death of her husband, Jeremy Watson, and for the transfer of 15.5% membership to Robert Graham through his company Harmony Nevada, LLC. JDW requested waivers of 5.110 pursuant to 5.112 and 5.125. If approved, the requirements for prior Board approval of transfers ownership of less than 5% and agent card requirements for owners of less than 5% will be waived. JDW has adequately addressed the requirements. Staff suggest that if approved, the waivers be set to expire on JDW's next TOI agenda date. Areas of concerns identified include lack of current Clark County business license and questions regarding the nature of Tampa Bay Investment Partners LLC's manager position of JDW as a limited liability company.

Chair Douglas noted the entity was non-operational and part of the transfer was based on the death of the husband.

Daniel Friedman appeared on behalf of JDW Nevada. Mr. Friedman stated they were working through the licensing process and all of the building approvals; there are different stages and things that had to happen, but things are on track. Kathleen Watson, CEO, and Taryn Reid, Point of Contact, appeared on behalf of JDW Nevada. Robert Brahms appeared on behalf of Harmony Nevada.

Member Durrett asked what the plans were. Mr. Friedman stated they are non-operational and in the process of constructing the 30,000-foot facility. They will be a contract manufacturer and a producer for a host of cannabis products. It is modular construction that they are putting together and anticipate being done in the first quarter of 2024; they had previous delays due to covid and a civil engineering firm walking off the job without notice. Member Durrett asked if Mr. Friedman was helping with the business aspect. Mr. Friedman responded that he was in-house counsel and worked in numerous areas of the start-up.

Member Durrett recommended touring Nevada facilities. Mr. Brahms stated that he was the operating partner, and they were currently a multi-state operation and was confident they would be able to operate in Nevada.

Chair Douglas noted the Tampa Bay concerns and it appeared that this would be turning over operational control to this entity that has not been licensed; there were plans for them to come forward at a later date.

Member Durrett made a motion to approve the TOIs requested under agenda item III B with approval of the waiver of NCCR 5.110 pursuant to NCCR 5.112 and 5.125 which would be set to expire on the next TOI agenda date. Member Young seconded the motion. All Members said aye. Motion carried.

C. Green Cross of America, Inc. (C035, RC035) (TOI# 2300010) and Happy Cabbage, LLC

Member Durrett made a disclosure that counsel for Happy Cabbage, LLC recently represented her in a legal matter. Member Durrett did not believe this would impact her judgment and would vote on this matter.

Chief Staley stated that Green Cross was placed in receivership due to financial issues in a prior summary suspension and disciplinary complaint. Appointed receiver Kevin Singer negotiated the potential sale to John Harp through his company, Happy Cabbage, LLC. TOI 2300010 was filed to request approval for Happy Cabbage to purchase Green Cross's cultivation licenses. An area of interest was identified relative to the business competence and experience of Chad Harp and Marjorie Frogoso who will be running the day-to-day cultivation operations.

Chair Douglas asked for specifics on the concerns as to the ability to manage, so that the representatives may respond. Chief Staley responded that the investigation revealed that Chad Harp and Marjorie Frogoso had experience in cannabis operations, but this would be the first time in management and executive oversight roles.

Maggie McLetchie appeared on behalf of Happy Cabbage. Derek Connor appeared on behalf of Green Cross. Kevin Singer appeared as Receiver for Green Cross. Ms. McLetchie noted that Happy Cabbage had a challenge ahead with these troubled licenses, but this small family-owned entity was ready. They have a year pursuant to the settlement agreement and have already gotten the SUP in Nye County. They have a team in place. John Harp has extensive experience as a CEO and owner of businesses, including construction. Chad Harp has extensive experience in growing. Ms. Frogoso has bookkeeping, management, and medical field experience. John Harp will not be an absentee owner.

Chair Douglas asked to hear from the Receiver. Mr. Singer stated they were looking to get the transfer approved by the Board. The transfer will put the license in the hands of a responsible party, will pay the fines and penalties, and will have funds to distribute to creditors.

Mr. Connor stated this was a good example of where the system is working properly. Mr. Connor thanked the staff for their work and requested approval. Ms. McLetchie thanked the staff and noted that the transfer is conditioned on the approval from the receivership court which has already been done.

Member Durrett asked for information on the receivership process. Mr. Singer responded that it has been a year and a half process. He hired a broker that specialized in marketing cannabis businesses in Nevada, and it was open to qualified buyers. Ms. McLetchie noted that it was a complicated process with the liens.

Member Durrett made a motion to approve the transfer requested under agenda item III C. Member Guzmán Fralick seconded the motion. All Board Members present said aye. Member Merritt was not present. [Member Merritt dropped out of the meeting at 9:52 a.m.] Motion carried.

D. Medical Cannabis Healing, LLC (C178, RC 178, P112, RP112) (TOI# 22015)

Chair Douglas noted that agenda item III D will be continued and heard on next month's agenda.

E. MJ Distributing C202, LLC (C202, RC202) (TOI# 2100025, 2100026); MJ Distributing P133, LLC (P133, RP133); and MJ Holdings, Inc.

Chair Douglas noted that agenda item III E will be continued and heard on next month's agenda.

IV. Consideration of Proposed Adoption, Amendment, and/or Repeal of the Nevada Cannabis Compliance Regulations

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

1. NCCR 5.020. Request for applications to operate a cannabis establishment: Notice by Board; required provisions; time period for submission of applications. (for possible action)
2. NCCR 5.035. Request by the board of county commissioners of the county to the Board to issue a medical cannabis establishment license for one medical cannabis cultivation facility and/or one medical cannabis production facility. (for possible action)
3. NCCR 5.042 Submission of application for a cannabis establishment license pursuant to NCCR 5.035. (for possible action)
4. NCCR 5.047 Cannabis establishment prospective and conditional licenses pursuant to NCCR 5.035. (for possible action)
5. NCCR 5.052 Cannabis establishment final licenses pursuant to NCCR 5.035. (for possible action)

Deputy Director Michael Miles presented the proposed amendments to NCCR 5 that would create a licensing process for a county, specific for a medical cannabis establishment license for counties where zero licenses have been issued.

NCCR 5.020 was updated to include all licensing types; it had been specific to consumption lounges only. NCCR 5.035 created a petition process for counties that do not hold a medical only cultivation or production license; this allows the county to petition the Board to create a licensing round for those licenses. NCCR 5.042 creates a new regulation for medical only application process. The process is similar to the process for consumption lounges. The criteria of merit listed in the initial application are all weighted equally; these requirements must be met before moving to the random number generator process. NCCR 5.047 creates a new regulation for medical only county specific prospective and conditional licensing process. Those that met the minimum scoring guidelines in NCCR 5.042 will be entered into a random number generator process. If selected by this process, the potential licensee will move into prospective license status and a long list of criteria of merit must be submitted to the Board to move forward with a detailed suitability analysis. If deemed suitable, the prospective licensee will move to conditional licensee status. NCCR 5.052 creates a new regulation for the final steps of the medical only county specific licensing round. The final steps include becoming operational within the time limit set by NCCR 5.085 in addition to various local ordinance and fee requirements. Deputy Miles stated the process was similar to the consumption lounge licensing process.

Chair Douglas asked for public comment on this agenda item, noting that a letter was received from White Pine County and its County Commissioners that had issue with the lottery. The Nevada Cannabis Association submitted a letter and there were concerns from other individuals.

Amanda Connor reiterated her previous public comments regarding the proposed regulations. Ms. Connor stated that NRS 678B.220(3)(a) states the Board shall issue at least one medical cultivation and one medical cultivation in each county; there is no option to deny the request of a county in

statute. NRS 678B.210(6) requires that when determining whether to issue a medical cannabis establishment license, the Board shall consider criteria of merit and the medical licensing statute does not permit a lottery or random number generator. Pursuant to NRS 678B.241(a) through (j), there are certain criteria of merit for a medical cannabis establishment that the Board shall consider such as the knowledge and expertise in the compassionate use of cannabis to treat medical conditions that is not included in the proposed changes. Ms. Connor recommended that the Board consider amendment prior to adoption.

Layke Martin spoke on behalf of the Nevada Cannabis Association and stated they had submitted detailed written comments, echoed the comments of Amanda Connor regarding statutory requirements, and reiterated previous comments made regarding the concerns of a lottery and criteria of merit and relative weight. Ms. Martin recommended not approving the proposed changes.

Brett Scolari of Strategies 360 echoed the comments of Amanda Connor and Layke Martin. Mr. Scolari recommended the use of criteria of merit and that the Board may consider factors such as economic development that may be important to the community. Mr. Scolari recommended pulling the proposed changes for further consideration.

Will Adler spoke on behalf of the Sierra Cannabis Coalition and pointed to the comments made by White Pine County. Mr. Adler echoed the comments made by Brett Scolari and Layke Martin. Mr. Adler stated the criteria of merit should be considered as it is still in statute and did not think a lottery was the right way.

Chair Douglas asked Deputy Miles to respond to the comments before the Board engages in discussion.

Deputy Miles stated that the comment made that NCCR 5.035 allowed the Board to illegally deny a petition is inaccurate. The one criterion that would allow the Board to deny a petition is if there was already a medical only license in that county. Deputy Miles stated there was nothing in the statute to prevent a random number generator from being used in the process; criteria of merit is used throughout the process, prior to the random number selector, and in the suitability analysis. An applicant can and will likely be denied if found to be not suitable. In reference to the comment made about life experience, there is a specific criterion of merit that addresses the educational life experience of the persons who are the proposed owners, officers, and board members.

Deputy Miles added that to call this process a lottery is a mischaracterization. There is a criteria of merit process in the initial application. If that is met, a fee is paid to be in the random number selector. This will give the applicant a chance to potentially get a final license. There are many steps in the process to be potentially granted a license. Criteria of merit is not cut out in any way and is a requirement of the new process.

Member Durrett asked for clarification regarding the weight of the criteria of merit and thought it should be relative or ranked. Deputy Miles responded that the statute says that the criteria of merit be given a weight, and they are given an equal weight in the initial application process. It is a binary weighted process. Member Durrett thought that this twisted the intent. Deputy Miles responded that it was a change to how the licensing round was done in 2018 but disagreed that it was twisting it; there is legal opinion that it's allowed.

Member Durrett commented that there were also legal opinions that it isn't allowed and those should be considered. Member Durrett thought that the Board should listen to the industry and consider their comments. It is a misinterpretation of the statute because the Legislature meant a weighted ranking process. Member Durrett did not know the best way to do this but thought that one must look at the preamble whenever considering changes to the Regulations.

Member Guzmán Fralick thanked the staff and noted that the Board has been asked to deal with this issue and thanked the industry for their comments and trying to provide better ways. Member Guzmán Fralick asked the Attorney General to state whether or not the Board had the authority to do what was being proposed.

Senior Deputy Attorney General L. Kristopher Rath stated that he agreed with Mr. Miles's assessment. There are factors of merit to be considered in statute and there are criteria of merit to be met before getting to the random number selector, for example liquidity. The CCB would structure the initial application so that the basics are covered; the second process would further evaluate the remaining criteria of merit through the suitability evaluation. All criteria of merit are considered pursuant to the statute. Mr. Rath added that the random number generator is not a pure lottery. There may be more than one qualified Person applying so there needs to be some way to sort it out when there is only one license available. Mr. Rath thought this was the fairest way to proceed; there should not be pre-ordained licenses. There is nothing prohibiting a random number generator; the Board is charged with coming up with a process that is fair, equitable and considers the criteria of merit.

Member Durrett asked if the random number selection language was in statute for consumption lounges. Mr. Rath responded that was correct. Member Durrett stated the random number selection language was not in statute for other establishment types. Mr. Rath responded that was correct and added that this was a limited licensing round like consumption lounges.

Chair Douglas noted that consumption lounges came in to play with a whole slew of new regulations and other regulations weren't touched previous because they weren't open at the time. When the previous licenses were issued, they also did not have the set asides for disenfranchised groups to be included in. Chair Douglas supported the process because the previous process introduced large pay days for lawyers and litigation that is ongoing. The process has not been fair when you look at the number of women or minorities involved in the cannabis industry. The CCB is trying to make this as open as possible, not to discount newcomers for old-timers; legal cannabis is a relatively new business and some of the people with the most experience are the "illegal" operators that have been left out. The statute requires criteria of merit which has been included; how do you make the final determination. Every week there are lawsuits against licensing agencies alleging the merit selection is not fair. There were applicants that received licenses and did not act on them; there were also applicants that did not act on their licenses only because there were moratoriums in the jurisdictions where they received the license. This has happened in jurisdictions such as Henderson and in rural areas. How do you fairly exclude people that on their face are qualified; what makes one more qualified than another? This process of requiring merit, getting into the game, and then additional merit review, meets the intent of the Legislature who is supposed to be representative of all people in Nevada.

Member Durrett thought there are benefits to having a random number generator but did not think that it actually gives everyone a fair chance. The Legislature adopted the ranking process and has declined to change it. Member Durrett did not think that this satisfied the goal of the economic

benefit to the State. Member Durrett did not think that the random number generator allowed for all of the criteria of merit to be considered, such as diversity, equity and inclusion. Avoiding litigation is smart but Legislature did not give that directive.

[Member Merritt rejoined the meeting at 10:23 a.m.]

Chair Douglas appreciated those comments and stated that fairness was in the eye of the beholder. The CCB was precluded from putting things into statute, such as saying you must be a resident of Nevada, or additional points for military, females, or disabled persons. By saying the only thing of importance is money, this presupposes the outcome. Chair Douglas noted that the intent of the Legislature is not always known, and the intent of the new Legislators may now be different.

Chair Douglas stated that the regulations before the Board would allow White Pine County to proceed with a license if adopted. The statute does not say that the CCB can't use a random number selector; it does say we must have criteria of merit which this process does.

Chair Douglas called for a recess at 10:29 a.m. The Board came back on the record at 10:39 a.m.

Chair Douglas asked for additional discussion or a motion from the Board.

Member Durrett made a motion to deny the adoption of the proposed changes. Chair Douglas noted if the motion is not seconded, the motion fails. Member Guzmán Fralick seconded the motion. The Board discussed the motion. Member Durrett provided her reasons for the motion. Member Guzmán Fralick did not think the regulation was ready and provided some different options. Chair Douglas noted that CCB Regulations are subject to review by Legislature; they would have the opportunity to weigh in and approve or send them back with instructions.

Chair Douglas called for a vote on the motion to deny adoption of amendment. Member Durrett and Member Merritt said aye. Members Young, Douglas and Guzmán Fralick opposed the motion. Motion failed.

Member Guzmán Fralick made a motion to send this item back to staff for further consideration. Member Merritt seconded the motion. Member Durrett commented that was a smart approach and what she meant to do. Chair Douglas noted he would not support the motion and thought the Board needed to make a decision. Member Durrett, Member Merritt, and Member Guzmán Fralick said aye. Members Young and Douglas opposed the motion. Motion carried.

V. Adjudication of Disciplinary Action – Continued from February 15, 2023

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

Chair Douglas trailed this item to later in the agenda.

VI. Briefing from the Chair and the Executive Director

Executive Director Klimas noted that there were several cannabis related bills that the CCB was tracking. Amendments were still coming in and an update would be provided in June.

VII. Next Meeting Date

The next Board meeting is scheduled for June 20, 2023.

VIII. Items for Future Agendas

Items for future agendas may be submitted.

V. Adjudication of Disciplinary Action – Continued from February 15, 2023

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

Chair Douglas noted that there would be no additional argument heard and the Board will not discuss what they will do with negative outcomes. The matters for discussion will be whether or not the Board finds a violation. This is the Board's review after the hearing officer and arguments before the Board.

Chair Douglas called for a recess at 10:56 a.m. The Board came back on the record at 11:04 a.m.

Chair Douglas stated the State charged violations and the hearing officer split those her review into categories. Chair Douglas proposed that he would read the hearing officer's findings and then have discussion by the Board. Chair Douglas detailed the record that was provided to the Board in the matter.

The first category in the Findings of Fact and Conclusions of Law was Security.

In Paragraph 83, the Complaint alleged Respondent did not have a designated security manager or director who had undergone specific training as required by NAC 453D.434(7) or have an approved security plan as required by NAC 453D.905(3)(d)(6). Petitioner established Respondent failed to comply and Respondent failed to present mitigating evidence for this violation.

Member Durrett and Chair Douglas discussed the allegations and the referenced NACs and if the Respondent admitted to these allegations. Chair Douglas made a motion to accept the findings of fact and the legal authority for the violation. Member Young seconded the motion. All Members said aye. Motion carried.

In Paragraph 84, the Complaint alleged Respondent failed to maintain a required surveillance system. The hearing officer declined to find a violation. There was no additional discussion by the Board. Member Durrett made a motion to accept the hearing officer's recommendation of no violation. Member Merritt seconded the motion. All Members said aye. Motion carried.

The second category in the Findings of Fact and Conclusions of Law was Records and Documentation.

In Paragraph 85, the Complaint alleged the Respondent failed to document disposal of test samples in Metrc between mid-April 2018 and December 2019 as required by NAC 453A.658(4), NAC 453D.426(5), NAC 453D.745(4), NAC 453D.788(4) and NAC 453D.905(3)(d)(4) & (15). The hearing officer found that the Petitioner established that the Respondent failed to comply with NAC. The Respondent failed to properly record the destruction of 10,734 of the 14,305 samples destroyed during that period; Respondent admitted it failed to properly record the information and had the information elsewhere.

Chair Douglas made a motion to accept the hearing officer's findings of a violation. Member Guzmán Fralick seconded the motion. All Members said aye. Motion carried.

In Paragraph 86, the Complaint alleged the Respondent improperly issued one amended COA without an “AMENDED” banner or explanation of the change between the original COA and the amended COA in violation of NAC 453D.788(10)(b)(3) and NAC 453D.905(3)(d)(4), (8), & (13). Chair Douglas noted this was a single violation. There was discussion by Member Durrett and Chair Douglas on whether this was technically a violation.

Chair Douglas made a motion to find a single violation. No Board Member seconded the motion. The motion failed.

Member Durrett made a motion to find no violation in Paragraph 86. Member Guzmán Fralick seconded the motion. Board Members Merritt, Young, Durrett and Guzmán Fralick said aye. Chair Douglas opposed. Motion carried.

In Paragraph 87, the Complaint alleged the Respondent improperly issued 9 COAs without header and footer banners reading “RESEARCH AND DEVELOPMENT” or “R&D” in violation of NAC 453D.776(4) and NAC 453D.905(3)(d)(4), (8), & (13). The hearing officer found that the Respondent failed to properly include the required banner on 9 COAs. Member Durrett did not think the violations were substantiated. Chair Douglas noted that the laboratories are one of the most important parts of the industry in terms of public health and safety and should comply with SOPs and statutes, and there was an admission by an employee of the failure to properly designate the COAs.

Chair Douglas made a motion for a finding of violation. Member Young seconded the motion. Members Young, Merritt, Guzmán Fralick, and Chair Douglas said aye. Member Durrett said nay. Motion carried.

In Paragraph 89, the Complaint alleged the Respondent issued 5 COAs reporting test results for flower samples as test results for trim samples in violation of NAC 453D.905(3)(a)(3). The hearing officer found sufficient evidence for 5 false statements. There was discussion by the Board on who had the responsibility to properly label the samples tested, if it was intentional mislabeling or intentional false statement, and is there an obligation to make the correction.

Member Young made a motion that this did not constitute a violation for an intentional statement. Member Guzmán Fralick seconded the motion. Members Young, Merritt, Durrett, and Guzmán Fralick said aye. Chair Douglas said nay. Motion carried.

In Paragraph 94, the Complaint alleged the Respondent failed to maintain records when it discarded laboratory testing information contained on post-it notes in violation of NAC 453A.652(1), (4), (6) & (7), NAC 453D.764(1), (4), (6) & (7), and NAC 453D.905(3)(d)(4). Specifically, the Complaint alleged that Respondent used post-it notes to direct staff to perform various retests but did not retain those post-it notes in its records. There was discussion by the Board Members on whether these records were required, ISO and IEC requirements for laboratories, actionable violations in publications, the importance of records, and the use of post-it notes as a bad practice.

Chair Douglas made a motion to accept the violation of NAC 453A.652(1), (4), (6) & (7), NAC 453D.764(1), (4), (6) & (7), and NAC 453D.905(3)(d)(4). Member Young seconded the motion. Members Guzmán Fralick, Merritt, Young, and Chair Douglas said aye. Member Durrett said nay. Motion carried.

The third category in the Findings of Fact and Conclusions of Law was Laboratory Practices.

In Paragraph 88, the Complaint alleged that the Respondent failed to report test results to the Department at the same time it provided test results to its clients in violation of NAC 453A.658(9) and NAC 453D.788(9) and these actions amounted to intentional concealment of the results in violation of NAC 453D.905(3)(a)(4). The hearing officer found that the Respondent failed to comply with NAC 453A.658(9) and NAC 453D.788(9) in that Respondent admitted it provided test results to clients before it issued COAs and did not provide those results to the Department at the same time.

Member Durrett asked about the options for the category of violations that will be considered later. Chair Douglas noted that the statute included all tests performed by the lab to be reported.

Chair Douglas made a motion to accept the hearing officer's findings and that there was a violation pursuant to NAC 453D.905(3)(a)(4). Member Young seconded the motion. Members Young, Merritt, Durrett, and Chair Douglas said aye. Member Guzmán Fralick said nay. Motion carried.

Member Durrett noted that none of the findings approved are related to the category that the hearing officer recommended.

Chair Douglas called for a recess at 12:17 p.m. The Board came back on the record at 12:26 p.m.

In Paragraphs 90, 91, and 92, the Complaint alleged in Paragraph 90 that the Respondent failed to achieve and maintain quality standards of practice and failed to supervise testing staff in violation of NAC 453A.650(1)(a) & (b), NAC 453D.755(1)(a) & (b), and NAC 453D.905(3)(d)(7) & (8); these violations had also been found previously. The Complaint alleged in Paragraph 91 that Respondent failed to adequately train and supervise employees Osvaldo Ruiz, Luling Wang, and Gail Wang in violation of NAC 453A.650(1)(a) & (b), NAC 453A.652(1), (4), (6), & (7), NAC 453D.764(1), (4), (6), & (7), NAC 453D.755(1)(a) & (b), and NAC 453D.905(3)(d)(7) & (8). The Complaint alleged in Paragraph 92 that Respondent failed to ensure the competency of the staff who performed testing of cannabis products in violation of NAC 453A.652(1), (4), (6) & (7), NAC 453D.764(1), (4), (6) & (7), NAC 453D.352(1) & (3), and NAC 453D.905(3)(d)(7) & (8); specifically failed to ensure competency of Mr. Ruiz by failing to have Mr. Ruiz complete necessary competency assessments before independently performing cannabinoid potency testing. These were grouped together because the party thought they were the same set of facts.

Member Durrett asked if it was the petitioner's burden to establish the violations and if it is clear and convincing. Chair Douglas responded affirmatively.

Member Durrett did not find the violations to be clear and convincing. Senior Deputy Attorney General L. Kristopher Rath noted that the standard is preponderance of evidence as noted by the hearing officer and in the regulations. The Board discussed taking the three allegations as one and whether training and supervision were adequate.

Chair Douglas made a motion for finding of no violations in Complaint Paragraph 90 and for a finding of violations in Complaint Paragraph 91 and 92. Member Young seconded the motion. All Board Members said aye. Motion carried.

In Paragraph 93, the Complaint alleged Respondent failed to analyze THC potency in accord with its written procedures in a way which would ensure accurate reporting of Delta-8 THC, Cannabidiol (CBD), Cannabidiolic acid (CBD-A), and Cannabinol (CBN) in violation of NRS 453A.368(2)(a)(1), NAC 453A.6544(1)(a), NAC 453D.782(1)(a), and NAC 453D.905(3)(d)(7) & (8). The hearing officer found that the petitioner established that Respondent failed to comply with NRS 453A.368(2)(a)(1), NAC 453A.6544(1)(a), NAC 453D.782(1)(a), and NAC 453D.905(3)(d)(7) & (8).

The Board discussed the testing practices, inadequate training and supervision, and whether it was disorderly activity.

Chair Douglas made a motion for a finding of violations in Complaint Paragraph 93. Member Young seconded the motion. Members Guzmán Fralick, Merritt, Young, and Chair Douglas said aye. Member Durrett said nay. Motion carried.

In Paragraph 95 and 101, the Complaint alleged in Paragraph 95 that Respondent utilized an unsanitary homogenization method that allowed cross contamination of test samples in violation of NAC 453A.652(1), (4), (6) & (7), NAC 453D.764(1), (4), (6) & (7), and NAC 453D.905(3)(d)(7) & (8). The Complaint alleged in Paragraph 101 that Respondent utilized the chemistry samples (“chem sample”) to retest products which initially failed microbiological testing in violation of NAC 453D.764(1), (4), (6), & (7) and NAC 453D.905(3)(d)(7) & (8). The hearing officer found that the Respondent failed to comply with NAC 453A.652(1), (4), (6) & (7), NAC 453D.764(1), (4), (6) & (7), and NAC 453D.905(3)(d)(7) & (8). The hearing officer found the Respondent failed to comply and recommended a finding of one violation.

Member Young noted that this was poor lab practices that could positively and negatively impact the results. Chair Douglas made a motion for a finding of violations for Complaint Paragraph 95 and 101 which could be found as one violation. Member Guzmán Fralick made an amendment to the motion to find a violation for Paragraph 101 and find no violation of Paragraph 95 as recommended by the hearing officer. Chair Douglas accepted the amendment. Member Merritt seconded the motion. There was discussion by the Board on the code, what the violations fall under, and to clarify the motion. Member Young stated that the violations were related but he considered the violation in Paragraph 101 to be a clear violation.

Chair Douglas made a motion to find no violation in Complaint Paragraph 95 and to find a violation in Complaint Paragraph 101. Member Young seconded the motion. Member Durrett commented that there needed to be more guidance on what practices lead to violations. Members Guzmán Fralick, Merritt, Young, and Chair Douglas said aye. Member Durrett said nay. Motion carried.

In Paragraph 97, the Complaint alleged that Respondent’s pesticide and mycotoxin precluded accurate reporting and endangered the public in violation of NRS 453A.368(2)(a)(2) & (4), and NAC 453D.905(3)(d)(7) & (8). Specifically, the complaint alleged Respondent continued to report testing results following quality control failures and before taking corrective action and failed to maintain adequate documentation of the failures and corrective actions. The hearing officer found that the Respondent failed to follow Nevada law and its own SOPs.

Chair Douglas noted that this was a technical issue and the Respondent had SOPs. Member Durrett questioned whether the results were inaccurate and would like more discussion on which

portions of lab practice publications are actionable violations. Chair Douglas noted the Respondent did not follow its own procedures.

Chair Douglas made a motion that the evidence was sufficient for the violation for Complaint Paragraph 97 and failed to comply with NRS 453A.368(2)(a)(2) & (4), and NAC 453D.905(3)(d)(7) & (8). Member Young seconded the motion. Members Guzmán Fralick, Merritt, Young, and Chair Douglas said aye. Member Durrett said nay. Motion carried.

The fourth category in the Findings of Fact and Conclusions of Law was Retesting.

In Paragraph 98 and 102, the Complaint alleged in Paragraph 98 that Respondent performed unauthorized retesting of samples for microbials in violation of NAC 453A.658(11), NAC 453A.672(3), (4), (5) & (6), NAC 453D.788(11), NAC 453D.790(3), (4), (5) & (6), and NAC 435D.905(3)(a)(3), and further alleged Respondent falsely reported passing results because the initial test results showed that the samples failed microbial testing. Paragraph 102 alleged that the Respondent falsely reported 43 Aspergillus testing results as passing when the samples in question failed initial microbial testing for that analyte in violation of NAC 453D.905(3)(a)(3), and further alleged the Respondent intentionally misled the Investigator about the testing process. The hearing officer found that the Respondent failed to comply with NAC 453A.658(11), NAC 453A.672(3), (4), (5) & (6), NAC 453D.788(11), NAC 453D.790(3), (4), (5) & (6), and NAC 435D.905(3)(a)(3) and failed to present evidence. The hearing officer recommended a finding of one violation.

Member Guzmán Fralick made a motion to agree with the hearing officer's findings of one Category II violation for complaint Paragraph 98 and 102. Chair Douglas asked to not include the Category of violation. Member Guzmán Fralick rephrased the motion to find one violation for Paragraph 98 and 102 as recommended by the hearing officer. Chair Douglas asked to restate to find a violation as to Paragraph 98 and Paragraph 102 and to accept hearing officer's recommendation based on evidence presented that there should be only a violation or penalty considered for one violation. Member Guzmán Fralick accepted the motion. Chair Douglas seconded that motion. All Board Members said aye. Motion carried.

In Paragraph 99, the Complaint alleged that Respondent performed unauthorized retesting of samples for heavy metals in violation of NAC 453D.788(11), NAC 453D.790(3), (4), (5) & (6), and NAC 435D.905(3)(a)(3). Specifically, the complaint alleged that when Respondent reported passing Cadmium results for tests performed for Silver Sage Wellness following the retesting, it falsely reported passing results because the other test results for the samples showed that the samples failed heavy metals testing for Cadmium. The hearing officer found that Respondent failed to comply with NAC 453D.788(11), NAC 453D.790(3), (4), (5) & (6), and NAC 435D.905(3)(a)(3). Chair Douglas detailed the retesting processes as indicated. Member Durrett clarified that the violation was for retesting without reporting.

Member Young made a motion to approve the violation as set by the hearing officer. Member Merritt seconded the motion. All Members said aye. Motion carried.

In Paragraph 100, the Complaint alleged that Respondent performed unauthorized retesting of samples for cannabinoid potency in violation of NAC 453D.782, NAC 453D.790(3), (4), (5) & (6), and NAC 435D.905(3)(a)(3). Specifically, the complaint alleged that when Respondent reported higher cannabinoid potency results to the Department following retesting, it falsely inflated THC potency which was a deceptive trade practice. The hearing officer stated that the Petitioner

established that Respondent failed to comply with NAC 453D.782, NAC 453D.790(3), (4), (5) & (6), and NAC 435D.905(3)(a)(3), alluded to using retesting in an attempt to control its cannabinoid potency test results and avoid reporting lower test results to the Department, and failed to follow Nevada law.

Member Durrett made a motion to find there was a violation under Complaint Paragraph 100. Member Young seconded the motion. All Members said aye. Motion carried.

The fifth category in the Findings of Fact and Conclusions of Law was Quality Assurance and Quality Control Program.

In Paragraph 96, the Complaint alleged that Respondent failed to maintain a quality assurance and quality control program in violation of NAC 453A.652(1), (4), (6), & (7), NAC 453D.405, NAC 453D.764(1), (4), (6), & (7), and NAC 453D.905(3)(d)(7) & (8). Specifically, the complaint alleged the Respondent engaged in six practices which showed it was not adhering to a quality assurance and quality control program, and the Respondent was previously cited for some of those practices following a 2017 inspection. The hearing officer stated that Petitioner established the Respondent failed to comply with NAC 453A.652(1), (4), (6), & (7), NAC 453D.405, NAC 453D.764(1), (4), (6), & (7), and NAC 453D.905(3)(d)(7) & (8) by failing to maintain a quality assurance and quality control program.

Member Durrett asked whether these were considered as separate violations, or not a new violation but a new category. Member Guzmán Fralick asked for a recess to make notes regarding votes on previous motions.

Chair Douglas called for a recess at 1:45 p.m. The Board came back on the record at 1:54 p.m.

Chair Douglas made a motion to approve the violation but not adopt the 3rd portion in the hearing officer's findings and recommendation and would adopt the 1st, 2nd, 4th and 5th sections. Member Durrett commented that she did not support this, and she thought they were covered under previous violations and did not want to pursue the same violations under different names. Member Guzmán Fralick echoed those concerns. Chair Douglas commented that these violations were under a different category and explained the reasons why there may be duplicative charges. Member Young noted that one of the references was to NAC 453D.405 requirements for dual licensure and did not see how that applied.

Chair Douglas made a motion to accept the violation in Complaint Paragraph 96 of NAC 453A.652(1), (4), (6), & (7), striking NAC 453D.405, continuing with NAC 453D.764(1), (4), (6), & (7), and NAC 453D.905(3)(d)(7) & (8). Member Young seconded the motion. Members Young, Merritt and Chair Douglas said aye. Members Durrett and Guzmán Fralick said nay. Motion passed.

The sixth category in the Findings of Fact and Conclusions of Law was Impartiality.

In Paragraph 103, the Complaint alleged the Respondent failed to maintain impartiality in its testing practices in violation of NAC 453A.652(1), (4), (6), & (7), NAC 453D.764(1), (4), (6), & (7), and NAC 453D.905(3)(a)(3). Specifically, the complaint alleged that for five of its clients, Respondent inflated potency test results, passed microbial failures, passed heavy metal failures, and tested flower as trim; these practices were for the benefit of the client rather than yield accurate testing results.

The hearing officer recommended finding of a single Category II violation.

Chair Douglas noted that he would find for a single violation. Member Durrett thought that these violations were handled previously and were for retesting and not for impartiality.

Member Durrett made a motion to decline to find a violation in Complaint Paragraph 103. Member Young seconded the motion. Members Guzmán Fralick, Young, Merritt, and Durrett said aye. Chair Douglas said nay. Motion carried.

Chair Douglas noted that concluded that portion. Chair Douglas would like to have the transcript and then the Board can have the discussion on the Categories and how the violations will be handled. Chair Douglas would like to set that at the end of the next Board meeting if the transcript is ready in three weeks.

IX. Public Comment

Kimberly Maxson-Rushton spoke on behalf of Lettucetest and had some clarifications regarding the next proceeding. Ms. Rushton asked if there would be an Order issued regarding the violations. Ms. Rushton noted that she would not be present for June's Board meeting and asked that the matter be scheduled later.

Mr. Rath commented that it would be appropriate to have an Order and was not opposed to continuing the matter to July.

Chair Douglas noted the Board would accommodate both requests and would contact both sides for dates as it may not be at the end of the July meeting.

Timothy Eli Addo appeared on behalf of Kora Lounge and provided clarification and additional information regarding statements he made previously on consumption lounges and corruption.

[Member Durrett left the meeting at 2:15 p.m.]

Rachel Lee of Sunflower Compassionate Company spoke about her experience in cannabis. Ms. Lee commented on social equity and the laws that changed her life. Ms. Lee spoke about her work in the industry. Ms. Lee asked for the definition of "assets" and addressed concerns with moving the location of a consumption lounge.

Chair Douglas noted that questions about what one can and can't do need to be submitted in writing to the Department.

X. Adjournment

Meeting adjourned at 2:22 p.m.