

Nevada Cannabis Advisory Commission – Federal Rescheduling Subcommittee

Meeting Minutes September 29, 2023*

The Nevada Cannabis Advisory Commission’s Subcommittee on Federal Rescheduling held a meeting via Zoom September 29, 2023, at 12:30 p.m.

Members Present:

Ashley Balducci, Chair

Shellie Hughes

Emily Berthelot

Andrew Kline

Mitchell Britten

Chair Balducci called the meeting to order at 12:35p.m. and took roll. All members were present via Zoom.

Instructions to join the meeting the meeting via Zoom for public comment were read into the record.

I. Public Comment

Katree Saunders with the Last Prisoners Project and Americans for Safe Access discussed how she has been affected by the War on Drugs on a State and federal level. Ms. Saunders discussed how her incarceration excluded her from working in the industry even though she contributed to the growth of the industry and helped open several dispensaries. She finds herself advocating for social justice. She stated that SB277 was written to mitigate some of the issues, and she’s concerned it took four years to have someone listen to her concerns. She feels federal rescheduling will put cannabis under the DEA’s control and think it will be harmful for those who have found safe access and take away some of the laws the states have put into place. She thinks cannabis should be descheduled rather than rescheduled. She also pointed out that there were no people of color on their subcommittee and that none of them were affected by the War on Drugs. She said she would like to serve as an expert due to her experience within the industry on a State and federal level. She feels the state of Nevada’s laws were strategic in excluding people like her, including the Cannabis Consumption Lounge bill since her area did not qualify as disproportionately impacted according to regulations. She has been impacted on a State and federal level and there are systemic things in place that have prevented her from working and have destroyed her life and she believes Nevada and the federal government are responsible for reparations to her due to the mental, emotional, and financial harm she’s sustained.

Presentation by Subject Matter Expert.

Items were taken out of order. Chair Balducci introduced the subject matter expert, Howard Sklamberg, former Deputy Commissioner for the FDA's Global Regulatory Operations. Currently, Mr. Sklamberg counsels clients on a wide range of compliance and enforcement issues related to the FDA.

Chair Balducci informed Mr. Sklamberg of the formation and purpose of the Subcommittee, which is to create a report on the potential effects federal rescheduling or descheduling will have on the state of Nevada. She informed Mr. Sklamberg that the Subcommittee has identified some effects but would like to hear from him on potential effects he sees if the Feds decide to reschedule cannabis from a Schedule I substance to a Schedule III substance.

Mr. Sklamberg responded by saying that, although he's not familiar with Nevada's specific program, he does not foresee rescheduling having a tremendous effect on how states operate their programs because cannabis will still remain a controlled substance and many of the restrictions will remain. The FDA has not taken enforcement action that interferes with state cannabis programs, and there's no reason to think they will start. The principal changes states can focus is on taxes and the tax treatment for companies, which would be in a better tax situation.

Chair Balducci brought up a paper by the Congressional Research Service titled the Department of Health and Human Services Recommendation to Reschedule Marijuana and the Implications for Federal Policy, which focused on the states' medical programs being affected by rescheduling and was wondering if Mr. Sklamberg had any insight on that.

Mr. Sklamberg stated that state programs are designed by the states and in a sense they all violate federal law because of the Controlled Substances Act. Cannabis remains a controlled substance. Under the FDA statute, any substance used to treat disease is technically a drug and had to go through the approval process. However, based on the appropriation's language passed by Congress regarding medical programs, the FDA has not interfered with state programs, so he does not believe they will if cannabis is rescheduled. He says it is up to the states themselves to make changes based on what Schedule cannabis is in.

Chair Balducci asked how Mr. Sklamberg thinks cannabis will be regulated and whether he thinks it will be regulated as a food or a pharmaceutical.

Mr. Sklamberg responded that he doesn't think things will change with the FDA's current enforcement if cannabis is rescheduled. The rescheduling of cannabis would not change the status of it in the Food Drug Cosmetic Act. Whether something is a drug is separate from its scheduling. Drugs are classified as something that intends to affect the function of the body and it claimed to

treat a disease or a condition under current state programs. FDA would consider cannabis to be an unlawful food additive, regardless of schedule, because of their rules of what you can add to food and what is recognized as safe. He added that the FDA has not done enforcement in this space and there is no reason to think that they will.

Chair Balducci gave other areas that the Subcommittee has identified, which could be potentially affected by rescheduling/descheduling: banking, criminal justice, medical, insurance, research, and taxes. She asked Mr. Sklamberg if he felt there were any other potential effects the Subcommittee missed.

Mr. Sklamberg stated that he feels there is a symbolic effect with the decision of FDA scientists to present cannabis as something that does not present the same public health calculus that it had under Schedule I. He feels it may affect the policy calculus that states have.

Member Kline asked whether Mr. Sklamberg agreed with the assessment from former subject matter expert, Dr. Gillian Schauer, that if cannabis were descheduled at the state level that the state programs wouldn't be affected. Mr. Sklamberg agreed with that statement, but he said he could not comment on the state level, but their scheduling does not have any affect on the federal level.

Chair Balducci asked for Mr. Sklamberg's insight into changes to banking. He responded that there are restrictions in transactions under federal law of the sale of controlled substances. He stated that the passage of the Safe Banking Act would amend federal restrictions if companies are in compliance with state laws. He commented on the difficulty cannabis businesses have trying to do business, since banks cannot work with them, or they would fall out of compliance.

Chair Balducci asked Mr. Sklamberg if rescheduling would change the ability for doctors to prescribe cannabis and insurance covering it. Mr. Sklamberg does not see any changes. Prescriptions fall under state laws, so some states doctors can prescribe cannabis. The issue with insurance is that drugs are not federally approved. However, he stated that insurance has the ability to cover what they'd like to cover but currently that is not happening.

Chair Balducci asked whether he feels rescheduling would open cannabis up for research. Mr. Sklamberg stated that Congress passed a cannabis research statute before Health and Human Services' (HHS) recommendation, so that will be in effect regardless of how cannabis is scheduled.

Chair Balducci asked if he sees the DEA deviating from HHS's recommendation. Mr. Sklamberg said he feels it is unlikely the DEA will deviate because they must defer to the FDA on a medical and scientific calculus, and they can only deviate on a policy or legal basis. He doesn't feel the different parts of the administration would come to different conclusions. He does not feel the DEA has any legal basis to not accept the recommendation.

Meeting Minutes

The Subcommittee took twenty minutes to review the previous meeting minutes. Once they reconvened, they pointed out typographical errors they'd like to be corrected.

The September 1, 2023, meeting minutes were passed unanimously with the recommended typographical changes to pages 5, 6, 9, 10, and 11.

The September 15, 2023, meeting minutes were passed unanimously with the recommended typographical changes to pages 3,4, 5, 6, 7, 8, 9, 11, 17, 18, 19, 21, 22, and 23.

Discussion Regarding Outline of Draft Report and Assignment of Tasks

Chair Balducci presented an outline for the report the Subcommittee will present to the Cannabis Advisory Commission in January. The Subcommittee discussed the outline and volunteered to take on portions of the report to draft before the next meeting.

Future Presentations by Subject Matter Experts (for discussion only)

Member Kline suggested the public policy lead at Jazz Pharmaceuticals (formally GW Pharmaceuticals) who would have good insight into how the FDA hypothetically would create prescription drug model.

Chair Balducci thanked the Subcommittee for working to identify experts and inviting them to come speak. She also stated that she would look for someone in insurance to answer questions given during public comment in the initial meeting. She also mentioned that Member Britten is working on securing a speaker to discuss taxes at an upcoming meeting. Chair Balducci said she may also have a criminal justice expert, and asked Member Berthelot to look into finding one as well to discuss federal cannabis reform.

Member Kline suggested inviting Ian Stewart, who is an insurance expert in the cannabis industry, to speak at a future meeting.

Future Meetings

Chair Balducci asked the Subcommittee to work on the topics assigned in the interim and stated the next meeting will be held on November 3rd.

Public Comment

Timothy Eli Addo a cannabis advocate wanted to draw the subcommittees attention to laws and treaties portion Article IV of the US Constitution. He would like to correlate that with the United Nation's Single Convention treaty and look at how Nevada can put together a system that can decriminalize cannabis and put forth a new understanding of treaties.

Abad Piza stated that he was a medical patient, and he has studied the medical aspect of cannabis. He urged the Subcommittee to look into the medical side and speak to medicinal cannabis patients. He also stated that descheduling may not decriminalize but it may change the severity of punishment. He said that the money should not be going to the Subcommittee but to the schools and to bettering communities. He urged the Subcommittee to bring new things to the table. Mr. Piza lost the connection with Zoom before finishing his comment.

Adjournment at 2:18 p.m.