

# **Nevada Cannabis Compliance Board**

## **Meeting Minutes February 15, 2024**

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 February 15, 2024.

### **Cannabis Compliance Board Members Present:**

**Adriana Guzmán Fralick, Chair**

**Riana Durrett, Vice Chair**

**Hon. Michael Douglas**

**Jerrie Merritt**

**Dr. Vicki Mazzorana**

Chair Guzmán Fralick called the meeting to order. Chair Guzmán Fralick thanked Dr. Young for his service on the board and welcomed Dr. Vicki Mazzorana to the Board. Chair Guzmán Fralick noted that agenda item VIII would be heard before agenda item VII.

Executive Director James Humm took roll. Chair Guzmán Fralick, Vice Chair Durrett, Member Douglas, and Member Mazzorana were present in Las Vegas. Member Merritt was present via video conference.

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

### **I. Public Comment**

Rachel Lee of Sunflower Compassionate Company addressed her concerns with the \$200,000 requirement for consumption lounges, and that social equity applicants would not have that amount. Ms. Lee spoke about the struggles she has faced since being awarded a provisional consumption lounge license. Ms. Lee hoped that Nevada's social equity program would not end up like Arizona's social equity program where only one of twenty-six applicants was able to move forward in ownership and operations.

Sheldon Mudd spoke as director of the Northeastern Nevada Regional Development Authority which is responsible for economic development in Lander, Eureka, Elko, and White Pine counties. Mr. Mudd stated the adoption of NCCR 5.037 and 5.039 will diversify the economy, generate new revenue streams, and create jobs in the rural communities. Mr. Mudd detailed the many reasons for his support of the regulations that will give a mechanism to create a pathway for economic sustainability in rural Nevada.

Robert Kurilko, CEO of Silver Lion Farms in White Pine County. Mr. Kurilko provided information on the background of the proposed regulations to allow for the licensing of medical licenses in the rural counties and the "shall" language in statute. Mr. Kurilko encouraged the Board to act on the intent of the legislature and approve the regulations. If there was language that was not supported by a Board Member, Mr. Kurilko recommended striking that and going forward with a motion for approval.

Donna Bath spoke as a citizen of White Pine County and detailed the financial problems that the county has faced over the years. Ms. Bath stated she has worked on this project for several years and asked the Board to find a way to pass the regulations.

There was a phone-in caller to provide public comment; the caller had technical difficulties.

Chair Guzmán Fralick noted that there will be an additional opportunity to provide public comment during the agenda item for the regulations.

## **II. Meeting Minutes**

### **A. Consideration of approval of the January 18, 2024, Cannabis Compliance Board Meeting minutes.**

Chair Guzmán Fralick asked for a motion on the January 18, 2024, meeting minutes. Member Douglas made a motion for approval of the minutes. Member Mazzorana seconded the motion. All Members said aye. Motion carried.

## **III. Consideration of Proposed Amended Settlement Agreement to Resolve Disciplinary Action**

### **A. Cannabis Compliance Board vs. The Harvest Foundation, LLC (Case No. 2021-55)**

Senior Deputy Attorney General L. Kristopher Rath presented the amended settlement agreement to the Board. Pursuant to paragraph 11 of the original settlement agreement, the parties are allowed to amend the agreement. The parties have agreed to the amendment to reduce the civil penalty amount of \$200,000 to \$30,000 and to extend the date that Harvest is required to file the transfer of interest. The receiver, Kevin Singer, exercised considerable efforts to sell the licenses but the best offer was \$100,000. Mr. Singer and his counsel are owed over \$100,000 for their services during receivership. The amendment will allow for the receiver to receive some renumeration and will allow for the license to be transferred to a new owner. The Attorney General recommends and requests approval of the amended settlement agreement.

John Savage, counsel for the receiver, thanked the Board and Mr. Rath for considering the amendment and being flexible on the civil penalties that were imposed. The receiver stepped in while the licenses were under summary suspension and was able to reach a disciplinary settlement. There is a motion pending with the receivership court to approve the sale of the license subject to the Board's approval of a pending transfer of interest. Mr. Savage noted that the receiver has come out of pocket for renewal fees and marketing expenses. Kevin Singer added that he marketed the license for over a year, but it can be challenging with a license under disciplinary action to find a buyer. A buyer was found after the auction, and he seems reputable.

Member Durrett made a disclosure that she was retained as an expert witness by a law firm that represented opposing counsel to this party; Member Durrett will abstain from voting out of an abundance of caution.

Chair Guzmán Fralick asked if there were any tax liens. Mr. Savage responded that he did not believe that the Nevada Department of Taxation is owed taxes. The IRS submitted a claim that was around \$50,000. Mr. Rath noted that the Nevada Department of Taxation did not have any issue with the amended settlement.

Member Douglas made a motion for approval. Member Mazzorana seconded the motion. Members Douglas, Merritt, Mazzorana, and Chair Guzmán Fralick said aye. Member Durrett abstained. Motion carried.

## **IV. Request for Transfer of Interest**

Chief David Staley presented the transfer of interest to the Board.

**A. MMNV2 Holdings I, LLC (TOI 2200027 and 2300026) (C025, RC025, P016, RP0106); Mustang2Mouths, LLC; and TGNV LLC**

Chief Staley stated TOIs 2200027 and 2300026 were filed to request approval for Foundry Works to purchase cultivation and production licenses from MedMen Enterprises Inc. and subsequently sell the licenses to TGNV LLC. The operations are currently operating under a management services contract that was approved by the Board at its September 2021 meeting. The purchase price is minimal but results in Foundry assuming all assets associated with the cultivation and production operation as well as MedMen's outstanding wholesale tax liability. A component of the lease payment is tied to future sales over a certain amount; the lease may come before the Board for approval since it appears to include a percentage of revenue. No areas of concern were developed.

Amanda Connor appeared on behalf of TGNV along with owner Zachary Kozak. Ms. Connor stated that this was a multi-part transaction and ultimately, the licenses will be held by TGNV. They will be assuming serious liabilities and are committed to operating a compliant, successful operation in Nevada. Mr. Kozak added he was happy to answer any questions.

Chair Guzmán Fralick asked what jurisdiction the facilities were in. Ms. Connor responded that she believed it was unincorporated Washoe County, but the address is Sparks. Chair Guzmán Fralick asked how many employees there were. Mr. Kozak stated there were twelve, but the number would increase once it is fully operational. Chair Guzmán Fralick wanted to ensure that the employees were taken care of.

Member Douglas asked how the taxes would be dealt with, the \$500,000 that is owed to the State. Ms. Connor responded that TGNV is assuming the tax liability and will continue to pay the tax liability that is outstanding. They have been working with the Department of Taxation on a payment plan and making payments towards it. Mr. Kozak has been working with an employee at the Department of Taxation. Member Douglas noted that if the matter goes forward, he would like to see follow up in sixty to ninety days regarding the tax arrangements. Ms. Connor stated she would provide staff with an update.

Member Douglas made a motion for approval of the transfer of interest. Ms. Connor noted there was also a waiver of NCCR 5.112; Chief Staley confirmed and added that staff would request that if approved, the waiver expire at the next TOI application for TGNV. Member Douglas accepted that as part of his motion. Member Durrett seconded the motion. All Board Members said aye. Motion carried.

**V. Management Agreements**

**A. Consideration of Recission of Approval for Management Services Agreement between Pure Tonic Concentrates, LLC (RD456) and Lucid Management, LLC/Burnt Springs Outfitters, LLC**

Chief Staley stated agenda item A is a reconsideration of an MSA previously approved at the November 2020 CCB Meeting. The MSA was filed in connection with a TOI application which provided for Lucid to purchase Pure Tonic's dispensary license. The TOI was assigned to an agent in March of 2022; in January 2023, Lucid stopped responding to the agent's requests for information despite numerous attempts. As a result of the applicant's refusal to provide the requested information, staff thought it was appropriate to submit the existing MSA to the Board for reconsideration.

Jacob Ward, managing member of Pure Tonic Concentrates, noted that the store has been operating compliantly with all taxes paid since the management contract went into place. Mr. Ward added that there were some concerns with suitability that they just became aware of and that may have an impact on the TOI moving forward. Mr. Ward requested time to clean up the matter and keep the management contract in place. The potential outcome would be to continue moving forward with good communication between Lucid and the investigator to complete the TOI as originally intended. If the suitability issues get in the way, they would like to sort out a way to take over operational control of the store. In either of those scenarios, the current contract will end. Mr. Ward requested ninety more days to keep the management contract in place at which point they can come back before the Board, or whatever the Board may decide.

Chair Guzmán Fralick asked for an explanation as to why the information was not getting through to the agent and asked who would be communicating with the agents. Mr. Ward responded that they have the same questions; they have supplied everything that the investigators requested. Stanley Johnson explained that Thor Hoyte was based in Washington; Mr. Hoyte was the point of contact and then moved to the UK after family health issues. Mr. Littlefield, the financial person, also had health issues. Mr. Johnson stated that he planned to be the responsible person for all communication going forward. Mr. Johnson provided all the requested documents after receipt of the letter from the CCB and has had a meeting with CCB.

Member Douglas asked if Lucid was an actual operating company or not. Mr. Johnson responded that Lucid is its own management company and does not hold the marijuana license. Member Douglas clarified that he would like to know the status of the entity. Mr. Johnson stated it was an active corporation. Member Douglas asked if it was licensed in Nevada. Mr. Johnson replied affirmatively. Member Douglas commented that in Nevada, individuals need to have suitability cards and no one from the original arrangement has come forward. Member Douglas added that the Board was curious as to who was running the business. Mr. Johnson noted that Lucid provided the location, buildout, expertise; everything except the license.

Chair Guzmán Fralick asked for the status of the TOI application. Mr. Johnson stated that they were still working through it; the original deal was signed in 2019 or 2020. Mr. Johnson noted that the store did not do as well as the tribe had done in Winnemucca. Chair Guzmán Fralick asked if it was Lucid's intent to continue with the transfer of interest. Mr. Johnson answered affirmatively.

Member Durrett noted that they might need a better understanding of the Nevada framework even though the facility had been in compliance. Mr. Johnson agreed.

Member Douglas would like to see the matter back before the Board in sixty or ninety days.

Chair Guzmán Fralick noted that the item before the Board was whether or not to rescind the management agreement. Chair Guzmán Fralick added that the goal was to make sure that businesses run smoothly and are successful and that everybody is abiding by all of the rules. The Board can't do its job if people are not responsive.

Chair Guzmán Fralick asked for additional comments. Mr. Johnson stated that he appreciated the time and understood where his team had failed. They currently do business in four other states and

haven't had this problem before. Mr. Johnson would like the opportunity to straighten things out. Lucid has a presence in the local community.

Jake Ward thanked the Board for the time and noted that as the license holder, they have not been completely hands off. They make the monthly tax payments. Communication is open between Pure Tonic and Lucid. Mr. Ward asked for additional time.

Member Durrett stated she was rooting for this to be success and recommended finding counsel with experience working with the CCB.

Member Douglas made a motion to not go forward with any rescission of the management service agreement and to bring the matter back in sixty days as to the status of the proposed TOI. Member Durrett seconded the motion. All Members said aye. Motion carried.

### **B. Consideration of Approval of Management and Administrative Services Agreement for GWGA LLC (RC024) and Undrgrnd Management Nevada, LLC**

Chief Staley stated the management services agreement between GWGA and Undrgrnd Management Nevada provides for Undrgrnd to have broad authority to manage the operations on behalf of GWGA. The MSA was submitted in conjunction with the TOI application providing for Undrgrnd to acquire 100% ownership interests of GWGA. Staff reviewed the agreement and found the relationship between the parties appropriate. No areas of concern were identified.

Sandra Tiffany, owner of GWGA, stated they have been in multiple conversations about the transition and how each of the compliance components will be addressed. Ms. Tiffany was confident that the transition will be smooth. Ethan Woods, owner of Undrgrnd Management, stated he will be the responsible party for the compliance efforts. Mr. Woods noted that he also has eight licenses in California and operated those for six years without compliance issues.

Member Douglas if there was an anticipated date for wrapping this up. Ms. Tiffany responded that they anticipated the transition to be around forty-five days.

Member Durrett made a motion to approve. Member Mazzorana seconded the motion. All Members said aye. Motion carried.

## **VI. Consideration of Proposed Adoption Amendment and/or Repeal of the Nevada Cannabis Compliance Regulations**

### **A. NCCR 5.037**

Deputy Director Michael Miles detailed the timeline of the work that the CCB did on the proposed regulations regarding the issuance of a medical establishment license pursuant to NRS 678B.220(3)(a) including workshops, meetings with industry and interested parties, and various versions presented to the Board for consideration. The CCB retained an independent expert that has worked with more than twenty governmental entities regarding cannabis licensing. The expert stated that it would be irresponsible of the Board to move forward with solely criteria of merit style application process as this process has failed across the country. The recommendation was to use a mixture of criteria of merit along with the random number generator style of application process. They also recommended that the CCB take into account the County's input when awarding a license. Deputy Miles added that these regulations would only apply to a maximum of eight

licenses for cultivation and production assuming that all counties requested the license. Deputy Miles stated NCCR 5.037 details the request process for these licenses and the application process for said license. NCCR 5.039 details the criteria of merit.

Chair Guzmán Fralick noted that the affected counties would be Douglas, Pershing, Storey, and White Pine. Chair Guzmán Fralick added that the CCB has done its due diligence in getting input from stakeholders.

Chair Guzmán Fralick invited public comment. Senator Pete Goicoechea provided public comment via telephone. Senator Goicoechea believed that the legislative intent was that local jurisdictions had the ability to say yes or no to a cannabis facility in their jurisdiction. Senator Goicoechea added that the White Pine County Commissioners petitioned for licensure for Silver Lion Farms recognizing the investment that has been made in Silver Lion Farms. The legislative intent was that local jurisdictions were meant to have input into the process. In this case, White Pine County is petitioning in favor of a cannabis license for Silver Lion Farms. Senator Goicoechea asked the Board to move forward with the regulations. The rural counties should have the opportunity to be involved.

Amanda Connor stated that everyone in the industry and outside would like White Pine County to get licenses. Ms. Connor questioned whether the statute allows for a random number generator, but appreciated all the work that has gone into this. Ms. Connor had concerns with the random number generator being used as a tiebreaker but given the limited nature of this and the “shall” language in statute, did not think it should be held up. This is something that needs to be discussed at Legislature before future applications and licensing rounds.

Layke Martin of the Nevada Cannabis Association echoed Ms. Connor’s comments and thanked CCB staff and the Board for taking so much time to work through this with stakeholders.

Brett Scolari of Strategies 360 stated that he was involved in the process and appreciated the work of Deputy Miles and staff. Mr. Scolari supported White Pine County’s mission for economic development. Mr. Scolari noted his concern with the random number generator process and believed it detoured from the strictly merit-based system and statute. Mr. Scolari thought that issue should be looked at for future licenses and licensing rounds.

Member Durrett thanked the staff for their patience and work on this. Member Durrett agreed that everyone was in support of the licensing but how to do it was the question. Member Durrett was supportive of going forward.

Member Douglas thought that the Board needed to look at what was presented in two parts. Member Douglas stated that it was not clear that “shall” mandates everything that was put forth. The input by the counties was authorized under statute and the Board understands that should be part of the process but is not necessarily the controlling factor. The law as stated leaves the authority in the Board to determine who gets the state license. Member Douglas was concerned with making sure there was a fair process and does not get hung up in litigation as to how the Board has determined the licensee. Member Douglas did not want the public to feel they had been excluded and it’s a done deal for the party that assisted the county based on the public record that has been presented and that it wasn’t an open process. Member Douglas was concerned with NCCR 5.037(7) and suggested a different merit review process.

Member Durrett commented that there was room to make changes before this was completed but was in support of the current language. Member Durrett acknowledged that there may be discussion if a certain party gets the license after so much of their discussion, but the process is so well deliberated and intentionally avoids impropriety; Member Durrett thought the process would withstand any scrutiny.

Chair Guzmán Fralick called for a motion on item VI (A) for NCCR 5.037 to allow the Board to issue a cannabis establishment license for one medical cannabis cultivation facility and/or one medical cannabis production facility.

Member Durrett made a motion to approve agenda item VI (A). Member Mazzorana seconded the motion. There was discussion of the motion by the Board. Member Douglas opposed the motion and thought that subsection 7 would potentially get into litigation as its stated. Chair Guzmán Fralick respected Member Douglas's comments and noted that there was always risk with rulemaking, and also the opportunity to improve a regulation. Member Durrett noted that not every person will be on board but thought that this was the most defensible; it was an open process while complying with the commands of the legislature.

Chair Guzmán Fralick called for a vote. Members Merritt, Mazzorana, Durrett, and Chair Guzmán Fralick said aye. Member Douglas opposed. Motion passed.

#### **B. NCCR 5.039**

Chair Guzmán Fralick called for public comment on NCCR 5.039. There was no public comment.

Member Douglas expressed concerns with NCCR 5.039(1)(a), regarding the points for the amount of money; NCCR 5.039(1)(b) regarding the previous years of experience; NCCR 5.039(1)(c) regarding the educational and life experience; NCCR 5.039(1)(d) regarding knowledge or expertise in the compassionate use of cannabis to treat medical conditions; NCCR 5.039(1)(f) regarding the adequacy of the size of the proposed establishment to serve the needs of the persons authorized to engage in the medical use of cannabis; and NCCR 5.039(g) regarding points for having a diversity plan. Member Douglas had concerns with the number of points given if there was a letter from the county. Member Douglas thought that the Board should have information from the local entities on what their county needs so that it can be considered; people should not be cut out because they did not get the vote of the local county.

Member Durrett stated that she agreed with some of the comments that Member Douglas made but would like to see an opportunity to work on those for the next time this comes up. Member Durrett would like to engage with the experts that drafted the report but was in support of going forward.

Chair Guzmán Fralick noted that the regulation was a lot better than when it started. Chair Guzmán Fralick asked for a motion. Member Durrett made a motion to approve agenda item VI (B). Member Mazzorana seconded the motion. Members Merritt, Mazzorana, Durrett, and Chair Guzmán Fralick said aye. Member Douglas opposed. Motion passed.

Chair Guzmán Fralick called for agenda item **VIII(A)** to be heard. The rooms were cleared to go into closed session.

## **VIII. Petition Filed Pursuant to Senate Bill 277 Section 4.5(1)**

### **A. Janice Hind-Padilla**

The Board came out of closed session. Chair Guzmán Fralick stated Senate Bill 277 Section 4.5(1) allowed for a petitioner to seek an exemption from the prohibitions resulting from the conviction of an excluded felony offense. Member Douglas made a motion to grant the exemption as is allowed if the Board determines that granting the exemption would not pose a threat to public health and safety or negatively impact the cannabis industry. Member Durrett seconded the motion. All Members said aye. Motion carried.

## **VII. Adjudication of Disciplinary Action – Continued from May 23, 2023**

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

Chair Guzmán Fralick detailed the time restrictions that each party will have: the petitioner will have ten minutes, followed by fifteen minutes from the respondent, and then five minutes from the petitioner. Member Douglas noted the Member Merritt, Member Young, and Member Durrett have been part of the process and are familiar with the record. Member Mazzorana noted that she will abstain from voting in this matter.

Counsel for the petitioner, L. Kristopher Rath stated that the Board found fourteen serious violations and he will discuss the categories to assign to each of the penalties. Mr. Rath presented a chart to the Board members and the respondent that detailed by paragraph and lists the violation the hearing officer found, the disciplinary authority, and the recommended discipline by the hearing officer which is the same as the recommended discipline.

Mr. Rath stated that revocation could be found three different ways and explained the categories of the violations and those that make a person ineligible to receive a license, including actions that involve dishonesty, those that create a present threat to public health and safety, false statements, concealment of evidence and other specific issues. Appropriate penalties could be increased or decreased by factors that include the gravity of the violation and history of compliance. The NCCRs mirror NAC 453D.905 when it comes to categories and penalties for violations except that they are higher under NCCR 4.

Mr. Rath reviewed each violation the hearing officer assigned and the petitioner's agreement to that category. Mr. Rath noted that the hearing officer checked for mitigating factors for each violation.

Paragraph 83 was the failure to follow the security plan: the hearing officer found one Category III violation.

Paragraph 85 was the failure to follow seed to sale tracking requirements: the hearing officer found one Category III violation.

Paragraph 87 was failure to properly label certificates of analysis and failure to keep required records: the hearing officer found one Category III violation.

Paragraph 94 involved hiding lab information on Post-it notes and then discarding: the hearing officer found one Category III violation for failure to keep required records. Mr. Rath noted that could have been a Category I violation for intentional concealment of evidence of illegal testing.

Paragraph 88 was concealment of test results from the Department: the hearing officer found one Category I violation for dishonesty with a regulatory body. Mr. Rath noted this was a revocable offense.

Paragraph 91 was inadequate training of staff: the hearing officer found one Category III violation.



Paragraph 92 involved lack of competency of the lab staff: the hearing officer found one Category III violation.

Paragraph 93 was failure to analyze THC potency to ensure accurate reporting: the hearing officer found one Category III violation.

Paragraph 101 involved use of use of contaminated chemistry samples to test for microbials: the hearing officer found one Category III violation.

Paragraph 97 involved repeated retesting for pesticides and mycotoxins: the hearing officer found one Category III violation.

Paragraph 98 and 102 involved illegal retesting of microbials and false reporting of aspergillus test results as passing when initial results had failed: the hearing officer noted that these were an intentional act and found one Category II violation.

Paragraph 99 involved twenty-two instances of illegal retesting of heavy metals: the hearing officer noted it was intentional and found one Category II violation.

Paragraph 100 involved multiple instances of illegal retesting of samples for cannabinoid potency: the hearing officer noted that it was intentional but found one Category II violation.

Paragraph 96 involved respondent's failure to maintain quality control and quality assurance programs: the hearing officer found one Category III violation.

Mr. Rath summarized that if the Board accepts the hearing officer's recommendations on each of the fourteen violations, then there is one Category I violation, three Category II violations and ten Category III violations. The first Category I violation results in a civil penalty up to \$35,000 or revocation. The first Category II violation requires a civil penalty up to \$10,000 and the second up to \$20,000. The third Category III violation requires revocation. The respondent has the requisite number of Category IIs for revocation; Category III violations require revocation after five. The hearing officer found double the amount needed for revocation. Mr. Rath urged the Board to accept the hearing officer's final finding of revocation and \$82,500.

Member Douglas noted a typo in paragraph 91 and 92 in the document presented by Mr. Rath regarding NAC; it should say 905. Member Douglas noted that there was a forty-seven-page preliminary order of the Cannabis Compliance Board regarding findings of violations that was found by the Board and signed in July and detailed the charges and the violations. Mr. Rath requested that the Board adopt what the hearing officer recommended.

Member Durrett asked for clarification on the fine amounts; if the amounts from 2019 were comparable to what is in place today. Mr. Rath responded that SB 195 does not apply since it is not retroactive, but the only difference would be the \$35,000 for Category I would get knocked down to \$20,000. Other than that, they are all lower.

Kimberly Maxson-Rushton appeared on behalf of the respondent along with owners Rob Richardson and Ric Rushton, and chief of compliance Kelly Anderson. Ms. Rushton expressed concerns with the statutes and regulations that the CCB operates under and the multiple agencies that have regulated the industry over the years. Ms. Rushton noted that changes were made by Legislature to the CCB's disciplinary process. Ms. Rushton submitted that there was a high threshold to enter into a regulated industry, but the regulators should work with licensees to help maintain compliance when there is a lapse and not go after them with revocation and penalties. Ms. Rushton added that under 233B, suspension is only allowed when there is a known threat to the public and objective standards that must be met by the agency before the suspension. Additionally, under 233B the ability to revoke a license applies to those licensees who have demonstrated an inability to be compliant. Ms. Rushton stated that the CCB must now consider other factors in the disciplinary proceedings and provided examples of what is allowed and not allowed.

Ms. Rushton detailed the facts surrounding the respondent's summary suspension from December 2019. Ms. Rushton stated that there have been no reported medical or health issues after the four health advisory notices issues and that products are still on hold. Ms. Rushton stated the respondent has incurred legal fees and other costs related to the hearing and argued that there were due process violations. Additionally, there were other unquantifiable expenses. Ms. Rushton stated the facility has paid annual renewal fees, audit fees, insurance, security, and its employees during this process.

Ms. Rushton disagreed that the new law is not retroactive and argued that regulators have an obligation to follow current law. The respondent acknowledged that it had not completed the sixteen hours of training and completed it within ten days after they were made aware; Ms. Rushton requested this be a Category V subsection 6 violation and a warning be issued. Ms. Rushton requested a Category V violation and warning for failure to close out samples in Metrc. For failure to maintain R&D banner on COA's, Ms. Rushton requested a Category V subsection 6 violation and a warning. For disseminating partial test results to a cultivator before putting complete test results into Metrc, Ms. Rushton recommended Category V violation and a warning. For violations in Paragraph 91 and 92 which serve as basis for violations in Paragraph 93 and 96, Ms. Rushton recommended they be consolidated into one Category V violation and a warning. For violation in Paragraph 94, Ms. Rushton recommended a Category V violation and warning. For violation in Paragraph 96, Ms. Rushton asked again for the Board to consider that related to the other lab director's failures and be consolidated into one Category V violation. For violation in Paragraph 97, Mr. Rushton requested a Category V violation and warning. For Paragraphs 98 and 102, Ms. Rushton requested a Category IV violation and fine not to exceed \$1,250. Ms. Rushton concluded that going through the violations, it focuses on the lab director's failure to ensure accuracy in the lab and failure to train. Ms. Rushton stated that based on the mitigating factors and the amount of money that has been spent on this case, the Board should issue a warning and both parties move forward.

Member Douglas stated that in regard to the Administrative Procedures Act, at the time the agency was exempt. The Governor's office has made it clear that matters that were started prior to the new requirements would proceed under the previous rules. Ms. Rushton argued that Nevada and U.S. Supreme Court rules basically state that statutes that do not change substantive rights and instead relate to remedies and procedures apply to any case pending when enacted; Ms. Rushton added that this case is pending.

A recess was called at 11:57 a.m. The Board came back on the record at 12:16 p.m.

Chair Guzmán Fralick noted that the Board was considering agenda item VII, and called for the petitioner to provide closing arguments noting that a total of ten minutes would be allowed since the respondent went over allotted time by five minutes.

Mr. Rath stated that the respondent's counsel argued for a few Category V violations and one Category IV violations. It is clear from that argument that the respondent does not understand the seriousness of the fourteen violations that the Board found; it does not show respect for the regulators and is looking for a slap on the wrist. Mr. Rath argued that SB195 does not apply here; there is no indication it is retroactive. It's not merely procedural but goes to how the Board considers penalties, what penalties to impose and how. Even if it did apply, the penalty of revocation is still applicable to Category I, the number of Category II violations, and the number of Category III violations. Mr. Rath stated there was no stacking here; for instance, there were over

200 illegal retests and the Board ultimately found one violation for that. Respondent's counsel argued that correcting an omission or an illegal act was enough to absolve yourself of discipline. Mr. Rath noted that if a doctor or dentist was performing improper or unnecessary procedures, the Board will discipline them even after they correct or stop; stopping is not enough to avoid discipline otherwise you would see the same things over and over again. In response to costs incurred, Mr. Rath noted that going to hearing may cost attorney's fees and the court reporter owns the transcripts. Mr. Rath stated that deference should be given to the hearing officer's findings as she sat through twenty days of the hearing, observed each witness, went through 8,000 pages or more of exhibits, and listened to 3,000 pages of testimony. The petitioner did not agree with everything the ALJ recommended for a penalty but accepted what she found. Mr. Rath stated the easy motion to make would be to accept the hearing officer's recommendations.

Member Durrett asked if there was a standard or anything that the respondent would need to overcome to convince the Board not to accept the administrative law judge's decision. Mr. Rath responded that this is the first time there has been an adjudication under these rules. Mr. Rath asked the Board to give a deference to the ALJ because she looked at everything thoroughly and wrote an 80-page order with 300 footnotes. Mr. Rath did not think there was a legal standard.

Member Durrett thought that the Board should follow SB195 even if not required to. Mr. Rath stated that it was discretionary, and the Board can set the penalties it wants. Even if SB195 was applied, there were still enough Category I, II, and III violations to revoke; the only thing that would change is the penalty amount would be taken down to \$20,000.

Member Durrett understood that 233B did not apply to this, but now that the law has changed, could the Board choose to comply with it due to the new legislative intent. Mr. Rath stated that 233B doesn't apply, but even if it did, nothing changes. Member Durrett stated that what would change is the Board is not as interested in discipline or fines but getting licensees back on track. Mr. Rath disagreed and stated that nowhere in 233B or anywhere else does it say if you correct something, there is no discipline. Mr. Rath has been before numerous Boards that are subject to 233B, and mere correction or stopping an act will get out way from discipline. Mr. Rath added that it is unfair to the other licensees to do that. Member Durrett questioned if the focus was punishment or compliance. Mr. Rath responded that it was both; for this licensee that was summarily suspended in 2017 and 2019, and in 2022 repeat violations were found, they are past the rehabilitation stage.

Chair Guzmán Fralick asked if there were any questions for the respondent.

Member Durrett commented that it did not appear to be stacking in this case and asked Ms. Rushton to respond. Ms. Rushton stated that what SB195 was attempting to accomplish was asking the Board to consider multiple instances of the same act, such as failure to click the button in Metrc. Ms. Rushton argued that having a first Category III, a second Category III, and a third Category III was illegal; you cannot have a second offense until the first one is adjudicated. Ms. Rushton said the objective wasn't to sidestep responsibility, but to point out that they recognized, accepted, and addressed the issue before the complaint was filed; the suspension was lifted and then they received a complaint a year later. Ms. Rushton added that any financial penalty assessed will be a significant financial hardship.

Mr. Rath asked to respond to new items that were brought up. Chair Guzmán Fralick noted that she was being very lenient and wanted to make sure that everything gets brought up and everyone gets a chance to speak.

Chair Guzmán Fralick asked for clarification if the lab was currently testing cannabis. Ms. Rushton responded that the pesticide machine was not working so they felt it was not in the best interest of the cultivators, so the lab does not accept cannabis testing right now.

Mr. Rath responded to the stacking issue and the claim that you have to adjudicate each item separately before you can have progressive discipline. Mr. Rath noted the 453D.905(4) was clear on progressive discipline. It was not stacking if the violations are committed within two years of the other. Progressive discipline kicks in otherwise you would have to file a separate complaint for each different violation, have that adjudicated, and come back before the Board. That is inefficient and wastes everyone's resources. If there are multiple violations, they should be charged in one complaint.

Member Durrett asked if the facility has been inspected annually. Ms. Rushton responded that they are subject to the same audits as every other license and thought they were recently audited. Member Durrett asked if they planned to go back to cannabis. Ms. Rushton responded affirmatively but indicated they were having issues with the tolerance levels in the pesticide equipment.

There were no further questions from the Board for the petitioner or the respondent. Chair Guzmán Fralick brought the matter to the Board for deliberation. Chair Guzmán Fralick stated she was inclined to go through the violations by Paragraph but was open to suggestions.

Member Douglas stated there was a lot to consider in terms of what has been presented but he was not in favor of the revocation of a license at this point. Member Douglas was not interested in good business relationships but was interested in something that potentially affects individuals being done properly. Member Douglas commented that he was looking at a 180-day suspension, acceptance of the recommended penalties and lowering some of the fines. Member Douglas added that the industry was still new, but it is a restricted and privileged license where you have to conform. Member Douglas thought that some leeway should be allowed.

Chair Guzmán Fralick echoed those sentiments and added that she did not want to see anyone fail but wanted to make sure to protect the public health and safety. Chair Guzmán Fralick added that the Board also has to make sure that is a fair and equal field for the other labs that are compliant.

Member Durrett agreed that just because issues were corrected does not mean that there shouldn't be penalties. Member Durrett did not support revocation. Member Durrett thought that the retesting was a big problem, but they did stop doing it. Member Durrett was in support of lowering the fines to \$30,000 because they are not currently making money in cannabis; it would send a message that the state is disciplining their conduct. Member Durrett questioned how to treat the categories of violations so that it is not revoked.

Member Merritt supported Member Douglas's comments.

Chair Guzmán Fralick was concerned with the categories adding up to revocation. Member Douglas detailed his recommendation for discipline to include 30-day suspension running consecutively for a total of six months and the fines.

There was discussion on how to craft the motion. Member Durrett requested to ask the respondent when they planned to start testing cannabis again as it may be relevant to the suspension. Ms. Rushton responded that they have not done cannabis testing since June of 2022; if they are suspended for 180 days and fined \$82,000, they will surrender their license since they can't afford it. They have spent over \$100,000 trying to get the pesticide machine to the state's tolerance levels. Ms. Rushton stated the Board could consider a retroactive suspension based on the fact that they haven't operated. With a 180-day suspension, there is no point in continuing the operation and trying to get the pesticide machine working.

Mr. Rath responded that 180-day suspension was a lot better than revocation. A retroactive suspension is no penalty since they voluntarily stopped operating. Mr. Rath recommended adopting the categories and picking fine amounts and the period of suspension. Member Durrett thought that a six-month suspension and \$80,000 fine would have the same impact as a revocation.

Member Durrett made a motion to find all Category V violations with warnings except that Paragraph 88 would be a Category I with a \$35,000 fine, and for Paragraph 99 would be no fine but a 30-day suspension. DAG Harris confirmed the framing of the motion. No Board Members seconded the motion. Motion failed.

Member Douglas made a motion to find as follows:

Paragraph 83: Category III violation, \$2,500 fine;  
Paragraph 84: no violation;  
Paragraph 85: Category III violation, \$5,000 fine;  
Paragraph 86: no violation;  
Paragraph 87: Category III violation, \$10,000 fine;  
Paragraph 88: Category I violation, \$20,000 fine;  
Paragraph 89: no violation;  
Paragraph 90: no violation;  
Paragraph 91 and 92: Category III violation, 30-day suspension;  
Paragraph 93: Category III violation, 30-day suspension consecutive;  
Paragraph 94: Category III violation, 30-day suspension consecutive;  
Paragraph 95: no violation;  
Paragraph 96: Category III violation, 30-day suspension consecutive;  
Paragraph 97: Category III violation, 30-day suspension consecutive;  
Paragraph 98 and 102: Category II violation, \$10,000 fine;  
Paragraph 99: Category II violation, \$10,000 fine;  
Paragraph 100: Category II violation, 15-day suspension consecutive;  
Paragraph 101: Category III violation, 15-day suspension consecutive.

Member Merritt seconded the motion. The Board discussed the motion and determined that the motion was for a total 180-day suspension and fines in the amount of \$57,500. Member Durrett requested to amend the motion to 90-day suspension. Member Douglas did not accept the amendment to his motion. Chair Guzmán Fralick called for a vote. Member Douglas, Member Merritt, and Chair Guzmán Fralick said aye. Member Durrett said nay. Member Mazzorana abstained. Motion passed.

Mr. Rath asked for clarification that this would not be effective until counsel is served with the final Order. Chair Guzmán Fralick confirmed that was correct.

**VIII. Petition Filed Pursuant to Senate Bill 277 Section 4.5(1)**

**A. Janice Hind-Padilla**

[This matter was previously heard in closed session.]

**IX. Briefing from the Chair and Executive Director**

Executive Director Humm reminded everyone of the TPMA Market Study; the survey is live on the website and Director Humm asked the public to distribute that wide and far.

There will be a Cannabis Advisory Commission meeting on Friday, February 23 at 10:00am. Director Humm thanked the subcommittee for their work on rescheduling and descheduling.

There was an open workshop on January 31 and Director Humm thanked everyone for their participation.

Director Humm welcomed Board Member Mazzorana and noted that she participated in the required training.

Director Humm thanked Chief Staley, Deputy Director Miles, Chief Gilbert, and Chief Cronkhite for their work. The Board made history by hearing the first petition as allowed under Senate Bill 277. In addition, Smoke and Mirrors, is the first cannabis consumption lounge to pass final CCB inspection

**X. Next Meeting Date**

The next Board meeting is scheduled for March 21, 2024.

**XI. Items for Future Agendas**

Member Durrett applauded Senator Harris for the passage of Senate Bill 277.

**XII. Public Comment**

Timothy Eli Addo spoke on behalf of Kora Lounge, that did not make it through the initial random number selector. Mr. Addo thanked the Governor's office for the response he received but there were things that he disagreed with. Mr. Addo stated that the CCB stated that it did not know how many CEIC graduates there were and played an audio recording. Mr. Addo thought that there was an unfair advantage and that a third party would investigate. Mr. Addo detailed his concerns with the application process and thought that there could be an amendment to help those in the medical cannabis get additional points.

**XIII. Adjournment**

Meeting adjourned at 1:23 p.m.