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By E-mail and Hand Delivery

Cannabis Control Commission
One Ashburton Place, Room 313
Boston, MA 02108
ATTN: Regulations
cannabiscommission@state.ma.us

Re: Proposed Adult Use Cannabis Regulations

Dear Commissioners:

I write on behalf of several of our clients that are registered medical marijuana dispensaries ("RMDs") with final and/or provisional certificates of registration in good standing with the Department of Public Health ("DPH"). Our RMD clients are grateful for the opportunity to provide comments regarding the Commission's regulatory priorities and they welcome the opportunity to continue to engage with the Commission.

We respectfully submit that in the very short timeframe that the Legislature has given the Commission to promulgate regulations necessary to support a licensing framework, the Commission should focus on enacting statutory requirements for licensure and public safety, while leaving certain matters to subsequent drafting. To that end, we list below the six (6) questions that we believe should guide the industry in its rulemaking efforts until licensing begins on April 1, 2018.

I. How Can the Commission Maximize Integration With Existing DPH Regulations to Save Resources and Promote Regulatory Cohesion?

The Commission has before it a difficult task to establish the minimum necessary framework so it may begin to accept applications by April 1, 2018. Fortunately, much of the regulatory structure that the Commission will require has already been prepared. DPH's comprehensive regulations, 105 CMR 725, govern all aspects of medical marijuana sales, testing, cultivation, processing, seed-to-sale tracking, entity and employee licensing, enforcement and inspection. These regulations should serve as the basis for adult use regulations, as well. These regulations – including those that have been proposed as final regulations after notice and comment, but have not yet been adopted by DPH's Public Health

Council[1] – are the product of years of study and refinement. In short, the Commission need not – and must not – start "from scratch."

Particularly because G. L. c. 94G, as amended by Chapter 55 of the Acts of 2017 ("Chapter 55"), authorizes a dual-use model of regulation where medical and adult use cannabis sales may be co-located and virtually separated, the existing regulations that have safely and effectively governed the medical marijuana industry should serve as the foundation for the Commission's adult-use regulations. Therefore, incorporating the existing elements of 105 CMR 725, where consistent with the Commission's statutory obligations, will (i) create a strong predicate for the Commission to meet its regulatory charge in the tight time frame allotted; (ii) promote regulatory cohesion with existing medical marijuana businesses, most of which will incorporate virtually separated adult use sales into their businesses; and (iii) save precious Commission resources and avoid regulatory incoherence.

II. What Regulations Are "Necessary for the Issuance of Licenses" Under Section 55 of Chapter 55?

The Commission need not undertake to promulgate regulations on all subject matter within its jurisdiction before March 15, 2018. Chapter 55 provides only that the Commission "shall promulgate regulations, guidelines and protocols **necessary for the issuance of licenses** pursuant to chapter 94G of the General Laws not later than March 15, 2018." Stat. 2017 c. 55 § 55 (emphasis supplied).

Our clients respectfully request that the Commission focus its attention in the short time before March 15, 2018 on only those areas of regulation that are necessary to license and for the operation of marijuana establishments. This includes public safety, inspection and enforcement measures, application contents and review protocols, minimum qualifications for entity and employee licensure. Generally speaking, the Commission should focus its "first round" of regulations on some or all of those subject areas for which the Legislature created a mandatory duty to adopt regulations. *See* G. L. c. 94G, §§ 4(a)(1)-(15), 15. As noted, existing DPH regulations at 105 CMR 725 already comprehensively address many of these subjects.

Conversely, there are several other areas of future regulation that can wait until a later date, such as development of the Commission's research agenda and the framework for regulation of cultivation cooperatives. Indeed, with regard to cooperatives, this is the first time in the country that craft cultivation will be permitted and the Commission will need time to formulate regulations that ensure that craft cultivators meet the same high standards as other licensed entities. Without proper oversight, in fact, cultivations cooperatives could lead to a new unregulated market, divert cannabis proceeds to criminal elements, and

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[1] It is imperative for patient access and safety, as the *Boston Globe* noted in an article published October 14, 2017, http://www.bostonglobe.com/metro/2017/10/13/dph-freezes-medical-marijuana-fixes-infuriating-patients/wmGZpl5VXipNOdbUqrjEoO/story.html, that these regulations be made effective as soon as possible. The Commission should ensure that these regulations are adopted as soon as it assumes authority for medical marijuana in the Commonwealth.

possibly lead to Massachusetts violating mandates of the U.S. Department of Justice's "Cole Memorandum."

In sum, while a great many of the areas that the Commission has authority to (and ultimately must) regulate are of vital importance, the Legislature has not imposed a deadline for adoption of regulations on these matters. As such, the consideration and drafting of these regulations should wait until after threshold licensing issues are addressed and a clear plan and timeline are developed with the goal of having adult-use marijuana establishments operational by July 1, 2018.

III. How Will the Commission Implement the Legislative Requirements That Qualifying RMDs Be Entitled to "Accredited Status" and/or Application "Prioritization"?

As part of the licensing process, the Commission is required to "identify applicants who are holders of a provisional or final certificate of registration pursuant to chapter 369 of the acts of 2012 and accompanying regulations" and grant such applicants "accreditation status." Stat. 2017 c. 55 § 73(b). The commission "shall ensure an expedited review process for applicants for a license to operate a marijuana establishment who have achieved accreditation status and shall only require that such applicants submit specific information not previously required, analyzed, approved and recognized by the department of public health." *Id.*

We respectfully suggest that the Commission, as part of the adult-use application process, should expedite the processing of applications for those RMD applicants who receive "accreditation status." The DPH licensing process is rigorous. As part of the DPH licensing process, accredited applicants will have passed extensive background checks for all managers and officers, demonstrated proof of capital, had all operations, security features, and internal controls thoroughly vetted, and been physically inspected by DPH.

In light of the extensive scrutiny already received by accredited applicants and the express statutory command that these applicants receive an "expedited review process," we respectfully suggest that the Commission commit to take action on applications submitted on April 1, 2018 by accredited entities **before June 1, 2018**.

At minimum, the Commission should commit to take action **before June 1, 2018** on any application submitted on April 1, 2018 under the prioritization provision at Section 56(a)(i) of Chapter 55 by an applicant that also is an RMD "in good standing with the department of public health [that is] operational and dispensing to qualifying patients." Stat. 2017 c. 55, § 56(a)(i).

IV. What Standards Will the Commission Adopt for Priority Review under Section 56(a)(ii) of Chapter 55?

Consistent with the mission of our clients, we are committed to the Legislature's directive that applicants that "demonstrate experience in or business practices that promote

economic empowerment in communities disproportionately impacted by high rates of arrest and incarceration for [controlled substances] offenses" be afforded prioritization in application review. *See* Stat. 2017 c. 55 § 56(a)(ii)

The Commission, however, will have to promulgate specific regulations that define the standards that applicants must meet to qualify for this prioritization in application review under Section 55(a)(ii) of Chapter 55. We recommend that the Commission adopt measurable quantitative criteria that applicants must meet. For instance, applicants qualifying under Section 55(a)(ii) should be required to, at minimum, (i) organize as not-for-profit entities; (ii) invest all revenue after expenses in economic empowerment initiatives in designated and qualifying communities; and (iii) demonstrate a majority of ownership shares and corporate control of the entity is vested in persons of color. Without stringent quantitative standards, we fear that opportunistic applicants will present illusory promotion of economic empowerment in communities of color solely to obtain a licensing advantage.

V. How Will the Commission Implement a Virtually Separated Supply Chain?

Because the Legislature has resolved that the Massachusetts cannabis industry operate on a dual-use model where medical and adult use cannabis operations are permitted to be co-located, but virtually separated, cultivation and product manufacturing of cannabis, regardless of its end user, should be fully operationally integrated and governed by a single and consistent set of regulations. Virtual separation must occur at the point of retail sale, at which point age verification, taxation, tracking, and other rules will differ. Wholesale cannabis need not be identified for medical or adult use purposes at the point of wholesale; only at the point of retail.

VI. How can the Commission Displace Unregulated Cannabis Markets in the Commonwealth?

In furtherance of its primary mission to create and safely regulate a new industry,[2] the CCC should consider outreach with sister agencies that aim to displace unregulated cannabis in markets in the Commonwealth. So long as unregulated markets flourish, shadow economies will continue to derive profit from cannabis, products will remain unsafe and untested and the Commonwealth and municipalities will be denied substantial tax revenue. Without effective policies to enforce laws against cannabis sales by unlicensed persons, regulated markets, implemented and launched by the CCC, will at a competitive disadvantage and public health and safety will be threatened.

The Commission should take two steps to eradicate unregulated markets even before the Commission formally promulgates regulations.

First, the Commission should engage with the Attorney General and county District Attorneys to promote more rigorous enforcement of laws against the unregulated sale of cannabis in the Commonwealth. Regrettably, since the passage of Question 4 in November

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[2] https://www.mass.gov/files/documents/2017/09/26/CNBMeetingMissionStatement92617.pdf.

of 2016, unscrupulous actors have engaged in gimmicks to circumvent the letter and intent of the law, such as "gifting" cannabis as part of a package selling items of *de minimis* value for the street retail price of that gifted cannabis. Also, in many markets including Boston, the unregulated delivery of cannabis from unlicensed entities has flourished. The passage of Question 4 and Chapter 55 does not mean that law enforcement officials should turn a blind eye to all cannabis-related activity, particularly in light of the clear mandates the United States Department of Justice in the Cole Memorandum.[3]

Second, delay is the friend of the unregulated cannabis markets. However challenging the task ahead, the Commission should be aware that the longer it takes for a regulated adult use market to become established, the more entrenched black market actors will become, and the more successfully they will adapt to the changing regulatory landscape.

This is an added reason why the Commission should create efficiencies, such as adopting existing DPH regulations to form the basis of the Commission's own adult use regulations, and assuring that action is taken on the applications of "accredited" applicants and those permitted a "prioritization" in review under Chapter 55 by June 1, 2018.

We thank the Commission for its consideration and are available to answer questions at any time.

Sincerely,

Kevin C. Conroy

[3] https://www.justice.gov/iso/opa/resources/305201382913275685746 7.pdf