

CNMI Cannabis Commission

Regular Session Meeting Minutes June 23, 2020

I. Call to Order

The CNMI Cannabis Commission was called to order by Chairwoman Nadine Deleon Guerrero at 10:34 a.m. on June 23, 2020, in the Commonwealth Casino Commission Conference Room, Saipan.

II. Roll Call/Determination of Quorum

Nadine Deleon Guerrero, Commissioner representing Saipan

Matthew Deleon Guerrero, Commissioner representing Saipan

Valentino Taisacan Jr., Commissioner representing Northern Islands (unexcused absence)

Journie Hofschneider, Commissioner representing Tinian (attending by GoTo Meeting)

Thomas Songsong, Commissioner representing Rota (attending by GoTo Meeting)

Joseph Deleon Guerrero, Special Advisor (SA) on Cannabis Industry for the Office of the Governor

Mike Ernest, Attorney General

Keisha Blais, Attorney General

Monique B. Sablan, Managing Director (MD)

Alexis Hofschneider, Legislative Secretary to Senate Committee on Cannabis

III. Consideration and Adoption of Agenda

- Vice Chairman made a motion to adopt the agenda; Secretary seconded; no discussion and all members voted in favor of the motion.

IV. Consideration and Adoption of Minutes of Prior Meeting

- Chairwoman made a motion to adopt previous meeting minutes; Vice Chairman seconded; no discussion. Minutes adopted.

V. Public Comment

- SA, verified that there were no members of the public present; therefore, no public comments were made to the Commission.

VI. New Business

1. Final Adoption of Proposed Regulations

- Chairwoman made a motion to adopt the regulations into the Commonwealth Register. The emergency regulations is identical to what will be adopted today; we did not make any amendments to the regulations and confirmed that we did not receive any public comments from posting the regulations. Chairwoman made a motion to adopt the regulations into promulgation; Vice Chairman seconded it; **discussion:** Chairwoman asked Mike Ernest what would happen if we wanted to put a limit on certain licenses after we adopt the regulations. Mr. Ernest

confirmed that amending the regulations can be done (typically within 60-90 days) and if limiting, the Commission needs to set criteria or implement a first “come first serve” approach. He mentioned that most likely it will be the MD deciding that operationally, a limit would be favorable and before a court, this information would hold weight. Vice Chairman stated that it would be best to make this change to the regulation as a stand-alone amendment so that the rationale for the change can be outlined and justified. Chairwoman confirmed that she would like to limit licenses if we have the rationale to do so. Vice Chairman mentioned that a lot of the jurisdictions do not limit the number of licenses except California that has three licensing authorities and each has a relationship with the counties and it’s the health authority in the counties that can set the limits as opposed to the regulatory body. Vice Chairman recommended that we should distinguish between islands if we set limits of licenses. MD mentioned that she believes Oregon or Massachusetts has a set window of time for applicants to apply for certain licenses and it is something we could consider. Vice Chairman mentioned that PL 18-56 (Limitation on number of poker machine licenses issued in the CNMI) could be used as a model for language should we implement license limitations.

- Mike Ernest mentioned that in amending regulations, the challenge is predominantly is getting the signature of the Governor and the signature of the Attorney General.
- MD asked Secretary and Commissioner Songsong if we had any issues working with licensees in Tinian and Rota. Commissioner Songsong mentioned his experience with DNLR and working with many applicants without issue. Secretary mentioned she is also ok with helping the public; however, does not have an office in Tinian. MD mentioned that she will assist Secretary with finding an office and that the Tinian Youth Center is vacant. Chairwoman mentioned that we will most likely have limited office hours in Tinian.
- All present members voted in favor of adopting the official regulations
- Vice Chairman mentioned that part 300-355 of the official regulations speaks to limiting licenses.

2. Discussion on Proposed Amendments to PL 20-66 & PL 21-05

- Chairwoman gave an update that they met with the legislature last week and made them aware that the Commission was going to make amendments to the law. She requested that the members collaboratively put together a list of all the proposed changes/priorities. Chairwoman mentioned that one of the priorities should be repealing the statute (section 112 (e)) that states that the Commission shall not prohibit nor deny anyone over 21 years of age or older from obtaining a homegrown marijuana registry card. Mike Ernest recommended adding the word “unreasonably” (the Commission shall not unreasonably deny). He also recommended to change the section in the statute that prohibits the

Commission from enforcing licensees to keep their records in the licensed facility.

- Vice Chairman mentioned the law prohibiting growing and production of marijuana on public lands and how that relates to the Northern Islands (all public land). SA asked Mike Ernest about the statute regarding public lands, specifically leased hotels (on public land) that are grandfathered allowing them to obtain any kind of license regardless of being on public land. He asked if cultivation on public land would then conflict with Federal law. Mr. Ernest replied that all cannabis currently conflicts with federal law; however, the Commonwealth Constitution is silent about cultivation on public land.
- Vice Chairman asked if we needed to repeal of §53074: Commonwealth Public Lands Shall Not be Leased or Used for Cannabis (Marijuana or Hemp) Businesses. The Department of Public Lands and all other government entities shall not lease or use public lands for the purpose of establishing cannabis (marijuana or hemp) businesses or establishments. This section does not apply to existing public land leases with existing hotels or commercial buildings.
- SA brought up Rev & Tax and asked if we wanted to get rid of excise tax and change it to BGR surtax for producers. Vice Chairman agreed to get rid of it. He stated that it is changing the law; however, it would clarify what is trying to be accomplished with the tax. Vice Chairman explained that there is a separate BGR on manufacturers and wholesalers and a different rate instead of 1301 which is the regular BGR rate; there's 1301 which is manufacturers and wholesalers and the surcharge is on 1301 and not 1303. He mentioned from the meeting with Rev & Tax that it seemed like they were not ready to implement the tax at this point.
- Vice Chairman also suggested introducing a sales tax, piloting it in the CNMI (as there has been talk about the CNMI introducing a sales tax already). Chairwoman raised the concern that there may be a perception that we are trying to over tax the industry with the term "sales tax". SA mentioned once producers start up, they will be required to pay the excise tax and asked would it make sense to change the rules in the middle of the game. Mike Ernest recommended we speak with John Cool, tax lawyer with AG.
- SA also asked to add to the list of recommended law changes regarding all licenses expiring on the same date (September 30th).
- Secretary raised the issue regarding transporting cannabis between islands. Although there it is not prohibited under CNMI law, federally, transporting would be an issue. Mike Ernest suggested we work with our lawyer (Keisha Blais) to review a case in district court that involved a boat transporting between the islands and whether the federal government had jurisdiction over the boat or not. Mr. Ernest recalls the outcome was that they did not have jurisdiction; however, we need to submit a LSR with Ms. Blais to obtain the actual findings. Secretary

mentioned that she has been asked questions regarding this issue and feels that people may not think it is worth getting into the industry if product cannot be transported between islands.

- Chairwoman raised amending the definition of “marijuana” to exclude seeds as a marijuana item. SA believes there is already a legal opinion from AG; however, the address that would be an amendment to the law to redefine what marijuana items is inclusive of.
- Mike Ernest suggested to remove “seeds” from the definition and add a line that clearly states that “marijuana does not include seeds”.
- Chairwoman raised earmarking of regulatory fees to the Commission for operational expenses. Vice Chairman suggested a revolving account for the Commission to use with Chairwoman and MD having expenditure authority. MD mentioned that Scholarship Office does this.
- Vice Chairman acknowledged that Saipan delegation provided Saipan office with \$25,000 for office improvements/renovations.
- Chairwoman raised another item to be added to the list of proposed amendments: adding protection for commercial licensees from their security plans being subjected to OGA.
- SA discussed §53022 (c) (specifically the section bolded): A marijuana producer who possesses no more than twenty-five (25) mature marijuana plants may acquire a micro production license, instead of a production license, issued by the Commission for the premises at which the marijuana is produced. **A marijuana micro producer shall sell marijuana to licensed marijuana establishments.** A marijuana micro producer is prohibited from selling marijuana to the general public or a person without a license pursuant to this chapter. SA questioned whether a licensee could challenge this provision when the regulations requires a micro producer to sell directly and solely to a wholesaler. Vice Chairman clarified that there was not a conflict between law and regulations, but that regulations further specifies the “licensed marijuana establishment” (wholesaler). He discussed how micro producers selling to wholesalers would cultivate a larger market power for micro producers overall because as a group, they are competing against the larger producers.
- MD will put the proposed amendments list together and submit a LSR

3. Current Budgetary Concerns for Commission

- Chairwoman gave an update regarding the Commission’s accounts and indicated that we only have \$6000 in the account, no other money. Saipan Delegation gave us \$25000 to get us in the office. Chairwoman suggested Commissioner Songsong and Secretary try and get funding from Tinian and Rota Delegation. She suggested presenting quotes on how much it will cost to operate the office so it can paint a clear picture at how much is required for operation given the Commission does not have funds to appropriate for any operational or hiring costs.

4. Personal Contributions by Board Members for Commission Operation Expenses

- Members paid for the website annual fee out of pocket (\$420); Re: Saipan Commission Office: Chairwoman paid \$383 out of pocket for labor to hook up the power. \$298 for materials for the Saipan office. They still need money for the assessment for outlets, AC connectivity etc. She is getting a quote and will be paying out of pocket. Vice Chairman helped with the roof crack (\$1500). MD mentioned that she has exhausted her efforts acquiring furniture/equipment for the office from other offices. MD mentioned she will use her networking from previous positions to work with Tinian and Rota Delegations for assistance. MD also had personal volunteers to help clean the Saipan Commission office due to budget constraints.
- MD mentioned that the budget for 2021 will also be limiting.
- MD requested Commissioner Songsong and Secretary name a senator or house member that can be a contact for discussing potential assistance for basic office supplies/equipment (ie. Printer, paper, etc.)
- SA recommended against asking for money from Tinian and Rota delegation due to their limited budget.
- SA volunteers (without pay) to participate in the Commission's meetings since his position was impacted in the budget cuts. Chairwoman reminded members that their salaries were not cut at this time.
- SA mentioned once the Commission starts generating money, it will be easier to approach the legislators for money to appropriate.

Managing Director's Report

- MD met with OMB to talk about the Commission's financial status; she is trying to meet regularly with them to ensure the accounts are reflecting what is being spent (accurately).
- We are still in a deficit in account 1501 (a); however, we are no longer in a deficit in 1501. If both accounts are combined and do all the income and deductions, the total in our account is only \$6000. Fortunately, the Commissioners are still getting paid.
- \$25000 appropriated from Saipan Delegation is strictly for renovations.
- MD spent 5 hours on Saturday with the electrician at the Saipan Commission office; Power and water was hooked up on Friday
- Chairwoman and MD met with Department of Finance, Secretary of Finance's office; the depositary accounts have been set up
- The 2021 budget looks like \$222,000 in 1501 (a) and \$37282 in 1501. The proposed budget reflects lesser hours which means the Commission will be operating with reduced hours and we will have to determine what that means for application intake and processing.
- Chairwoman summarized the meeting held with CHCC regarding medical marijuana:

- The CHCC board will have to allow their physicians to issue recommendations to patients (not a Rx but recommendation) supporting the use of marijuana for their medical condition(s).
- CHCC has a laboratory in-house; however, they do not foresee testing marijuana of any sort and do not foresee having dispensaries on site for medical patients that do receive a recommendation for marijuana use. The lack of a laboratory prevents the Commission from implementing medicinal marijuana.
- Chairwoman advised that there will be a sub-committee working on the medical marijuana program and that we will work with a designated contact from CHCC to address any concerns that are identified during development of the program. CHCC suggested that the Commission review the law with them to ensure both agency's authority/jurisdiction is clearly identified.
- Each hospital would need to establish medicinal marijuana policies and develop a list of approved medical conditions/debilitations that would warrant a recommendation for medicinal marijuana.
- Determine if our law allows individuals receiving a recommendation from a physician outside the CNMI if it would be valid or not.
- Vice Chairman recommends looking to the hospital to determine whether medicinal marijuana is even a demand (for 18-20-year-olds because 21+ can legally purchase). He suggested (to Chairwoman) for the Commission to write a letter to CHCC board outlining the pertinent questions we have prior to meeting with them.
- SA stated that we are required to meet with CHCC annually to discuss the status of the industry and mentioned that in other jurisdictions the medical industry provides the cannabis regulator with data regarding the impacts of cannabis use in the community. SA recommended we do the same with CHCC.
- Members discussed edibles and the requirement to partner with BEH for licensees to obtain a health certificate.
- Members discussed meeting with different applicants and ensuring that the information disseminated is the same for all applicants. All members agreed.
- MD discussed meeting with Treasury regarding the application process and they recommended there be an added section to the application payment forms to include the account number so Treasury staff know where to direct the money received for the applications.
- Vice Chairman discussed thinking through potential LSRs as applications start to be received: the Commissioners' role in appealing or being a body to which the actions of the director need to be brought forward to the Commission under the regulations. If Tinian and Rota are in the process of receiving applications and being heavily focussed on customer centric

service, Vice Chairman suggests that we need to have a clearer understanding on what would prejudice them in that sort of environment if it came back to the Managing Director taking an action and having to present that before the Commission.

- MD asked Keisha Blais for clarification: who she would delegate an application to if there was a conflict of interest (i.e. family member – MD acknowledge that she is related to a lot of people) given that MD is currently the only employee for the Commission. Keisha will look into this and get back to the members. Vice Chairman mentioned to call OPA if with a particular scenario them to determine if there is in fact a conflict of interest based on the details.
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EXECUTIVE SESSION – Chairwoman made a motion to move into executive session to discuss outstanding LRS with AG Keisha Blais; Vice Chairman seconded. Discussion: SA asked if he should remain present during executive session; Keisha advised that SA could stay if he was in fact invited to the executive session. Chairwoman requested he stay. Executive session began at 12:37 pm.

1. Discussion with AG's Office on outstanding LSRs

- MD requested that Keisha report out on the application process that she has been assisting MD and Secretary with during quarantine and the feedback she has given us regarding the applications as well as an overview of the enforcement meeting she attended.
- Keisha summarized the enforcement meeting: discussed the role of the Commission regarding enforcement, specifically for homegrown marijuana, how much enforcement can the Commission do, who does it delegate duties to and the confusion with the criminal side of the AG's office.
 - She had a meeting with the AG, the Deputy AG, and the Chief of Criminal and the head of Drug Enforcement. Their main concerns were what do they advise DPS in regard to violations of the regulation; she answered that the Commission does not currently have the registry system up so at this point it is very hard to enforce. They are going to confiscate and issue warnings. Nothing has been prosecuted or will be. Moving forward, how much is the Commission going to be responsible for as far as enforcement. The criminal side wants the Commission wants to issue citations, is the first person called when there is a violation and wants them to have their own enforcement division (they want the Commission to enforce for homegrown marijuana).
 - Members discussed Keisha's response and clarified that if a violation was identified, there would be a collaborative effort; however, AG would like all issues to be directed to the Commission first. Secretary suggested that she would create a complaint form for the public to fill out, submit it to the Commission for review and then determine if DPS/AG/ Customs etc. need to be involved or if it can be resolved at the Commission's level.
 - Secretary suggested the complaint process should be one process as opposed to some complaints going to the Commission first and some to DPS. All complaints should be first directed to the Commission (by completing the complaint form) so that the nature of the complaints can be

reviewed and the Commission will determine necessary action (ie. Involving DPS).

- SA suggested we sit down with the Criminal Division to discuss these topics.
Keisha and members discussed:
 - Civil violations – Commission will impose penalties and collect fines
 - Criminal violations – AG wants to refer to the Commission if they do not wish to prosecute.
 - Chairwoman asked Keisha to elaborate on the Commission’s authority to approach a residence to inspect if there was a complaint, for example. Keisha explained that anyone can knock on someone’s door; however, whether they allow you to enter is entirely up to them. DPS could not do this without reasonable suspicion and a search warrant. Members and Keisha had previously discussed amending the rules to require applicants to abide by any investigation conducted by the Commission.
 - MD discussed her concern regarding a lack of enforcement assistance.
 - MD suggested we implement the homegrown marijuana registry; it has been legally reviewed. Members agree.
 - Keisha mentioned that a press release is required; there is a concern that the public does not know the law.
 - MD asked Keisha to follow up on a case regarding jurisdiction of the federal government over waters between interstate. Keisha will get back to the Commission.
 - SA suggested to Secretary to speak to the Mayor about MOT temporarily receiving applications for the Commission.
- Chairwoman made a motion to return to regular session; Vice Chairman seconded; no discussion. Summary of Executive session: LSR matters, Keisha Blais summarized the enforcement meeting.
- Members discussed next steps for implementation of the homegrown marijuana registry aimed for the following two weeks. Secretary agreed to work on a complaint form to be rolled out with the registry and brief DPS on the process so there is no confusion.

Adjournment

Chairwoman made a motion to adjourn the meeting; Vice Chairman seconded; no discussion. Meeting was adjourned at 1:43 pm.