November 14, 2022
ATTN: Dual Use Cannabis Task Force
Office of Medical Cannabis Control and Regulation

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Honorable Members of the Dual Use of Cannabis Tax Force,

The Maine Craft Cannabis Association (MCCA) is pleased to submit comments on the policymaking process underway in Hawai'i to assess approaches to Dual-Use regulation of cannabis within the state, on Agenda items A, B, C, and D. Our members are small cannabis businesses from across the supply chain and include cultivators, retailers, manufacturers, medical practitioners and medical cannabis patients - as well as some who also have businesses in Maine's newer adult use market. We have decades of collective experience in legal regulated cannabis markets. Our group is also a member of the National Craft Cannabis Coalition (NCCC), a coalition of state-level advocacy organizations working to promote state and federal policies that support small cannabis producers and to support a business ecosystem that supports craft cannabis cultivation. Our testimony today represents only the opinions of the MCCA.

We believe that Maine, a state which also has a dual-use system of regulation for cannabis for medical use and for 'recreational'/adult use and which has had a robust medical cannabis market for over twenty years, could be of great interest for Hawaiian policymakers. We would like to offer expertise or share resources wherever possible during this process.

We applaud the open and measured approach this body has taken towards this set of complex issues. There is no urgency more important than good policy, so first and foremost we recommend that the State resist calls for swift implementation of a commercialized market that stands to benefit a chosen few investors rather than the greater population of the state, especially given the uncertainty around federal regulation and particularly its impact on business regulation contrary to the language of federal antitrust laws.

From a public policy perspective, investments made with the expectation of profit by private individuals or businesses should have no bearing on public policy except to learn from past mistakes. All citizens' rights and needs deserve equal consideration both as consumers and as participants in legal cannabis businesses. We believe that fair market access should be a fundamental principle for policymaking in cannabis. Unfortunately, much of cannabis policy to date is the result of a repackaging of Drug War lies and unproven public safety claims crafted to facilitate market dominance by a small set of highly-capitalized players.

In Maine, we have successfully defended our medical cannabis program from most of those attacks, but only because we kept the two programs separate and steadfastly defended individual privacy and autonomy over health and commercial decisions, empowering citizen health and

fostering a strong, hyper-local economy. We also resisted the creation of 'mandatory' for-profit business models in the testing and inventory tracking (e.g METRC, BioTrack, etc) of cannabis, two perverse novelties of cannabis regulation that ensure small, artisanal farming of cannabis is impossible and that highly-automated industrialized models of agriculture can dominate market access.

We feel these themes are pertinent to a number of items on the Agenda:

Social Equity Working Group

- Legislation should focus first on decriminalizing and undoing the harms of unjust criminalization rather than on for–profit commercialization. The urgency lies in criminal justice reform, not profit or tax collections;
- Retaining strong oversight of Executive by the Legislature helps ensure the will of the people remains foremost in consideration (e.g. legislative review of rulemaking, strong ethics oversight, periodic holistic review & reporting);
- We suggest the State offer services and training to the industry where possible and re-invest funds from the program into relevant areas of public interest rather than treat license fee and tax receipts as a 'slush fund';
- We strongly suggest avoiding use of law enforcement for civil regulatory issues and avoiding staffing the office of oversight with law enforcement personnel;
- Low barriers to entry are the single greatest tool to promote equitable participation in the market. Market structures that limit participation to highly-capitalized players are guaranteed to fail the state's goals for equitable cannabis regulation. Affordability for patients is also an equity issue;
- A focus on providing robust, ongoing support to individuals who qualify as SEAs may be a lower-risk and more sustainable model than restricting others to avoid expensive litigation. We believe market restrictions based on limiting the market share of individual participants rather than on participation itself could prove more effective in achieving goals of supporting local participation.

Market Structure Working Group

- While creating an entirely new department of oversight may seem logical, consider carefully what powers it will have and who is hired to enforce this role. A focus on expertise within the fields of agriculture and public health may be more appropriate than a background in law enforcement. We recommend avoiding individuals with conflicts of interest within or adjacent to the industry, and the awarding of no-bid or monopoly contracts in the guise of RFPs for government services. As the Group states in its findings: "...*Most of the rules applicable to the cannabis market: consumer protection, common law nuisance, county building safety/building codes, AOAO covenants, tax compliance, business registration requirements, labor laws, insurance requirements, etc., already exist and do not need to be created sui generis."*
- All employees and consultants hired by state government should be rigorously vetted for conflicts of interest above and beyond current practices given the high rate of corruption in cannabis policy making;

- There should be reasonable limits on the number of cultivation, retail, manufacturing, or any type of license a single individual/entity or affiliated group of individuals/entities can hold. This is the best way to ensure that access to capital does not automatically distort market share and push small and medium businesses owners out.
- Focus business enforcement on abusive monopolistic practices and gross violations of public safety rather than on minor business errors and overbearing proscriptive rules, and
- Look to create an oversight and penalty structure equivalent to other industries;
- Focus on educating and supporting businesses rather than on punishing them unless there are real public health and safety risks - such as dumping of pesticides;
- Keep the regulations for the adult' use of cannabis entirely independent of the medical use of cannabis program to avoid regulatory capture of the medical program by consumer-packaged-goods businesses. There can still be a holistic strategy for regulating the programs.
- Avoid using the state to create business models, focus on the bigger picture and keep the tools to pick winners and losers out of the hands of a small group of unelected individuals;
- Prioritize the societal and environmental considerations and implications of regulation before private commercial concerns;
- Keep business overhead and cannabis taxes low. Higher costs of doing business result in less competition and more advantage to the more highly-capitalized - and this ultimately leads to less choice and higher costs for patients;
- We recommend the State not give privileged early access to existing dispensary license holders. That is a guarantee of exclusive financial benefit to a tiny group not just for the early years of the program but well into the future. It could also lead to legal challenge. They already have a big leg up on new entrants to the industry.
- Keeping business regulation simple should expedite policymaking goals of launching a fair and robust market more than creating a special pathway to profits for a select few who can afford to navigate it.

<u>Medical Use Working Group</u>

- Explicitly enshrine the ability for Direct-to-Customer (DTC) operations to ensure patient access and choice. We recommend the state not limit these to dispensary license holders as those licenses are inaccessible to anyone but the rich;
- Center patient choice and access by establishing a caregiver structure that removes patient limits and affirms patient choice among caregivers and dispensaries;
- Promote economic participation, better health outcomes from expanded access to medicine, and healthy competition by expanding the caregiver model and not the inaccessible dispensary licenses;
- Tax medical cannabis like healthcare rather than like 'recreational' cannabis;
- Use the State itself for overseeing public health and safety rather than creating mandatory business models for testing of cannabis or surveillance of patients and providers. Focus on things like secret shopping, inspections, and education to ensure product quality and reduce externalities, but ensure there are no market or regulatory barriers to affordably testing product for the benefit of the patient;

- Eliminating the list of qualifying conditions should be done immediately. Research clearly highlights the therapeutic applications and potential of cannabis–remove the stigma of who should be allowed to access this plant medicine;
- Provide access for visiting patients with valid identification. Patients visiting or doing business in Hawaii should continue to have access to treat the condition that they and their medical provider determined would most benefit from use of cannabis without having to resort to the illicit market;
- Consider limiting the cost of patient certifications to ensure economic status doesn't restrict access and/or funding the cost of certifications for groups in need.

<u>Public Health and Safety Working Group</u>

- Be wary of crafting regulations that create plastic waste in the name of child safety, particularly around packaging. While preventing unsafe access to cannabis by youth should be a priority, parents are able to perform that function without packaging, which is already an environmental disaster in this country. Excessive labeling requirements not required for far more dangerous items in widespread use will also drive enormous packaging waste. In most states, packaging weighs multiples of the product it carries.
- Cannabis is not an inherently dangerous plant. Social attitudes towards it and particularly its legal treatment are not based on data showing harm, toxicity, or crime. On the contrary, cannabis can have enormous and varied medicinal and therapeutic benefits, and will have even greater potential when allowed to be studied. The criminalization and stigmatization of cannabis cultivation and use was an active commercial strategy employed by industrial interests in this country that found an ally in politicians using messages of racism and xenophobia to advance their own interests. Humans had been safely using cannabis in all its forms for thousands of years medicinally prior to that.
- When collecting and analyzing data, there is so much focus on the 'harms' of cannabis rather than its many potential benefits. Those potential benefits should be fundamental to the mission of any government body tasked with studying or facilitating study, especially with regards to distribution of resources such as public grant money.

Many states have made the mistake of allowing a market design easily captured by large well-funded interests in the name of the 'dangers' of cannabis. So many of the regulations in existence are based on the trifecta of bad science, stigma, and regulatory capture. We are so fortunate to be able to change this paradigm away from manipulative fear and towards social benefit. An industry made up of small farmers and entrepreneurs with a connection to the land, to the people, and to the place will ensure that regardless of how federal regulation unfolds, Hawai'i will have its own healthy and vibrant cannabis ecosystem for many years.

Sincerely,

Mark Barnett

Policy Director
Maine Craft Cannabis Association


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CRAFT CANNABIS
ASSOCIATION

OAHU CANNABIS
FARMS ALLIANCE

Aloha Task Force group members,

As we come to the end of this Task Force meeting, it is important to highlight the data that relates to the intent of this group's formation in order to make appropriate recommendations going forward for policy makers. The most important objective in our opinion is impacts of legalization of cannabis on qualifying patients, including access to medical cannabis by qualifying patients.

As legalization approaches rapidly, those states that have a resilient medical program and recreational program are poised to keep big business from overtaking the market. Small business-owned cannabis companies have proven to provide both affordable and safe medicine to patients without burdensome over-regulation. Legalization—without a strong and robust medical program that favors small businesses (as opposed to large vertical dispensaries)—has had major pitfalls in other states and is well-documented.

The Task Force group has done a lot of work. However, with no budget to conduct this study, the group faced large hurdles in proposing rules in such a short time with limited meetings. Although the task force conducted open-to-the-public meetings on most islands, very few people showed up to these meetings to provide information. OCFA attended most of the meetings, and there were at most 20 people in attendance and at a minimum of 8 people at the Oahu meetings. This is not the voice of the medical cannabis community with over 30,000 medical patients. Once again with no budget for this task force there is no major participation. A symposium advertised to the public would have bought more people in.

Another huge factor in participation of these meetings is the lack of trust by the cannabis community. This lack of trust is represented in the number of patients that are in the medical program. Hawaii has roughly 35,000 patients. The state of Maine has approximately 100,000 patients, and the state of Montana has roughly 70,000 patients—both with similar population sizes as Hawaii. A result of negative law enforcement action towards the medical community and a lack of oversight by the state and the DOH to educate and address law enforcement towards medical cannabis community in a non-punitive way has resulted in a "wild west" approach, causing people to be fearful of joining the program. We have personally witnessed Narcotics Enforcement Division (NED) come onto medical cannabis farms, without a search warrant, and take plants, threaten people, and fly helicopters over people's homes. DOH has worked with NED to conduct compliance checks and has watched NED take plants from people's homes. Why would people join the medical program to grow their own plants if this harassment exists? Everybody would like to participate in the medical program, but the DOH must make compliance checks easy and not rely on heavily gunned law enforcement. This is a medical program and should be treated with compassion. All patient grow sites are listed on the DOH database. There should

be no reason for NED coming to the same farms repeatedly, harassing patients with statements like, “This is a narcotics investigation.” We have this type of conduct on recordings. We must get local law enforcement and NED on board with our medical program. There is no reason for the fear and waste of tax resources on these efforts. I do want to add that the one HPD compliance visit I have witnessed was very professional.

Lastly, I would like to draw attention to what I consider the most meaningful data collected from these meetings—specifically, the “Rapid survey among Hawai'i medical cannabis patients and providers on the potential effects of legalization of adult use ("recreational" or non-medical use).” Although this is data is limited to the 10% of the registered patients and caregivers, it is important and could be easily expanded on.

- 54% of Hawaii’s patients want to remain in the medical program. Another 37% were unsure and lack the knowledge to understand the question posed. This shows overwhelmingly that the medical program is important and should be expanded on.
- 67% cannot get access to dispensaries because they are too far away. Hawaii does not have enough access points for patients to get medicine, and the creation of the limited dispensaries in 2016 has not helped the problem. A framework must be developed to allow local business to join the medical cannabis market. All medical patients should be able to move freely in the medical cannabis market and be allowed to obtain affordable licenses to allow for cultivation, sales, and delivery.
- 86% of patients use both dispensaries and local sources, i.e. collectives. This data shows that people are using both dispensaries and other cannabis 329 card growers to get their medicine.
- Sourcing of cannabis in the survey clearly show 31% of people are growing their own cannabis. This is amazing! But as we know the state is currently trying to take away the growing rights of patients through limiting plant counts and abolishing the caregiver act by 2024. This clearly shows the monopoly and influence the current dispensaries have on the state.
- 3% are growing with a collective. A collective is defined as a farm where people can grow their own plants. In past testimony DOH has labeled these as abuse of the medical program and introduce legislation to limit the size of collectives. Collectives provide a function for those who cannot afford dispensaries and need help to grow their own medicine and don’t have a place to grow their medicine. OFCA believes this collective number ought to be much larger and would benefit Hawaii medical patients. However, many people fear NED and don’t want risk the stress and potential personal loss or harm by engaging in collective farms.

OCFA is excited and grateful to provide testimony for these meetings. We envision our state with a productive patient access program and a locally owned small craft cannabis industry moving into legalization in the years to come.

Mahalo,

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