

CANNABIS CONTROL COMMISSION

May 30, 2024
4:00 PM

Remote via Microsoft Teams Live

EXECUTIVE MEETING MINUTES

Documents:

- Business Litigation Session Civil Action Cover Sheet
- Memorandum of Law in Support of Plaintiff Patient Centric of Martha's Vineyard LTD.'s Emergency Motion for a Preliminary Injunction
- Plaintiff Patient Centric of Martha's Vineyard LTD.'s Motion for Expedited Hearing
- Plaintiff Patient Centric of Martha's Vineyard LTD.'s Emergency Motion for a Preliminary Injunction
- Preliminary Injunction
- Affidavit of Geoffrey Rose
- Verified Complaint for Declaratory and Injunctive Relief

In Attendance:

- Acting Chair Ava Callender Concepcion
- Commissioner Kimberly Roy
- Commissioner Bruce Stebbins
- Acting Executive Director Debra Hilton-Creek
- General Counsel Kristina Gasson
- Associate General Counsel Michael Baker
- Associate General Counsel Donald Hubbard
- Legal Assistant Brendan Pauley

Minutes:

- 1) Patient Centric of Martha's Vineyard, LTD. and The Green Lady Dispensary, Inc. v. Cannabis Control Commission
 - General Counsel Kristina Gasson (GC Gasson) briefly summarized the matter. She discussed the Commission's legal options. She stated that the Legal Department had been working with the Office of the Attorney General (AGO) who had filed an appearance on the matter. She noted that, due to the plaintiff's motion being filed on



an emergency basis, the opposition was due on May 31, 2024. She described the options to litigate or settle the case.

- The AC discussed GC Gasson's comments and reiterated the options of using a waiver, a settlement agreement, or continuing with litigation. GC Gasson described the Commission's settlement options as they pertained to waivers. She stated that another option for settlement was to issue an executive order if the Commission found that there was undue hardship as in the case of telehealth. Lastly, she noted the option to vote on a policy of non-enforcement. Commissioner Roy asked about the differences between issuing an executive order versus a waiver in light of there being two plaintiffs. She asked if an executive order would be better as it would apply to both. GC Gasson confirmed that an executive order would be more inclusive and apply to all licensees who choose to participate.
- Commissioner Stebbins asked if there was any precedence for issuing a waiver. GC Gasson stated that Investigations and Enforcement would have more information, but that in the past, to request a waiver, Licensees still had to submit compensating features and other findings. Commissioner Stebbins asked if there was a difference in standing between the two plaintiffs. Associate General Counsel Michael Baker (AGC Baker) noted the difference between the two parties but stated that both plaintiffs claim that the current regulations were unreasonably impracticable, which the Commission is barred from promulgating under G. L. c. 94G. Commissioner Roy added that The Green Lady Dispensary, Inc. was asserting equal protection rights. GC Gasson responded that Patient Centric of Martha's Vineyard, LTD. had a better argument, but they both have standing and mentioned that she had just received confirmation that the hearing would be held on June 6, 2024, at 2:15 p.m. The AC stated that it would make sense to handle this matter in the same way as telehealth as it would provide more time for the Commissioners to resolve regulatory issues while handling the matter on a temporary basis. GC Gasson stated that the plaintiffs were trying to stay within existing regulations as much as possible, and their argument was that they can do everything within regulations, noting that the latter point was arguable. The AC noted that the plaintiffs had referenced the Registry of Motor Vehicles (RMV), but boats go beyond the RMV's authority. She asked how the Commission could account for that. GC Gasson offered potential language.
- Associate General Counsel Donald Hubbard (AGC Hubbard) stated that The Green Lady Dispensary, Inc. claimed that they were harmed by being prohibited from transporting Marijuana from their facility on Nantucket to another in Newton. He discussed the legal implications of this claim. The AC noted the filing deadline and stated that she wanted to continue as if the Commission were poised itself for litigation. She said that, ideally, Commissioners would leave the meeting with a direction and asked when they needed to decide how to proceed. GC Gasson responded that if litigation was chosen, they should come to an idea of what they would want included in a preliminary injunction and what terms they were open to including. Commissioner Stebbins stated that he wanted to be clear that the Commission did not put Patient Centric of Martha's Vineyard in this position and had not sought to put them out of business. He stated that he wanted to be thoughtful as to



the Commission's responsibilities and, as there was an existing regulatory framework, suggested requesting that the plaintiffs go through the waiver process. He was concerned that the absence of a cultivator on the island left space for an illicit market. Commissioner Roy responded that issue would be resolved by a waiver or executive order.

- The AC asked about issuing a waiver versus an executive order. GC Gasson noted that, under a waiver, Licensees would be required to supply a Standard Operating Procedure (SOP). The AC said that she preferred the executive order option as this was an issue that affected every Licensee on the islands. Commissioner Roy agreed that a waiver would not be inclusive enough. The AC stated that any executive order would state that the Commission did not regulate the waters and that the licensee would be taking on the risk as to federal enforcement. Commissioner Roy stated that there were state territorial waters to Martha's Vineyard and that there could be an end date to the order to force the Commission to revisit the topic. GC Gasson stated that one of the differences between an executive order and a waiver would be that a waiver would be granted as a matter of course if the Licensee supplies whatever documents the Commission decided. Commissioner Roy asked, if they agreed to issue an executive order, would Commissioners have the opportunity to opine before it is presented to the plaintiffs and how would the document be ratified. GC Gasson stated that responsibility could be delegated to herself and that discussion as to specifics would occur in public session.
- The AC asked about what would happen if the executive order was finished before the hearing date. GC Gasson stated that would be communicated to the plaintiff to postpone the hearing. She stated that she had spoken with plaintiff's counsel, and they were open to settlement. Commissioner Roy stated that she thought settlement was the best option in light of patients on the islands.
- Commissioner Stebbins asked if the plaintiffs could file another suit if the Commission issued an executive order, but they did not agree with the regulations which were waived. GC Gasson stated that the proposed SOP was helpful with this because the settlement would be a conversation. The AC asked about next steps. GC Gasson stated that the delegation would be to initiate settlement talks with a direction towards an executive order to allow for island transportation. The AC stated she would want Investigations and Enforcement to be involved with the executive order. Commissioner Stebbins asked if an executive order was needed to get product from the mainland to the islands and not vice versa as that might put the Commission in the crosshairs of the other plaintiff. AGC Hubbard discussed potential issues. GC Gasson stated that that Patient Centric of Martha's Vineyard, LTD. had a much stronger argument than the other plaintiff. Commissioner Stebbins stated he was leaning towards issuing an executive order.
- Commissioner Stebbins noted that one of Investigations and Enforcement's regulatory concerns related to 935 Code Mass. Regs. 500.450(13) under which knowingly violating a federal law was listed as grounds for the suspension of a Marijuana Establishment's License. He asked for clarification on whether that only applied if a Licensee faced federal enforcement and noted that an executive order



from the Commission would not forgive breaking federal law. GC Gasson stated that vertical integration had been the Commission's solution to island transportation and a felony could still be cause for revocation of a license. Commissioner Stebbins stated he was comfortable with the executive order approach as it would give the Commission the ability to hold the order to a particular timeframe. The AC confirmed that all commissioners present were in agreement to move forward with an executive order and asked what motion language was needed to continue. The AC asked if Commissioners could be notified of any response without entering Executive Session, which GC Gasson responded could happen provided there was no deliberation. GC Gasson provided proposed motion language through the chat and incorporated amendments suggested by Commissioners, AGC Baker and AGC Hubbard.

- Commissioner Roy asked for routine updates and if this was something that could be ratified at the June 6, 2024, public hearing. GC stated she needed to speak with the AGO, but the plaintiff wanted to move quickly and that she would keep commissioners apprised.
- Commissioner Stebbins moved to delegate authority to General Counsel to enter into settlement discussions with Plaintiffs for the purpose of issuing an executive order that would permit the Commission to waive its applicable regulations to permit transportation of marijuana and marijuana products through Massachusetts waters to the counties of Duke's County and Nantucket County, subject to the approval of the Commission.
- Roy seconded the motion.
- The AC took a roll call vote:
 - Commissioner Roy – Yes
 - Commissioner Stebbins – Yes
 - AC Concepcion – Yes
- The Commission unanimously approved the motion.

2) Adjournment 5:30 PM

- Commissioner Roy moved to adjourn.
- Commissioner Stebbins seconded the motion.
- The AC took a roll call vote:
 - Commissioner Roy – Yes
 - Commissioner Stebbins – Yes
 - AC Concepcion – Yes
- The Commission unanimously approved the motion to adjourn.

