

CANNABIS CONTROL COMMISSION

May 23, 2024

1:49 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
- Proposed 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
- Timothy Casey, Chief of Constitutional and Administrative Law Division, Massachusetts Office of the Attorney General
- Erin Fowler, Massachusetts Office of the Attorney General
- 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) introduced the topic and provided a broad overview of the matter. She stated that there were two plaintiffs seeking declaratory relief and a preliminary injunction to enjoin the Commission from preventing or punishing them for transporting Marijuana and Marijuana Products over Massachusetts territorial waters. Timothy Casey, Chief of Constitutional and



Administrative Law Division, Massachusetts Office of the Attorney General (Chief Casey) stated that any opposition would need to be filed by May 31, 2024. He clarified that the role of the Massachusetts Office of the Attorney General (AGO) was as litigation counsel. He explained that his office would defend the Commission in court, but they would not dictate the agency's policy. He discussed areas of policy concern regarding the litigation and the process for producing a response in court. He explained the plaintiff's argument regarding emergency relief and that a Licensee supplier was running out of product. He reviewed the Plaintiff's argument from the court filings and discussed how those claims intersected with G. L. c. 94G.

- The Acting Chair (AC) asked what affect an injunction would have on the broader regulatory framework regarding transporting Marijuana to the islands. Chief Casey responded that the Commission never had to forego regulatory authority to inspect shipments or vehicles and the Commission could work with plaintiff to determine what modes of transport would be acceptable. He noted that if the Commission wanted it may be possible to reach a short-term solution out of court.
- Commissioner Roy asked about case law from other jurisdictions. Chief Casey stated that this was a case of first impression. He was not aware of any similar cases from other states. He noted that other jurisdictions were experimenting with regulatory solutions to similar problems and added that New York, Maine and Hawaii were wrestling with similar issues.
- Commissioner Roy asked about exposure of the Commission. She noted that Cannabis was transported over federal highways and asked if that had been brought up in the lawsuit. Chief Casey responded that it had. He explained that if litigation was chosen as the path forward, he would respond in court that the reason the Commission did not allow transportation over the sea was because it was illegal to transport over federal waters and federal authorities had not approved that activity.
- GC Gasson noted Maine had provisional regulations allowing for water transport. Acting Executive Director Debra Hilton-Creek (AED Hilton-Creek) noted a recent meeting with the Cannabis Regulators Association where the topic of federal agents confiscating Marijuana near the Mexico border was discussed. She asked about how this might affect Licensees on the islands. Chief Casey responded that anyone on the island would have the same claims available to them. He noted that this issue would likely to arise with any retailer on Martha's Vineyard.
- Commissioner Stebbins asked about relevant legal arguments and the Commission's enforcement authority. He noted efforts to address the issue in a recent public meeting where island transportation was discussed and emphasized that he did not want to leave room for people in the illicit market to conduct business on the islands. He asked Chief Casey about potential regulatory resolutions. Chief Casey explained that the Commission may be in a position where it finds a short-term solutions with the plaintiff while keeping an eye on long-term regulatory changes.
- Commissioner Stebbins asked about emergency regulations being drafted in a way that does not run afoul of federal law. Chief Casey stated that he would expect any court order to be careful and to avoid running afoul of federal law. Attorney Fowler stated that if the Commission sought a settlement with the plaintiffs, the settlement



would not necessarily require emergency regulatory changes. GC Gasson proposed using the waiver process for settlement purposes. She explained two options for waivers under 935 Code Mass. Regs. 500.850 as a general waiver or under 935 Code Mass. Regs. 500.110 to waive security requirements.

- Commissioner Roy noted the rescission of the Cole Memorandum and asked about potential issues regarding licensees transporting cannabis over the sea. Chief Casey discussed the Commission's potential exposure to legal liability. Commissioner Roy advocated that Licensee's assume the risk of any legal liability if the board chose to settle the matter. Chief Casey agreed.
- Commissioner Stebbins noted that in the last Public Meeting two topics were discussed regarding island transportation: scheduling a meeting on Martha's Vineyard and prioritizing review of any License applications from the islands. He asked for confirmation that the Commission could still take those actions. Chief Casey responded affirmatively. Commissioner Stebbins asked how to respond about the litigation. Chief Casey stated that Commission should not comment on the litigation.
- GC Gasson noted that the plaintiffs were open to settlement and Attorney Fowler added that they would like to meet as soon as possible.
- AED Hilton Creek asked about patient's interest in the case. Chief Casey discussed the legal implications of the case in the context of medical patients. Commission Stebbins discussed at home cultivation. Chief Casey explained that there was no problem with reminding patients and caregivers about at home cultivation on the island.
- The AC asked if there was an issue with holding a meeting on the island on June 6, 2024, in light of the hearing date. Chief Casey stated that it would not be problematic if it was purely a listening session. Attorney Fowler noted that the plaintiff had initially requested for the hearing to be held on the May 22, 2024. Chief Casey asked if the date for the meeting had been announced. The AC responded that she had planned on discussing it when she returned to the public meeting. Chief Casey stated that it may be unfortunate if they fall on the same day.
- Commissioner Roy asked about next steps. Chief Casey mentioned that the deadline for an opposition was the May 31, 2024, which would need to incorporate the Commission's legal position. He noted that a filing could be prepared for the 31st.
- GC Gasson noted that Commissioners could not meet with the plaintiffs in executive session. The AC stated she needed more time to think about her position. Commissioner Roy asked about the waiver process. The AC suggested scheduling an executive session within the next week to discuss next steps. GC Gasson stated that if there was an executive session the week of the May 27, 2024, it would need to be posted on May 24, 2024. GC Gasson said that she would need to speak with the rest of the Legal team. Commissioner Roy commented that if there was a meeting next week, the AGO would have one day to file their opposition. Chief Casey explained that he would work with GC Gasson to gather information and prepare affidavits. The AC proposed getting a notice out today and scheduling a meeting for Tuesday. Chief Casey stated he would work with GC Gasson on policy documents and staff communications and that he would continue to prepare for litigation.



2) Adjourn & Return to Open Session

- Commissioner Roy moved to return to public session.
- 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 return to public session.

