October XX, 2020

To: Pat Allen, Director of the Oregon Health Authority
Steve Marks, Director of the Oregon Liquor Control Commission

From: Dr. Rachel Knox, Chair
Anthony Taylor, Vice Chair
Oregon Cannabis Commission

Re: Oregon Cannabis Commission Recommendations

The Oregon Cannabis Commission (OCC) is a nine member commission appointed by the Governor and tasked with providing advice to the Oregon Health Authority with respect to the administration of ORS475B.400 to 475B.525; and the Oregon Liquor Control Commission with respect to the administration of ORS475B.010 to 475B.395, as those statutes pertain to or affect registry identification cardholders and primary caregivers.

In 2019 the OCC created three subcommittees to help develop new high priority legislative concepts that will continue to advance the OCC's efforts to advise and help shape an effective and integrated medical marijuana program in Oregon that ensures long term access to therapeutic and affordable cannabis as medicine as defined in ORS 475B.961.

The subcommittees on Governance, Patient Equity, and Research Leadership met monthly to develop recommendations for legislative concepts, agency changes, and to identify additional high priority focus areas.

Oregon Cannabis Commission Recommendations

The first five recommendations below follow from the 2019 Legislative Report to the Legislature.

Recommendation 1: Establish an alternative and stable funding source so OMMP may reduce fees for OMMP participants, and not require medical patients to wholly fund OMMP.
Patient costs to participate in OMMP have become prohibitive for many Oregonians, especially those who are extremely ill, who reside in care facilities, and/or those on low or fixed incomes.

The non-reduced application fee remains the highest in the program's history at $200 a year and is at the highest tier of medical cannabis card application fees in the United States. Other costs, such as the cost for changing a caregiver, grower, or grow site during the year are also high.

OMMP growers must also pay an annual grow site registration fee of $200 per patient to OMMP if they are growing for a patient other than themselves, growing for themselves at a grow site which is not the patient's residence, growing more than 12 plants at the grow site, or

are transferring product to medical processors or medical dispensaries. For a grower growing for the maximum of eight patients, this costs $1,600 per year. In addition to this, each grow site with more than two patients must also pay the annual Cannabis Tracking System (CTS) fee of $480, which OMMP collects and transfers to OLCC. OMMP fees should not operate as deterrents to participation.

This recommendation was made in the Oregon Cannabis Commission HB 2198 Report (January 2019).

Recommendation 2: Amend ORS 475B.791 to expand the definition constituting which licensed medical providers in Oregon may recommend medical cannabis to those who have a primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

Extending the list of providers to include Naturopaths, Nurse Practitioners, and Physician Assistants will modernize statute to reflect common and current medical practices and broaden OMMP patient access to a wider range of providers. This will facilitate improved patient access, for instance, to providers in rural areas where patients are more often served by Nurse Practitioners and Physicians Assistants.

This recommendation was made in the Oregon Cannabis Commission HB 2198 Report (January 2019). Legislation similar to this recommendation was proposed in senate bill 1561 in the 2020 session but progression was halted due to legislative walkouts.

Recommendation 3: Amend the 475B.791(6) definition of "debilitating medical condition" to include any other medical condition or side effect for which the Attending Provider (formerly Attending Physician), in their professional medical opinion, and under their ongoing medical oversight, determines can be addressed with medicinal cannabis.

If the treatment of a medical condition for which a patient uses or wishes to use medicinal cannabis is within the Attending Provider's scope of practice, then the Attending Provider should be permitted to authorize that patient's participation in the OMMP. However, current statute prohibits an Attending Physician's from recommending medicinal cannabis to patients with debilitating conditions not listed in 475B.791(6), but who could otherwise benefit from medical cannabis use. Current statute requires a petitioning process to expand the debilitating medical condition list that in practice is onerous and has not been used. Statute should be changed to grant the Attending Provider the ability to determine the proper medical care for their patient, as is the case in broader medical practice.

This recommendation was made in the Oregon Cannabis Commission HB 2198 Report (January 2019).

Recommendation 4: Establish an independent state reference lab for the cannabis industry to objectively audit and investigate private laboratories and randomly test cannabis products to ensure testing accuracy, consistency, and cannabis product integrity.

A random or audit testing program would further ensure that Oregon's cannabis meets certain standards in packaging and testing and that cannabis testing laboratories are held to legal and ethical standards. Such a program would ensure compliance by investigating laboratory compliance issues, potential lab shopping on the part of producers and wholesalers, manipulation of testing results, and serve as a reference for legal and compliance disputes related to testing, and establish standard reference methods for testing cannabis and cannabis products.

This recommendation was made in the Oregon Cannabis Commission HB 2198 Report (January 2019) Oregon Cannabis Commission proposal for the future governance of the OMMP, adopted January 5, 2020, and Recommendations from the Vaping Public Health Workgroup (August 2020).

Recommendation 5: Establish a centralized database and a centralized data repository for consumer and phytochemical input and set up an Institutional Review Board (IRB) to allow for the publication of anonymized digital health data and operator data.

A centralized database would be useful for 1) auditing and monitoring patient trends and outcomes to benefit the making of evidence-based public health policy surrounding cannabis use in Oregon, and 2) establishing industry standards and best practices. We recommend further the consideration of using blockchain technology for the purposes of verification, validation, and transparency.

This recommendation is a component of the broader recommendation to establish a Cannabis Research Center or Coalition in Oregon, as recommended in the Oregon Cannabis Commission HB 2198 Report (January 2019).

The remaining recommendations require legislative changes for OHA and OLCC.

Recommendation 6: Amend OAR 845-025-1060 to waive or significantly reduce the research certificate fee.

The current fee of $4,750 for a three-year term is prohibitively expensive to research cannabis for the public good, especially wherein sole proprietors or small research organizations wish to pursue simple research projects such as data collection and reporting.

Recommendation 7: Amend OHA Public Health Division's role as outlined on the Cannabis and Your Health webpage as follows to establish a responsibly holistic role of protecting the public health as it pertains to cannabis use:

- [*Monitor cannabis use, attitudes and health effects in Oregon*] **Monitor and routinely report cannabis use, attitudes, and public health outcomes related to cannabis use**
- [*Understand and minimize the negative public health impacts of cannabis use]* **Understand the public health effects of cannabis use to minimize negative outcomes and promote positive ones**
- **Measure and routinely report the impacts of public health interventions around cannabis use, aimed at minimizing negative outcomes and promoting positive ones**
- [*Educate the public about adverse health issues related to cannabis use*] **Educate the public about the known benefits and risks related to cannabis use**
- [*Protect children and vulnerable populations from cannabis exposure" and "Prevent youth cannabis use*] **Protect children and vulnerable populations from cannabis misuse, abuse, and accidental exposure**
- **Understand and integrate traditional cannabis history into public education around cannabis use**
- **Understand and integrate the history of cannabis regulation and prohibition, and its disproportionate impact on communities most impacted by prohibition into public education around cannabis use**
- **Responsibly promote and steward the Oregon Medical Marijuana Program to ensure that Oregonians have long-term access to safe and affordable medicinal cannabis, equal civil rights protections under the law, and patient security**
- **Work with the Oregon Cannabis Commission to maintain a responsive Medical Program based on the most current scientific and regulatory best practices**
- **Ensure that cannabis be treated like other medicines as defined in ORS 475B.785.**

Continued reports of discrimination and instances of institutionalized stigma concerning cannabis use and its legitimacy as medicine adversely impact participants and deter eligible patients from entering the program. OHA perpetuates the systemic bias of cannabis use that views only negative health factors and outcomes, rather than providing a holistic, intellectually honest, and balanced perspective. The public access web site language and content reflect that bias. The adverse impacts of social stigma are well documented in the public health literature. Many OMMP participants are already socially isolated due to disability from debilitating conditions and other factors. In the age of awareness of social equity, the commission has a duty to Oregonians to make every effort to revise the program structure to redress these flaws.

In light of these revisions, it is also recommended that the http://www.staytruetoyou.org/ program be evaluated and appraised against a holistic and evidence-based lens.

Recommendation 8: Amend ORS 475B.816 to eliminate Oregon Medical Marijuana Online System (OMMOS) reporting requirements for grow sites with 12 or fewer plants. Amend applicable rules under OAR 888-008-0630 and delete ORS 475B.816, revise conforming amendments.

This will ease regulatory burdens for very small (12 or fewer plants) grow sites.

Recommendation 9: Revisit essential reporting requirements for state fee collection, product traceability, and other safety issues. Minimal reporting should be required to achieve program requirements. This reduces the role of cost and associated factors requiring added access to technology.

Data collection and reporting requirements occupy critical Internet bandwidth and require sunk costs and levy non-botanical and non-care giving tasks that limit OMMP participation in many sectors and communities. Evidence is lacking that reporting measures function as sold or are optimally configured. Evidence is growing that certain social classes are excluded from program participation because of these requirements (minority, rural, elderly, less educated, and poor people). All digital mandates should offer compensatory equity measures to impacted populations to include grants, internet, or other critical infrastructure access, as well as license cost waivers, training, and direct support.

Recommendation 10: Agencies should revisit record keeping requirements and reporting requirements and how to best ensure accountability for these programs as follows:

- Carefully review all technical requirements.
    - These are the front line of reinforcing social inequities.
- The METRC requirement is not evidence based. A security and Personally Identifiable Information (PII) risk evaluation should be conducted for OMMP.
- Program participants have their PII and health information exposed disproportionally more than adult use consumers and producers or patients in other health programs.
    - The procedures dictated in rules create a cyber vulnerability. Requiring multiple instances of PII instead of more secure authentication is one example.
- Regarding future technology acquisitions, a better understanding of challenges and pitfalls of using self-reporting information systems to gather meaningful analytics and to conduct surveillance and enforcement (like blockchain technology) is strongly recommended.

The costs and requirements levied onto the regulated community and their impacts must be considered to address systemic social equity issues in the "Digital Divide" (Oregon Broadband Advisory Council Recommendations, OBAC, 2018). Furthermore, levying a requirement to use an expensive, commercial system and require digital infrastructure and staff to execute cumbersome data entry creates an economic hurdle that will remove (or has already) most vulnerable growers from the program, further distancing patients from affordable medicine.

This is an especially sensitive social equity issue as those Oregonians with means can purchase their cannabis over the counter in dispensaries anonymously, circumventing enrollment in the OMMP.

Recommendation 11: Amend ORS 475B.825 increasing transfer limits from CTS grow sites into the OLCC retail market.

The transfer limit of 20 pounds per year does not yield enough financial incentive for OMMP growers to participate. Increasing the allowable transfer amount will provide OMMP growers with more access to the recreational market.

Recommendation 12: Amend ORS 475B.895 to allow all OMMP growers using CTS to transfer excess product to any OMMP current cardholder or caregiver with cardholder release. Amend applicable rules.

This will increase patient access to OMMP grower cannabis products and reduce excess cannabis within the grower population.

Recommendation 13: Revisit ORS 475B.810 regarding the need to conduct a criminal record check for OMMP growers.

Criminal records checks exacerbate social inequities, especially across Black, Indigenous, and People of Color (BIPOC) communities. Revisit how criminal records checks are used. This is frequently a social equity problem because of disparate enforcement of drug laws and systemic bias in policing BIPOC and culturally marginalized communities. The Oregon State Health Assessment (2018) provides statistics on arrests and incarceration by race and ethnicity. This shows an up to five times more likely incidence of criminal record in BIPOC communities compared to white communities. OMMP should not perpetuate the systemic bias reflected in our policing and justice system within their own program.

Recommendation 14: Create a new definition in statute that addresses decolonization and honors traditional and indigenous cannabis knowledge, science and medicine.

(#) "Decolonization" means the psychological process of eliminating thinking and knowing that reflects western superiority over traditional and indigenous knowledge, science, and medicine.

a. "Statutory Decolonization" means the process of eliminating statute language that reflects western superiority over traditional and indigenous knowledge, science, and medicine.

Laws around cannabis use must reflect an awareness and inclusion of traditional cannabis knowledge and indigenous cannabis science to ensure a balanced approach to regulating medicinal cannabis that does not perpetuate a position of western superiority and dominance.

Recommendation 15: Create an omnibus cannabis equity bill (e.g., Oregon Health Parity) to remedy large and wide-reaching issues including:

- Revisiting OMMP grow site plant counts overall with particular attention to urban cultivation issues
- Addressing the complexity of OMMP Related Rules

- Amending ORS 475B.797(2)(d) to remove patient residency requirements, create tax exemption and possession limits, and add reciprocity for out of state patients
- Addressing the lack of civil rights protections for OMMP participants

Revisiting OMMP grow site plant counts overall with particular attention to urban cultivation issues

Using plant counts exacerbates social inequities. Plant counts (as opposed to canopy coverage or other metrics) marginalizes urban dwellers, the elderly, and a variety of demographic groups who cannot grow six monster plants. This plant count doesn't comport with how most patients use or need cannabis. Fewer varieties generally require more quantity for patients, as case studies suggest patients consume less quantity with more variety. Hence the rule actually encourages more consumption than without this restriction. Revisit to allow certain growers (urban with limited space or resources) to grow enough to reasonably meet a patient's needs.

Addressing the complexity of OMMP-related rules

- OMMP rules are difficult to decipher.
    - Legislative Statutes and OHA Rules are voluminous, difficult to understand, lack flexibility, and frequently require extra-regulatory, extra-legal work-arounds to meet patient, caregiver, and grower needs.
- Rules are seemingly contradictory, and difficult to follow by most participants, both for patients, producers, and administrators.
- The rules governing grow sites are especially problematic.
- Many OMMP rules concerning grow sites for patients are not based in public health nor Cole memo guidance.
- Revise multi-patient grow sites to reflect current public health, revenue, and law enforcement requirements.

The lens through which rules should be evaluated should be directly and concisely matched to public health requirements. Rules should facilitate and not impede affordable and manageable collective grow sites or any other innovative approach that is safe, sustainable and consistent with the patient service goals of the program.

Rules constraining multi-patient grow sites reinforce social inequity, as marginal patients and growers with a variety of social barriers cannot realistically participate in multi-patient grow sites as currently constructed. Current structure of these rules requires first, obtaining permission from landowners to cultivate for others and creating workarounds to avoid rental agreements that prohibit cannabis in any fashion. Cost of grow site registration, use of a reporting system that is expensive and for those with less access for digital reporting who may not respond in a timely manner and may face loss of grow site. All these barriers facing Oregonians of color, minorities and of populations with lesser means perpetuate stigma, a debilitating condition in its own right and higher barriers for participation that are not easily overcome. The best arrangement for multi-patient grow sites and cannabis distribution must consider safety, economy, and accountability, but should not be overly complicated or

inherently biased. It also fosters poor environmental stewardship to de-incentivize collective farming where it is best suited and promotes less environmentally sustainable practices.

Amending ORS 475B.797(2)(d) to remove patient residency requirements, create tax exemption and possession limits, and add reciprocity for out of state patients

Oregon adopted residency requirements for OMMP patient in 2015 ending access for nearly 6,000 patients who registered primarily because their state of residence did not have a medical program OMMP Residency Analysis (June 2015). This lack of parity is not a compassionate policy. Medical "tourism" is a significant aspect of current healthcare delivery, and Oregon is well positioned to help those who can benefit from cannabis therapeutics, consultation and care. Since this change many more states have adopted medical programs of their own and this should no longer be the issue it once was.

Addressing the lack of civil rights protections for OMMP participants

Construction of the OMMP and OLCC statutes, 475B.020 and 475B.794 and subsequent legislation legitimizes employment and housing discrimination against patients and their support networks. It asserts state sanctioned defiance of federal law but allows anyone in state to use federal law as a pretext for discrimination against patients and their support network. Use of this language in drug reform bills is especially problematic from a social equity and civil rights perspective and should be closely evaluated with change as a goal.

Civil rights protections for OMMP participants are stripped in life activities such as school, tenancy, employment, and access to healthcare, and patient support systems. This is a fundamental impediment to making substantive social equity reforms. It is a dangerous precedent in healthcare to strip participants of their civil rights based solely on their use of a specific state-licensed therapy.

The impact of legal case law ruling in Emerald Steel Fabricators Inc. v. Bureau of Labor and Industries, OR (2010) divorced OMMP patients from their civil rights. The state should seek to protect these patients, especially as they accept their funds in trust as an Oregon public health program.

The OCC mission should be modified to include "protecting the civil rights and public health of patients, medical marijuana support systems, and cannabis consumers." Currently participants in OMMP are stripped of their civil rights and patient protections (CRDPOL-M-3, 2010, Bureau of Labor and Industries). These basic rights are afforded to people using other healthcare therapies. This leaves OMMP participants open to discrimination and puts some of Oregon's most vulnerable citizens in precarious situations with respect to housing, employment and even access to other healthcare. There are widespread reports of civil rights abuses on OMMP participants. OCC is in a unique role to assist in addressing continued problems with discriminatory behaviors and can provide support for this marginalized population. Many OMMP patients are unable to advocate for themselves.

As an example, Oregon's own Bureau of Labor and Industries, Civil Rights Operations Manual, dated 11.4.2010, following on the aforementioned Emerald Steel case, states, "Civil Rights Division will not investigate employment or housing claims of discrimination pertaining to the use of medical marijuana."