

Medical Cannabis Policy Advisory Board Meeting Minutes

Tuesday, October 17, 2:00 pm-5:00 pm

This meeting was held in person and virtually.

This meeting was recorded. An audio copy of this recording can be found on the Utah Public Notice Website (<https://www.utah.gov/pmn/>).

Visit the Board's website for more information on past meeting minutes and agendas (<https://medicalcannabis.utah.gov/resources/medical-cannabis-policy-advisory-board/>).

Attendees

Board members attending: JD Lauritzen, Matthew Page, Nanette Berezhnyy, Desiree Hennessy, Misty Smith, Kent Andersen, Jimmy Higgs, and Dr. Annalise Keen

Board members excused: Susan Jackson

DHHS/UDAF staff attending: Dr. Michelle Hofmann, Richard Oborn, Abigail Hodgson, Trevor Eckhoff, Jeremiah Sniffin, Dr. Brandon Forsyth, Melanie Henderson, and Cody James

Agenda

1. Welcome

Mr. Lauritzen acknowledged that there was a quorum so the meeting could proceed at approximately 2:06pm.

2. Board approval of September 2023 minutes

Mr. Lauritzen asked the board if there were any proposed changes to the September 2023 minutes by the board. There were no changes proposed. Mr. Andersen motioned to approve the minutes and Ms. Hennessy seconded the motion. The board voted unanimously to approve the September 2023 minutes.

3. Board administrative business

Mr. Lauritzen directed the public on how to make public comments virtually and in-person.

4. DHHS and UDAF update

Mr. Oborn described the following updates to board members:

- Gave updates on the new software that The Department of Health and Human Services (DHHS) is implementing.
- Current statistics of the medical cannabis program in Utah.
- Updates on the previous Cannabis Research Review Board's (CRRB) meeting.

Dr. Forsyth gave the following updates to board members:

- Utah Department of Agriculture & Food (UDAF) is implementing a new software project and gave updates on when the software will be live. He stated that this new software will affect how processors, cultivators, and pharmacies will apply for their licenses.

5. DHHS proposed amendments to R383-1 through R383-15, cont.

Mr. Oborn addressed the board on this agenda item that was continued from September's meeting. He updated the board on public comment hearings that DHHS was hosting to get input from the medical cannabis industry and other stakeholders on forthcoming rule changes. He noted that the changes primarily focused on the shifting medical cannabis program responsibilities from DHHS to UDAF which will be formalized in January of 2024. Mr. Oborn also mentioned updates to definitions in R383-1, including adding the definition of a Qualified Medical Provider (QMP) proxy. Finally, Mr. Oborn mentioned updates on the login information protection for the Electronic Verification System (EVS).

The board discussed the following about the presentation:

- The responsibility of regulating Pharmacists in Charge (PICs) will now be the responsibility of UDAF.

6. Pharmacy and courier rules, cont.

Mr. James presented updates on the following UDAF rule changes:

- R68-40 will now be pharmacy rules.
- R68-41 will now be courier rules. Mr. James stated that there were limited changes in the UDAF rule from DHHS rule on couriers, and that the only change included adding definitions to make the rules consistent with other UDAF rules currently in place.
- UDAF combined multiple DHHS rules into two rules. These changes included shifting references from DHHS statutes to UDAF statutes and removing the rule for education.

- R68-14 changes included approval of a walkup window for pharmacies.
- There will be a removal of the business name and logo standards as there are currently references to this in the statutes for medical cannabis.

The board discussed the following about the presentation:

- Changes on how pharmacies, producers, and couriers would get approval for educational events.
- When the UDAF rule changes will go into effect.

7. UDAF intro of fee changes for lab testing and applications.

Ms. Henderson from UDAF shared a [memorandum](#) with the board outlining fee changes for lab testing and applications. She described the various categories of fees and which fees would be increasing. Ms. Henderson discussed why the fee changes are necessary for UDAF to continue to fund their statutory responsibilities while also noting the efforts of UDAF staff to keep fees as affordable as possible to prevent price increases to patients.

The board discussed the following about the presentation:

- The need to keep prices as low as possible for patients, while acknowledging that there would be costs accrued to keep the state departments running.
- The possibility of additional fees in the future.
- The need for UDAF to gather more concrete information on why costs have been raised since the beginning of the program.
- The addition of capital investments for UDAF into their fees and future budget schedule.

DHHS/UDAF staff clarified the following for the board:

- Ms. Henderson clarified how UDAF staff determined the exact amount for fees and the process for justifying budget costs to the legislature.
- Dr. Forsyth discussed that the fees are evaluated each year and have been set since the beginning of the medical cannabis program in Utah.
- Dr. Forsyth mentioned that the cost of cannabinoid testing has gone down since the total number of samples coming into the lab has decreased.
- How many tests are conducted each year.

8. Medical cannabis business tax decoupling, cont.

Mr. Lauritzen stated that the Utah Tax Commission (UTC) was not able to attend the board meeting and have additional work to complete before providing the board with more

information. He was hopeful that more information would be available to present to board members in early November. Mr. Lauritzen also mentioned that he believes UTC will present a tax credit for each type of licensee that would mirror the gross amount of disallowed deductions on the federal level.

The board took the following action on this agenda item:

- Mr. Andersen motioned to table this agenda item. Ms. Berezhnyy seconded the motion. The following votes were taken by the board members in a roll call vote:
 - Mr. Lauritzen: Yea
 - Mr. Page: Nay
 - Ms. Berezhnyy: Yea
 - Ms. Hennessy: Yea
 - Ms. Keen: Yea
 - Mr. Andersen: Yea
 - Mr. Higgs: Yea
 - Dr. Smith: Yea

9. Medical cannabis processor delivery

Mr. Eckhoff presented the following [memorandum](#) to the board which included the following:

- An alternate plan to processor delivery provided by Mrs. Hennessy that introduced the following discussion points:
 - Allowing a processor to establish a website, potentially accessible to patients only, where a patient could see what products are produced and which pharmacies carry their products.
 - Giving patients the ability to subscribe to electronic communication and targeted marketing from a processor.
 - Giving patients the ability to request products from a processor which would be delivered to the patient's pharmacy of choice.

Mr. Eckhoff also presented a Utah Cannabis Association (UCA) [position paper on processor delivery](#) as well as a Utah Patients Coalition (UPC) [alternate proposal to processor delivery](#). He noted a concern that, currently, there is no cap on the number of processors in Utah. Additionally, he stated that a conversation around capping processor licenses is warranted to protect the current market and to prevent outside interests starting processor businesses in Utah.

The board discussed the following about the presentation:

- Ms. Hennessy stated that the Utah legislature is already moving towards a conversation on processors being able to have their products available online and that the only addition to the law this year is to allow educational marketing and the request of a product. She further mentioned that some pharmacies believe that small batch orders will not increase prices significantly, especially if being sent monthly for patients.
- The potential of increased costs to patients of ordering a small bath of product.
- Mr. Lauritzen asked the board if they knew of any processors who felt they were specifically being shut out of pharmacies currently.
 - Mr. Page responded that he could confirm five pharmacies who felt they were being shut out, and Mr. James responded that he could confirm three.
- The fact that patients are the ones who are suffering as a result of the current practices, and that patients should have access to whatever medicine they feel would best help them.
- The amount of pharmacy licenses and whether they should be increased in the state.
- The need for patients to be able to interact with the pharmacists frequently, even when they are getting products from a processor and not a pharmacy.
- Ms. Berezhnyy noted that as a patient, she rarely talks with a pharmacist when she goes into a medical cannabis pharmacy, and that patients don't necessarily need these interactions with pharmacists to be so frequent.
- Dr. Smith commented that there is a need for more education for patients to talk with their pharmacists if and when their other medications are changing.
- Mr. Lauritzen noted that processor delivery brings up a lot of concerns with the pharmacies and that the board should not overlook these concerns.
- The possibilities of who would have access to a processor's website and whether or not to only make websites available to medical cannabis cardholders.

DHHS/UDAF staff clarified the following for the board:

- Mr. Oborn clarified that one of the potential issues that would need to be addressed if processor delivery was allowed, would be determining the end costs of the medical cannabis products.
- Dr. Forsyth stated that with the new software system that will be implemented next year, the options for website security will change drastically.

The public gave the following comments about this agenda item:

- Alyssa Smailes from the UCA asked what processor home delivery is trying to solve for. She noted that she believes the board is moving in the right direction and that UCA supports patient access, but that it needs to be done in a way that is reasonable and feasible.
- Bijan Sakaki from Beehive Farmacy stated the difference between having a name brand product versus off-brand products and that there are comparable products found at most pharmacies. He also stated concerns with issues of cost for ordering small batches of product from processors, and that board members should be conscious of those struggles for pharmacies. He concluded that a challenge pharmacies also currently face is some patients not picking up their online orders or special order products.
- Mindy Madeo from Beehive Farmacy stated that she does not support direct processor delivery. She said that processor delivery would be the equivalent of a pharmaceutical company being able to deliver directly to a patient, and there needs to be checks and balances within the medical cannabis system. Additionally, she stated that processor delivery would create biased pharmacists at processor facilities, because they would be biased in recommending their processor's products. She concluded that the intent of this program is to be a medical cannabis program, and processor delivery would be very close to a recreational program, and that one-on-one meetings with pharmacists are crucial for patients.
- Narith Panh from Dragonfly Wellness commented that the real issue that the board can talk about is supply and demand. He noted that there is artificial supply and demand and that the processor should have the ability to provide information about their products at the very least to improve supply and demand, including processor advertising.
- Nicholas Thompson-Baugh from Empathetix commented that patients have been saying that they have finally found a product that works for them, but then they can't find it. He stated there should be more educational materials coming from processors so that patients can have information about what their products are.
- Chris Jeffery from WholesomeCo Cannabis commented that processors should be able to give education and access to patients so they know where to get the products they want. Processors should be able to communicate with patients and then do affiliate purchasing. He concluded that there should be a demand for a product and believes the program is on the right path.

The board took the following action on this agenda item:

- Ms. Hennessy motioned that the board not approve the language written in HB 72. Mr. Andersen seconded the motion. The following votes were taken by the board members in a roll call vote:
 - Mr. Lauritzen: Yea
 - Mr. Page: Nay
 - Ms. Berezhnyy: Nay
 - Ms. Hennessy: Yea
 - Ms. Keen: Yea
 - Mr. Andersen: Yea
 - Mr. Higgs: Yea
 - Dr. Smith: Yea
- Mr. Page motioned to expand the definition of targeted marketing as currently written to include processors. Mr. Andersen seconded the motion. The following votes were taken by the board members in a roll call vote:
 - Mr. Lauritzen: Yea
 - Mr. Page: Yea
 - Ms. Berezhnyy: Yea
 - Ms. Hennessy: Yea
 - Ms. Keen: Yea
 - Mr. Andersen: Yea
 - Mr. Higgs: Yea
 - Dr. Smith: Yea

10. Medical cannabis pharmacy ownership cap

Mr. Eckhoff presented the following [memorandum](#) to the board. He stated that at a Medical Cannabis Governance Structure Working Group, Representative Ray Ward expressed that the maximum cap for pharmacy ownership should be anything less than thirty-three percent, ensuring that at least 4 businesses would operate pharmacies in Utah. Mr. Eckhoff also stated that if the board did want to recommend an ownership cap, board members would need to consider management agreements between pharmacies.

The board discussed the following about the presentation:

- Whether lawmakers or state entities would have responsibility over expanding the agreed-upon number of pharmacy ownerships.
- Discussion on whether or not to grandfather in Curaleaf and if that would cause Curaleaf to divest.

- Whether a whole fraction of ownership or a percentage of ownership would be allowed.

DHHS/UDAF staff clarified the following for the board:

- Where the program started in regards to pharmacy ownership.

The public gave the following comments about this agenda item:

- Bijan Sakaki from Beehive Farmacy stated that there needs to be a vetting process for people wanting to purchase new pharmacies to check if they have interests in other pharmacies, and that limiting master service agreements and related parties from controlling pharmacies must be considered.
- Narith Panh from Dragonfly Wellness commented that there is a clear difference of goals and strategies between local businesses and multi-state operators. He noted that only people who have a vested interest in Utah should be running our pharmacies.
- Nicholas Thompson-Baugh from Empathetix commented that there should be a limit cap at four so other local actors can have the ability to grow. Additionally, out-of-state businesses are more focused on business growth and not the patient's interests.

The board took the following action on this agenda item:

- Mr. Andersen motioned that medical cannabis pharmacy ownership would be capped at no more than thirty percent of the total available pharmacy licenses. This ownership would include stipulations limiting master service agreements (MSAs) and related parties. In addition, in order for any entity to obtain additional pharmacy ownership, the total market ownership amount would have to equal a whole number. Ms. Berezhnyy seconded the motion. The following votes were taken by the board members in a roll call vote:
 - Mr. Lauritzen: Yea
 - Mr. Page: Nay
 - Ms. Berezhnyy: Yea
 - Ms. Hennessy: Yea
 - Ms. Keen: Yea
 - Mr. Andersen: Yea
 - Mr. Higgs: Yea
 - Dr. Smith: Yea

11. Upcoming meeting agenda

The board discussed the following about the November agenda:

- There may need to be a special meeting earlier in November or moving the November 21st meeting up to early November.

12. Adjourn

Ms. Hennessy motioned to adjourn the meeting and Dr. Smith seconded the motion. The board voted unanimously to end the meeting, and the meeting ended at approximately 4:48pm.

APPROVED