

**Department of Human Services
Oregon Medical Marijuana Program
Advisory Committee on Medical Marijuana**

**Wednesday, December 13, 2006
10:00 am – 2:30 pm
Portland State Office Building
800 NE Oregon St, Ste 140
Portland, OR 97232**

The Oregon Medical Marijuana Program (OMMP) Advisory Committee on Medical Marijuana (ACMM) provides an opportunity for public to discuss administrative issues with the OMMP management.

Meeting called to order at 10:05 am.

WELCOME AND INTRODUCTIONS

The Chair, Sandee Burbank, introduced new attendees with an outline for the ACMM meetings. Ms. Burbank commenced the meeting with introductions of the ACMM: Stormy Ray, Jim Klahr, Leland Berger, Darryl George, DO, Madeline Martinez, Sandee Burbank, Acting Chair, Laird Funk, John Sajo, Todd Dalotto, and Chris Iverson

HANDOUTS: ACMM Order of Business, September 21, 2006 Meeting Minutes, October 23, 2006 Meeting Minutes, Leland Berger's Proposed Legislative Changes, John Sajo's Proposed Motions

PRESENT: David Abboud, Dennis Carver, Aaron Cossel, Mike Dingeman, William Etter, Don Esch, Sheryl Fitzwilliams, Jeff Fortnick, Chris Grorud, Kristen Gustafson, Grant Higginson, Bill Hildebrandt, Jennifer Hiromura, Alice Ivany, Anthony Johnson, Larry Johnson, Neil Larsen, Stephen Nelson, Steve Parsons, Shannon O'Fallon, Xavier Small-Lenart, Jason Sowers, Roger Tower, Janet Usak, Richard Volkman, Jerry Wade, John F Walsh, Darin Watkins, Sonny Watkins, Alicia Williamson

REVIEW OF SEPTEMBER 21, 2006 MINUTES

- The ACMM was asked to review the meeting minutes for corrections or additions. The minutes were passed and deemed approved.

REVIEW OF OCTOBER 23, 2006 MINUTES

- The ACMM was asked to review the meeting minutes for corrections or additions. Alicia Williamson's name, spelling error on page 6, and Mr. Iverson's statement on page 7 were corrected. The minutes with corrections were passed and deemed approved.

OMMP ADMINISTRATIVE REPORTS

- Present for the Administrative Reports were: Aaron Cossel, Lead Law Enforcement Liaison, Christian Grorud, Program Support Manager, Grant Higginson, Administrator for the Office of Community Health and Health Planning, Public Health Division, Jennifer Hiromura, Administrative Specialist, Shannon O'Fallon, Assistant Attorney General with the Department of Justice (DOJ).

Handouts: December 13, 2006 Program Agenda, Workflow Stage Duration, FAQ, Proposed Legislative Draft LC 539, and December 8, 2006 Financial Statement

PROGRAM UPDATE AND STATISTICS

- Mr. Cossel updated the Committee with Program Reports.

Application Timeline

- As of December 1, 2006, the number of cards issued and pending application patients were 14,497 and the number of physicians who have approved patients were 2,439. Since July 1, 2006, there have been 22,277 cards issued for patient, caregiver, and persons responsible for grow site.

Data Entry Backlog

- Currently, the Program has a backlog of eight days for entering new and renewal applications; however, there is no backlog with processing change requests.

L2K Update

- The conversion from the current to the new database has started and the Program with Office of Information Systems (OIS) expects a March 2007 start date.

Staffing

- There are ten full-time Administrative Specialist 1 staff, one full time temporary employee, and one vacancy for a full-time Office Specialist 2 position.

FAQ – Who can use medical marijuana?

- Dr. Higginson informed the Committee of a FAQ the Program is proposing to add to the website and packets that will clarify who can legally use medical marijuana.

Questions and Discussion:

- Dr. Higginson understood the ACMM and Program felt that this is an important issue that needs to be clarified. Ms. O’Fallon clarified the Program’s goal is to provide a clear answer on who is protected with Oregon Medical Marijuana Act (OMMA).
- Mr. Berger motioned the request the Program wait three weeks and consider the input from the Committee regarding this FAQ; Mr. Sajo seconded. Motion passed with general consent, with Dr. George and Ms. Ray abstained. Dr. Higginson consented to allowing the ACMM two weeks to provide suggestions for the FAQ answer. It was agreed the topic will be placed on the next meeting agenda.

PROGRAM FINANCIAL REPORT

- Mr. Grorud explained the Program’s finances using the December 8, 2006 Financial Statement handout. Column C: Projected 7/05 – 6/07 has not changed since the last meeting. Column B: Actual 7/05 – 11/06 represents all changes through November 2006, showing a 24-month period with a 71 % straight-line basis from the budget, revenues about 74%, and services and supplies about 76%. The payroll expenses are about 60% from the projection, but may increase due to new health care benefit packages, general cost of living increase, and the full staffing the Program currently has. Postage and Printing were the major cost change due to large orders of cardstock, envelopes, receipt book, and receiving audio statute and rules. Not on the Financial Statement, the Committee travel costs within expenditures are about \$3,842.
- The cash balance is about \$283,000. Mr. Grorud reminded the Committee the cost of L2K can run about \$181,000 and a good standard is to have two-three months of operating costs available.
- Mr. Grorud was requested at a previous meeting to provide a re-projection of adding food stamps for the reduced fee, the cost per issued registry card, and about how much Oregon Health Plan (OHP) and Supplemental Security Income (SSI) eligible patients are issued cards.
- The general concern with adding food stamps is processing the administrative rule change but he was able to estimate the biannual

impact to be about \$21,480, making a slight reduction. Based on patient registry cards, he is uncertain but estimates about \$60.36, but may decrease by 5% with changes in administrative costs but cannot know until July or August 2007. From June 2006, he estimated patient numbers with the reduced fee about 2,310 are OHP, 152 are SSI, and 58 have both OHP and SSI.

Questions and Discussion:

- Mr. Berger inquired of the cost of rule changes as well as placing a temporary rule. The cost of an administrative rule change is about \$25,000 – 30,000, depending on the number of changes and mailing.
- Ms. O’Fallon explained that when temp rules are issued, notices are bypassed, mail outs still occur before and after, there must be an immediate need, and they last for 180 days and will disappear without a permanent rule in place. Dr. Higginson added the temp rule has to be justified and the Program will still go through the rule changing process to make a permanent rule.
- Mr. Berger motioned the Advisory Committee **recommend** that the Program **promulgate** a rule amending the fee structure to allow those who qualify for food stamps to have the reduced fee, Ms. Martinez seconded. Motion passed with none opposed.

Administrative Reports with ACMM adjourned at 11:04 am

Meeting called to order at 11:17 am.

PROPOSED LEGISLATION DRAFT

- Dr. Higginson provided a background of the legislation progress. The spring of every even year, the Program is asked to do legislative concepts and are not public until it has been accepted by the Department and Governor’s office. The proposed concept goes to legislative council and forwarded to draft and returned before being submitted as a bill. The Legislative Concept 539 (LC 539) was provided at the meeting and will be a Governor’s sponsored bill at the next legislative session. Any amendments will need to go through a legislative hearing process. Dr. Higginson will gather ACMM comments on LC 539 and the Program will sponsor all agreeable amendments.

Questions and Discussion:

- Dr. Higginson suggested the Committee make a recommendation to Dr. Goldberg so that in 2008 the Committee would like to be involved in the preliminary discussions for the legislative concept proposal.
- Ms. Burbank was concerned that many of the issues the Committee has raised in the past were not included with the changes and she inquired about how the issues were chosen. Dr. Higginson explained many of the changes were considered administrative housekeeping issues. The issues that the Program disagrees with and are more controversial were not addressed.

Discussion on Proposals:

- The first proposal, “**The department shall conduct a criminal records check under ORS 181.534 of any person whose name is submitted as a person responsible for a marijuana grow site**” (LC 539 Section 1, (6)(a), p. 2), was added because the Program has responsibility to do a criminal background check but does not have the authority without going through a protected DHS process.
- The Committee requested the Program provide how security is addressed with running background checks and the number of people who have been restricted as persons responsible for a grow site. The Program will update the Committee at the next meeting. Mr. Iverson wishes to discuss the topic of finding an alternate course of doing the criminal background checks at another time.
- The second proposal, the deletion of Section 2, 6(b), is housekeeping as DOJ found the section redundant.
- The third proposal, “[the department may deny an application for the following reasons:] **the applicant has been prohibited by a court order from obtaining a registry identification card**” (LC 539 Section 2, (5)(A)(c), p. 6), was written because the Program has received court orders that are in conflict with the current statute.
- Mr. Berger expressed his concerns with giving a judicial officer the authority to veto a medical decision and questioned why the Program is taking this position. Ms. O’Fallon explained the purpose of the Program is put in a difficult position when a court order is received and the patient still has a valid registry card.
- The Committee requested the Program provide the number of patients where a court order has been received to be updated at the next meeting.

- The fourth proposal requiring renewal medical documentation include **“that the medical use of marijuana may mitigate the symptoms or effects of the person’s debilitating medication condition”** (LC 539 Section 2, (7)(a)(B)(i), p. 7), was written because the issue has been raised to the Program by physicians who feel they are unwillingly being pulled into participation in the program.
- The Committee does not find it necessary for change and the verification letter should suffice.
- The Program wrote the fifth proposal regarding a registry identification cardholder **“whose physician has determined that the medical use of marijuana is contraindicated for the person’s debilitating medical condition** shall return the registry identification card to the department within seven calendar days of notification of the diagnosis or **notification of the contraindication”** (LC 539 Section 2, (8), p. 7).
- The Committee would not be opposed to this, but feels patients should have a 120-day grace period to seek a new physician and would like this written in the statute and the administrative rule for both no longer having a debilitating medical condition or contraindication. Dr. Higginson will consider this and get second opinions on the timeframe for establishing a physician and patient relationship.
- The sixth proposal, **“The Department shall revoke the registry identification card of a cardholder if a court has issued an order that prohibits the cardholder from participating in the medical use of marijuana or otherwise participating in the OMMP... The cardholder shall return the registry identification card to the department within seven calendar days of notification of the revocation. If the cardholder is a patient, the patient shall return the patient’s card and all other associated OMMP cards”** (LC 539 Section 2, (10) p. 8), was written by the Program to ensure card issuance, suspension, and/or renewal is consistent with a court order when such an order prohibits a cardholder from participating in the OMMP.
- The seventh proposal, deletion of Section 3, (1)(e), p. 8, was to clarify the ambiguity of grow site and grow site registration.

Motions on Proposals:

- Mr. Berger moved the Committee to notify the Governor of the Committee’s objections the Department’s proposals.

- Mr. Berger motioned the Committee to oppose Section 1 as currently drafted to the Governor, Mr. Funk seconded; four members voted in favor, six opposed. Motion did not pass.
- Mr. Berger motioned the Committee to oppose portions of Section 2, (7)(a)(B)(i) as current drafted which relate to renewal medical documentation (p. 7), Mr. Funk seconded; four members voted in favor, six opposed. Motion did not pass.
- Mr. Berger motioned the Committee to oppose portions of Section 2 regarding court orders on p. 6 and 8 as currently drafted, Mr. Funk second; six members voted in favor, four opposed. Motion passed.
- Ms. Burbank updated the Committee on the *Domino Effect* and communication with Stephanie Soares Pump, Vice Chair of the Governor's Council on Alcohol and Drug Abuse Program. A meeting has yet to occur and Ms. Burbank has not received follow-up regarding the discussed topics, such as the \$50 fee increase.
- Mr. Sajo requested the Program provide the Committee with information regarding how many multiple-patient grow sites the Program currently has. Mr. Cossel will research the availability of the current database in providing this information and will update the Committee at a later time.

Proposed Legislation Draft with ACMM adjourned at 12:20 pm.

Meeting called to order at 1:01 pm.

LEGISLATION

- Mr. Sajo motioned the Committee to recommend Oregon Legislature to modify OMMA requiring the Department to notify caregivers and persons responsible for grow site with patient removal, Mr. Iverson seconded; nine members voted in favor, one opposed. Motion passed.
- Mr. Sajo reviewed the June 2006 hearing before Senator Morissette and Kruse and reminded the ACMM is expected to provide advice upon all proposals relating to medical marijuana.

Legislative Changes

- Mr. Berger presented his proposed legislative changes to the Committee. He motioned the Committee to recommend these changes to OMMA.
- His recommended amendments to the definitions in ORS 475.302, subsection 2 (c) and subsection 3 were seconded by Mr. Funk; nine

members voted in favor, none opposed. Motion passed with one abstained vote.

- Mr. Berger recommended amending the designated primary caregiver definition in ORS 475.302 subsection 5, seconded by Mr. Funk; eight members voted in favor, one opposed; motion passed with one abstained.
- Mr. Berger recommended amending the usable marijuana definition in ORS 475.302 subsection 11, seconded by Mr. Sajo; eight members voted in favor, one opposed. Motion passed with one abstained vote.
- Mr. Berger recommended amendment to ORS 475.304 subsection 4, creating a Class A violation for failure to post grow site registration cards and also clarifying failure to post should not be a reason to seize plants, Mr. Funk seconded; nine members voted in favor, none opposed. Motion passed with one abstained vote.
- Mr. Berger recommended amendment to ORS 475.306 subsection 2, includes transporting marijuana plants, clarification that failure to possess registry card while transporting is a Class A violation and should not be basis for seizure of medical marijuana or marijuana plants, Mr. Funk seconded; nine members voted in favor, none opposed. Motion passed with one abstained vote.
- Mr. Berger's proposal to delete language in ORS 475.306 subsection 3 was amended to state, "The Department of Human Services shall define by rule when a marijuana plants is mature and when it is immature. The rule shall provide that a plant that has no flowers is a seedling or a start and is not a mature plant," was seconded by Mr. Funk; eight members voted in favor, one opposed; motion passed with one abstained vote.
- Mr. Berger recommended amendment to ORS 475.309 to add subsection c, Mr. Funk seconded; four members voted in favor, five opposed. Motion failed with one abstained vote. The Committee discussed alternatives and would like to amend language in the proposal to include registry identification card holders to include caregivers and persons responsible for grow site. Mr. Berger motioned the Committee with the amended language, registry identification card holder, to ORS 475.309 to add subsection c, Mr. Funk seconded; nine members voted in favor, none opposed. Motion passed with one abstained vote.
- Mr. Berger recommended adding language to ORS 475.312 subsection 2 allowing patients' protection in medical facilities in providing medicine to the patient, Mr. Funk seconded. Nine members voted in favor, none opposed. Motion passed with one abstained vote.

- Mr. Berger recommended amendment to ORS 475.319 subsection 3 for affirmative defense whether the person has an OMMP card or not, Mr. Funk seconded; nine members voted in favor, none opposed. Motion passed with one abstained vote.
- Mr. Berger recommended addition to ORS 475.324 to address confiscation abuse from Law Enforcement officer(s), he further amended his recommendation replacing “this statute” with “this section”, Mr. Funk seconded; eight voted in favor, one opposed. Motion passed with one abstained vote.
- Mr. Berger recommended two changes to ORS 475.331. The first regarding subsection b, provides incentive to Law Enforcement to verify if a location is a registered grow site before seizure, Mr. Funk seconded; eight voted in favor, none opposed. Motion passed with two abstained votes.
- The second recommended change to ORS 475.331 subsection 3 relates to releasing or using identifying information for purposes other than verification was amended to state “willful violation of this section shall result in the dismissal of any charges initiated due to the violation and shall subject the violating Law Enforcement officer’s department to liquidated damages of \$10,000,” seconded by Dr. George; nine members voted in favor, none against. Motion passed with one abstained. The Committee discussed this section and found that violation of Health Insurance Portability and Accountability Act (HIPAA) should result in a fine of around \$10,000. Ms. Ray cautioned the Committee there is no random figure for HIPAA violation due to appropriate fees and structure involved.

Legislation with ACMM adjourned at 2:24 pm.

Meeting called to order at 2:34 pm.

PUBLIC ANNOUNCEMENTS AND COMMENT

- Sheryl Fitzwilliams shared with the Committee problems she has encountered with medical marijuana, she feels the State and police departments do not protect patients and feels there is no resource for patients. Ms. Burbank encouraged Ms. Fitzwilliams to submit her comments in writing to the ACMM.
- Darin Watkins, Mercy Center, commented about listing grow sites on registry identification cards and recommends adding Post Traumatic

Stress Disorder (PTSD) as a qualifying medical condition. Mr. Berger informed him of Ed Glick's law suit in Benton County to add PTSD and other psychiatric conditions.

- Jason Sowers announced this as his first meeting in Oregon, his discontent with Law Enforcement, and agrees with the proposed changes.
- Don Esch was bothered by weapons at the meeting and included he would support Voter Power's proposal for legal dispensaries and supports majority of proposed changes.
- Lex stated that 12 inches has been the worse thing to happen to the Program, his issues with Law Enforcement, feels the dispensaries in Canada are successful and safe, and was pleased with changes proposed in the meeting.
- Cat Koehn suggested an educational video be produced due to problems caused by misconception of the Program and recommended the ACMM consider public education and funding for this. She applauded and thanked the Committee's amendments.
- Anthony Johnson stated there is a problem with lack of access to medicine and encouraged the ACMM to do all possible to increase access.
- Jerry Wade, Stormy Ray Cardholder's Foundation, encouraged the Program to make sure it is the signing physician that can contraindicate the original statement with explanation to the contraindication and spoke about the misunderstanding of the 12 inch rule.
- Erin read aloud her poem.
- Mr. Funk motioned the Committee for the Program to arrange a January special meeting to finish legislative changes, Mr. Iverson seconded; nine members voted in favor, one opposed. Motion passed with one abstained.

Meeting adjourned at 3:01 pm.

Respectfully submitted by Jennifer Hiromura