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TO: The Honorable Ginny Burdick, Co-Chair
The Honorable Ann Lininger, Co-Chair
Joint Committee on Implementing Measure 91

FROM: Lynne Saxton, Director
Oregon Health Authority

Subject: SB 844

Co-Chair Burdick, Co-Chair Lininger, and members of the committee, I am Lynne Saxton, the Director the Oregon Health Authority. I am joined by Priscilla Lewis, Deputy Director of the Public Health Division and Steve Wagner, Administrator for the Center for Health Protection in the Public Health Division. We are here today to provide information on SB 844 and regulation of medical marijuana. OHA supports the goals of SB 844, which works to ensure that the medical marijuana market is sensibly and responsibly regulated. OHA is committed to ensuring availability of safe medical marijuana products for those under a physician's recommendation. I also want to assure a level playing field for the emerging retail market so that small businesses can succeed.

We have learned from other states that clear safeguards are needed so that medical marijuana does not become a source for an unregulated black market. As amended, this bill establishes a path toward this goal. However, this bill will not fully achieve its intended goals and will not allow OHA to efficiently and effectively identify diversion risks in the supply chain. This could put Oregon at risk of violation of the Cole memo.

What I will talk to you about today will be in three parts:

Part 1: How OHA regulates medical marijuana today

Part 2: How OHA will implement SB 844, as amended

Part 3: What additional steps are needed to achieve the goals of SB 844

Part 1: How OHA regulates medical marijuana today

The Oregon Medical Marijuana Program (OMMP) is a state registry program within the Public Health Division of OHA. OHA's role is to administer the Oregon Medical Marijuana Act which was approved by Oregon voters in November 1998.

Under the Act, Public Health is responsible for issuing medical marijuana cards to individuals who, according to a physician, have a qualifying medical condition that the use of medical marijuana may lessen or relieve the symptoms or effects of that condition. The conditions for which an individual can qualify for a medical marijuana card are specifically outlined in the Medical Marijuana Act and may be expanded upon by rule.

Under current law, OHA does not have authority to evaluate the medical practices of physicians that recommend marijuana for their patients. However, OHA has clarified through rule, that physicians treating 450 or more medical marijuana patients must provide evidence that they are the attending physician for a condition as required by statute.

Current law also limits OHA's role with growers of medical marijuana. Once a patient receives a card from OHA, they may decide to grow for themselves, or designate an individual 18 years or older to act as a grower. OHA's only role is to conduct a criminal background check on all designated growers. OHA does not have any authority to inspect, regulate or interact with medical marijuana growers or track the movement of marijuana products.

In 2013, the legislature adopted a law (HB 3460) sponsored by Rep. Buckley and Sen. Prozanski which required OHA to establish rules for the establishment of medical marijuana dispensaries in the state. At that time an estimated 100-300 dispensaries were operating illegally statewide. The intent of the legislation was to reduce black market diversion, establish patient safety standards, and comply with the federal guidelines regarding marijuana enforcement enumerated in the Cole memo. OHA is required to inspect dispensaries annually to ensure compliance with the law. Program staff may also visit dispensaries at any time and assess compliance. Inspections are unannounced.

Authority granted to OHA allows us to require that products leave dispensaries in child resistant packaging that is not attractive to youth and carries a noticeable warning. OHA also requires testing of products and labeling to identify THC and cannabinoid content and ensure that pesticides, molds and mildew are not present in the product. Because OHA has no authority over the laboratories, the program cannot currently assure the quality of the testing.

Part 2: How OHA will implement SB 844

OHA recognizes the importance of the elements of SB 844 and is ready to implement them. These important components include:

- **Grow Site Registry:** Creates a medical marijuana grow site registration system and allows OHA to perform inspections at licensed grow sites, processing sites, and laboratories;
- **Processing Site Registry:** Creates a marijuana processing site registration system to track and regulate the processing of marijuana into products, concentrates and extracts;
- **Product Tracking:** Creates and maintain a database of information related to production of marijuana at a grow site, processing of marijuana at a processing site, and transfer of product throughout the distribution chain;
- **Laboratory Accreditation/Licensing:** Establishes a licensing and accreditation program for laboratories that conduct testing of recreational and medical marijuana items;
- **Production Limits:** Limits the amount of marijuana and plants that may be produced at a given grow site address;
- **Packaging Standards:** Provides OHA with the responsibility for rules that define standards for packaging and labeling of all marijuana items.

OHA welcomes having an expanded role in the public health regulation of medical marijuana from the grow site to retail. Once enacted, OHA would hire the correct number and type of inspectors for grow sites and laboratories and work quickly to ensure that rules are established to provide the necessary guidance to the new regulated community and reduce risk to public health and safety. We will also hire staff to monitor and analyze data and develop systems on how to identify diversion risks in the system.

OHA understands and shares the committee's interest in ensuring that the medical marijuana market does not become a source for black market marijuana. However, while SB 844 is well intended, we believe there are several issues that will limit our ability to accomplish the intended goals of the legislation.

Concern 1: OHA is required to track the amount of “usable marijuana” that is transferred 1) from grower to processing site, 2) from processing site to dispensary, 3) from dispensary to cardholder. However, under SB 844, medical marijuana growers are only required to submit information to OHA on product transfers on a monthly basis. Monthly reporting will not provide the information necessary to actually “track” the amount of marijuana that is present in the system and could allow the possibility for significant

diversion. In order to successfully reduce diversion, OHA will need the ability to track inventory and transfer of marijuana with equal visibility to the retail seed-to-sale system.

Concern 2: There are currently no possession limits for medical marijuana card holders. We believe that by not having possession limits that a system would be created where medical marijuana cardholders could become the source for black market marijuana sales.

Concern 3: Medical marijuana processors under SB 844 are allowed to transfer any amount of marijuana to any patient, caregiver or dispensary without limitation. We believe that this provides the opportunity for processors to become, unlicensed and unregulated distributors (i.e. while licensed as a processor, they would not be licensed for the dispensary like activity). (See: Page 33, lines 24-28, Sec. 13)

Concern 4: We also have numerous concerns around commercial kitchen regulation. While local public health departments regulate restaurants, OHA does not have the expertise in regulation of food processing sites or commercial kitchens. While we understand the committee's concerns around too many state regulators impacting industry, it is necessary to rely on the technical expertise of the Department of Agriculture (ODA). Just as a complex industry relies on specialists, complex regulation and health protection requires specialists.

Additionally, by only including regulation requirements for processors using edibles, a processor or commercial kitchen who makes concentrates or extracts may do so in a facility that has not been inspected for health and safety standards.

Overall concern: We risk creating separate and unequal regulatory systems with an expectation of equivalent oversight and similar outcomes.

Part 3: What additional steps are needed to achieve the goals of SB 844

As I shared earlier, OHA fully supports the goals of SB 844 and believes that there are additional steps that can be taken to ensure that the medical marijuana market does not become a source for black market marijuana sales in Oregon. These potential steps include:

- OHA could be given the authority to collect data on real-time, point of transfer reporting and recording of medical marijuana transfers. This real-time reporting would help us ensure that there is integrity in the system and allow us to better identify weak points for diversion of product into the unregulated black markets. One tool that is available is to track the product from seed to store by bar code or RFID tracking tools.

- Reasonable possession limits could be established for medical marijuana card holders.
- Medical marijuana processors should be limited in the amount of product that they can transfer, limited in the circumstances in which they can transfer products, and be required to register as a dispensary to distribute products to card holders. Further, it needs to be made clear how processors receive flowers for processing, as all medical marijuana is the property of the card holder.
- ODA needs to have the authority to conduct food safety inspection of edible marijuana production. The requirements that commercial kitchens and processors be regulated and the state agency that should regulate them should be clearly stated in the law.

I appreciate this committee addressing this issue and thank you for the opportunity to testify today. I am happy to answer any questions you may have.