

To the Joint Committee on Marijuana Regulation
Re: SB 1057 and HB 2198, and related proposals
For the Record

The following is relevant to both SB 1057 and HB 2198, as well as the topic of legalization and the regulatory framework as a whole.

I have been involved with this process since the beginning. Before the beginning, really. As a member of the Oregon Cannabis Industry Association (OCIA) and a founder of the Salem chapter (SCIA) well before M91, and a medical program participant since advocating for M67 back in 1997. I've seen history being written from the inside.

I have also had the privilege of serving on the OLCC Licensing, Compliance and Enforcement Committee (LCE) helping draft the rules that were to govern implementation under M91, as well as being the appointed representative of cannabis by the Governor's office on the SB 844 implementation task force.

As we have deliberated the many facets of legalizing and regulating this plant my voice was heard often. But, unfortunately, often ignored. The following are cautionary tales derived primarily from my experience with LCE and the state Department of Justice (DoJ).

During the process I brought to the table for discussion many items I know from years of involvement with this plant in Oregon. Some of my statements were disregarded by the OLCC, DoJ, and OHA/OMMP. As a result, you have heard many apologies from their representatives when their numbers were all wrong for 18 months. I will highlight some of the root causes here, and how this inaccurate information could have been avoided, as well as tying this in to future plans.

(I'm going to use rough numbers here for simplicity. They adequately illustrate the shortcomings.) During LCE discussion, originally it was supposed that the number of adult users of cannabis was around 150,000 in Oregon. I stated that it was closer to 750,000, and that ultimately medical consumption would be determined to be about 1/8 of the total retail market. This information was initially regarded skeptically, then dismissed, then proven correct.

The OLCC anticipated 200 processor licensees for Oregon. I articulated that they would need to license over 300 in the first year. I was told I was "making up numbers" and that their numbers were "made up by real actuarials". They stuck with this unrealistically low number until having to acknowledge that there were in excess of 300 initial applicants.

I told the State that there would be more than double the number of grow-site (producer) applications than they expected when looking at initial projections. Again I was told the budget was based on expert numbers. Again the 'experts' were wrong, and the number very closely mirrored my initial estimates.

I cautioned that twice as many inspectors would be required, and that the base salary should be 10% higher to gain the best people for the job. We are now behind on inspections with applicants waiting two months to be scheduled for an inspector's visit for licensing. This is all a matter of record.

I don't have a crystal ball, and I don't claim to know the future. But history has an interesting habit of proving me right. I do my due diligence before making claims, and as a result, I have not deviated

from any of the positions I have taken over the time you have known me. There are many other examples, but the above will suffice for setting the stage for my following statements.

When the legislature made grandfathering set at 1/1/2015, thousands of small medical growers, including myself, had to release patients. This was because even though we had the cards required for grandfathering during the 2015 season, the legislature went back in history to change the rules instead of making 1/1/2016 the (logical) effective date for grandfathering medical growers. Sites like my small farm which naturally gained or shed cardholders over time were forced into a smaller, more restrictive system. This was a violation of the voters' intent as expressed by support of M91.

The OMMP continued to gain new participants after M91 passed, as I predicted. Until the new grower fees of \$200 per card put a damper on participation. Charging excessive fees without providing a service to the applicant does not prove that there were too many people in the OMMP. It does prove, however, that the 40% of low income cardholders that receive merit based reduced card fees are not able to sustain any additional costs associated with their medication of choice.

New restrictions on production for small medical farmers requiring them to enter the METRC system will have a financial impact on the Oregon cannabis budgets. Each time the plant limit is cut in half the cost of regulation roughly doubles, and the return on investment is cut in half. Going from over 48 plant gardens under METRC to over 24 plant gardens on METRC roughly doubles the number of gardens being tracked, but does not add significantly to the number of plants actually being tracked because the individual farms are smaller. This happens again, and again is magnified, by putting all gardens over 12 plants into METRC reporting. 7 plant gardens don't resemble 7000 plant farms, and Oregon doesn't regulate small gardens the way that commercial farms are regulated into commerce for any other farm crop.

Parity and equality in regulation is something we should strive for as we normalize cannabis in Oregon. In fact it is required in Oregon law from M67 through M91 including our hemp rules between.

During our deliberations in LCE, the DoJ and OLCC agreed that limiting the number of immature plants for medical producers would likely be illegal when the number of immature plants for OLCC producers remained unlimited. I have not seen any evidence to the contrary since, and do not understand why the Joint Committee is now recommending going to a 12 plant immature count for medical producers (per card). This is in fact more restrictive than the 18 plant per card limit that was in place immediately prior to immature plant restrictions being lifted. This excessive restriction will have the tendency to make otherwise law abiding participants in the medical program in violation of the law as they deal with immature males (which have no value, and are disposed of when they are 'sexed'), and poor performing, weak starts which are also composted in favor of the "6 best" from a given seed or clone group. This last lot is the only one of value, and under METRC for OLCC producers is the only group for which tracking has any value or significance for the State or producer.

Please do not roll back legalization to pre M91 levels for the handfull of OMMP participants that will remain regardless of how the state handles the delegation of duties for cannabis regulation between the various agencies being discussed. It's not only immoral and unethical, but also likely illegal.

The OHA tracking system has never worked correctly, and has not been implemented as required. Growers with 8 cards have 2 to 8 accounts for OHA reporting currently. These accounts were intended to be a single account for which the reporting was to be done by the PRMG (person responsible for marijuana grow site). This protocol to make an efficient reporting system has not been implemented,

and is unnecessarily difficult for the grower(s) remaining at these small medical gardens.

In this sense, METRC could be an easier system for these growers to comply with and adapt to (even though the seed to sale tracking system is an unenforceable joke). The most unfortunate part of this narrative is that the only reason METRC looks even vaguely reasonable is that the legislature has not held OHA accountable for failing to live up to their mandates yet again.

Another clear cut case of OHA failing to live up to its mandates is the failure to hire ORELAP employees last year. Due to a lack of inspectors, even though I understand there was a budget for them, lab accreditation is woefully behind. This led to further difficulties in implementing OLCC and OMMP sales in a timely and efficient manner as the early sales program phased out at the beginning of 2017.

I was there when the representative of Franwell, the company that owns the METRC software, first set foot on an outdoor cannabis farm in 2016. He was surprised to say the least, because he had only seen cannabis cultivation indoors up to that point. And was the first to admit that METRC was not designed for agriculture in the conventional sense, the way that we apply it as SunGrowers and small family farms.

Even now OLCC is just scheduling rulemaking for food producers. The OHA is taking yet another look at what appropriate lab standards are, and pesticides and appropriate testing for different types of products is being debated. Much of this is caused by artificial deadlines imposed on this industry by both the agencies and the legislature. This has led to a shortage of high value, high demand products available to adult use consumers and OMMP patients alike.

This doesn't have to be difficult. But part of the process makes it difficult if not impossible to have effective implementation on the timeline allowed. One difficulty here is that the timeline was based on unrealistic numbers projected by the "real actuarials". The other difficulty is that the State, especially through the DoJ involvement in the OLCC administrative process, reserved veto power over any recommendations made by its committees. This meant that similarly to the OHA ignoring the advice of the Advisory Committee on Medical Marijuana, the OLCC was able to ignore the advice being given by cannabis business participants on their committees.

And back to METRC again, the number of plants for an equal number of growers between 24-48 plants versus 48-96 plants is roughly half. The same phenomenon occurs when tracking growsites with 12-24 plants. Although the number of growers is roughly equal, the number of plants being accounted for drops by half again.

There is a good argument to be made here that there is a significant cost incurred in tracking an ever decreasing plant count. Although compliance with the 'Cole Memo' as Oregon understands it is of paramount importance, compliance with our own laws is equally important to compliance with the memo as a whole. This cannot be overstated.

There is also a good argument to be made that at the 48 plant limit, with METRC tracking, the product of these small medical producers is appropriately introduced into commerce through the same OLCC regulated stores that commercial OLCC licensees have access to. In fact, the only incentive for small producers to adhere to this structure is the allowance into commerce of all plants tracked under the OLCC mandated system. This logic can similarly apply to grows above 24 plants that desire access to the retail market here in Oregon (although with greatly reduced market impact and a similar cost of

administration). At this point the law of diminishing returns has certainly kicked in. Small medical growers, 24 plants and under, are normally growing for themselves and their neighbors. As such they may not have an interest in providing into Oregon's stores beyond the annual transfer limits being proposed. I will assert that they should be allowed to continue in their current fashion without further burden of regulation. If smaller growers are inclined to participate in commerce, then the law should logically allow them to do so without requiring them to use a market based system if they are not engaged in the marketplace.

I would strongly recommend that any grower required to use METRC, or any other state mandated system, be allowed the same access into commerce as all other participants in the tracking system. If it is in fact Oregon's desire to contain all of our production for distribution within our borders, the only logical way to accomplish this end is allowing access to a robust retail market here by all of the participants.

This is where the 'sunrise' provisions come into the conversation. The hastened implementation schedule is guaranteed to eject growers from the system that would prefer to participate. Knowing from past mistakes that OLCC, or any other agency charged with the duty, will not be able to complete the task in the time frame allowed, I would ask that the sunrise on provisions that further modify the OMMP be delayed to become effective 1/1/2019. This would allow the queue of early transition applications to get in line and be approved in a timely fashion. Considering the anticipated delays in approval of new licenses and acceptance into the new tracking system this may indeed be the only way to ensure the highest degree of compliance with our own requirements.

Throughout this entire process the "interest of public health and safety" has been a constant. So has the concept of "Cole compliance". The needs of the State in implementation have also been a focus, although the DoJ position being more transient, these are not always as clear.

Returning the focus to growsites that are 12+, 24+ or 48+ plants, under M67 these were only regulated by cards per grower that the site could sustain. The produce went directly to patients, with surplus going into OMMP dispensaries. These numbered over 300 at the end of the period which the recent State Police report which is so much discussed covers. Since then the dispensaries numbered over 400 at the implementation of early sales, and now the medical only OMMP dispensaries number is well under 100 and falling while the number of OLCC retail outlets is over 300 and growing. Clearly implementation of M91 under HB 3400 and SB 1598 especially has impacted the medical program here again.

If the interest of Oregon is as stated, to keep our product in the state, then excluding small producers from this marketplace is the cause of and not the solution to undesired diversion. At whichever point the legislature chooses to enforce tracking again all product tracked must have a direct path to our market.

And about that police report... Considering that over the period it covers, the number of dispensaries roughly doubled, and that considering under the early sales program the safe access points to the adult use market increased by about half again, before the report was even published it was outdated and no longer relevant to the cannabis economy in Oregon. I will not argue that some diversion occurs. But considering what we are now documenting at the retail level, and the nature of production in Oregon, we are doing a better job now of containing our produce than under the restrictions that were prohibition.

As I have stated in committee: Rules that are easier to follow are easier to comply with. Rules that are easier to comply with have both a higher rate of compliance and a lower cost of enforcement. Both high voluntary compliance rates and reduced enforcement costs are in the interest of Oregon. This is more relevant now than ever in the face of uncertain federal regulation.

In an attempt to keep this brief, I will conclude with the following: The cornerstone of legalization at this date in history is the establishment and maintenance of a robust medical program. This is the case in all adult use legal states now. Medical patients are exercising their right to choose the medication that they feel is right for their body. Due to the fact that so many pharmaceuticals are subsidized and cannabinoid therapy is not, the voluntary philanthropy of many medical producers has been part of the equation since 1998 in law. This has been a huge cost savings to Oregon and the OHP at the same time that it has improved the quality and duration of life for individual Oregonians preferring this method of therapy. Further restrictions to the OMMP are also subject to the law of unintended consequences. Please do not conflate the 'recreational' market with responsible adult users treating their own maladies as they see fit – with or without the permission of Oregon to self medicate with a registry I.D.card. Please consider the implications of bringing people in to or excluding them from access to the legal, regulated marketplace in Oregon. Looking at our history of success and failures it is clearly difficult to make a case for OHA continuing to administer the OMMP. Indeed the best case is made by the county opt out regulations for OLCC producers. Establish an effective mechanism with enough time for a smooth transition like the OCC currently on the table or the OCRI as recommended by the 844 task force.

I'll borrow some here from Larry Arn, President of Hillsdale College, in a presentation that he made on December 2, 2016 at the Allan P. Kirby Jr. Center for Constitutional studies and citizenship in Washington D.C. Although I have applied his words to this subject, the message remains the same, and can be found in it's original version at hillsdale.edu in vol. 45 # 12 of 'Imprimis':

Laws are made now chiefly by regulatory agencies that combine in themselves all three powers of government. Every institution in society is in principal subject to comprehensive regulation. Every employer, school, clubs, and family life itself are now the subject of rules too complex for the lay person to grasp. These rules are not always enforced, nor can they be, but Americans sense that they better be looking over their shoulders, careful of what they say.

This has changed the way we live. Compliance increasingly replaces law abidingness as the public goal. Laws, the founders held, must be simple, few, and constant. Then we may all know what they are, live under them, and help to enforce them. This makes us equal, ruler and ruled. It means we do not quail before the forces of law. We are the forces of the law.

Compliance, by contrast, means adapting constantly to changing and complex instructions from central authorities, and it means the employment of specialists to interpret the regulations and make sure others conform. In addition to this, whole populations live in long term dependence on the government. It means the government is separate from the people.

This is the least that must be considered to remain in compliance with Cole, with our own rules and regulations, and to be compassionate to our fellow Oregonians and responsible stewards of our land, ourselves, and our God given resources .

“Pioneer” Pete Gendron