



**Marijuana Control Board
Meeting Minutes
August 15, 2017
Telephonic Meeting**

Board Members Present:

Peter Mlynarik, Public Safety Member, Chair
Mark Springer, Rural Member
Brandon Emmett, Industry Member
Loren Jones, Public Health Member
Nick Miller, Industry Member

Staff Members Present:

Erika McConnell, Director
Sarah Oates, Program Coordinator
James Hoelscher, Enforcement Supervisor

Legal Counsel Present:

Harriet Milks, Assistant Attorney General

Call to Order

11:01am

Director's Brief

11:03am

Erika McConnell states that the advertising regulations under 3 AAC 306.360(e) require that any marijuana advertisement include five warning statements. She informs the Board that an advisory notice was sent out to all marijuana retail licensees on August 7, 2017, that reminded licensees of this requirement and stating that the requirement also applies to advertisements for the retail store itself. She states that staff is seeking guidance from the Board on these issues.

Enforcement Brief

11:06am

James Hoelscher speaks about some of the examples provided with the Board memo, including a marijuana leaf in an advertisement, and asks what would be considered to be an advertisement for purposes of the requirements set forth in 3 AAC 306.360(e). He raises concerns about establishments using a green cross, and asks for guidance regarding apparel.

Board Discussion

11:10am

Peter Mlynarik states that an advertisement for a retail store is obviously considered to be an advertisement for marijuana.

Nick Miller states that the Board saw proposed language to add definitions of “advertisement” and “logo” to the regulations at the February 2017 meeting, but there was no motion to pursue the regulation project. He states that this shows that the Board’s intent was not consistent with what went out in the advisory notice and that the notice was overreaching. He reads for the record draft language that the Board reviewed in February.

Peter Mlynarik states that it is apparent that some of these ads for the retail stores are clearly ads for marijuana and should have the warnings.

Brandon Emmett states that judging from the language that was presented and reading the minutes, the staff’s interpretation is too broad. He said that having the warning language everywhere only serves to scare the public away.

Harriet Milks states that at the meeting on May 15, 2017, the publicly-noticed Board packet included a compilation of what other states are doing, and that Colorado and Oregon’s laws state that an advertisement would include those for the retail establishments themselves. She states that the Board ought to consider whether the store would exist without marijuana.

Erika McConnell states that there is an open regulation project that would move this section out from the retail marijuana stores section of the regulations and into Article 7, which would make it applicable to all license types. She adds that until that regulation change is adopted, the staff needs guidance regarding the regulations as they exist today.

Mark Springer states that he looked at the advertisements in the memo and some of them were clearly lacking the warnings. He adds that a good advertisement designer could incorporate the warnings in interesting and creative ways. He states that he feels that the intent of the regulations applies to each individual licensee to be responsible for meeting the requirements of the regulations. He states that if a licensee just has the name of its business, then it wouldn’t be considered advertising for these purposes. He adds that he likes the idea of a sticker with the warnings on apparel.

Loren Jones states that both tobacco and alcohol advertising are much more highly restricted, but at a federal level, and that because the feds won’t do it, the State is the only regulatory authority over marijuana. He adds that he feels that the advisory was appropriate.

Peter Mlynarik states that the warnings should not scare anybody. He says that because there is no other reason for these stores besides selling marijuana, they should have to use the warnings. He adds that he does not see this as a discouragement to the public, but as more of an inconvenience for licensees. He emphasizes that the Board needs to provide guidance to staff, especially if the members don’t like what the staff is putting out there.

James Hoelscher reminds the Board that marijuana is the only substance, out of marijuana, alcohol, and tobacco, that is federally illegal.

Nick Miller states that the Board needs to stick to the regulations as they are written and amend them if they don’t like them. He adds that his biggest concern is that this is a very broad advisory.

Loren Jones asks Harriet Milks if the Board decides to let the advisory stand, what avenue of due process a licensee would have to appeal.

Harriet Milks states that the appeal rights and processes are outlined in 3 AAC 306.845.

Brandon Emmett moves to withdraw the advisory notice.

Nick Miller seconds the motion for discussion.

James Hoelscher states that he doesn't think that the entire advisory is incorrect.

Brandon Emmett states that his reason for withdrawing is because of the broad interpretation. He states that if the interpretation of advertisement is to include the business name itself, then he does not support it.

Harriet Milks asks Brandon Emmett if he is asking for the advisory to be withdrawn in its entirety or if his intent is to remove a portion.

Brandon Emmett states that his reason for motioning to remove the advisory in its entirety is that advertisement is already clearly defined.

James Hoelscher clarifies that enforcement's intention was to educate licensees rather than hold everyone accountable by way of NOV.

Erika McConnell asks the Board to have everyone look at the Enlighten advertisement on Page 4 and the Pakalolo advertisement on Page 8. She states that in her opinion, Enlighten's ad that includes a photo of a marijuana leaf would be considered an advertisement for marijuana. She adds that she is finding it difficult to understand how Pakalolo's advertisement that includes four photos of marijuana would not meet the definition of an advertisement for marijuana just because the only words on the ad are the name of the store.

Brandon Emmett states that Pakalolo's example is easily recognizable as marijuana by definition and would qualify as an ad for marijuana. He says that the photo of the leaf is a grey area. He states that if an ad includes something that meets the definition of marijuana, which would not include a leaf, then it should require the warnings.

Nick Miller states that he can look at these ads and see that some of them clearly need warnings.

James Hoelscher states that a complete recall of this advisory notice would undermine enforcement and asks that if the Board wishes to recall, that it only recall a part of the advisory.

Erika McConnell clarifies for the record that the definition of marijuana means all parts of the plant of the genus cannabis. She requests that if the Board recalls the advisory, it should direct the staff to issue a new advisory.

Mark Springer states that he feels like instead of recalling the advisory, that the Board should be asking the staff to amend it.

Mark Springer moves to amend the motion to have the advisory clarify that the current interpretation by the Board is that any advertisement of marijuana products have to have warnings attached and that any reference to strains or to edibles in an advertisement constitutes advertising marijuana and marijuana products; the mere existence of a marijuana leaf that is part of a logo and not just slapped on shouldn't be construed as an advertisement for marijuana or marijuana product.

Nick Miller seconds the motion.

Mark Springer states that stores have signs up, and the signs do not have the warnings attached to them. He adds that when a store states that they have new pre-rolls or new strains, that those should include the warnings. He states that electronic advertisements should include a hyperlink to the warnings.

Brandon Emmett asks Erika McConnell if Mr. Springer's amendment to his motion is acceptable.

Erika McConnell states that Mr. Springer's motion would be for her to revise the existing advisory. She requests that the Board clarify further, as the motion made it sound as if the presence of words would be necessary to qualify something as an advertisement. She again points out Pakalolo's ad.

Mark Springer states that his suggestion be that there is some kind of language that indicates that this is just temporary clarification and that there is an ongoing regulations project that may supersede it.

Mark Springer's motion to amend carries, 3-2 (Loren Jones and Peter Mlynarik vote No).

The original motion carries as amended, 3-2 (Loren Jones and Peter Mlynarik vote No).

Brandon Emmett moves that a future draft would amend "marijuana and marijuana products" to read "marijuana flower and marijuana products" and would strike "this requirement also applies to advertisement for the retail store itself".

Peter Mlynarik states that the original motion already passed.

Brandon Emmett withdraws his motion.

Nick Miller asks if Mr. Hoelscher can provide any complaints that the public has filed regarding this advisory in his enforcement report.

Harriet Milks states that if it is not directly pertinent to the regulations project that it would be compiled in the marijuana mailbox that comes directly to the Board at every meeting.

Nick Miller clarifies that he was wondering if someone from the public has complained that marijuana or marijuana products are being advertised without the warnings.

James Hoelscher states that he would be unable to give an accurate number because of all of the different locations that complaints are sent to.

Erika McConnell requests for guidance from the Board regarding whether or not a green cross is acceptable for a marijuana establishment to use.

Mark Springer states that he would not want to see a bunch of green crosses in marijuana advertising, but that if there's one on the premises, then he doesn't think it should be restricted.

James Hoelscher states that the signs on a business are only intended for the business name, and that anything in addition to those are considered advertisements. He adds that a green cross is symbolic of medical marijuana, and in Alaska, there are no regulated medical marijuana stores.

No action taken regarding green crosses.

Adjourn

12:28pm

Mark Springer moves to adjourn.

Nick Miller seconds the motion.

None opposed.

Minutes prepared by:



Sarah D. Oates
Program Coordinator

Reviewed and approved by:



Erika McConnell
Director