



# The Commonwealth of Massachusetts

## General Court

September 18, 2023

Senator Adam Gomez  
Senate Chair  
Joint Committee on Cannabis Policy  
24 Beacon St., Room 413-B  
Boston, MA 02133

Representative Daniel M. Donahue  
House Chair  
Joint Committee on Cannabis Policy  
24 Beacon St., Room 544  
Boston, MA 02133

### **Re: Oversight, Transparency, and Accountability of the Cannabis Control Commission**

Dear Chair Gomez and Chair Donahue:

As we all know, the Cannabis Control Commission (CCC) is not performing as it should. Our constituents, media reports, and even the actions and words of the CCC itself have repeatedly made clear that action is desperately needed to bring oversight, transparency, and accountability to the CCC. A survey of some recent headlines captures the current state of affairs:

- “Shannon O’Brien, the state’s top cannabis regulator, suspended from role a year into her appointment”, *Boston Globe*, September 15, 2023
- “What the heck is going on at the Cannabis Control Commission?” *Boston Business Journal*, September 5, 2023
- “Mass. Cannabis Commission ‘in crisis,’ chair says, in announcing executive director’s exit” *State House News Service*, July 28, 2023
- “Cannabis commission retaliating against pot lab for speaking out, committee hears,” *Boston Herald*, July 18, 2023
- “Transparency needed in Cannabis Control Commission investigations[;] The agency is increasingly facing questions about its own practices and professionalism” *Boston Globe Editorial*, April 2, 2023
- “Cannabis regulators putting out ‘a series of fires’ involving a Russian oligarch and data breach” *WGBH*, March 22, 2023

Below we have highlighted just some of the publicly reported issues and questions that we believe the public and legislature require answers to regarding the CCC. As Chairs of the Joint Committee on Cannabis Policy (the “Committee”), you have the authority to conduct an oversight hearing yourselves or advance legislation currently before the Committee to create an independent oversight unit for the CCC. We respectfully ask you to at least act on one of those options. Our constituents need and deserve action.

## **Background:**

### **A. Suspension of the Chair of the CCC**

Just this past week the Boston Globe reported that State Treasurer Deborah Goldberg suspended CCC Chair Shannon O’Brien.<sup>1</sup> According to the reporting, the Treasurer’s Office declined to explain the basis for the suspension or its duration.<sup>2</sup> In addition, the article notes that State Treasurer “Goldberg has not named an interim chair in O’Brien’s place, leaving the commission with just four members and no designated leader.”<sup>3</sup> State law provides only five reasons for the removal of a CCC commissioner, if a commissioner is: “(i) is guilty of malfeasance in office; (ii) substantially neglects the duties of a commissioner; (iii) is unable to discharge the powers and duties of the office; (iv) commits gross misconduct; or (v) is convicted of a felony.”<sup>4</sup> These limited for cause restrictions on the removal of a commissioner are key to the CCC’s nature as an independent agency. As the legislature has limited the reasons for the removal of a commissioner, the State Treasurer must – at a minimum – identify which reason(s) serve as the basis for her action. In addition, as the term of the CCC Chair, by statute, runs until the conclusion of the commissioner’s term *and* until a successor is appointed, it is unclear what happens when a CCC Chair is merely suspended but not removed.<sup>5</sup>

According to a statement by CCC Chair Shannon O’ Brien reported on by the Boston Business Journal, “Treasurer Goldberg asked her to apply to the chair role last July, and told O’Brien that she was not happy with how the commission was being run. O’Brien said that Goldberg had wanted someone to make ‘significant improvements in how the Commission operated.’”<sup>6</sup> In addition, according to the Boston Globe:

In an interview, O’Brien said she was not formally given a reason for her suspension and said she’d had “a conversation [with Goldberg] about whether I could continue” in the role.

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<sup>1</sup> See Shannon O’Brien, *the state’s top cannabis regulator, suspended from role a year into her appointment*, Boston Globe, September 15, 2023 <https://www.bostonglobe.com/2023/09/15/metro/shannon-obrien-suspended-cannabis-control-commission-deborah-goldberg/>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> M.G.L. c. 10, § 76(d).

<sup>5</sup> *Id.* at § 76(a) (“The treasurer and receiver-general shall designate the chair of the commission. The chair shall serve in that capacity throughout the term of appointment *and* until a successor shall be appointed.”) (emphasis added).

<sup>6</sup> See *Mass. treasurer suspends cannabis chair Shannon O’Brien*, Boston Business Journal, [https://www.bizjournals.com/boston/news/2023/09/15/goldberg-suspends\\_shannon-obrien.html](https://www.bizjournals.com/boston/news/2023/09/15/goldberg-suspends_shannon-obrien.html)

“I said I believed that, consistent with the statute, I was doing my job,” O’Brien said.

In a separate written statement, O’Brien said Goldberg turned to her last year to improve an agency that had become “riddled with internal discord, lack of accountability and infighting.”

“I went in knowing I had a difficult job to do, but I was told by the Treasurer that in spite of many talented people applying for this position, I was the right change agent who could make improvements within the Commission,” O’Brien said. She said that a “toxic internal environment” has hobbled the agency’s mission, including its aim to help people of color gain a foothold in the industry, “and I am hopeful needed change can be mandated by the Legislature.”<sup>7</sup>

The legislature needs to ensure that statutory requirements are complied with and examine what steps are needed to finally bring stability to the CCC.

- Which statutory reason(s) served as the basis for the suspension?
- What are the circumstances that led up to the suspension? How long did they continue before the suspension was made? Was the written notice and opportunity to be heard provided prior to the suspension?
- What is the duration of the suspension?
- Which Commissioner, if any, is currently exercising the powers of the chair?
- What issues did the State Treasurer have with the operations of the CCC and what improvements did the State Treasurer want to see made at the CCC?
- What is the toxic environment referenced in CCC Chair O’Brien’s statement?
- What legislative changes would improve the situation at the CCC?

#### B. Ongoing Governance Issues

More than a year ago, in April of 2022, the CCC voted to participate in closed door mediation on “Commission Governance.”<sup>8</sup> The stated purpose of this private mediation has been vaguely described as: “participate in mediation between the Commissioners and staff leadership, for purpose of finding common ground and obtaining buy-in from all parties, in its efforts to establish a durable and effective governance structure.”<sup>9</sup> It is unclear exactly what issues lead to this vote, and for how long these issues had existed prior to the vote, but what is clear is that by April of 2022 the CCC knew their existing governance structure was not working.

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<sup>7</sup> See Shannon O’Brien, *the state’s top cannabis regulator, suspended from role a year into her appointment*, Boston Globe, September 15, 2023, <https://www.bostonglobe.com/2023/09/15/metro/shannon-obrien-suspended-cannabis-control-commission-deborah-goldberg/>

<sup>8</sup> See April 7, 2022 Meeting Agenda of the CCC, <https://masscannabiscontrol.com/events/cannabis-control-commission-public-meeting-april-7-2022/?occurrence=2022-04-07>

<sup>9</sup> See e.g., March 27, 2023 Meeting Agenda of the CCC, <https://masscannabiscontrol.com/events/cannabis-control-commission-public-meeting-march-27-2023/>

Since then, the CCC has engaged in semi-regular executive session mediation. As the public is excluded from executive session, the specific items discussed in the mediation, its progress and status are all unclear. What we know as of this letter is that no public resolution has come from the mediation as the Open Meeting Law requires that any action would have to be publicly announced: “no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session[.]”<sup>10</sup> As the Open Meeting Law makes clear, these issues are not intended to remain behind closed doors forever, and ultimately are expected to be resolved publicly. It’s worth noting that the CCC is not a unique structure. The CCC is modeled after the Massachusetts Gaming Commission, but unlike the CCC, the Massachusetts Gaming Commission has never had to undergo mediation regarding its governance structure.

Contemporaneous with the ongoing private internal governance mediation, the CCC requested a 23% budget increase for FY24.<sup>11</sup> While increased funding for the CCC would likely address some of the delays and issues at the CCC, the legislature as the steward of public funds has an obligation to ensure that additional funds that are provided to the CCC are appropriately and efficiently spent. The CCC cannot continue to discuss its problems behind closed doors while simultaneously requesting a substantial increase in public funding. Simply put, additional funds need to come with additional oversight.

- What issues lead to the decision of the CCC to engage in mediation and when did these issues begin?
- How many Commissioners and staff members have engaged in these mediation sessions, and how many work hours have they dedicated to preparing for and engaging in these mediation sessions?
- What is the cost in terms of public funds that have been expended in preparing for and participating in these mediation sessions?
- How much has the CCC spent on mediation services and any other procurements related to the mediation?
- What is the current status of the mediation and what, if any, results have come from the mediation so far?
- Has the CCC considered adopting the governance structure of the Massachusetts Gaming Commission, and if not, why not?

### C. Licensing Delays

Delay in the licensure process has become a frequent complaint regarding the CCC. Worse still is that delays are often coupled with no information for prospective licensees on when they can expect to complete the licensing process. An extended opaque licensing process only favors prospective licenses with the financial resources to sustain themselves through the licensing process – which undermines equity goals.

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<sup>10</sup> M.G.L. c. 30A, § 21(a)(9)(ii) (emphasis added).

<sup>11</sup> See *Cannabis regulators seek big budget increase*, Boston Globe, December 12, 2022, <https://www.bostonglobe.com/2022/12/10/marijuana/cannabis-regulators-seek-big-budget-increase/>

- What oversight are the Commissioners exercising over the processing of licenses?
- How are these delays impacting the equity goals of the CCC?
- Why is the CCC unable to give even a rough or estimated timeframe to prospective applicants?
- What steps is the CCC taking to reduce delays as part of the licensing process?
- What is the recourse for a prospective licensee faced with undue delay as part of the application process?

#### D. Opaque, Extended and Overly Aggressive Investigations

The CCC's investigations have also come under criticism for operating in an overly aggressive, unproductive, and untimely manner. As was previously reported, and as the Committee heard during its recent hearing, CCC investigators are alleged as operating akin to criminal investigators and not like regulators.

- What are the CCC's policies and procedures for conducting its investigations? How were these policies and procedures developed and what type of training does the CCC provide to its investigators?
- Has the CCC made any changes to its investigation policies, procedures and practices resulting from alleged overly aggressive investigations? What were the results of the CCC's internal review of these allegations and what process did the CCC employ as part of that internal review?
- What is status of the investigation related to Trulieve Cannabis Corporation and the death of Lorna McMurray? Why has this investigation taken so long to complete? What recommendations and changes has the CCC implemented as a result of this investigation?
- What was the CCC's findings and recommendations from its internal investigation related to the CCC's site visit to MCR Labs?

#### E. Inadvertent Records Release

On March 16, 2023, the CCC announced an "Inadvertent Records Release."<sup>12</sup> The CCC described the release as "[g]enerally, the information pertained to former and current Marijuana Establishment and Medical Marijuana Treatment Center Agents."<sup>13</sup> But as described by WGBH:

Thousands of employees in the Massachusetts cannabis industry received an official email last week about a major data breach: the name, home and email address, phone number and date of birth of every cannabis worker in the state had been made public in an "inadvertent release of agency documents" by the state's own Cannabis Control Commission. Along with the names and personal information, the dataset included a list of former employees and the specific reasons

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<sup>12</sup>See Inadvertent Records Release | March 16, 2023 <https://masscannabiscontrol.com/2023/03/inadvertent-records-release/>

<sup>13</sup> *Id.*

they were no longer associated with the marijuana company, including alleged violations of company policy.

The state email provided little context for the leak, sparking panic and confusion across online message boards and the local cannabis community. Cannabis workers say they didn't know what the breach meant for their safety.<sup>14</sup>

In response to this release, the CCC apparently contacted the requestor, and while the spreadsheet had never been published, "Commission lawyers then demanded that [the requestor, Grant] Smith Ellis and his colleague, blogger Eric Casey, delete the spreadsheet, which they say they did. Smith Ellis says he removed the story voluntarily because commission lawyers mentioned an unspecified safety threat."<sup>15</sup>

As a remedial action, the CCC announced they were reviewing procedures and training for public records production.<sup>16</sup> This is more than warranted as the release shows a profound lack of internal controls, completely inadequate policies, procedures and training. Still the inadvertent release is deeply troubling as it raised the prospect of creating a safety threat. It also raises the question of whether previous public record responses by the CCC also inadvertently released agency records. More generally, it speaks of an agency that has weak compliance controls and needs additional oversight.

#### F. Alleged Retaliation Against an Independent Journalist

The CCC recently informed an independent journalist that – in the opinion of the CCC – the journalist did not uphold journalistic ethics and standards that members of the media are expected to conform. As a result, the CCC informed the journalist that going forward they would no longer have access to CCC resources for the media. Our understanding is that while the CCC believes multiple actions by the individual justify this decision, one instance apparently cited by the CCC was the content of testimony given by the individual before the Committee.

A government agency removing the press credentials of an individual is no minor matter. The Committee should ensure that the CCC has fair, equal and transparent written standards and criteria for its decisions in this regard. These standards should also be publicly posted and shared with members of the media. It is also extremely concerning that the CCC finds itself leveraging the content of testimony before the Committee as part of the rationale to exclude certain media oversight. Particularly since the journalist had testified in favor of legislation that would have created an independent oversight unit for the CCC. The chilling effect it will have on future testimony alone is enough to warrant action by the Committee. It is also disappointing to see that the CCC's priority take away from that legislative hearing was not to address the complaints on

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<sup>14</sup> *Editorial: Transparency needed in Cannabis Control Commission investigations*, April 2, 2023, <https://www.bostonglobe.com/2023/04/02/opinion/marijuana-investigation-transparency/>

<sup>15</sup> *Cannabis regulators putting out 'a series of fires' involving a Russian oligarch and data breach*, March 22, 2023, <https://www.wgbh.org/news/local/2023-03-22/cannabis-regulators-putting-out-a-series-of-fires-involving-a-russian-oligarch-and-data-breach>

<sup>16</sup> *See Inadvertent Records Release* | March 16, 2023 <https://masscannabiscontrol.com/2023/03/inadvertent-records-release/>

the CCC's practices, (which included claims of retaliation by the CCC) but rather cite the content of certain testimony as part of the justification to relieve the CCC of having to interact with a journalist in a media capacity.

At bottom, it is bewildering that an agency with a troubled governance structure, vacancies in several leadership positions, and issues in the licensing, investigation, and public records process would decide that an independent journalist doesn't meet standards certain media standards rather than first addressing its own internal issues.

- Does the CCC have a written policy for determining when they will and will not recognize someone as a member of the media? If so, is this written policy publicly available or provided to members of the media? Does this policy set out fair, equal and transparent criteria and standards with notice to individuals? Are there any warnings to members of the media prior to the removal of their press credentials? Is there an opportunity to be heard or an option to appeal to the Commissioners themselves?
- Was each circumstance that led up this decision documented and the final decision memorialized? Does the CCC apply the same monitoring and evaluation to all members of the media with whom it interacts?

#### G. Sex Offenders as Retail and Delivery Operator Agents

Finally, recent regulatory updates proposed by the CCC create the risk that individuals required to register as sex offenders will be able to obtain registration as retail or delivery operator agents. This is a reversal from the CCC's position in 2017 that individuals who have access to customers and personal data should be held to a higher suitability standard. While recent legislative changes to Chapter 94G have eliminated, in most instances, conviction of a criminal offense as a suitability standard, the CCC can still include other restrictions in the suitability standards that continue the higher standard that has been in place since 2017. Given the public safety concerns surrounding a proposed change that would allow individuals required to register as sex offenders to have access to customers, other marijuana workers, and personal data, the Committee should ensure there is oversight and accountability over any potential change that could weaken the protections currently in place.

#### **Oversight Options:**

Oversight is a foundational aspect of our state constitution. The Massachusetts Declaration of Rights mandates accountability for government officials:

All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.<sup>17</sup>

While independent agencies play an important role in our government structure – independent agencies should not be independent from oversight, transparency, and accountability. Indeed, when

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<sup>17</sup> Article V of the Massachusetts Declaration of Rights, <https://malegislature.gov/Laws/Constitution>

the legislature has created an entity outside of the normal structure of government accountability; the legislature has an obligation to provide that oversight either itself or through alternative mechanisms.

#### A. Oversight Hearing

The Joint Rules adopted by the House and the Senate for the administration of 193<sup>rd</sup> General Court lay out the “oversight responsibilities” for Joint Committees.<sup>18</sup> These include a mandate to evaluate the effectiveness of state agencies which have responsibilities for the administration of laws within the jurisdiction of the Joint Committee:

[E]ach joint committee shall review and study, on a continuing basis, the implementation, administration, execution and effectiveness of those laws, or parts of law, the subject matter of which is within the jurisdiction of that committee, the administrative regulations adopted to implement those laws, and those state agencies or entities having responsibilities for the administration and execution of such laws;<sup>19</sup>

As it is “the duty of the committee on Cannabis Policy to consider all matters concerning the subject of marijuana[.]” an oversight hearing regarding the administration and effectiveness of the CCC, as the state agency responsible for administering the Commonwealth’s marijuana laws, and its administrative regulations, fall squarely within the oversight responsibilities of the Committee.<sup>20</sup>

#### B. Internal Special Audit Unit Legislation

The legislature can also delegate its oversight responsibilities. Currently before your Committee is a bill that would establish an independent internal audit unit within the CCC.<sup>21</sup> This unit would fall under the authority of the state Inspector General and is modeled after existing internal audit units in the Massachusetts Department of Transportation / MBTA, Executive Office of Health and Human Services, and the State Police.<sup>22</sup>

The unit would “monitor the quality, efficiency and integrity of the [CCC]’s operations, including but not limited to, operations under chapters 94G and 94I, host community agreements, investigation and audit policies and procedures, organizational structure and management functions and seek to prevent, detect and correct fraud, waste and abuse in the expenditure of public funds.”<sup>23</sup> Through the Inspector General’s annual report, the unit would report on its activities and findings to the Committee by April 30 of each year. In addition, the unit would create and provide trainings to the CCC, including trainings on conducting regulatory investigations.

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<sup>18</sup> See Rule 1, Joint Rules of the Senate and House of Representatives <https://malegislature.gov/Laws/Rules/Joint>

<sup>19</sup> *Id.* at Rule 1(i).

<sup>20</sup> See About the Joint Committee on Cannabis Policy, <https://malegislature.gov/Committees/Detail/J50/About>

<sup>21</sup> S.B. 58 *An Act establishing an internal special audit unit within the Cannabis Control Commission*, <https://malegislature.gov/Bills/193/S58>

<sup>22</sup> See generally OIG Embedded Unit Annual Reports <https://www.mass.gov/lists/oig-embedded-unit-annual-reports>

<sup>23</sup> S.B. 58 *An Act establishing an internal special audit unit within the Cannabis Control Commission*, <https://malegislature.gov/Bills/193/S58>



Moreover, to facilitate and enhance interagency cooperation and collaboration, the bill would also require that the CCC, Department of Public Health, and the Massachusetts Department of Agricultural Resources enter into a memorandum of understanding for joint and coordinated activities.

The bill received its hearing on July 18, 2023, and the legislature's action at this time is appropriate and needed to protect the expenditure of public funds, ensure a functioning regulatory scheme and bring public accountability, transparency and oversight to an agency that is clearly not functioning properly.

Thank you for your prompt attention to this matter.

Sincerely,

**Senator Michael O. Moore**  
Second Worcester District

**Senator Bruce E. Tarr**  
First Essex and Middlesex District

**Senator Michael D. Brady**  
Second Plymouth and Norfolk District

**Representative Donald R. Berthiaume**  
Fifth Worcester District

**Representative Michael J. Soter**  
Eighth Worcester District