Item: **Cannabis/Marijuana Legalization Impact, Information Only**

Item Summary: In accordance with the Board's recently drafted Strategic Plan 2017-2021, the following information is provided regarding the legalization of marijuana in the State of California and its impact on applicants and licensees to effectively regulate the new law and ensure consumer protection (enf2)

Board Action:

1. President calls the agenda item and it is presented by or as directed by the President.
2. Information Only- No Board Action Required

HISTORY

In 1996, California became the first state in the nation to allow the use of medicinal cannabis after voters approved Proposition 215, the California Compassionate Use Act.

In 2003, California enacted Senate Bill 420, the Medical Marijuana Program Act, which allowed the medicinal cannabis industry to organize as collectives and cooperatives, and provided limited protections from prosecution.

In 2015, California enacted the Medical Cannabis Regulation and Safety Act **(MCRSA)**, by passing Assembly Bill 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood), Assembly Bill 243 (Wood), and Senate Bill 643 (McGuire). The Medical Cannabis Regulation and Safety Act was the first proactive regulatory framework for medicinal cannabis in the state's history. The MCRSA was revised in 2016 with the passage of Senate Bill 837 and Assembly Bill 2516, which made changes to implement the act and create a new cottage cultivation license.

In 2016, two decades after the approval of Proposition 215, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act **(AUMA)**. The regulatory system contained within AUMA was modeled after the MCRSA, as approved by the Legislature in 2015, but contained policy differences and did not reflect legislative amendments made to the MCRSA prior to AUMA's approval. Both acts require state licenses to be issued by the Department of Consumer Affairs, the Department of Food and Agriculture, and the State Department of Public Health, and both require compliance with local ordinances regulating commercial cannabis activity.

AUMA directed the state to begin issuing licenses to businesses in the adult use cannabis industry by January 1, 2018, despite having only been approved by the voters on November 8, 2016. This was an aggressive timeline for implementation given that it leaves state licensing authorities with less than 14 months to engage in the stakeholder process, determine how to regulate the adult-use cannabis industry and to what extent these regulations should differ from those they develop for the medicinal cannabis industry, and begin issuing multiple types of licenses under AUMA and the MCRSA, two systems with significant policy differences.

The Blue Ribbon Commission report published on July 22, 2015, highlighted the benefits and drawbacks of a unitary, reconciled system for regulating medicinal and adult-use cannabis, suggesting that under such a system regulated businesses can reach the entire market of both adult-use and medicinal consumers under one set of licenses, which would help reduce the costs of compliance with regulations and enable the businesses to remain competitive with the market.

Robust standards for the cultivation, manufacturing, testing, distribution, and transportation of cannabis are required under both the MCRSA and AUMA and should be uniform.

Senate Bill 94 (2017) reconciled the Medical Cannabis Regulation and Safety Act and the Control, Regulate and Tax Adult Use of Marijuana Act and provided uniform standards for both medicinal and adult-use cannabis activity.

AUMA provides for amendment by the Legislature when consistent with and furthering the intent and text of the initiative. Creating a viable regulatory structure for both medical and adult use, which this act does, is core to and furthers that intent.

It is the intent of the Legislature that this act continue the reconciliation of the Medical Cannabis Regulation and Safety Act and the Control, Regulate and Tax Adult Use of Marijuana Act in order to protect public safety, communities, patients, consumers, and the environment.

In November 2017, the Bureau of Cannabis Control (Consumer Affairs) announced California's three state cannabis licensing authorities had proposed emergency licensing regulations for commercial medicinal and adult-use cannabis and had been posted online for public review.

The Department of Consumer Affairs' Bureau of Cannabis Control, Department of Public Health's Manufactured Cannabis Safety Branch, and Department of Food and Agriculture's CalCannabis Cultivation Licensing Division each developed new regulations to reflect the law defined in California's Medicinal and Adult-Use Cannabis Regulation and Safety Act **(MAUCRSA)**. These regulations went into effect December 7, 2017.

HISTORY SUMMARY

1996 - Proposition 215, approved by voters, allowed the use of medicinal cannabis

2015 - Various legislation passed established the Medical Cannabis Regulation and Safety Act

2016 - Proposition 64, approved by voters, allowed adult recreation use of marijuana - the Control, Regulate and Tax Adult Use of Marijuana Act

June 2017 - SB 94 (legislation) consolidated the regulation of both medicinal and adult recreation use of marijuana establishing the California's Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)

December 2017 - Regulations in place

CURRENT LAW

RESPIRATORY CARE PRACTICE ACT - BUSINESS AND PROFESSIONS CODE

3750.5.
In addition to any other grounds specified in this chapter, the board may deny, suspend, place on probation, or revoke the license of any applicant or license holder who has done any of the following:

(a) **Obtained, possessed, used, or administered to himself or herself in violation of law,** or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9, except as directed by a licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider, or illegally possessed any associated paraphernalia.

(b) **Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, or to others, or that impaired his or her ability to conduct with safety the practice authorized by his or her license.**

(c) Applied for employment or worked in any health care profession or environment while under the influence of alcohol.

(d) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

(e) Been committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a), (b), and (c), in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.

(f) Falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).
(Amended by Stats. 2012, Ch. 799, Sec. 21. (SB 1575) Effective January 1, 2013.)

HEALTH AND SAFETY CODE, DIVISION 10

11014. "Drug" means (a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (c) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (d) substances intended for use as a component of any article specified in subdivision (a), (b), or (c) of this section. It does not include devices or their components, parts, or accessories.
(Repealed and added by Stats. 1972, Ch. 1407.)

11018. "Cannabis" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include either of the following:

(a) Industrial hemp, as defined in Section 11018.5.

(b) The weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product.

(Amended by Stats. 2017, Ch. 27, Sec. 115. (SB 94) Effective June 27, 2017. Note: This section was amended on Nov. 8, 2016, by initiative Prop. 64.)

11018.1. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

(Amended by Stats. 2017, Ch. 27, Sec. 116. (SB 94) Effective June 27, 2017. Note: This section was amended on Nov. 8, 2016, by initiative Prop. 64.)

11018.2. "Cannabis accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.

(Amended by Stats. 2017, Ch. 27, Sec. 117. (SB 94) Effective June 27, 2017. Note: This section was amended on Nov. 8, 2016, by initiative Prop. 64.)

11054. **(a) The controlled substances listed in this section are included in Schedule I.**

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmethadol ...
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine....

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.

(4) Codeine methylbromide.
(5) Codeine-N-Oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Drotebanol.
(10) Etorphine (except hydrochloride salt).
(11) Heroin....

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term ''isomer'' includes the optical, position, and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.
(2) 2,5-dimethoxyamphetamine—Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.
(3) 4-methoxyamphetamine—Some trade or other names: 4-methoxy-alpha-methylphenethylamine, paramethoxyamphetamine, PMA.
(4) 5-methoxy-3,4-methylenedioxy-amphetamine.
(5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP."
(6) 3,4-methylenedioxy amphetamine.
(7) 3,4,5-trimethoxy amphetamine.
(8) Bufotenine—Some trade or other names: 3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin, 5-hydroxy-N,N-dimethyltryptamine; mappine.
(9) Diethyltryptamine—Some trade or other names: N,N-Diethyltryptamine; DET.
(10) Dimethyltryptamine—Some trade or other names: DMT.
(11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta, 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.
(12) Lysergic acid diethylamide.
(13) Cannabis.
(14) Mescaline.
...
(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its isomers:
(1) Cocaine base.
(2) Fenethylline, including its salts.
(3) N-Ethylamphetamine, including its salts.
(Amended by Stats. 2017, Ch. 27, Sec. 120. (SB 94) Effective June 27, 2017.)

VEHICLE CODE

23152. (a) It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.

(b) It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for a person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a narcotic treatment program approved pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code.

(d) It is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210. In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(e) Commencing July 1, 2018, it shall be unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a motor vehicle when a passenger for hire is a passenger in the vehicle at the time of the offense. For purposes of this subdivision, "passenger for hire" means a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle. In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(f) <u>It is unlawful for a person who is under the influence of any drug to drive a vehicle.</u>

(g) It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle.
(Amended by Stats. 2016, Ch. 765, Sec. 1. (AB 2687) Effective January 1, 2017.)

23220. (a) A person shall not drink any alcoholic beverage or smoke or ingest marijuana or any marijuana product while driving a motor vehicle on any lands described in subdivision (c).

(b) A person shall not drink any alcoholic beverage or smoke or ingest marijuana or any marijuana product while riding as a passenger in any motor vehicle being driven on any lands described in subdivision (c).

(c) As used in this section, "lands" means those lands to which the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(d) A violation of subdivision (a) or (b) shall be punished as an infraction.
(Amended by Stats. 2017, Ch. 232, Sec. 1. (SB 65) Effective January 1, 2018.)

23221. (a) A driver shall not drink any alcoholic beverage or smoke or ingest marijuana or any marijuana product while driving a motor vehicle upon a highway.

(b) A passenger shall not drink any alcoholic beverage or smoke or ingest marijuana or any marijuana product while in a motor vehicle being driven upon a highway.

(c) A violation of this section shall be punished as an infraction.
(Amended by Stats. 2017, Ch. 232, Sec. 2. (SB 65) Effective January 1, 2018.)

23222. (a) No person shall have in his or her possession on his or her person, while driving a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, any bottle, can, or other receptacle, containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.

(b) (1) Except as authorized by law, every person who has in his or her possession on his or her person, while driving a motor vehicle upon a highway or on lands, as described in subdivision (b) of Section 23220, any receptacle containing any cannabis or cannabis products, as defined by Section 11018.1 of the Health and Safety Code, which has been opened or has a seal broken, or loose cannabis flower not in a container, is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100).

(2) Paragraph (1) does not apply to a person who has a receptacle containing cannabis or cannabis products that has been opened, has a seal broken, or the contents of which have been partially removed, or to a person who has loose cannabis flower not in a container, if the receptacle or loose cannabis flower not in a container is in the trunk of the vehicle.

(c) Subdivision (b) does not apply to a qualified patient or person with an identification card, as defined in Section 11362.7 of the Health and Safety Code, if both of the following apply:

(1) The person is carrying a current identification card or a physician's recommendation.

(2) The cannabis or cannabis product is contained in a container or receptacle that is either sealed, resealed, or closed.
(Amended by Stats. 2017, Ch. 27, Sec. 174. (SB 94) Effective June 27, 2017.)

CURRENT RCB ENFORCEMENT PRACTICE

Since the passage of Proposition 64 in 2016, Board staff have applied the same approach to marijuana violations as it would alcohol violations. The following, includes several scenarios involving alcohol-related and marijuana violations and the discipline that is "typically" pursued when there are no mitigating or aggravating factors.

	Scenario	Discipline Sought
1	Applicant has one DUI/Marijuana conviction older than two years from the date of application	None, strong warning letter issued
2	Applicant has two DUI/Marijuana convictions older than five years from the date of application	None, strong warning letter issued
3	Applicant has three DUI/Marijuana convictions, 4, 8 and 11 years from date of application	Deny application, stipulate to probationary license
4	Licensee convicted for DUI/Marijuana violation, no criminal history in prior 7 years	Cite and fine
5	Licensee convicted for DUI/Marijuana violation, has one conviction already within last 7 years	File accusation, stipulate to probationary license (rare instances may result in cite and fine)
6	License convicted for DUI/Marijuana violation, has two theft violations ten years or older	Cite and fine
7	Licensee applies for health-care related employment and is found under the influence of marijuana, no criminal history	None
8	Licensee applies for health-care related employment and is found under the influence of alcohol, no criminal history	None, strong warning letter issued
9	Probationer tests positive for marijuana	Petition for revocation filed, revoke license
10	Licensee under the influence of alcohol/marijuana while at work.	Interim Suspension Order, file accusation, revoke

EVIDENCE OF MARIJUANA USE - RESPIRATORY CARE BOARD

An overwhelming majority of complaints involving marijuana, such as those found in scenarios 1-6, are based on criminal convictions. Therefore, the only evidence required in those cases are certified court records.

In those cases where a licensee applies for health-care related employment while under the influence of alcohol, the Board has the authority to take disciplinary action. Sufficient evidence would include a drug screening that showed the applicant was impaired, generally established at .08 BAC or above. If the applicant had no prior violation history, he/she would likely be issued a strong warning letter. If he/she had previous related violations, the Board may pursue probation.

In this same scenario where a licensee applied for employment under the influence of marijuana, the Board would take no action, unless there were extenuating circumstances. Currently, the Board does not have authority to take action under 3750.5, simply for being under the influence of marijuana while applying for employment.

A licensee on probation who tested positive for marijuana, as provided in scenario 9, would immediately be referred to the Office of the Attorney General for violating the terms and conditions of his/her probation. Probationers who are subject to drug testing are also required to abstain from ALL mood altering drugs, including marijuana and alcohol. Test results that demonstrate marijuana use corroborated by expert testimony provides sufficient evidence for revocation. Note: ALL terms and conditions provide that every probationer must obey all State and Federal laws. Therefore, a probationer - even one not subjected to the term and condition of abstention - who is convicted of a marijuana-related crime by the Federal Government would be subject to discipline. Since the Board's inception, it is believed the Board has never received information of a federal conviction related to marijuana. A violation of the term and condition "Obey All Laws" generally results in the filing of a Petition to Revoke Probation and may result in either extended probation or revocation. As in all cases, the Board is the ultimate decision maker.

A licensee under the influence of alcohol, marijuana, or any substance while at work will generally result in the Board seeking an Interim Suspension Order, followed by an Accusation to Revoke the license. Most, if not all, of these cases come about as a result of other staff recognizing an employee is not behaving normally. If the facility suspects substance use, they may subject the employee to drug/alcohol testing. Presence of any alcohol coupled with unacceptable behavior is generally sufficient evidence to pursue discipline. While we have yet to receive a complaint since 2016 of an employee under the influence of marijuana while at work, it is possible that test results showing marijuana use would be challenged. Unlike alcohol which can be flushed out of a person's system within 24 hours, marijuana may last several days or weeks depending upon a person's regular use. Furthermore, alcohol testing is a more reliable science in understanding the levels of blood alcohol concentration (BAC) and estimating the time of consumption. Expert testimony would be paramount if such a case is presented.

EMPLOYER POLICIES PROHIBITING MARIJUANA USE

Employers still have the right to maintain a drug and alcohol free workplace and can keep policies that prohibit the use of cannabis by employees and prospective workers. Further, there is no state law that protects employees from termination for using marijuana. A 2008 Supreme Court decision ruled that employers are entitled to fire employees who fail a drug screening for marijuana, regardless of state law.

The Board has also been made aware that facilities who receive monies from Federal grants must enforce a drug and alcohol free workplace.

ESTABLISHING CANNABIS CUT-OFF LEVELS/EVIDENCE OF RECENT USE

The California Highway Patrol (CHP) has taken the lead in identifying a method to determine recent cannabis use that would impair a person's ability to drive. Currently, the CHP has an outreach campaign to inform drivers that it is still illegal to drive under the influence of marijuana and promote new laws that prohibit marijuana from being placed in the cab of any vehicle. The CHP continues to make arrests for persons driving under the influence of marijuana by relying on evidence of positive marijuana tests and failed field sobriety tests. The CHP has enhanced officer training to identify persons under the influence of marijuana as well.

The CHP is coordinating with the Bureau of Cannabis Control (under the umbrella of the Department of Consumer Affairs) and the University of California, San Diego to study the effects of cannabis on impairment and driving.

The CHP has established a required taskforce to create recommendations related to cannabis impairment. The final report, expected in 2022, will further define standards for evaluation and may possibly have another mechanism to test for marijuana that can detect recent use and/or standards to establish cut-off levels that indicate impairment.

RESOURCES

For additional information about the proposed regulations, or to subscribe to email alerts to hear about updates as they become available, please visit: http://www.bcc.ca.gov/.

For information on all three licensing authorities, please visit the state's cannabis web portal: cannabis.ca.gov.