

PUBLIC BODY: MEDICAL MARIJUANA AUTHORITY FOOD SAFETY STANDARDS BOARD

DATE& TIME: SEPTEMBER 9, 2019 9:00AM

ADDRESS: OKLAHOMA STATE DEPARTMENT OF HEALTH—Central Office, Room 1102

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**Agenda Item 1:**

**Call to Order, Welcome**

Travis Splawn, called the meeting of the Medical Marijuana Authority Food Safety Standards Board to order on Monday, September 9, 2019, at 9:00 a.m. Public notice of the meeting was filed and posted with the Oklahoma Secretary of State and on the Oklahoma Medical Marijuana Authority (“OMMA”) website prior to the meeting. The final agenda was posted on the Oklahoma State Department of Health (“OSDH”) building entrance and the OMMA website. Relevant materials for the Board and other materials for the meeting are posted on the website.

Board members present: Becky Johnson, Scott Yates, Scott Schaeffer, Kara Berst, Travis Splawn, Troy Skow, and Dr. Edd Rhoades.

Board members absent: Fenton Rood, Mark Woodward, Bud Scott, and Ray Jennings.

Staff Present: Buffy Heater, Chief Data, Public Policy & Promotion Officer; Nicole Nash, OMMA Managing Counsel; Adrienne Rollins, OMMA Director; Samuel McClendon, OMMA Business Licensing Manager; Kim Heaton, Deputy General Counsel; Tony Sellars, OSDH Communications Director; Scott Chisholm, OMMA Assistant Director; Rebecca Ledford, OMMA Legal Intern; Katelyn Metzger, OMMA Lead Compliance Inspector; and Cortni Ogles, OMMA Administrative Assistant.

Others Present:

**Agenda Item 2:**

**Consideration of meeting minutes of August 19, 2019 <http://OMMA.ok.gov/food-safety-safety-standards-board>**

a. Review & Board Action

Scott Schaeffer made a motion to approve the August 19, 2019 minutes. Scott Yates seconded. Motion carried.

Aye: All members present voted to approve the meeting minutes. No member present opposed.

Absent: Fenton Rood, Mark Woodward, Bud Scott, and Ray Jennings.

### **Agenda Item 3:**

#### **OSDH presentation of FSSB rule recommendations from August 19, 2019 and the Commissioner's subsequent decisions on their incorporation into OSDH regulation <http://OMMA.ok.gov/rules-regulations>**

##### a. Discussion and Questions

Nicole Nash began the discussion by saying that legal division went through this Board's recommendations for changes to the Emergency Rules and the Commissioner accepted some of the recommendations. The Emergency Rules were developed to implement requirements in several new bills that were passed during the 2019 legislative session. Some of the new legislation went into effect on August 30, 2019, resulting in the need to go through the expedited process for Emergency Rules provided by Oklahoma statutes.

### **Agenda Item 4:**

#### **Discussion of possible rule recommendations to current rule language which incorporated a portion of the August 19, 2019 food safety standards board recommendations into OSDH regulation <http://omma.ok.gov/rules-regulations>**

##### a. Discussion and Questions

Ms. Nash said she would go through the board's recommendations and talk about what was adopted and not adopted. She explained that the agency has rule making authority; and that is mandated by statute. But it doesn't have the authority to promulgate the rules. The rules must be consistent with the statutes. We cannot enact rules that would be in violation of the law. The rules must be consistent with the statutes. We cannot enact rules that would change or conflict with statutes that are in existing law. There were several areas where the agency felt the recommendations were practical but conflicted with the statutory requirements.

The first instance is in 1.3 where we have a rule about the limitations of licenses. There was a recommendation to add the language that offers reciprocity. That was not accepted by the Commissioner because the purpose of this rule is to make clear to the public that we don't have authority to say that these licenses are valid on other sovereign lands. So it would violate the sovereignty of these other states that have reciprocity to say, hey our licenses are valid in this state. So that is why we see that we would have exceeded the authority we have.

The next is 1.4 where we had a couple of changes to definitions. We adopted with a modification the definition of Caregiver. We see that in the law the requirement is that patients with a caregiver must be homebound, but nothing in the definition of caregiver requires a patient to be homebound. So as far as the need for a caregiver, we recommend that a patient licensee could be either homebound or have a doctor attesting that the patient could benefit from a caregiver.

Bud Scott joined the meeting at 9:15a.m.

Ms. Nash continued that another definition is in entrance to a public or private school, there were a few recommended changes adding the entrance to an athletic field not only a facility, not just a building with any academic instruction. Our fear is that there are a lot of operational concerns that come into consideration with this issue. This is not a new requirement; there has already been an entire program and procedure developed during this process since the passage of the state question that governs, operationally, how that distance is measured. So changes to those procedures would have to have all those things taken into consideration. That recommendation was not adopted.

Fenton Rood joined the meeting at 9:23a.m.

Bud Scott says that part of the issue is the actual physical entrance of the school. With the new definitions, including preschools, you have the opportunity to deny licenses and re-licensure. We should point this out that on the definition, part of the issue is that we are going from the original definition that this was the actual physical entrance to the school. Now it is being changed to driveway, gate. It is now a much more extensive issue. Ms. Nash said that is incorrect. It is part of the operational procedure that has been in place. The school does include school activities being done and track fields. It is made very clear on the website. Obviously some of those places don't have an actual building entrance, but it applies to a gate or fencing.

Mr. Scott says that is something he will have to disagree on because he has clients who are getting notification that they are not in compliance. This is something our board needs to be aware of. He says this came up in the first place because it is an issue for his clients. We need clarity as how that measurement is defined. The ABLE language is much clearer. It doesn't hurt to have this board discuss it because it really does need clarification. Nicole agreed, saying she has looked at ABLE statutes and they are much clearer. So as we move forward we can look at it.

Travis Splawn said we need to continue to talk about this issue for future recommendations. He encourages this board to have a presence at the Capitol next session. Bud Scott said he talks with legislators who feel this board should not just be about rules.

The remainder of recommendations were discussed, and reasons for adopting or failing to adopt recommendations were explained by Ms. Nash. She emphasized that now that the Emergency Rules are in place, OMMA will begin the process to get Permanent Rules in place relating to the same new legislative requirements.

Over the next months, OMMA will be engaged in the rulemaking process to develop Permanent Rules, which include and replace the provisions of the Emergency Rules, and will be presented to the Legislature during the 2020 Legislative Session. As part of the permanent rulemaking process, there will be an opportunity for this board to make recommendations and for other concerned parties to comment during a public comment period relating to the proposed Permanent Rules. She encouraged board

members to individually visit with their legislators to express their thoughts and concerns.

- b. Consideration, possible action, and vote regarding rule recommendations  
Bud Scott contends that an emergency still exists because the emergency rules adopted weren't thorough. Kim Heaton explained that you have to have a basis for emergency. For instance passage of legislation that requires new rules to be implemented on a short time-frames basis. That was the basis that we used to have emergency rules. You can't have them for just any circumstances. It has to meet the definitions for emergency rules making statutes. Now the rules are in effect and the law is in effect, so the time for emergency rule making is passed. There is no basis for additional rule making.

Buffy Heater clarified that as far as testing requirements, we are not planning on new rules. The licensure requirements such as accreditation and certified standards, as well as processing standard will still need to be determined. Nicole Nash said the board should keep working on recommendations, just not as an emergency.

And then Mr. Scott stated that he would disagree; the basis is still there as we did not fully flesh out testing standards in the first place. We didn't have full blown recommendations or meet with the other sub-committee. So he feels there is still an emergency as the basis for emergency rules.

Fenton Rood asked Mr. Scott if he felt he wanted to make a motion to this effect.

Bud Scott then made a motion that an emergency still exists in the realm of laboratory testing and we urge the Commissioner to continue working on emergency rule-making. Becky Johnson seconded. The motion carried.

Aye: All members present voted to approve the motion. No member present opposed.

Absent: Mark Woodward and Ray Jennings.

Fenton Rood asked if we are under an obligation to set the 2020 meeting dates. Buffy Heater responded that the next year calendar dates must be filed with Secretary of State by December 15, 2019.

Travis Splawn said it would be beneficial for the board to see what the agency is working on with regarding to rules for laboratory testing. He'd like to get that early enough. Buffy heater asked if he is asking for a working draft prior to the October 14 meeting. Travis said yes, the board would like to have it early enough to review and consider. Buffy Heater asked if October 7 is adequate time for seeing a working draft. Bud Scott said that date wasn't great, it was just a week before the meeting, which was the problem with this last draft. It was agreed that ten days would be better.

Scott recommended that OBNDD, Mark Woodward; Dept. of Agriculture, Scott Yates; Dept. of Environmental Quality, Fenton Rood; and other board members should have their agency updates ready to present for the next meeting, so we could get an idea of how our agencies are approaching this program.

Buffy will get those updates on the next meeting agenda which is scheduled for October 14.

**Agenda Item 5**

**New Business**

No new business

**Agenda Item 6**

**Closing, Adjournment & Dismissal**

Bud Scott moved to adjourn. Scott Schaeffer seconded. Motion carried.

Aye: All members present voted to adjourn. No members present opposed.

Absent: Mark Woodward and Ray Jennings.

The meeting adjourned at 10:28 a.m.

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Authorized Representative of the Board