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September 20, 2021

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[publiccomment@cannabis.ca.gov](mailto:publiccomment@cannabis.ca.gov)

Re: Public Comment - Emergency Rulemaking Regulations Filed on  
September 15, 2021

To Whom It May Concern:

We write on behalf of the Los Angeles County Bar Association (“LACBA”) Cannabis Section concerning the proposed Emergency Regulations filed by the Department of Cannabis Control (“Department” or “DCC”) on September 15, 2021.

LACBA was founded in 1878 and is one of the largest voluntary metropolitan bar associations in the country, with more than 20,000 members. LACBA serves attorneys, judges, and other legal professionals through 28 sections, committees, networking events, live and on-demand CLE programs, and pro bono opportunities, as well as public service and informational resources.

LACBA formed its Cannabis Section in 2019, which is one of the newest among LACBA’s many sections. LACBA formed its Cannabis Section out of an interest among its members and the foresight of its leadership. LACBA’s Cannabis Section provides top-tier continuing legal education concerning the legal cannabis industry and its many complex issues, including: state and local regulatory compliance, corporate and tax structuring, banking, real estate, labor and employment, intellectual property, insurance, litigation, distribution, marketing, and ethics. The Cannabis Section serves as a source of expertise for other attorneys, government bodies, and the news media on issues regarding cannabis laws, regulations and developments, and serves as a forum for the consideration of public policies dealing with or regarding cannabis generally.

On behalf of the Cannabis Section, we wish to express our appreciation to the Department for its efforts to consolidate and clarify in an efficient and streamlined manner the existing regulations of the Bureau of Cannabis Control, the Department of Public Health, and the California Department of Food and Agriculture. While we recognize that many of the emergency regulations simply consolidate existing regulations from the now-consolidated departments, we have concerns that some regulatory changes may have immediate and material impacts on operators.

### **Emergency Rulemaking Process**

At the outset, we must also express our frustration and disappointment that the Department chose to implement a vast number of regulatory changes on an “emergency basis,” rather than through the traditional rulemaking process with sufficient time for public comment. We understand that Business and Professions Code § 26013, as originally passed by referendum on November 8, 2016, permitted licensing agencies to implement rules regulations necessary to implement, administer, and enforce their respective duties under the MAUCRSA. We also understand that the legislature has permitted that language to remain unaltered under the MAUCRSA through this session, including in reference to AB141, the DCC consolidation bill. We also recognize that the DCC will likely take the position that this is a legislative “deemed emergency” based on the referendum language from 2016, which has remained unaltered in Business & Professions Code § 26013, to date.

All these considerations notwithstanding, we have serious concerns regarding the DCC’s factual justification in its “Finding of Emergency and Notice of Proposed Emergency Regulations” for construing the original 2016 legislatively-deemed emergency warranting as continuing through 2021. The DCC’s two-paragraph statement identifying “Specific Facts Demonstrating the Need for Immediate Action,” cites only the fact that the DCC was consolidated under AB 141, but fails to explain how that consolidation constitutes a continuing emergency that warrants abridgment of the public process in agency rulemaking. Effectively, this has allowed the DCC to create an “emergency” and then invoke that “emergency” as a continued basis to cut short the traditional, regular rulemaking process with considered input from stakeholders.

The remainder of the “Findings” from the DCC’s “Finding of Emergency and Notice of Proposed Emergency Regulations” cite back to the legislatively “deemed” emergency, based on Business & Profession Code Section 26013, 26010.7, and 26153, which state only in conclusory fashion that the Department has the “authority to adopt or readopt emergency regulations to consolidate, clarify, and make consistent regulations” and “deems such regulations as an emergency and necessary for the immediate preservation of public peace, health, safety or general welfare,” without even the factual basis for the continued emergency.

Regardless of the legal sufficiency recognized in Business & Professions Code § 26013 five years ago as a basis to implement emergency regulations, we have serious public policy concerns about continuing to adopt and implement rules on an “emergency” basis. Many industry stakeholders feel cut out of this process but unable to raise these concerns with the DCC while applications remain pending before regulators. Further, we note that the timing of the 2021 Emergency Regulations was particularly troubling as it fell over Yom Kippur, the holiest day of the high holidays in the Jewish faith. Unfortunately, each of these factors negatively

impact public and stakeholder trust in the newly-formed DCC. We respectfully urge the DCC to extend the period for public comment in response to the Emergency Regulations and to adopt all future regulations in accordance with the regular rulemaking process, with a full and fair opportunity for all stakeholders to carefully review the proposed regulations before engaging in public comment. The comments below reflect a rushed review of the Emergency Regulations.

### **Issuance of Provisional Licenses**

Section 15001.1 is a new regulatory addition that provides that the DCC will not issue a provisional license if the cultivation premises are contiguous. *See* § 15001.1(b)(4). However, the DCC is silent on how it will handle provisional licenses for non-contiguous cultivation premises. Please confirm how the DCC intends to handle provisional license applications by single licensees seeking multiple cultivation licenses that: (i) are not contiguous but in combination (ii) exceed 20,000 feet for outdoor cultivation or 22,000 square feet for mixed-light or indoor cultivation, and (iii) the application is received on or after January 1, 2022. Based on the current text of regulations, there appears to be no limit on the total acreage a cultivation licensee may operate outdoors or indoors, provided that the premises are not contiguous.

### **Expansion of the Definition of “Owners”**

Section 15003 materially augments the current definition of “owner,” which creates ambiguities as to whether someone would constitute an “owner” for regulatory purposes and reserves enormous discretion to the DCC to make that determination without sufficient clarity for operators. The existing definition of “owner” that conflates concepts of management, control, and ownership is already confusing and unduly complex. We are concerned that the proposed expansion will result in further and unnecessary complications:

- **“An individual with the authority to provide strategic direction and oversight for the overall operations of the commercial cannabis business, such as the chief executive officer, president or their equivalent, or an officer, director, vice president, general manger or their equivalent.”** *Comment: The definition of “strategic direction and oversight” is vague and ambiguous, creating significant uncertainty and difficulty with regulatory compliance.*
- **“An individual with the authority to execute contracts on behalf of the commercial cannabis business.”** *Comment: This definition is overbroad and would include within the definition of “owners” managerial employees who have no equity stake or actual control over the business, and often change. For example, any manager who places orders or hires employees would arguably fall within this definition. We are concerned about the number and frequency of regulatory submissions this definition would require.*
- **“The Department may determine, on a case-by-case basis, that additional individuals have the ability to manage, direct, or control the commercial cannabis business and meet the criteria of an owner. Upon notification by the Department, the applicant or licensee must disclose the individual as an owner and submit the information required by section 15002 of this division or demonstrate that the individual does not qualify as an owner.”** *Comment: This does not provide sufficient regulatory direction to operators to know how or*

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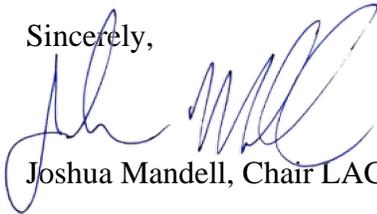
*whether the DCC will unilaterally determine on a case-by-case basis whether an individual is acting in an “ownership” capacity for the business. This has material impacts not just on regulatory compliance but also legal exposure and insurance risk, all of which should be clarified before implementation.*

### **Product Complaints**

Section 17225 requires licensees to maintain extensive written records for “every product complaint and any subsequent investigation,” including but not limited to the name and description of the good, the batch number or UID of the good, the date of the complaint and the name, address, and number of the complainant, the nature of the complaint, the reply to the complainant, the findings of the investigation and/or follow-up action, and the basis for any determination not to conduct an investigation, if applicable. *Comment: This creates an unnecessarily arduous and burdensome documentation process that imposes significant and costly externalities on operators without any relation to the merits of a complaint.*

Thank you for your consideration of these concerns and for your public service.

Sincerely,



Joshua Mandell, Chair LACBA Cannabis Section

Yvette McDowell, LACBA Cannabis Section Executive Committee Member

Ariel Clark, LACBA Cannabis Section Executive Committee Member

Nicole S. Phillis, LACBA Cannabis Section Executive Committee Member

cc: California Cannabis Industry Association