



Advocating for a regulatory environment to promote public health, protect consumer safety, and encourage the growth of the Texas cannabis industry

May 2, 2022

VIA EMAIL – RSD.Rule.Comments@dps.texas.gov

Susan Estringel
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, TX 78773-0140

RE: Comments on Texas Compassionate Use Program

Dear Ms. Estringel:

The Texas Cannabis Council (“TCC”) is a coalition of cannabis businesses and professionals, including companies experienced in cultivating, processing, and the retail sale of cannabis in highly regulated jurisdictions, investors in cannabis-related companies, small business owners, and others. Our board is comprised largely of Texas attorneys and lobbyists who assist cannabis companies as well as business owners and investors. As such we bring a wide range of experience and knowledge of the successes and failures of cannabis regulatory regimes in other states.

TCC submits comments to make two points: (1) the rules should reflect reality with emphasis placed on meeting the medical needs of patients enrolled in the Texas Compassionate Use Program (“TCUP”) and (2) the TCUP licensing should be expanded to encourage competition and ensure a diverse and secure supply chain. Focusing on the aforementioned points allow individuals diagnosed with the qualifying conditions under TCUP to have more effective access to low-THC cannabis products associated with TCUP and fosters on-going improvement through market forces driven by competition of such products. This benefits Texans.

Rules should reflect reality. As the TCUP rules currently stand, they include obsolete rules, such as Subchapter G’s supply restrictions and Rule 12.2(v)’s research prohibition, and they fail to reflect rules that embody current legal and policy considerations, as well as current Texas Department of Public Safety (“DPS”) practices in governing the program. *See* Tex. Gov’t Code § 2001.039. Businesses and entrepreneurs look for transparency and clarity from government regulations. Unwritten rules are unfair to a program’s participants and those considering participation alike because it creates ambiguity. Such ambiguity promotes compliance concerns and fear regarding governmental enforcement due to breaching imprecise DPS regulations. Those entering a program are unable to develop a reasonable business plan. Those in the program who follow unwritten rules and allowances are vulnerable to agency shifts in policy that



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may occur without warning or opportunity to adjust business practices. DPS is aware what rules are not enforced and what substantive practices are allowed but remain unwritten. To create a level playing field and transparency in the program, the TCUP rules should be revised to reflect actual, current practices.

This is particularly problematic with Rule 12.2(v), the research rule. Texas is blessed to be home to multiple, significant research institutions, such as the medical schools affiliated with Texas A&M, Texas Tech, the University of Texas, and Baylor University, as well as research organizations housed at the Texas Medical Center in Houston. HB 1535 explicitly provides for research on medical cannabis use. Moreover, Texas law has provided for medical cannabis research since 1979, making Rule 12.2(v) suspect in spirit from its inception. *See* Tex. Health & Safety Code Ch. 481, subch. G. Continuing to prohibit research runs counter to the law and common sense.

TCUP licensing should be opened up for competition to ensure adequate supply and reasonable pricing. As TCUP is a self-funded program and the state has artificially limited the number of dispensing organizations to three licensees (although only two licensees are functioning), the fees for participation are some of the highest in the country. TCC appreciates that this has been a financial burden on the three current licensees, especially in the face of other constraints on cannabis business profitability such as IRS Code Section 280E. But as long as the number of licensees remains artificially low, those licensees will have a harder time earning their investment back because of the elevated fees. It's a self-perpetuating cycle of deficit operations.

Texas and its patients would be better served by expanded licensing (thus allowing for lower fees), expanded price competition, and expanded product supply and diversity. Treating patients effectively with cannabis requires a variety of product formulations in ready supply. Many other states have experienced supply chain issues when licensing is too limited and competition is too weak. Texas has already fallen into the pitfall of unhealthy competition creating an unhealthy market for patients. The lack of competition drives up prices which discourages patients who cannot afford the prices and drives them to black market product for medical relief.¹ Further, patients find access to the products they need when they need them difficult.

At the current rate of patient count growth of about 10% per month, we can expect the patient count to hit 100,000 by next summer. At a typical monthly spend of \$150-\$300 per month, a 100,000-patient count will result in \$15-\$30 million in revenue for three licensees *per month*.² Once DPS decides to open up licensing, the review process and award of initial conditional

¹ *See* Merritt Enright, Nigel Chiwaya and Robin Muccari, 'Ridiculous' price of medical marijuana leaves patients scrambling, NBC NEWS, July 21, 2021, available at <https://www.nbcnews.com/news/us-news/ridiculous-price-medical-marijuana-leaves-patients-scrambling-n1274085>.

² *See id.*: Martha S. Rosenthal and R. Nathan Pipitone, *Demographics, Perceptions, and Use of Medical Marijuana among Patients in Florida*, MED. CANNABIS AND CANNABINOIDS 2021; 4:13-20, available at <https://www.karger.com/Article/Pdf/512342>.



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licenses will take several months to complete. Any companies awarded a license will in turn take several months, if not more than a year, to build out operations, receive their final license, grow a crop of cannabis, process it, and prepare and dispense the resulting final product for sale within TCUP. To meet the demand of the likely 100,000 patients by next year, DPS should open up licensing applications immediately.

We thank you for requesting comments and your attention to TCC's input. Do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah Kerber", is written over a light blue rectangular background.

Sarah Kerber
TCC President