OFFICE OF THE INSPECTOR GENERAL
MASSACHUSETTS

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Inspector General

June 18, 2024

Via Electronic Mail

The Hon. Karen E. Spilka
Senate President
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The Hon. Ronald Mariano
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The Hon. Bruce E. Tarr
Senate Minority Leader
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The Hon. Bradley H. Jones, Jr.
House Minority Leader
State House, Room 124
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Re: Cannabis Control Commission Appoint Receiver for Day-to-Day Operations Before Legislative Term Ends on July 31 & Subsequently Revise Statutory Governance Structure

Dear President Spilka, Speaker Mariano, Minority Leader Tarr and Minority Leader Jones:

As you are aware, numerous parties have raised concerns about the daily operation and governance of the Cannabis Control Commission (CCC). The Office of the Inspector General (OIG) conducted a limited review of the CCC's structure and determined the agency's statute lacks a clear leadership hierarchy with defined duties and responsibilities. For the past two years, CCC's staff, including its commissioners, have spent considerable time and money seeking to clarify roles and responsibilities. As of the date of this letter, it does not appear the CCC, on its own, is any closer to resolving these issues.

At this point, I respectfully submit that there is an urgent need for the legislative leadership to take immediate action to statutorily authorize the appointment of, and appoint, a receiver with clearly delineated authority to manage the day-to-day operations of the CCC, until corrective action is enacted, and thereafter take legislative action to revisit the governance structure set forth in Chapter 55 of the Acts of 2017 to provide clear leadership at the CCC. This is no way to operate a state agency, let alone one that was responsible for bringing in approximately $322 million in tax and non-tax revenue in Fiscal Year 2023.[1]

[1] CANNABIS CONTROL COMMISSION, *THE STATE OF CANNABIS IN MASSACHUSETTS* at 73 (April 2024), *available at* https://www.mass.gov/doc/masshealths-applied-behavior-analysis-program-service-providers-oig-2024-annual-report/download.

Background – Creation of the CCC

Chapter 334 of the Acts of 2016 established the CCC. The act created Section 76 of Chapter 10 of the General Laws, which defines the composition and the duties of the CCC. Chapter 55 of the Acts of 2017, "An Act to Ensure Safe Access to Marijuana," amended the law with significant changes to the CCC. Pursuant to the statute, the CCC consists of five commissioners with one appointed by the Governor, one appointed by the Attorney General, one appointed by the Treasurer, and two appointed by a majority vote of the Governor, Attorney General, and Treasurer.[2] The statute requires that each commissioner have expertise in a particular subject matter.[3]

The Treasurer designates the chair of the commission, who "shall serve in that capacity throughout the term of appointment and until a successor shall be appointed."[4] According to the statute, the chair "shall have and exercise supervision and control over all the affairs of the commission."[5] The chair "shall preside at all hearings at which the chair is present and shall designate a commissioner to act as chair in the chair's absence."[6]

The commissioners appoint an executive director.[7] The statute states the executive director "shall be the executive and administrative head of the commission and shall be responsible for administering and enforcing the law relative to the commission and to each administrative unit thereof."[8]

The State of CCC Leadership Today

On September 14, 2023, Treasurer Deborah Goldberg suspended CCC Chair Shannon O'Brien. A day prior, citing Section 76 of Chapter 10, Chair O'Brien appointed CCC Commissioner Kimberly Roy to serve as acting chair.[9] In subsequent meetings, starting with the September 18, 2023 meeting, the commission voted to appoint CCC Commissioner Ava Callender Concepcion as acting chair. Meeting minutes reflect that the commission members were not in consensus about who had the authority to appoint an acting chair – the commission or the chair who had been placed on leave. Meeting minutes also reflect that the commission was divided over who should hold the position of acting chair.

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[2] M.G.L. c. 10, § 76(a).

[3] *Id.*

[4] *Id.*

[5] M.G.L. c. 10, § 76(h).

[6] *Id.*

[7] M.G.L. c.10, § 76(j).

[8] *Id.*

[9] *See* M.G.L. c. 10, § 76(h).

A news report from the week of June 10, 2024, stated that during its June 13, 2024 meeting, the CCC voted to relieve the acting executive director of her day-to-day responsibilities.[10] According to the CCC's meeting packet, the commission planned to discuss and vote whether to delegate the responsibilities held by the acting executive director to oversee the CCC's departments to each department's supervisor. As of the date of this letter, the CCC has not posted its minutes online and the posted agenda did not give notice that the CCC would take action to completely relieve the acting executive director of her responsibilities. It is unclear what impact the planned action will have on the operations of the agency. In any event, the decentralization of management for the daily operations for an agency that has lacked clear lines of authority does not seem to be in the best interest of the agency's constituency or the people of the Commonwealth.

The turmoil at the CCC long preceded the chair's suspension and the subsequent questions about who has the authority to appoint a chair and what responsibilities and authority belong to the chair, commission, and executive director. Since May 2022, the CCC has spent more than $160,000 on mediation services purportedly to draft a governance charter. The commissioners and CCC staff have been meeting with the mediator in executive session for this purpose.[11] It should be noted and understood that this so-called mediation began during the tenure of the former CCC chair and former executive director. Thus, it is less than certain that any progress that had been made is consistent with the position of the current acting leaders, or will be agreeable to any future chair, commissioners, or executive director. As of the date of this letter, the commissioners have yet to approve the new charter, publicly release a draft charter, or even release minutes from the meetings at which they have discussed a charter. Nor has the CCC publicly provided any assurance that the charter or mediation process will be completed any time soon.

Even if adopted, such a charter will not have the force of law. It will only be as strong and as binding as the commission agrees. Given the commission's history to date, the charter may be an expensive exercise without lasting impact.

[10] Walter Wuthmann and Beth Healy, *Cannabis Commission board strips acting executive director of day-to-day oversight,* WBUR, Jun. 13, 2024, available at https://www.wbur.org/news/2024/06/13/cannabis-commission-board-strips-acting-executive-director-hilton-creek.

[11] The Open Meeting Law allows a public body to deliberate in executive session, outside of public view, "to meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity." M.G.L. c. 30A, § 21(a)(9). The Attorney General is responsible for interpreting and enforcing Open Meeting Law. For purposes of this letter, the OIG does not take a position as to whether the CCC appropriately invoked executive session for the stated purpose.

Challenges with the Commission Structure

The problems that have plagued the CCC have roots in the CCC's enabling statute, which is unclear and self-contradictory with minimal guidance on the authority and differing responsibilities of the CCC's commissioners and staff. For instance, the statute says the chair has "supervision and control over all the affairs of the commission,"[12] while the executive director is the "executive and administrative head of the commission."[13] These descriptions, in the absence of better defined authority and responsibilities, have empowered individuals in leadership roles to assert competing visions of the chair's, executive director's, and commissioners' roles.

Additionally, the statute is ambiguous with respect to the "commission"; in some places it apparently means the five-member public body of commissioners and in others it refers to the agency itself. This ambiguity has created conflicts within the CCC. Some employees interpret the statute to mean that the chair oversees the affairs of the five-member public body, while the executive director oversees the affairs of the agency. Others believe the chair oversees both the public body and the agency. The OIG observes that this confusion among commissioners and staff has contributed to the current situation at the CCC.

Urgency to Appoint Receiver

There is a sense of urgency to act to resolve the leadership issues at the CCC. The chair has exercised her right to a hearing on her suspension by the Treasurer. The OIG does not have confidence that either the outcome of that hearing, whichever party prevails, or the adoption of a governance charter can resolve the leadership crisis at the CCC.

The OIG urges the legislative leadership to take immediate action to statutorily authorize the appointment of, and appoint, a receiver with the authority to manage the day-to-day operations of the CCC. The receiver should be expressly authorized (1) to carry out the daily administrative functions of the CCC and (2) to carry out said functions notwithstanding any assertion of authority by the chair, acting chair, or commissioners under Chapter 76.

The OIG finds that a commission structure is not suitable for running the day-to-day operations of a state agency with as many responsibilities as the CCC. In particular, the Open Meeting Law prohibits two or more commissioners from discussing matters outside of a publicly posted meeting.[14] Such limitations are impractical when overseeing the day-to-day operations of a large state agency. Between 2017 and 2019, commissioners delegated some 70 tasks to the executive director. Many, if not most, of these tasks could be considered as within the executive director's statutory

[12] M.G.L. c. 10, § 76(h).

[13] M.G.L. c. 10, § 76(j).

[14] *See* M.G.L. c. 30A, §§ 18-25.

authority and responsibility. Nonetheless, the commission has voted on a list of specific actions. This seeming conflict between the statutory language and the actions of the commission raises questions about the executive director's statutory authority to run the daily operations. The Legislature should make that determination by delineating the respective authority and responsibility of the chair, commissioners, and executive director. Doing so would evince a clear legislative intent on how it expects the CCC to carry out its mandate.

In sum, I believe the CCC needs immediate clear direction with an accountable hierarchy. In its present state, the CCC lacks such direction. I urge the Legislature to take short-term action by authorizing the appointment of a receiver before the completion of the current formal legislative session on July 31, and long-term action by revisiting the commission structure. This authority should remain in effect until such time as the Legislature is able to revise the overall governance structure of the agency. Based upon the recent history impacting the day-to-day leadership and the overall commission structure, the Legislature should work to modify the structure to clearly delineate the role of the chair and the executive director so that the agency can properly function and avoid working at cross purposes, ensure that the agency can maintain the budgeted revenue stream, and provide clarity and certainty to its stakeholders.

I am available to further discuss my concerns and the OIG review with any of you who wish to do so at any time. I may be reached at 617-722-8806 or Jeffrey.S.Shapiro@mass.gov.

Sincerely,

Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (by email):

The Hon. Maura Healey, Governor
The Hon. Kim Driscoll, Lieutenant Governor
Kate Cook, Chief of Staff to Massachusetts Governor Maura T. Healey
The Hon. Andrea Joy Campbell, Attorney General
The Hon. Deborah B. Goldberg, Treasurer and Receiver General
The Hon. Michael J. Rodrigues, Chair, Senate Committee on Ways and Means
The Hon. Aaron M. Michlewitz, Chair, House Committee on Ways and Means
The Hon. Adam Gomez, Chair, Joint Committee on Cannabis Policy
The Hon. Daniel M. Donahue, Chair, Joint Committee on Cannabis Policy
Shannon O'Brien, Chair, CCC

Ava Callender Concepcion, Acting Chair, CCC
Nurys Camargo, Commissioner, CCC
Kimberly Roy, Commissioner, CCC
Bruce Stebbins, Commissioner, CCC
Debbie Hilton-Creek, Acting Executive Director/Chief People Officer, CCC
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