

# MINUTES

## Medical Marijuana Oversight Committee



Senator Erin Tobin, Chair  
Representative Roger DeGroot, Vice Chair

**Second Meeting, 2023 Interim  
Monday, November 6, 2023**

**Room 413 – State Capitol  
Pierre, South Dakota**

Senator Erin Tobin called the meeting to order at 9:00 a.m. in Room 413 of the State Capitol, Pierre.

A quorum was determined with the following members answering the roll call: Senator Jim Mehlhaff and Representative Curt Massie; Dr. Francine Arneson (remote), Katie Kassin, Brian Mueller (remote), Kristi Palmer, Jon Thum (remote), and Rachel Waddell (remote); Representative Roger DeGroot, Vice Chair and Senator Erin Tobin, Chair.

Staff members present included L. Anita Thomas, Principal Legislative Attorney, and Michelle Deyo-Amende, Administrative Specialist.

**NOTE:** For the purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was webcast live. The archived webcast is available at the LRC website at [sdlegislature.gov](https://sdlegislature.gov).

### **Approval of Minutes**

**Senator Mehlhaff moved, seconded by Representative Massie, to approve the minutes of the August 21, 2023, Medical Marijuana Oversight Committee meeting. Motion prevailed on a voice vote.**

### **Presentations by Representatives of State Agencies and Institutions**

**Dr. Benjamin Valdez, Vice President of Academic Affairs, Southeast Technical College, Sioux Falls, South Dakota,** said no state requires any formal education for employees of a dispensary. He said this is a safety concern. He said a one semester certificate series could include South Dakota medical marijuana laws; pharmacology; ethics, standards, and practices; compliance and Dispensing; an industry capstone project; mathematics; and English. He said the certificate series classes would initially be in-person. He said future classes could be offered virtually or in a hybrid format. (Internet connection with Dr. Valdez was lost. )

### **Presentations by Representatives of Private Sector Industries**

**Mr. Bill Van Camp, registered lobbyist, Association of Builders and Contractors,** said one-third of job site incidents in the construction industry are substance-related. He said current testing methods cannot differentiate between workplace and off-hour use. He said the Association of Builders and Contractors would like clarity on policies regarding medical marijuana in the workplace for safety-sensitive positions. He distributed a bill draft that Senator Mehlhaff is working on for the 2024 Legislative Session.

**Mr. Peter Dikun, owner, The Flower Shop Dispensary, Sioux Falls, South Dakota,** said he is concerned about smoke shops and vape shops selling products that contain THC. He said he purchased and tested product from two shops. He said the tests showed a 20 percent THC content. He said he also discovered, in the samples, additives that make the products unsafe. He said he is concerned that these businesses are operating illegal dispensaries, and not being regulated.

Mr. Thum said law enforcement is aware of the problem and is working on best practices to address it.

Ms. Palmer said the issue is not within the scope of the Medical Marijuana Oversight Committee's authority.

**Mr. Jeremiah M. Murphy, Lobbyist, Cannabis Industry Association of South Dakota**, said additional training toward certification is not a priority for the industry, at this time. He said systemic issues are creating problems. He said the industry wants to work with the Department of Health to address the inconsistent operation of the program and enforcement of the rules. He said regulation of the industry needs to be consistent, responsive, timely, and reflective of experience. He suggests legislation is needed to address regulatory issues.

In response to a question from Senator Tobin, **Mr. Kit Jeffries, Puffy's Dispensary and Dakota Cannabis Consulting, Rapid City, South Dakota** said Metrc provides a series of courses that meet the required number of training hours for each employee.

In response to a question from Senator Tobin, Mr. Jeffries said, in many cases, there is an unreasonable length of time between a patient renewing a card and receiving the card. He said it has taken a month, at times. He said there is nothing that the dispensary can do. The dispensary is unable to provide the product unless the patient has a valid card. He said there needs to be a more efficient system.

Mr. Dikun said some states issue virtual cards.

Mr. Jeffries said the Medical Marijuana Oversight Committee should review administrative rules more frequently. He said definitions are important in this industry and the rules do not adequately address this issue. He said, within the administrative rules there is one definition for batch. He said, in the medical marijuana industry, there are several types of batches -- a harvest batch, a production batch, a testing batch, a testing sample batch, etc. He said the rules need to be more accurate and more descriptive, so as to provide better communication between the industry and the Dakota Department of Health. He said the industry is changing and evolving rapidly. He said the rules, therefore, need to be revisited more frequently.

**Mr. Tyler Koehne, KTTK LLC, Rapid City, South Dakota**, said a new rules package will be considered at the next Interim Rules Review Committee meeting. He said he is concerned about the proposed ban on additives that do not come from cannabis, specifically terpenes. He said terpenes are aromatic compounds found in the cannabis plant, but also occur naturally in other plants. He said some additives can be safely used to flavor gummies and tinctures. He said this is an example of the need to have better definitions in the administrative rules.

#### **Presentations by or On Behalf of Members of the Medical Marijuana Oversight Committee Regarding Issues Identified for Further Consideration**

Senator Mehlhaff said he has researched authorizing employers to comply with federal work safety rules and has worked on a bill draft to address the issue.

***Senator Mehlhaff moved, seconded by Representative Massie, that the Medical Marijuana Oversight Committee endorse action to ensure that employers with safety-sensitive positions may address requirements for a drug-free workplace, without fear of litigation by employees or job applicants, who utilize medical marijuana, within the parameters of the state program. Motion prevailed on a roll call vote with 10 AYES. Voting AYE: Arneson, Kassin, Massie, Mehlhaff, Mueller, Palmer, Thum, Waddell, DeGroot, and Tobin.***

Senator Mehlhaff said he has also researched the repeal of SDCL sections that address the authority of law enforcement to investigate medical marijuana establishments.

Mr. Murphy said the industry is opposed to the repeal of any statutory section that addresses investigative authority but is open to discussions about clarification.

Mr. Mueller said the statutes are unclear and do not provide a coherent path for law enforcement to proceed. He said law enforcement would support reviewing and updating the statutes, in the interest of clarity, rather than repealing them.

**Mr. Thum moved, seconded by Mr. Mueller, that the Medical Marijuana Oversight Committee endorse action to ensure that law enforcement and various governmental entities are not precluded from inspecting, seizing, prosecuting, or imposing disciplinary action on cannabis dispensaries, cultivation facilities, manufacturing facilities, or testing facilities. Motion prevailed on a roll call vote with 10 AYES. Voting AYE: Arneson, Kassin, Massie, Mehlhaff, Mueller, Palmer, Thum, Waddell, DeGroot, and Tobin.**

Senator Mehlhaff said he has researched whether doctors and other practitioners should be able to have an ownership interest in the marijuana industry and in particular, to operate pop-up clinics. He said, he has no recommendation.

Representative DeGroot said he and Ms. Palmer have researched pop-up clinics and bona fide patient relationships with practitioners. He said they have no recommendation.

Representative Massie said he, Mr. Mueller, and Mr. Thum, have researched restrictions on medical marijuana use by parolees and probationers.

Mr. Mueller said the Governor's office, the Department of Corrections, and the Unified Judicial System are working on a bill that would incorporate restrictions similar to those for alcohol and other substances.

**Representative Massie moved, seconded by Senator Mehlhaff, that the Medical Marijuana Oversight Committee monitor efforts by the Governor, the Department of Corrections, and the Unified Judicial System to put forth legislation clarifying accessibility to medical marijuana by individuals who are on parole or probation. Motion prevailed on a roll call vote with 5 AYES, 4 NAYS, 1 EXCUSED. Voting AYE: Massie, Mehlhaff, Mueller, Palmer, and Thum. Voting NAY: Arneson, Kassin, Tobin, and Waddell. EXCUSED: DeGroot.**

Senator Tobin said she and Dr. Arneson, Ms. Waddell, and Ms. Kassin researched medical-related topics that included limiting the number of certifications a healthcare practitioner could provide in a given time period, establishing continuing medical education requirements for practitioners who certify patients for cards, requiring that primary care providers be notified when certifications are provided, and allowing practitioners to obtain protected information pertaining to a patient's use of medical marijuana.

Senator Tobin said legislative work to ensure that a bona fide patient relationship exists would resolve many of the issues.

**Senator Tobin moved, seconded by Ms. Kassin, to promote continuing education requirements for practitioners who issue written certifications for medical marijuana. Motion prevailed on a roll call vote with 9 AYES, 1 EXCUSED. Voting AYE: Arneson, Kassin, Massie, Mehlhaff, Mueller, Palmer, Thum, Waddell, and Tobin. EXCUSED: DeGroot.**

Senator Tobin said more stakeholder input is necessary on the other medical profession-related topics.

***Ms. Palmer moved, seconded by Senator Mehlhaff, that the Medical Marijuana Oversight Committee endorse the exploration of ways to strengthen the bona fide practitioner-patient relationship. Motion prevailed on a roll call vote with 9 AYES, 1 EXCUSED. Voting AYE: Arneson, Kassin, Massie, Mehlhaff, Mueller, Palmer, Thum, Waddell, and Tobin. EXCUSED: DeGroot.***

**Mr. Ned Horsted, 605 Cannabis**, asked that the Medical Marijuana Oversight Committee consider legislation to address penalties for medical cannabis establishments that violate statutes. He said SDCL [34-20G-80](#) allows for the suspension or revocation of medical cannabis establishment registration certificates. He said the section does not provide for any other penalty, nor does it define minor and major violations.

Senator Mehlhaff said he would like more information regarding the education and credentialing of budtenders.

Ms. Kassin said she would like to know what is involved in the training from Metrc, and who is ultimately responsible for the patient receiving education.

Senator Tobin said having a more thorough definition of a bona fide practitioner-patient relationship could resolve more issues than the certification or licensing of budtenders.

Ms. Palmer said she would like to see additional training for budtenders, because healthcare providers do not have all the answers, and patients are asking the budtenders.

Dr. Arneson said she makes a practice of educating her patients and follows-up with them about their experience using medical marijuana. She said her expectation of a budtender is to help a patient find a product that works best.

Ms. Kassin said she is concerned that information being provided by budtenders is anecdotal and not factual. She said budtenders should provide information that compliments what practitioners are telling patients.

Dr. Arneson said she has toured dispensaries in Flandreau and Sioux Falls and has been impressed by the knowledge and accuracy of budtenders. She said she has confidence that budtenders are knowledgeable but likes idea of more formalized training.

Senator Tobin said this committee has another year to work on these issues and gain knowledge to develop best practices.

***Senator Mehlhaf moved, seconded by Ms. Kassin the meeting adjourn. Motion prevailed on a voice vote.***

The meeting adjourned at 2:16 p.m.