MINUTES
Medical Marijuana Oversight Committee

Senator Erin Tobin, Chair
Representative Roger DeGroot, Vice Chair

First Meeting, 2024 Interim
Monday, August 19, 2024

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 Representatives Curt Massie; Dr. Francine Arneson (remote), Brad Jurgensen (remote), Katie Kassin, Brian Mueller, Kristi Palmer, Jon Thum, and Rachel Waddell (remote), Representative Roger DeGroot, Vice Chair and Senator Erin Tobin, Chair.

Staff members present included L. Anita Thomas, Chief Research and Legal Analyst 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 hyperlinked to the document on the Legislative Research Council website. This meeting was live streamed. The archived live stream is available at the LRC website at sdlegislature.gov.*

Approval of Minutes

Mr. Brian Mueller moved, seconded by Senator Mehlhaff, to approve the minutes of the November 6, 2023, Medical Marijuana Oversight Committee meeting. Motion prevailed on a voice vote.

Presentations by Representatives of the Department of Health Regarding the Medical Marijuana Program

Ms. Emily Kerr, Medical Cannabis Program Administrator, Department of Health, presented an overview of the program. She said the goal is to provide a safe and effective medical cannabis program, through regulation of the medical cannabis industry. She said the department seeks to ensure compliance through registration and the issuance of medical cannabis cards to patients, as well as the certification of practitioners and the registration and inspection of establishments, including cultivators, manufacturers, dispensaries, and testing laboratories. She said there is a statewide inventory tracking system, commonly known as a seed-to-sale software program.

Ms. Kerr said the program also has a staff attorney, two health program specialists, two senior health facility surveyors, and an assistant. She said the health program specialists are helping with various issues, data collection, policy work, research, project management, and the software. She said one inspector works out of Sioux Falls and a second inspector is now based in Rapid City.

Ms. Kerr said establishments can use a portal to submit initial application and annual fees. She said the portal is also used to generate certificates and store all information, from site plans to ownership. She said this enables the department to send out mass or individual communications regarding active licensure, suspensions, revocations, tracking, and inventory.

Ms. Kerr said there are out-of-state and non-resident cardholders. She said the Department of Health monitors to ensure that the out-of-state patients have a disabling or debilitating medical condition, as authorized under South Dakota law. She said minor patient cardholders must have a caregiver, because minors may not enter a dispensary.

She said home cultivation is also allowed. She said patients may have two immature and two mature plants. She said that is tracked through the cardholder software. She said the department also ensures there is a bona fide practitioner-patient relationship under which the patient's medical history is assessed and monitored. She said this provides the patient with a reasonable expectation that the practitioner is going to provide follow-up care and monitor their use of medical cannabis.

Ms. Kerr said new legislation requires electronic notice to a patient's primary care provider. She said the Department of Health is working to get that notice on a patient's prescription drug monitoring program record. She said when the department receives an initial application or a renewal application from an establishment, the department reviews the establishment's operating procedures, site plan, security plan, equipment, any city or county certification, and inventory tracking procedures. She said the department inspects every establishment roughly once per calendar year and more often if there are complaints. She said the department may conduct surprise regular inspections during business hours. She said the department has a joint powers inspection agreement with the Department of Public Safety.

Ms. Palmer said one facility in Sturgis advertises its location at a particular address, but does not do business at that address. She said she wondered if there is a list of the addresses at which establishments are located.

Ms. Kerr said there are just under 13,000 active patients. She said the number appears to be holding steady. She said there are 75 advanced practice nurses, 20 physician assistants, and 184 physicians who are registered and active with the program. She said there are 68 dispensaries, 18 manufacturing establishments, 35 cultivation operations, and two independent testing facilities or laboratories.

Ms. Kerr said the current establishment fee is $5,310 per year. She said that fee will be raised to $9,000 per year to sustain the program. She said some of the program contracts will be up for renewal in 2025, 2026, and 2027.

In response to a question from Senator Tobin, Ms. Kerr said the application process takes about a week, plus whatever number of days it takes the United States Postal Service to deliver the patient's registration card.

In response to a question from Senator Tobin, Ms. Kerr said, under state law, a caregiver is required to have a state fingerprint background check.

In response to a question from Senator Tobin, Ms. Kerr said the Department of Health obtains information regarding debilitating conditions that serve as the basis for approval. She said the data regarding the conditions will be included in the department's annual report to the legislature.

In response to a question from Representative DeGroot, Ms. Kerr said if an establishment is put under suspension, there is an administrative hearing process prior to a revocation.

In response to a question from Senator Mehlhaff, Ms. Kerr said patients are limited in the amount of product they can purchase during a rolling 14-day period. She said the Department of Health does not keep such quantity information. However, she said, the point-of-sale system should block a dispensary sale if the patient is over the limit.

Dr. Arneson said when one goes to the website to certify a patient for a card, there is a question regarding whether the patient is on probation. She said, ethically, she does not need to know a patient's probationary status to provide care. She said she would prefer not to know, because that information could cause an unconscious bias. She said, if the question cannot be removed, perhaps there could be an option to state "I do not know."

Ms. Kerr said, under the statute, a practitioner is required to determine probationary status as part of the practitioner's due diligence.

Dr. Arneson said practitioners should not be asking a patient's probationary status, any more than they should ask a patient who is obviously a prisoner, why that person is in prison. She said a practitioner does not need to know that to provide good medical care.

In response to a question from Mr. Mueller, Ms. Kerr said the Department of Health does not look at the amount of cannabis that is being cultivated, in relation to the amount of cannabis that is being purchased by the 13,000 active patients. She said the amount might not be standard, per patient, given the amount that might be appropriate for varying conditions. Mr. Mueller said if it is not the department's charge to make that assessment, someone should be looking at that data.

Ms. Kerr said South Dakota does not have a statewide cap on the amount of product produced.

Ms. Palmer said she wondered if a patient is precluded from a purchase because the patient has exceeded his or her 14-day allotment, is there a report to the patient's provider or to law enforcement.

Ms. Kerr said, under the prescription drug monitoring program, a practitioner would see only controlled substances that a patient has been prescribed. She said the point-of-sale system should stop any attempt to sell over an allotment. She said the system has equivalencies for different types of product -- e.g., flowers, gummies, tinctures, etc.

In response to a question from Ms. Palmer, Ms. Kerr said the consequence is a patient is told he or she may return in a few days. She said there is no report to the provider or to law enforcement.

In response to a question from Mr. Jurgensen, Ms. Kerr said the Department of Health does not track the percentage of practitioners who have signed up to certify patients for medical marijuana. She said the department only has the number of practitioners who have registered with the program.

Senator Tobin said the number of participating nurse practitioners is very small.

Ms. Kerr said there are 275 to 280 practitioners registered with the Department of Health. She said that is a very small number, given the total number of licensed physicians, physicians assistants, and advanced nurse practitioners in the state.

Ms. Kerr said Congress passed the Controlled Substances Act in 1970. She said, under the Act, marijuana is a Schedule I substance. She said, in 1996, states began to legalize medical marijuana. She said, in 2016, the Drug Enforcement Agency and the United States Department of Health and Human Services evaluated, and ultimately the Department of Justice and the Drug Enforcement Agency denied, a petition to reschedule marijuana. She said, in 2023 the United States Department of Health and Human Services recommended marijuana be reclassified as a Schedule III substance and in May 2024, the Department of Justice and the Drug Enforcement Agency posted a notice of rulemaking to reclassify marijuana as a Schedule III substance. She said the 60-day public comment period closed on July 22nd, 2024. She said the agencies now have an opportunity to make changes to the proposed rule based on the comments, or they could choose to again deny the petition.

Ms. Kerr said a rescheduling would impose certain restrictions and regulatory controls. She said it would not automatically address any specific regulatory changes at the state or federal levels in areas such as banking, medical

use and research, prosecution, interstate transport, etc., as those would all come later. She said Schedule III substances include ketamine, codeine and anabolic steroids.

In response to a question from Senator Tobin, Ms. Kerr said the matter of probationary status involves an attestation and includes a reference to beneficial medical use.

In response to question from Representative Massie, Ms. Kerr said, given the number of active cardholders and establishments, the Department of Health concluded it was appropriate to raise the annual fees to nine thousand dollars.

Presentations by Representatives of the Medical Marijuana Industry

Mr. Jeremiah M. Murphy, registered lobbyist, Cannabis Industry Association of South Dakota, said it is the responsibility of this committee to ensure timely access to high-quality medical marijuana. He said the cost of a license went from $5,310 to $9,000 and that is quite a jump in an anti-tax, anti-overregulation state like South Dakota. The industry made a commitment that the program would be self-funded.

Mr. Murphy said medical marijuana sales constitute one-seventh or one-eighth of all the marijuana sales in the state. He said the United States Department of Health estimates there are 93,000 marijuana users in the state. He said 13,000 of them are served through the medical marijuana program. He said tribal programs serve 19,000 to 20,000 users. He said the other 60,000 South Dakotans who use marijuana do not buy it through the medical marijuana program.

Mr. Murphy said many of the 13,000 people who now buy marijuana through the program utilized the black market prior to the program. He said they did not have a regulated market. He said this regulated market provides sales tax dollars, which are new taxes being collected on medical patients.

Mr. Murphy said one of the big concerns about this program early on was leakage. Was product going out through the back door of the growing or manufacturing facility? He said law enforcement did not want that. He said the industry is subject to suspensions and revocation. He said they have substantial investments in ensuring the legitimacy of this product. He said the industry does not want it going through the back door, either. He said it is not in anyone's interest to operate a licensed facility while serving the black market. He has received no reports of product leakage.

Mr. Murphy said, every now and then, a patient will appear too early for a refill. He said the patient is told to return at a later time. He said, just like with prescriptions, there is no need to contact law enforcement because a patient appears early for a refill.

Senator Tobin said she wonders if dispensaries give instructions with a product at the point of sale.

Mr. Murphy said, as a result of recent legislation, a patient's provider is to be informed if the patient is issued a card by a secondary provider. He said there may be discussions about preferred use between the patient and the provider, but the instructions are not as detailed as with prescriptions.

Senator Mehlhaff said he wondered if raw marijuana flowers were found on the street, could they be traced back to a particular dispensary.

Mr. Murphy said, if the product was packaged, it could be traced because the packaging is very detailed as to where it came from, what is in it, the quantity, the THC level, etc. He said, if it is merely loose flower, it would not be traceable. He said dispensaries sell packaged goods, not loose flowers.

Senator Mehlhaff said the maximum is three ounces every 14 days. He said that is approximately six joints a day.

In response to a question from Senator Tobin, Mr. Thum said, overall, narcotics cases are down slightly, while fentanyl and methamphetamine cases are up quite a bit. He said, often, the narcotics task force will find marijuana present, even when they are focused on fentanyl and methamphetamine.

In response to a question from Mr. Jurgensen, Ms. Kerr said, in considering a fee increase, the Department of Health examined the cost of the program as a whole. She said the costs include several large software contracts, which are highly specialized and industry specific. She said other programmatic costs include safety compliance and the processing of establishment and patient applications in a timely manner.

Mr. Tyler Koehne, Rapid City, said he holds a manufacturing license and is just about to start operations. He said he would like to see changes in the remediation process and in particular changes in some of the techniques used to remediate samples that failed heavy metals tests. He said all of the products have to go through heavy metals testing to ensure that they are under certain threshold levels. He said South Dakota's "safe" levels are lower than those in Minnesota and North Dakota. He said, if a product fails the test for heavy metals, it has to be destroyed, regardless of whether it is in raw flower form or it is a manufactured extract, food product, or an edible. He said a methodology now exists to remediate flower and extracts using a process that can be completed in the laboratory. He said he would like the rules to permit the use of such a process, rather than merely requiring destruction of the product. He said the remediation process in general is cumbersome and could be streamlined in the interest of efficiency.

In response to a question from Representative DeGroot, Mr. Koehne said cannabis is a bioaccumulator. He said it is a plant that pulls things out of the soil and concentrates them in the plant tissue. He said one of the things that it can pull from soil is metal. He said a cultivator might fail a metals test when in fact the metal came from the soil or water. He said nothing being sprayed on the plant contains metals. He said perhaps industry representatives and the Department of Health could engage in a round table discussion regarding different ways to address the presence of metals.

In response to a question from Ms. Palmer, Mr. Koehne said existing processes impact the amount of time it takes to get a product to market and cause negative cash flows. He said, some patients, depending on their location, do not have multiple options for obtaining products.

In response to a question from Senator Tobin, Mr. Koehne said heavy metals include arsenic, cadmium, mercury, and lead. He said the threshold at which we fail is about half of that in Minnesota and North Dakota. He said, if those jurisdictions consider their levels to be safe, why are South Dakota's levels different?

Senator Mehlhaff said it would be interesting to know how much product is being produced and how much is going legally to patients.

Mr. Alan Welsh, Dakota Herb, a licensed cannabis dispensary and cultivator, said medical card numbers went up to 13,000 and then began to decline. He said there are illegal marijuana sales all over the state and there is no enforcement. He said products are being sold under the guise of hemp. He said the medical marijuana industry has to comply with all the rules and the laws and has literally turned patients away because the patients were at their allotment. However, he said, the patient can go to a smoke shop and buy product. He said the industry is not going

to risk its investment and sell to people who are at their allotment. However, he said, marijuana can be purchased at multiple places in Sioux Falls alone. He said the product is called THCA. He said our product is tested. He said THCA is not. He said we track from seed-to-sale. He said we spend six hundred dollars a week to tag and track every plant and we pay a thousand dollars to test every batch and make sure it passes testing requirements. He said our facilities have to be compliant. He said we have a security system in our dispensaries. He said the state can look at the cameras, at any time, and literally see the cultivation process and the employees working at the dispensaries. He said this is not inexpensive. He said, likewise, they have to have reinforced windows and double secure entries into the building. He said only those patients who have cards may purchase their products. He said this places them at a huge disadvantage. In addition, he said, the places that sell THCA have not even received a letter indicating that if they sell any product that tests over 0.3, that amounts to selling marijuana, which is a felony.

In response to a question from Representative DeGroot, Mr. Welsh said his product has to be cheaper, in order to compete with that which the smoke shops sell.

Mr. Dalton Grimmius, Dakota Herb, said they have to entice patients to keep their medical marijuana cards. He said patients do not understand why they should spend $275 on a medical card when they can buy the product elsewhere.

Mr. Welsh said 0.3 is the differentiation between hemp and marijuana. He said South Dakota has had a law since 2020 that says, even if it is hemp, it cannot be inhaled or smoked. He said he is not aware that the law is being enforced. He said this is a definite health risk. He said the smoke shop products may contain harmful chemicals. He said, if a patient has a bad reaction, all cannabis is going to be negatively tied together.

Mr. Mueller said a principal issue pertains to the product testing capacity in the state. He said another issue pertains to whether the sale of smoke shop products should be under the jurisdiction of law enforcement or under the regulatory jurisdiction of the Department of Health.

Mr. Thum said smoke shop items are commonly targeted for shoplifting and burglaries.

Mr. Mueller said how we approach this issue should be uniform across the state.

Senator Tobin said we are allowing the sale of a product to our youth, without knowing the long-term effects.

Mr. Grimmius said some in the industry have growing and dispensing facilities that are co-located. He said there are rules that do not allow pesticide application in a co-located facility. He said, generally, the product being applied is citric acid or lemongrass oil -- very benign products. He said this puts the co-located businesses at a disadvantage.

Mr. Grimmius said there is a state-approved list of pesticides that can be applied. He said the vast majority of them are benign. He said the concern for co-located establishments is that it would leach into the dispensary area. He said the way these facilities are set up, that does not happen. He said everything is sealed because they want to ensure an ideal environment for growing cannabis. He said each area has its own HVAC and filtering systems.

In response to a question from Ms. Palmer, Mr. Grimmius said pesticides are applied with an atomized sprayer.

Presentation by a Representative of the State Public Health Laboratory

Dr. Tim Southern, Director, State Public Health Laboratory, said cannabinoids are produced by the cannabis plant, in very low levels and synthesized using plant derivatives or completely synthetic compounds. He said the cannabis plant is rich in many types of compounds. He said some of those compounds are purported to have beneficial health

properties. He said the compounds most frequently encountered on the laboratory side are terpenes, flavonoids, alkaloids, and cannabinoids. He said there are over 500 of these diverse compounds that come from the cannabis plant, and roughly 20% to 25% of those are known to be cannabinoids. He said cannabinoids are often characterized as having psychoactive properties or are called intoxicating. He said they are also referred to as non-psychoactive or non-intoxicating. He said some of these compounds are described as being naturally occurring or plant derived. He said a phytocannabinoid is a cannabinoid that originates from the plant. He said we also have chemically derived cannabinoids, which are also known as alternative cannabinoids.

Dr. Southern said cannabinoids are found in both the hemp and the marijuana plants. He said they are the same plant -- cannabis sativa. However, he said, they have been bred to do very different things. He said cannabinoid concentrations in plant tissues can vary greatly between hemp and marijuana. He said they can vary greatly between strains of hemp and between strains of marijuana.

Dr. Southern said cannabis plants can be bred or engineered to produce high levels of certain cannabinoids. He said an excellent example is Delta-8-THC. He said that has been the hallmark of potency for marijuana for the better part of half a century. He said we know that, in the marijuana plant, Delta-9-THC can be very high, while in the hemp plant, it must be less than 0.3 percent. Conversely, he said, hemp is bred or engineered to create high levels of non-psychoactive cannabinoids, like cannabidiol, also known as CBD.

Dr. Southern said, in addition to CBD, there are other non-psychoactive cannabinoids -- i.e., cannabinoids that do not have an intoxicating effect but are thought to have some medicinal properties He said these can include cannabichromine, cannabigerol, and cannabidaverin. He said psychoactive cannabinoids include Delta-8-THC, Delta-9, and Delta 10 THC.

Dr. Southern said there are 100 to 120 known cannabinoids. He said a semi-synthetic is a cannabinoid that is produced by converting a plant-derived precursor into a different substance, through chemical reactions. He said an example of this is taking CBD or cannabidiol and, through the modern miracle of chemistry, creating Delta-8-THC in high concentrations. He said Delta-8-THC is often considered a semi-synthetic, especially when encountered in an edible product or a smokable product, where percentages may be at 10, 20, or 30 percent and beyond. He said HHCs are another example of a semi-synthetic. He said these are the hexahydros.

Dr. Southern said the semi-synthetics are largely derived from biomass produced from hemp. He said the 2018 Farm Bill legalized industrial hemp nationwide, but left a tremendous amount of residual biomass. He said we are also seeing a tremendous amount of residual cannabidiol on the market for which there is not a substantial demand. He said modern chemistry can be used to create things like Delta-8-THC, Delta-10-THC, and other compounds, at exceedingly high concentrations. He said the CBD molecule is naturally occurring and with the addition of an acid and some other chemicals, can result in Delta-8-THC.

Dr. Southern said ingestion and smoking are the most common routes of administration for Delta-8-THC. He said there is another group of substances that also raise public health concerns. He said these are the tetrahydrocannabinol acetate esters-- THCO or THCO acetate. He said these are compounds that may occur in very, very low levels in the plant, much like Delta-8 and Delta-10, but are now being synthesized in very high concentrations. He said these substances are highly potent. He said one can create a THCO acetate with any cannabinoids, including Delta-8, Delta-9, and Delta-10. He said, in 2019 and 2020, clinical and public health practitioners encountered a new disease called EVALI. He said it is a lung injury associated with e-cigarettes. He said EVALI is caused by an acetate ester. He said, when heated, as in a vape pipe, the acetate ester breaks down into a harmful gas. He said EVALI caused 2,800 hospitalizations and almost 70 deaths. He said we have to be very careful with these products called THC-O acetates.

Dr. Southern said HHCs are hexahydrocannabinols. Again, he said, like Delta-8 and like the THC-Os, these are semi-synthetics that can be created from starting material like highly concentrated CBD. He said they include chemicals like HHCO, the cannabinol acetate, HHCP, and the bifluoro. He said HHC has been described as being stronger than Delta-8-THC, but not as strong as Delta-9-THC. He said, often, HHC is mixed with or sprayed on substances for consumption. He said this can be a flower product for smoking or it can be mixed into edibles. He said it is called THC-X and is touted by the industry as being the latest innovation. He said THC-X is a combination of Delta-8-THC and synthetic cannabinoids. He said THC-X is known for providing a fast and strong effect, compared to natural THC, because of what is purported to be enhanced bioavailability, or the enhanced ability of the human body to break these compounds down. He said primary routes are vaping and ingestion.

Dr. Southern said there are also alternative cannabinoids called K2 and Spice. He said these are fully synthetic cannabinoids whose chemical structure does not even resemble the natural chemical structure of something like a Delta-9. He said these compounds are marketed as herbal incense or potpourri. He said the synthetic drug is often incorporated with plant materials. He said K2 and Spice can cause an elevated heart rate, unconsciousness, seizures, and hallucinations. He said it can cause severe illness and has contributed to the loss of life.

Senator Tobin said marijuana is marijuana, whether it is medical or recreational. She said it is still the same plant. She said, since this is the Oversight Committee for Medical Marijuana, what steps must we take to ensure patient safety? She said it appears that not a lot of information is being given regarding the dosage and strength.

Dr Southern said we have to understand that we have a burgeoning and highly regulated medical cannabis industry, and we also have a hemp industry. He said it was never the intent of the hemp industry that hemp would become a surrogate for medical cannabis. He said we have regulations in place for testing products to ensure their safety. He said we are not seeing that applied to products originating from hemp. He said we need to have a serious conversation about the hemp industry and in particular about cannabidiol being used to create highly potent, semi-synthetic cannabinoids, at very high concentrations -- cannabinoids that are psychotropic, intoxicating, and psychoactive. He said federal law previously indicated that all intoxicating cannabinoids should be characterized as Schedule I marijuana. He said there was a subsequent ruling in the Ninth Circuit that characterized Delta-8-THC as a hemp product. He said it does occur naturally in hemp, but at very, very low levels. He said he believes that some within the hemp industry are interpreting that ruling to mean that highly concentrated semi-synthetic Delta-8 is also legal. He said, from that point, Delta-8 products can be used to make just about anything.

Senator Tobin said these hemp-based products are not being made in medical dispensaries. She said South Dakota is probably the number one hemp producer. She said she does not believe that these products are even made in the United States.

In response to a question from Ms. Palmer, Dr. Southern said, typically, the higher the concentration of the psychoactive substance, the greater the impact that the substance will have on the human body. He said one individual might experience an intoxicating substance very differently than another. He said something that causes euphoria in one person may cause paranoia in another. He said there are a lot of unknowns, especially with regard to some of the alternative cannabinoids. He said we do not have a lot of clinical information or research about THCO and HHCs in some of the substances that we are seeing on the market.

In response to a question from Mr. Mueller, Dr. Southern said he believes that some of the currently unregulated products fall within the purview of the hemp program. He said we may need to look to the Department of Agriculture and Natural Resources, perhaps in cooperation with the Department of Health, to get a better sense of what is being sold in this state and how to better regulate it. He said hemp is outside the purview of the Department of Health.

In response to a question from Mr. Thum, Dr. Southern said we need well-written legislation that does not allow modern garage chemists to wiggle out from under a law because they hydrogenated a molecule or because they added an oxygen or because they made the tail of an acetyl chain a little bit longer.

In response to a question from Senator Mehlhaff, Dr. Southern said there is a need to close some of the loopholes that were created by the 2018 Farm Bill, as well as those found within the federal definition of marijuana. He said Delta-9-THC is not the only intoxicating substance in that plant. He said Delta-8, Delta-10, HHC, THCO, and a litany of others need to be described and regulated.

In response to a question from Senator Tobin, Dr. Southern said, over the years, there has been quite a bit of discussion about what the Department of Health has authority to do. He said the interesting dichotomy is hemp versus marijuana.

Presentations by Representatives of the Medical Marijuana Industry

Mr. Murphy said the medical marijuana industry does not sell the products discussed by Dr. Southern. He said his members are not licensed to sell such products. He said the Department of Health has authority over his members because of their licenses. He said, when one gets a license to sell medical marijuana or to manufacture it, one surrenders certain rights to privacy. He said the department's responsibility regarding medical marijuana does not extend beyond that.

Mr. Murphy said his members pay the Department of Health to perform regulatory services regarding medical marijuana. He said they pay the department's budget for that service. He said they are not paying for the department to engage in law enforcement or to pursue this very separate issue. He said, if somebody is selling a dangerous product, that is a law enforcement issue. He said the department does not have the budget provided by the medical marijuana industry to follow through and regulate these other products. He said the medical marijuana industry would strongly resist the medical marijuana program being tasked with this. He said we do not believe that the Department of Agriculture and Natural Resources is the appropriate regulatory entity and that leaves law enforcement, which cannot do much because of the inherent chemical complexity of these products.

Mr. Murphy said his members are not selling these products.

In response to a question from Ms. Palmer, Senator Tobin said Delta-9 is marijuana. She said when Mr. Murphy says his members are just selling marijuana, he means they are selling Delta-9.

Mr. Murphy said his members sell medical marijuana in different forms, including flowers, which can be smoked or ingested or made into food products, tinctures to place under the tongue, vape products, etc. He said their product is very tightly controlled, as is the packaging of the product.

In response to a question from Senator Tobin, Mr. Murphy said, if marijuana was to be rescheduled, it would have very little impact on the medical marijuana industry. He said the rescheduling from I to III would still leave medical marijuana in a category with anabolic steroids and codeine, which require a prescription.

Senator Tobin said perhaps more providers would feel comfortable prescribing medical marijuana.

Committee Discussion

Representative DeGroot said perhaps this committee should try to identify one or two of the areas discussed -- perhaps the testing and smoke shops -- and work with law enforcement. He said perhaps there is model legislation that we could use so that we do not need to reinvent the wheel.

In response to a question from Ms. Palmer, Ms. Kerr said there is a statute that addresses the administration of medical cannabis to students. She said there are a small number of cardholders under the age of 18. She said they cannot go into a dispensary. She said they are required to have a caregiver.

In response to a question from Ms. Kassin, Mr. Koehne said testing results remain valid for one year. He said degradation and oxidation can affect the product over time. He said the storage environment is pertinent. He said if a product is vacuum sealed and protected in the right temperature and with the right humidity, it will remain viable.

In response to a question from Representative DeGroot, Mr. Koehne said if there is a surplus, it may be sent into manufacturing and made into other goods that are not experiencing a surplus.

Mr. Grimmius said, if there is excessive supply, one has to reduce the price. He said that raises issues of profitability. He said planting decisions are based on forecasting out about six months.

Mr. Mueller said the amount of product produced does not seem to be reconciled with what 13,000 patients would use. He said we need more transparency.

Senator Mehlhaff said we might require legislation or a rule to monitor how much product is grown, how much is sold, and what happens to the surplus. He said he will look at the issue of practitioners being required to question the probationary status of their patients. He said that came about as a result of legislation recommended by the Department of Corrections and the Unified Judicial System for individuals who are on conditional release from correctional institutions or who have been placed on probation. He said a lot of those people have a history of poor decision-making and a high level of addiction. He said we should look at that law and perhaps, rather than putting the burden on the medical practitioner to ask, make the patient report their status. He said, if they fail to report, they would be in violation of their probation or parole. He said he will take another look at that bill since he carried it last year.

Dr. Arneson said, when we practice appropriately, practitioners assess every patient and obtain the information needed to take good care of them. She said, in her clinic, that would include an extensive substance misuse history. She said that is important for all patients, not just those who have a history of parole or probation. She said a comment was made earlier suggesting that there be an attestation certifying that medical marijuana is in the patient's best interest. She said she would not certify any patient if she did not feel strongly that it is appropriate for the patient. She said she does monitor a patient's usage very closely. She said if a patient is actually under the care of a clinician who is monitoring the patient closely, the necessary information is already available.

Senator Tobin said perhaps the attestation could fall into the portal of the patient and give them an opportunity to opt-in. She said that is a very important part of being honest and open with any drug contract or pain contract. She said medical providers have a lot to do every day. She said the patient portal may be a way to remove a burden from the practitioner.

Ms. Kerr said, practitioners do not have access to the Metrc seed-to-sale system. She said establishments see just the card number allotment when they are trying to make that sale. She said that way, they do not oversell to the individual.

Mr. Mueller said we have a lot of work to do on the regulation of the variants and whether that which is currently being sold is safe and legal. He said we need to determine who is responsible for regulating the product. He said we heard that the medical marijuana industry does not believe that the broader product regulation should be an expense of the medical marijuana program. He said perhaps it should. He said it does have an impact on the medical marijuana industry.

Senator Tobin said the mission of this committee, as stated in law, is specific to Delta-9.

Senator Tobin said some patients, especially cancer patients, require very high dosages, because of their built-up tolerances. She said this does not necessarily translate to product diversion. Similarly, she said, how medical practitioners care for patients may differ. But, in judging how that care is provided, she said consideration must be given to the oath of care that each practitioner takes.

Representative Massie said he is concerned with the synthetic products. However, he said, it might be appropriate to do a thorough a summer study on that.

Senator Tobin said, to recap, Senator Mehlhaff volunteered to look into the issue of questioning probationary status. She said we should also look at remediation techniques for products that do not initially meet testing thresholds.

Representative DeGroot said it is difficult to come here for four or five hours, hear all this testimony, process all that, and then all of a sudden try to craft legislation. He said a summer study would be a good recommendation.

Senator Mehlhaff said the summer study might also include qualifications of and training for dispensary workers. Representative DeGroot said many of the dispensaries already provide training for their employees. He said we should investigate what is provided so we do not recreate the wheel.

Mr. Mueller said he volunteers Chief Thum to report back, at the next meeting, regarding the regulation of products other than those coming under the medical marijuana umbrella.

Senator Tobin said, again, that is not the charge of this committee.

It was moved by Senator Mehlhaff, seconded by Representative DeGroot, and carried on a voice vote that the meeting be adjourned.