

Meeting

MINUTES

SEPTEMBER 12, 2012

10:00 AM

800 NE OREGON ST, STE 1E
PORTLAND, OREGON 97232

MEETING CALLED BY	Todd Dalotto, ACMM Chair
TYPE OF MEETING	The Oregon Medical Marijuana Program (OMMP) Advisory Committee on Medical Marijuana (ACMM) provides an opportunity for public to discuss administrative issues with the OMMP management.
NOTE TAKER	John Sorensen, OMMP
TIMEKEEPER	Todd Dalotto, ACMM Chair
MEETING CALLED TO ORDER	10:00 AM
ATTENDEES	ACMM: Sandee Burbank, Dr. Alan Cohn, Todd Dalotto, Laird Funk, Alice Ivany, Jim Klahr, Dr. Gerry Lehrburger, Ben Mackaness, Cheryl Smith, Brian Michaels, Stormy Ray OMMP Staff: Tawana Nichols, Aaron Cossel, John Sorensen, Maureen Russell
PRESENT AS LISTED ON THE SIGN-IN SHEET	Debra Ivy. Peke

Agenda topics

REVIEW OF JUNE 22, 2012 MEETING MINUTES

TODD DALOTTO

ACTION ITEMS	PERSON RESPONSIBLE	OUTCOME
Motion: To approve the June 22, 2012 meeting minutes with amendments sent by Mr. Dalotto to the OMMP on July 9, 2012. 2 nd by Mr. Funk.	Ms. Burbank	Motion Passed Unanimously

UNINTERRUPTED ADMINISTRATIVE REPORTS

DHS ADMINISTRATION

DISCUSSION
<p>Program Update: According to Ms. Nichols, the OMMP currently has 29 permanent employees. Joann Jackson, from the Center for Health Statistics, has joined the OMMP to assist Ms. Nichols in managing the program in the wake of the Annette Johnston's departure. Ms. Jackson will partner with Ms. Nichols in a leadership capacity. Ms. Nichols explained that the assignment is temporary and noted that Ms. Jackson will not be taking the same role in the program as Ms. Johnston previously had.</p> <p>Statistics: Mr. Cossel stated that the OMMP currently has 54,436 patients, 26,477 of whom list themselves as the grower. The latter figure includes patients who have a current card and a renewal application pending. In addition, there are 29,604 registrations where the patient has listed someone else as a grower. Again, this figure includes patients who have a current card and a renewal application pending. There are 27,311 unique OMMP caregivers and 40,239 unique OMMP growers. Mr. Cossel noted that there are currently 2,075 physicians with a patient listed on the OMMP and stated that although this may appear to be a decrease, the program's new database is now able to reduce duplicate entries for physicians with multiple addresses and explained that there is no substantial reduction. Lastly, he stated that there are 762, 263, and 314 out of state patients, caregivers, and growers (respectively).</p> <p>Budget Review: Ms. Nichols conducted the budget review and began by stating that the OMMP brought in over \$900,000 in July of 2012. She noted that the OMMP's cash balance is now a little over \$2.4 million and that Jeff Carlson is the OMMP's new Program Support Manager. Although Mr. Carlson will not be attending the ACMM meeting, Ms. Nichols will relay any questions the committee has to him. Ms. Burbank asked if there is a possibility of the fees being lowered, as has been previously requested by the ACMM. Mr. Cossel explained that this is the first time in the history of the OMMP that the program has not been allowed to set its own fees and that several high-level discussions will need to occur in order for any changes to occur. Ms. Burbank asked where the ACMM's input falls into decisions regarding the fee structure. Again, Mr. Cossel stated that the program needs to understand the legislature's intent, moving forward, before any fee changes can be discussed. Ms. Nichols concurred, stating that the program will need to wait until the next legislative session concludes to understand their intent. Dr. Cohn asked Ms. Nichols to discuss fee cutting opportunities with the</p>

OMMP's new Program Support Manager. Ms. Nichols stated that she would. Mr. Funk asked for clarification regarding the legislative mandate. Ms. Nichols stated that the OMMP was not only mandated to raise a particular monetary figure for the programs it is funding, but that it was also mandated to set a certain fee structure as well. Ms. Ray stated that she met with Representative Cliff Bentz following the fee increase and asked him who now controls the program's fee structure. According to Ms. Ray, Mr. Bentz stated that the state legislature intended to maintain control of the OMMP's fees. Ms. Nichols noted that the majority of the complaints the OMMP receives stem from the increased fees, but reiterated that the legislature may have the final say on the topic. Mr. Dalotto asked if the legislature had taken away the Oregon Health Authority's (OHA) ability to set fees. Ms. Nichols said they had not. Ms. Smith asked if it is common for the legislature to mandate fees. Ms. Nichols stated that it is the first time it has occurred in the Public Health Division. Ms. Ivany asked if the legislature violated their statutory authority in setting the fees. Ms. Dalotto stated that he believes they did, as the ACMM has the statutory responsibility to advise the Director of the OHA. He added that the committee's role in providing annual input into the fees is not limited to the Director of the OHA.

CONCLUSIONS

Ms. Nichols will discuss the ways in which the OMMP could possibly reduce fees with Jeff Carlson, the OMMP's new Program Support Manager. The committee will send their questions to Ms. Nichols on the topic as well.

Mr. Funk will speak with Representative Peter Buckley, the state legislature's Co-Chair of the Ways and Means Committee, and ask him to attend an ACMM meeting to hear the concerns regarding the OMMP's current fee structure.

ACTION ITEMS	PERSON RESPONSIBLE	OUTCOME
Motion: The ACMM has received enough information to clearly justify a fee decrease, but has yet to receive enough information to recommend how much to reduce the fees. Therefore, the ACMM wishes to put forward a process to determine how much and to begin the administrative rule process to do so. 2 nd by Mr. Funk.	Mr. Dalotto	Motion Passed Unanimously

	DIALOGUE B/W ACMM AND ADMINISTRATION	TAWANA NICHOLS
DISCUSSION		

Schedule Next Meeting: The ACMM's next meeting will be on December 5, 2012 at the Portland State Office Building (PSOB).

New Committee Member Introduction: Cheryl Smith is the ACMM's new committee member.

Travel Reimbursement: Ms. Nichols discussed how to properly fill out Travel Expense Claim Forms, focusing on changing per diem rates, index, and PCA numbers. Ms. Nichols encouraged the committee to contact her prior to filing the claims to ensure that the information they have is current and accurate. Ms. Nichols has sent updated claim forms and instructions to each of the committee members. Mr. Klahr asked if the ACMM would receive reimbursement for the special meeting held on August 29, 2012. Ms. Nichols stated that the possibility is still being discussed; adding that the ACMM's Bylaws are being reviewed to ensure the meeting met the requirements for reimbursement. Mr. Dalotto referenced the ACMM's Bylaws, which state that, "special meetings may be scheduled as decided by a majority vote of the Committee during a public meeting, or through email correspondence, which reflects that a majority of the Committee believes an additional meeting to be necessary." Mr. Dalotto noted that the ACMM followed those guidelines as well as all public meeting laws and applicable administrative rules. He explained that the issue was originally raised when he asked Ms. Nichols to provide administrative support in transcribing the 8/29/2012 meeting minutes. Mr. Dalotto stated that the OMMP has provided support for the other special meetings called for and scheduled by the committee. Ms. Nichols stated there were questions surrounding the purpose of the meeting when it was scheduled. Mr. Dalotto stated that the meeting and its purpose were discussed at the ACMM meeting held on 6/22/2012 and that a motion was made on the subject. The motion is noted on the 6/22/2012 meeting minutes in the action item section for the topic of Attorney General/DOJ Memo. Mr. Dalotto stated that he would like the minutes for the special meeting drawn up and approved before the ACMM's December meeting in order avoid delaying the minutes from becoming part of the public record and in accordance with the committee's expectations of reimbursement.

Organizations Requiring Registration Cards: Mr. Cossel stated that OMMP employees have asked that the ACMM be made aware of the concerns and questions the program is receiving regarding organizations which will not grant access to a registered patient who has yet to receive their card. Mr. Cossel explained the OMMP has no authority to dictate the policies and procedures of such organizations. Ms. Nichols stated that the OMMP is currently within its statutory requirements in issuing cards. Mr. Dalotto stated that it seems to be taking up to four months for cards to be issued. Ms. Nichols explained that it takes much longer for an individual to receive their cards when the OMMP receives an incomplete application from

them. Mr. Dalotto asked if there has been any advancement in the program's online registration. Ms. Nichols stated that there are many higher level discussions which need to occur before a new system can be developed, adding that there are also major budgetary concerns associated with the development and implementation of an online application system. Ms. Ray pointed out that the patients, their caregivers, and their growers are covered under the Oregon Medical Marijuana Act (OMMA) as soon as the OMMP receives an application with proper medical documentation. Mr. Klahr asked about the possibility of having county offices accept delivery of applications. He feels as though the county offices do not understand the OMMP's application process and suggested some sort of training be provided. Ms. Ray concurred with Mr. Klahr's statement. Mr. Cossel stated that he often wonders what the intent of putting that delivery option into the OMMA was. He stated that there is nothing in the statute to require county offices to provide proof of receipt. Furthermore, while the idea is appealing in one sense, there are many logistical issues which may arise when coordinating something like what Mr. Klahr proposed, as it would require complex interactions between different levels of government. Mr. Cossel noted that requests to implement ideas, even excellent ones, can pull the program away from meeting its statutory requirements. Dr. Lehrburger suggested that getting the counties on board an idea like Mr. Klahr's may not provide a quick and efficient solution to the issues being discussed.

CONCLUSIONS	
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The next meeting will be held at the PSOB on December 5, 2012.

The ACMM will contact Ms. Nichols regarding the current per diem rates prior to submitting the Travel Expense Claim Form.

Ms. Nichols is still discussing the possibility of reimbursement for the committee members for expenses accrued as a result of the special meeting held on August 29, 2012.

Mr. Dalotto will draft a letter with Ms. Ray for Dr. Goldberg regarding the prioritization of an online application system.

ACTION ITEMS	PERSON RESPONSIBLE	OUTCOME
Motion: The ACMM strongly urges Dr. Bruce Goldberg, Director of the OHA, to do whatever is in his power to make the development and implementation of the OMMP's electronic application process a high priority to prevent the arrest of protected cardholders. 2 nd by Ms. Smith.	Mr. Dalotto	Motion Passed Unanimously
Motion: The OMMP will provide interim service for verification of a receipt of a valid application until the online application process is implemented to ensure patient protection. Motion was not 2 nd .	Ms. Ivany	Motion did not pass. Dr. Cohn, Dr. Lehrburger, and Ms. Ray abstained.
Motion: In reference to the motion made by Mr. Dalotto regarding the prioritization of an online application system, a letter will be drafted by Mr. Dalotto with the assistance of Ms. Ray to urge Dr. Goldberg to do whatever is necessary to ensure the online application be made a priority. 2 nd by Mr. Funk.	Mr. Dalotto	Motion Passed Unanimously

OUTREACH REPORT

SANDEE BURBANK

DISCUSSION		
Ms. Burbank opened the topic with her resignation as Outreach Committee Chair. She stated that she hopes any upcoming online application process takes issues faced by medical clinics into account, insofar as their interaction with the OMMP is concerned. She pointed out, as an example, that many clinics utilize a single server to run their operations and an online application system may necessitate an update. Essentially, she expressed a desire for the OMMP to include the medical clinics should the planning and design of the online application proceed. Ms. Burbank was thanked for her dedication as the committee Chair. Nominations for a new Chair were to occur after the lunch break, but did not.		
Ms. Burbank has resigned as the Outreach Committee's Chair and a new Chair will need to be nominated.		
ACTION ITEMS	PERSON RESPONSIBLE	OUTCOME
None	N/A	N/A

DISCUSSION

Mr. Dalotto wanted to report on a motion made during the 6/22/2012 ACMM meeting regarding the committee’s request to be placed on the interim legislative day’s agenda, which is occurring this week. He has not received a reply from any of the committees that have received his request. However, he noted Ms. Nichols has informed him that Dr. Goldberg has stated the ACMM must get approval from him in order to make a presentation to legislative committees as the ACMM. Mr. Dalotto noted that there is nothing stopping the ACMM members from addressing legislative committees on an individual level.

Mr. Dalotto noted that the committee participated in the discussions surrounding a proposed rule change to alter the process by which new conditions may be added to the OMMP’s current list. He explained that the decision now lies with the Rules Advisory Committee (RAC), set to decide the matter on 9/13/2012. He has shared the first draft of the administrative rule with the ACMM and called for a discussion on the subject. Mr. Dalotto stated that he found the initial draft to be severely lacking in accountability, scientific process, and protections from bias, prejudice, and conflicts of interest—all of which the ACMM had set forth to avoid. Again, he stated that the first draft has failed to meet those goals.

Mr. Dalotto referred to the ACMM’s 6/22/2102 meeting, during which the committee and public received a presentation from a representative of Portland General Electric (PGE), Brendan McCarthy, who discussed some of the serious safety concerns associated with the high electrical loads common to indoor cannabis gardens—injury or death to utility workers from exploding transformers, fire hazards, and the high cost for replacement transformers and other equipment—and noted that all of the risks can be minimized if indoor growers notify their utility company of the electric load their equipment requires. Mr. Dalotto noted that growers do not need to state why they have the increased usage. Due to the seriousness of these risks, the ACMM’s Horticulture, Research, and Safety Committee worked together with Brendan McCarthy over the past several months to coauthor *The Electrical Utility Cautionary Statement*, which has been forwarded to the entire ACMM. There are essentially two statements, as Mr. Dalotto explained, the first of which the ACMM is asking the OMMP to publish with applications, on the program’s website, and in any other appropriate medium. The second statement is for PGE to use in their communication with clients. According to Mr. Dalotto, PGE has offered to handle the printing costs for the distribution of the statement and asked that the OMMP consider means of distribution. Mr. Michaels drew attention to the last paragraph of PGE’s statement and claimed that the company’s assertion that it has no obligation to investigate or prosecute people under Oregon’s drug laws means absolutely nothing. He suggested that their assertion needs to be more clearly defined in order to preclude the possibility of increased prosecution based upon evidence provided by utility companies. Ms. Ray noted that people may be held responsible for damage done to PGE equipment. Dr. Lehrburger suggested that the language in the statement may be too specific and that a briefer, more succinct one may be better. Mr. Dalotto will rework the statement in accordance with the concerns raised by the committee.

CONCLUSIONS

While the ACMM may not address legislative committees, there is nothing to preclude them from doing so as an individual.

ACTION ITEMS	PERSON RESPONSIBLE	OUTCOME
Motion: The ACMM strongly recommends that the OMMP include the <i>Electrical Utility Cautionary Statement</i> on the OMMP website, in new and renewal application packets, and any other appropriate medium. The original statement will remove all mention of PGE and replace it with the phrase, “your utility company.” 2 nd by Mr. Funk.	Mr. Dalotto	Tabled.

MEETING ADJOURNED FOR LUNCH: 12:00PM

MEETING CALLED TO ORDER: 1:00PM

OMMP AS PART OF THE OREGON TRANSFORMATIONAL HEALTH CARE SYSTEM

JIM KLAHR

DISCUSSION

Mr. Klahr was curious about how Coordinated Care Organizations (CCO) would affect the OMMP, as he feels the program is being overlooked. He wants to ask Gail Shibley, Administrator to the Center of Health Protection, how the ACMM will fit into the transformation. He feels that the OMMP and ACMM should be included in the transformation and believes that the program plays an important role in public health, as it helps people move away from the use of hardcore, prescribed pharmaceuticals. Ms. Ray noted that being recognized by other state agencies has been difficult, historically, but that the program’s former administrator, Jody Noon, had done an excellent job bringing agencies together. Ms. Ray suggested that

the interaction between different programs continue at all ACMM meetings. Dr. Lehrburger suggested drafting a letter to send out to state agencies, introducing the ACMM and offering its services in the transformation to CCOs.

CONCLUSIONS

See motion below.

ACTION ITEMS

PERSON RESPONSIBLE

OUTCOME

Motion: Mr. Klahr will draft a letter to Dr. Goldberg, asking him where the OMMP stands in the broader, transitional health care system and what the ACMM can do to support the committee’s inclusion in that system. The letter will be reviewed by the ACMM via email in the interim. 2nd by Ms. Smith.

Mr. Dalotto

Motion Passed Unanimously

ADDING NEW CONDITIONS PROCESS (OAR 333-008-0090): INPUT ON 1ST DRAFT

TODD DALOTTO

DISCUSSION

Mr. Dalotto stated that the ACMM has a statutory responsibility to review current and proposed administrative rules. Mr. Funk expressed similar concerns to the ones raised earlier in the meeting during the Horticulture, Research, and Safety Report. Mr. Michaels stated the major issue he sees with the proposed rule change is that there is no advocacy of the statute for which the proposed rule is being promulgated. He explained that the only mention of advocacy in the OMMA is in its mandate for the creation of the ACMM. According to the Mr. Michaels, the ACMM should be the ones to decide what conditions to add. He stated that there are two physicians, two attorneys, researchers, and advocates sitting on the ACMM. Mr. Michaels asked why Dr. Grant Higginson, a former OHA administrator known for his dislike of the OMMA, is being allowed to participate in the RAC and suggested that his presence will have poisonous effects. Lastly, he noted that the proposed rule is no better than the existing one as neither promotes advocacy. Ms. Ray suggested that the ACMM may have more weight if it was reclassified as a council, rather than a committee. Mr. Funk noted that the legislature would have to approve a change of that sort and that may be a larger issue for voters to tackle. Mr. Mackaness suggested making a motion to put forth Mr. Michaels’ questions and concerns. Mr. Dalotto stated that the rule making process would be over before the letter was sent. Ms. Nichols concurred, stating that the program is under a strict timeline if a new rule is to take effect. Dr. Lehrburger suggested that the problem with having advocates decide what conditions are to be added is that they are not able to remain objective. Mr. Michaels disagreed. He explained that the promulgation of administrative rules is derived from the authority given by the statute authorizing the agency to promulgate the rules. This is termed an organic statute. Mr. Michaels continued by stating that the rules must, by definition, be written to enhance, enforce, and promote the purpose and benefits of the organic statute. The Agency, he explained, is not authorized to draft Rules which question or review the values enunciated in the statute, but instead must be drafted to promote those values. That is why the rules as drafted are contrary to their authority, and thus invalid. The presence of advocates of the OMMA, Mr. Michaels concluded, is precisely the design of administrative rules—to advocate for the statute granting the authority to promulgate rules in the first place.

CONCLUSIONS

ACTION ITEMS

PERSON RESPONSIBLE

OUTCOME

Motion: The ACMM strongly advises the OHA and RAC to include language which will strengthen protections against bias, prejudice, and conflict of interest in the decision and in the process that leads to the decision in the petition for the revision of adding new conditions. 2nd by Mr. Funk.

Mr. Dalotto

Motion: The language in the proposed rule change will be rewritten to require the State Public Health Officer (SPHO) or designee to consult experts and to request literature review by changing “may” to “shall” in (2)(a). 2nd by Mr. Klahr.

Ms. Smith

All Motions Passed Unanimously

Motion: Insert “under these rules” at the end of (1)(a)(F). 2nd by Laird.

Ms. Smith

Motion: If the SPHO should choose a designee, the selection shall require ACMM approval. 2nd by Mr. Funk.

Mr. Michaels

<p>Motion: The SPHO shall, upon final determination, publish a written report of finding which recommends either the approval or denial of the petitioner’s request. The written report of findings shall include a medical justification for the recommendation based upon the individual or collective expertise of the SHPO, designee, and/or expert consultants. The medical justification shall delineate the findings of fact made by the SPHO, et al., and scientific conclusions of credible medical evidence. 2nd by Mr. Funk.</p>	Mr. Dalotto	
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ATTORNEY GENERAL RELATIONS: RECAP OF THE 8/29 MEETING

TODD DALOTTO/BRIAN MICHAELS

DISCUSSION		
<p>Due to time constraints, Mr. Dalotto simply noted that Attorney General Ellen Rosenblum will be speaking to the ACMM again. Mr. Dalotto suggested that the ACMM communicate via email to collect questions and comments they may have before the next meeting.</p>		
CONCLUSIONS		
<p>The ACMM will be speaking with Oregon’s Attorney General again to discuss any concerns the committee has.</p>		
ACTION ITEMS	PERSON RESPONSIBLE	OUTCOME
None	N/A	N/A

OMMP SUPPORT FOR LIVE STREAMING, AUDIO/VIDEO ARCHIVING, AND SOUND AMPLIFICATION FOR ACMM MEETINGS

TODD DALOTTO

DISCUSSION		
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Mr. Dalotto tabled this discussion, but did request that the OMMP provide the support noted above.

CONCLUSIONS		
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The OMMP will continue to provide sound amplification support at the ACMM meetings.

ACTION ITEMS	PERSON RESPONSIBLE	OUTCOME
None.	N/A	N/A

PUBLIC ANNOUNCEMENTS AND COMMENT

PUBLIC-ACMM

Debra Ivy: Ms. Ivy has several friends who want to participate in the program, but their doctors are making them sign contracts stating that they will not register with the OMMP. Ms. Burbank explained that it is called a “pain contract”, designed to make patients choose between the use medical marijuana and prescription medication, and that it is happening with increasing regularity. Dr. Lehrburger stated that some clinics receive federal funding and indentify medical marijuana as a conflict of interest. Dr. Lehrburger also questioned the constitutionality of clinics denying medication to patients.

Peke: Thanked the ACMM and the OMMP for the meeting.

MEETING AJOURNED	2:30PM
MINUTES SUBMITTED BY	John Sorensen, OMMP
SPECIAL NOTES	None