



# Report of the Joint Committee on Legislative Ethics



IN RE: DELEGATE DAN K. MORHAIM



Annapolis, Maryland  
February 28, 2017

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MARYLAND GENERAL ASSEMBLY  
JOINT COMMITTEE ON LEGISLATIVE ETHICS

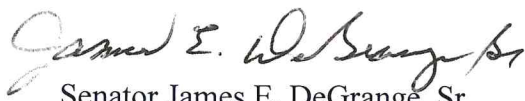
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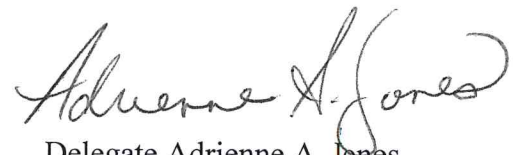
The Honorable Michael E. Busch  
Speaker of the House of Delegates  
H-101 State House  
Annapolis, Maryland 21401

Dear Speaker Busch:

There is transmitted herewith the Report of the Joint Committee on Legislative Ethics, In  
Re: Delegate Dan K. Morhaim, adopted by unanimous vote of the Joint Committee on February  
28, 2017.

Sincerely,

  
Senator James E. DeGrange, Sr.  
Co-Chairman

  
Delegate Adrienne A. Jones  
Acting Co-Chairman



**Maryland General Assembly  
Joint Committee on Legislative Ethics**

**2017 Membership Roster**

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**Delegate Adrienne A. Jones, Acting House Chairman**

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**Committee Staff**

Deadra W. Daly  
Stacy M. Goodman



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# **Report of the Joint Committee on Legislative Ethics In Re: Delegate Dan K. Morhaim**

**February 28, 2017**

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The Joint Committee on Legislative Ethics (joint committee), pursuant to the October 19, 2016, complaint issued by the joint committee, and in accordance with § 5-516(a)(2) of the General Provisions Article, after conducting a review and proceedings regarding the alleged ethical improprieties on the part of Delegate Dan K. Morhaim, submits its report with recommendations to the Speaker of the House of Delegates, adopted by a unanimous vote of the joint committee on this date.

## **Summary of Recommendations**

Based on careful and thorough consideration of the evidence and the issues before it, and for the reasons set forth in detail in this report, the joint committee unanimously recommends to the Speaker of the House of Delegates that:

1. The Speaker of the House of Delegates submit to the House of Delegates, and the full House of Delegates adopt, a resolution of reprimand expressing the House of Delegates's disapproval of Delegate Morhaim's actions, based on his activities as set forth in this Report of the Joint Committee on Legislative Ethics.
2. The Speaker of the House of Delegates requests that Delegate Morhaim consider making a public apology to the members of the House of Delegates to acknowledge and express regret for his conduct and the disrepute and dishonor he has brought to the Maryland General Assembly.

## **Procedural Background**

The joint committee, pursuant to the October 19, 2016, complaint issued by a motion of a majority of the membership of the joint committee in accordance with § 5-516(a)(2) of the General Provisions Article, regarding alleged ethical improprieties on the part of Delegate Dan K. Morhaim, (Delegate Morhaim) submits this report with recommendation to the Speaker of the House of Delegates, adopted by a unanimous vote of the joint committee on this date.

In accordance with the provisions of § 2-706(1) of the State Government Article and Title 5, Subtitle 5 of the General Provisions Article, the joint committee commenced its review and proceedings in accordance with its mandate to “perform all duties assigned to it by law or by legislative rules” including review of complaints received or made.

The joint committee met in closed session on October 19, 2016, to review the preliminary facts and information compiled by co-counsel to the joint committee. The facts and information considered included documents and video of the activity that gave rise to the allegation of violations of the Maryland Public Ethics Law. The joint committee voted to issue a complaint against Delegate Morhaim and to conduct an investigation of the allegations. Co-counsel and staff proceeded to gather information relating to the allegations. On December 1, 2016, the Department of Legislative Services (DLS) retained independent counsel to assist the joint committee in its review of this matter. Over a period of several months, the independent counsel, counsel to the joint committee, and DLS staff assembled and reviewed information from the various sources, including witness testimony from current staff; former staff; members of the Maryland Medical Cannabis Commission (MMCC); representatives of Doctors Orders, a medical cannabis company with whom Delegate Morhaim had entered into a consulting agreement; telephone and meeting notes of the Ethics Counsel (following waiver of attorney/client privilege); a video of a public meeting of the MMCC; various disclosure forms; license applications submitted to MMCC by Doctors Orders; and email communications between Delegate Morhaim and various individuals.

On February 1, 2017, the joint committee met in closed session to review the alleged facts of the specific activity and the specific statutory provision of the Maryland Public Ethics Law that may have been violated as a result of the activity. To provide Delegate Morhaim with an opportunity to respond to the allegation made against him, the joint committee voted to send a letter with the enumerated allegation to Delegate Morhaim along with a request for relevant documentation or other evidence relating to the allegation. This letter was emailed and hand-delivered to Delegate Morhaim on February 3, 2017.

In its letter with the enumerated allegation, the joint committee requested that Delegate Morhaim provide a written response to the allegation and any relevant written documentation by February 10, 2017. Counsel for Delegate Morhaim submitted a timely response to the joint committee, including production of relevant documents.

On February 21, 2017, the joint committee met in closed session to interview Delegate Morhaim under oath. Delegate Morhaim was represented by counsel at the hearing. He

was interviewed by counsel to the joint committee and by members of the joint committee. The joint committee also heard testimony from Ethics Counsel, Deadra Daly. The hearing was recorded and transcribed. After the hearing, the joint committee remained in closed session to review evidence relating to the allegation and make a determination on certain issues.

On February 28, 2017, the joint committee met again in closed session to vote on the adoption of a written report.

## **Findings of the Joint Committee on Legislative Ethics**

The joint committee, after gathering and thoroughly reviewing all available evidence relating to the activities of Delegate Morhaim in connection with Maryland Public Ethics Law, issues the following findings:

### **Factual Background**

Delegate Dan Morhaim has been a member of the General Assembly for 23 years. For many of those years, he has been a leading and vocal advocate for the legalization of medical cannabis. Beginning in the 2002 session, he introduced and supported a number of bills to accomplish this goal, culminating in the adoption of Chapter 403 of the 2013 session, which established the Natalie LaPrade Medical Marijuana Commission, and which was subsequently renamed the Natalie LaPrade Maryland Medical Cannabis Commission (MMCC) by Chapter 251 of the 2015 session.

Since its establishment, Delegate Morhaim has been extensively involved in the workings of the MMCC and its mission; frequently commenting in writing to MMCC members and staff on matters of policy and regulation and testifying before the MMCC during their public meetings. In making these comments, and in his testimony, he always has been identified in his legislative capacity as a delegate of the General Assembly.

### **Natalie M. LaPrade Maryland Medical Cannabis Commission**

The MMCC operates as an independent commission within the Department of Health and Mental Hygiene. The MMCC is responsible for developing regulations and procedures for the award of medical cannabis grower, processor, and dispensary licenses, as well as the regulation of the medical cannabis industry in the State. Regarding license applications, regulations adopted by the MMCC established a double-blind identification process for the review, evaluation, and ranking of medical cannabis-related license applications. Applicants were required to submit one un-redacted paper copy and one flash drive with a copy of the application for each license application during the application period from September 28, 2015, to November 6, 2015.

On November 6, 2015, the application deadline, the MMCC received 1,080 applications – more than three times the number it expected. The redacted applications on the flash drives were forwarded to the Regional Economic Studies Institute of Towson University (RESI), the third-

party vendor hired by the MMCC to review, evaluate, and rank the applications. Subject matter portions of the application were sent to various experts to perform the evaluations.

On August 5, 2016, the MMCC voted to preliminarily approve the RESI-ranked grower and processor applications. On August 8, the applicant cross reference key was un-blinded for the assistant Attorney General for the MMCC for only those applicants approved on the August 5 vote, so that MMCC staff could perform background checks. On August 15, 2016, the names of the successful applicants were revealed to the members of the MMCC and to the public. Doctors Orders was one of the successful applicants for both its grower and processor license applications.

### **Medical Cannabis Entities Express Interest in Delegate Morhaim**

Beginning in May of 2015, Delegate Morhaim was contacted by a number of medical cannabis entities and potential licensees to consult with them in preparing their license application, and working for them if they were awarded a license. On or about May 21, 2015, he contacted the Ethics Counsel to inquire whether this type of consulting arrangement would be permitted under the Maryland Public Ethics Laws. Ethics Counsel's advice, which was set forth in her May 29, 2015 letter to Delegate Morhaim, was based on the following information provided by Delegate Morhaim:

- he would be acting in his personal capacity as a physician, and not as a member of the General Assembly;
- his potential activities would include educating doctors and other medical professionals about the clinical use of and research related to medical cannabis;
- he may also review research related to the uses of medical cannabis;
- he did not propose to represent clients before State or local government entities; and
- his name may be listed as a medical consultant in his clients' various applications and company descriptions, but his General Assembly position would not be referenced.

Based on this information, Ethics Counsel advised Delegate Morhaim that the Maryland Public Ethics Law did not prohibit the proposed consulting arrangement. The letter concluded with Ethics Counsel advising Delegate Morhaim, "[a]fter you formalize your arrangement and when future *legislative action* on medical marijuana is pending, please contact me to discuss any other disclaimer or recusal requirements." (Emphasis added). The letter also contained joint committee disclosure forms Form D, "Disclaimer of an Apparent or Presumed Conflict of Interest," pertaining to possible conflicts of interest with the delegate's legislative action, and Form F, "Disclosure of Sources of Earned Income," in the event he was hired by and receiving earned income from a medical cannabis entity. During their conversation, Delegate Morhaim did not inform Ethics Counsel that he already had been in contact with staff and members of the MMCC

providing advice with regard to proposed regulations for growing, processing, and dispensing of medical cannabis.

### **Consulting Agreement with Doctors Orders**

During this time period, Delegate Morhaim was contacted by a lobbyist who is a principal in a lobbying firm that focuses in the health care field and who was working with one potential applicant, Doctors Orders. The lobbyist inquired as to whether Delegate Morhaim would be interested in meeting with representatives from Doctors Orders to discuss a consulting arrangement in which he would serve as their medical director, a position authorized under MMCC regulations for a licensed dispensary. Delegate Morhaim agreed to meet.

The meeting with Doctors Orders occurred on June 3, 2015. The parties discussed Delegate Morhaim's potential role to be the company's national medical director in his personal capacity as a physician on being awarded licenses in Maryland (Doctors Orders intended to submit individual applications, as required by the MMCC, for a grower, processor, and two dispensary licenses). His immediate duty for the company would be to solicit candidates to be part of a company medical advisory board.

After the meeting, Delegate Morhaim sent an email to the Doctors Orders representatives and their lobbyist that included an excerpt from Ethics Counsel's May 29 letter regarding potential employment with a medical cannabis entity noting, "[t]his is standard stuff, and basically it says that I can apply my medical skills but not represent clients before government entities."

On June 8, Delegate Morhaim spoke with a principal of Doctors Orders regarding the terms of a consulting agreement, which was executed on July 9, 2015. The consulting agreement stated that Dan Morhaim, in his personal capacity, would work exclusively for Doctors Orders, and that he would provide advice and other services in connection with not only its efforts at obtaining medical cannabis licenses in Maryland, but in other states where Doctors Orders either already was operating or was looking to do business in the future. The agreement provided that Dan Morhaim would be paid a fixed fee, which the joint committee finds to be substantial, for his work in Maryland and two other states and with a promise of additional substantial annual compensation if Doctors Orders obtained licenses in Maryland, and further compensation for licenses obtained in other states.

### **Joint Committee Disclosure Forms D and F**

Shortly after receiving the executed consulting agreement and the initial payment pursuant to the schedule in the agreement, Delegate Morhaim contacted Ethics Counsel on July 23, 2015, to seek advice as to how to complete Forms D and F. Delegate Morhaim told Ethics Counsel that he had been retained by an applicant without identifying Doctors Orders, but he did not tell her he had been paid by, or that he had begun work for, this applicant. He also did not tell her that he was appearing before the MMCC as a delegate, or that he was communicating with members of the MMCC on matters of policy and suggesting changes to proposed regulations.

Despite having already started working for Doctors Orders, Delegate Morhaim completed Form D by stating that he “*may* do medical consulting and/or treatment” in the areas of “addiction issues” and “medical cannabis.” (Emphasis added). Ethics Counsel told the joint committee that it was her impression that Delegate Morhaim’s work for the company would not begin until or unless the company received a license, and therefore, she advised Delegate Morhaim that this language was sufficient. As indicated previously, at the time she provided this advice she had no knowledge that he was appearing before the MMCC, and if she had been aware, her advice may well have been different.

On Form F, Delegate Morhaim declared that he was receiving income from an LLC he recently had formed, Whitebridge Associates. He advised the joint committee that the LLC was created based on the advice of his personal counsel for the purposes of receiving payment and processing expenses from Doctors Orders. Ethics Counsel advised that he was not required to list the name of his consulting client, Doctors Orders, consistent with standard advice provided on this issue.

### **Commencement of Work for Doctors Orders**

Delegate Morhaim began assisting Doctors Orders almost immediately after signing the consulting agreement. On July 19, 2015, he emailed Doctors Orders to advise them that the MMCC would be meeting on July 21 and he would be attending; a meeting that was also attended by the lobbyist working for Doctors Orders. On July 22, 2015, he emailed Doctors Orders with information regarding potential locations in Baltimore County where the company could set up a grower operation. On August 24, 2015, he traveled to Colorado to view Doctors Orders medical cannabis growing, processing, and dispensing facilities in order to better understand how the company operated and ensure it was operating in a professional and medically sound manner. On September 1, 2015, he emailed Doctors Orders to suggest they consider a sliding fee schedule for medical cannabis based on economic ability to pay. He also emailed Doctors Orders separately on September 1 with his “thoughts on [their] application process for Maryland licenses,” making suggestions for how it could be modified, including comments on the processor application, which he thought was deficient. He ended the email with the comment, “I’d appreciate the opportunity to review the application as drafting continues.” Finally, on November 1 and 4, 2015, Delegate Morhaim emailed Doctors Orders separately with comments on its dispensary application and grower application.

At the same time, Delegate Morhaim continued to interact with the MMCC as a delegate; yet, at no time during these interactions did he tell the MMCC that he had been retained by a potential license applicant. The following are a small number of examples of his interactions with the MMCC during this period of time. On July 21, 2015, Delegate Morhaim appeared before the MMCC at its meeting at the University of Maryland School of Medicine. On August 3, 2015, he emailed the Executive Director of the MMCC requesting copies of the comments to the proposed regulations submitted by MedChi, the Board of Physicians, and the Board of Pharmacy, which were provided to him by MMCC staff. On August 28, 2015, he emailed a member of the MMCC regarding the number and location of anticipated dispensary licenses. On October 21, 2015, he

emailed the MMCC with recommendations for adding two additional members to the MMCC with financial experience.

### **Ethics Advice on Involvement in the Application Process for Medical Cannabis-related Licenses**

On October 26, 2015, Delegate Morhaim emailed Ethics Counsel seeking advice as to whether biographical information referencing his legislative position that was to be included in the Doctors Orders' license applications met ethical standards. Ethics Counsel responded by referring to Ethics Opinion #1, an opinion of the joint committee that advises that a legislator may identify their position in biographical material in a business context. Still unaware that Delegate Morhaim was interacting with the MMCC, and with a focus on his role as a legislator, she concluded by stating, "[b]ecause of your involvement with the group through the consulting organization, you should not be involved with *applications* in your *legislative capacity*." (Emphasis added). Ethics Counsel advised the joint committee that had she known Delegate Morhaim was engaged in communications with members of the MMCC and was testifying at MMCC hearings, she would have advised him to stop because his actions could appear to or potentially violate the Maryland Public Ethics Law, particularly, the use of his prestige of office or public position for private gain.

### **Meeting with Former Executive Director of the MMCC**

On August 28, 2015, Delegate Morhaim emailed the Executive Director of the MMCC to arrange a meeting on September 4 at a local coffee shop in Baltimore County where they both lived. Delegate Morhaim stated that at this meeting, he told the executive director that he was affiliating with an applicant, but did not name the company. The executive director, however, recalled that Delegate Morhaim said he was only "thinking about" affiliating with an applicant.

Delegate Morhaim told the joint committee that he believed he had satisfied any disclosure obligations regarding his affiliation with Doctors Orders by telling the executive director, and he left it to her to decide whether and how to communicate this information to the MMCC because, in his view, telling the members would have been inappropriate and potentially violate the anonymity of the application process. In her interview with co-counsel for the joint committee, the executive director said that she advised Delegate Morhaim that she expected him to formally advise the members of the MMCC once he had actually been engaged by the potential licensee. She did not communicate Delegate Morhaim's disclosure to the members because the affiliation had not been formalized and she "did not want to start a rumor." She believed his affiliation was never formalized because Delegate Morhaim continued to communicate with the MMCC as a delegate, including offering public testimony. The executive director resigned from her position with the MMCC in January, 2016.

### **2016 Legislative Action**

During the 2016 legislative session, Delegate Morhaim continued his assignment as chair of the Government Operations Subcommittee of the House Health and Government Operations Committee, the subcommittee tasked with consideration of all legislation in the House relating to

medical cannabis and the MMCC. At no time did Delegate Morhaim inform the chair of the Committee or the Speaker of the House that he had entered into a consulting agreement with a medical cannabis company that had pending license applications. The committee chair told counsel that this is information he would have wanted to know.

On January 18, 2016, Delegate Morhaim introduced one medical cannabis-related bill, House Bill 104, titled, Medical Cannabis – Written Certification – Certifying Providers. On January 23, Ethics Counsel emailed Delegate Morhaim regarding his inquiry to her as whether his relationship with Doctors Orders would require him to recuse himself from legislative action on HB 104. Ethics Counsel advised him that this legislation would not have “a direct, financial impact on the entity for whom you consult or on you” and that he had disclaimed an apparent conflict of interest with the filing of his Form D on July 23, 2015, therefore recusal was not required.

### **Post-application Interaction with the MMCC**

Doctors Orders submitted four applications for licenses on the November, 6, 2015 deadline along with 1,000 other potential licensees. Delegate Morhaim told the joint committee, and it was confirmed by Doctors Orders, that he had little contact with Doctors Orders after the applications were submitted. During the period from November 2015 through July 2016, however, he continued to frequently and substantively engage with the MMCC. For example, on November 12, 2015, he emailed the MMCC Executive Director, asking how many doctors had signed up to be certifying physicians. On December 31, 2015, he forwarded an email from an applicant to the Executive Director, complaining about the pace of the decisions regarding the awarding of licenses. On June 11, 2016, he forwarded to the commission suggested modifications to proposed regulations. The above examples are just a small sample of the hundreds of email communications Delegate Morhaim had with staff and members of the MMCC during this time.

### **Medical Cannabis Processor License Issue**

On May 22, 2016, the MMCC voted to limit the number of initial processor licenses to 15 citing the difficulties inherent in regulating a new and controversial industry, including a lack of staffing and financial resources. Section 13-3309 of the Health-General Article does not set a statutory limit on the number of processor licenses, but the law does cap the number of initial medical cannabis grower licenses to 15. *See* § 13-3306. Beginning on June 1, 2018, however, the MMCC is authorized by statute to issue as many medical cannabis grower licenses as necessary to meet patient demand.

On learning of the vote to limit the number of initial processor licenses, and while having an interest in a medical cannabis company with applications for a grower license and a processor license pending, Delegate Morhaim began to communicate his objections to the MMCC. He first raised this issue in an email to the new Executive Director of the MMCC, its chair, and other members of the MMCC on May 23, 2016. He followed up that email with a telephone call to the Executive Director and another set of emails on May 25 and 26, 2016, forwarding the email string with the responses of the Executive Director to various State officials in the Department of Health



and Mental Hygiene. In these communications, he stated the reasons for his objections and he proposed that the MMCC consider a new method of awarding processor licenses.

Delegate Morhaim suggested that the MMCC have no fixed number of processor licenses; instead, he proposed that the MMCC not rank processor applications in order (which may be contrary to the statutory requirement of § 13-3309(c) of the Health – General Article), but simply group processor license applications as “sufficient to operate” and “grossly deficient.” The MMCC would then allow those applicants deemed “sufficient to operate” to “choose to proceed or not.” Delegate Morhaim further advocated that “[f]or any entity that gets a grower license and that also applied for a processor license, the processor license is automatically granted, unless its processor license is found to be grossly deficient.”

On June 11, 2016, he sent a subsequent email with the same information to the Executive Director of the MMCC, Eric Sterling, an individual member of the MMCC, the Secretary of Health and Mental Hygiene, and the Deputy Secretary of Public Health Services. Finally, he testified before the MMCC at its public meeting on July 12, 2016, in Howard County on this and other issues. At no time during his testimony or in any of his other communications did he advise the MMCC that he had entered into a contract of employment with a potential licensee who had submitted a medical cannabis grower license application and a processor license application.

Both Delegate Morhaim and Doctors Orders have advised the joint committee and its counsel that Delegate Morhaim was not retained or paid to represent Doctors Orders before the MMCC, and that Doctors Orders was unaware that Delegate Morhaim had testified before the MMCC on July 12, 2016. Furthermore, both Delegate Morhaim and Doctors Orders have advised that Delegate Morhaim’s testimony on July 12, 2016, objecting to the MMCC’s decision to limit the number of processor licenses was contrary to the interests of Doctors Orders because expanding the number of potential processor licenses would potentially decrease the economic value of Doctors Orders’ investment.

The joint committee notes, however, that Delegate Morhaim was well aware that Doctors Orders was actively seeking *both* a grower license and a processor license. His testimony on July 12 pointed to the economic disadvantage to a grower applicant who might not also receive a license to process medical cannabis, and therefore it was in his financial interest (and the financial interest of Doctors Orders) to advocate for a regulatory scheme that provided the greatest opportunity for Doctors Orders to receive both types of licenses. Further, in his initial comments to Doctors Orders on September 1 2015, regarding their draft applications, Delegate Morhaim questioned the strength of their processor application, and asked to review further drafts. Finally, it is difficult to reconcile Delegate Morhaim’s argument that his testimony was knowingly inconsistent with Doctors Orders’ position on this issue with the fact that, by his own admission, he had had little to no contact with anyone from Doctors Orders after their applications were submitted on November 6, 2015, some eight months earlier.

### **Public Revelation of Interest in Doctors Orders**

The public, and the joint committee, first became aware of Delegate Morhaim's relationship with Doctors Orders when an article was published by the *Washington Post* on July 16, 2016, revealing his interest with Doctors Orders and questioning his July 12 public comments before the MMCC. The publication of this and subsequent articles from various news outlets prompted Delegate Morhaim to write a letter to the chairs of the joint committee on August 17, 2016, explaining his relationship with Doctors Orders and stating his belief that he acted appropriately based on the advice of Ethics Counsel. In his letter (and in his testimony before the joint committee on February 21, 2017), Delegate Morhaim stated that he refrained from advising the MMCC of his affiliation with Doctors Orders in order to maintain the integrity of the MMCC's double-blind identification system that required the redaction of specified names of applicants in their license applications. He also acknowledged, however, that, "[i]n retrospect, I wish I had made reference to my consultant role when I spoke in public before the Commission," and, [g]oing forward, to avoid even the slightest appearance of impropriety, I will not have any communications with the Commission or its staff concerning the medical cannabis issue in the future," and "I will not take any additional legislative actions concerning the medical cannabis issue."

During his testimony before the joint committee on February 21, Delegate Morhaim reiterated his belief that he had complied with all ethics laws and standards based on the advice he received from Ethics Counsel, and that he did not act with any intent to use the prestige of his office or public position for personal financial gain. Regardless, he apologized to the joint committee, and expressed deep regret that his actions have tarnished the public perception of the legislature. Delegate Morhaim also confirmed his intent not to have anything to do with medical cannabis in his legislative position, and further, that he would disassociate himself from working with Doctors Orders when legally permissible. On February 22, 2017, Delegate Morhaim filed Form E with the joint committee, formally recusing himself from voting on any medical cannabis-related legislation.

### **Findings of the Joint Committee on Legislative Ethics**

The joint committee, after gathering and thoroughly reviewing all available evidence relating to various activities of Delegate Morhaim in connection with the Maryland Public Ethics Law, makes the following findings:

#### **Disclosure and Disclaimer Provisions**

The joint committee publishes six forms to facilitate the legally required disclosures and disclaimers of legislators under the Maryland Public Ethics Law:

- Form A: Disclosure of Interest: Representation Before a State or Local Agency (required by § 5-514(b)(1)(i) of the General Provisions Article for representing a person for

compensation before a State or local government agency, except for judicial or quasi-judicial proceedings);

- Form B: Disclosure of Interest: Financial Relationship with the State or a Local Government (required by § 5-514(b)(1)(i), (ii), (iv), and (v) for:
  1. representing a State or local government agency for compensation;
  2. a contractual relationship with the State or a local government in the State; and
  3. conducting a transaction with the State or a local government in the State for monetary compensation);
- Form C: Disclosure of Interest: Interest in Business Entity Regulated by a State Agency (required under § 5-514(b)(1)(iii) if the legislator, legislator's spouse, or dependent children have a certain financial interest in a business' stock or shares in a business entity);
- Form D: Disclaimer of an Apparent or Presumed Conflict of Interest (required under §-5-512 for disclaiming the appearance of or presumption of a conflict of interest *in legislative action*) (emphasis added);
- Form E: Statement of Recusal from Voting and other Legislative Action (required under § 5-513 for being disqualified from participation in legislative action or choosing to be excused); and
- Form F: Disclosure of Sources of Earned Income (required under § 5-514(b)(1)(vi)). A legislator is also required to file an annual financial disclosure statement with the State Ethics Commission and the joint committee under Title 5, Subtitle 6 of the General Provisions Article.

As previously stated, Delegate Morhaim filed a Form D and a Form F with the Joint Committee on July 23, 2015. He also filed his annual financial disclosure statement with the State Ethics Commission and the joint committee on April 1, 2016, in which he disclosed his income from Whitebridge Associates, LLC.

## **Finding**

The joint committee thoroughly reviewed each statutory provision of the Maryland Public Ethics Law that provides the basis for required legislator disclosure, disclaimer, or recusal as set forth above. While the joint committee has concerns about the wording of Delegate Morhaim's Form D (filed on July 23, 2015) given the actual circumstances of his consulting agreement on the date of filing, the Joint Committee finds that:

- Delegate Morhaim properly disclosed his earned income from Doctors Orders through the consulting firm, Whitebridge Associates, on his July 23, 2015, Form F and financial

disclosure statement filed on April 1, 2016, and that he was not required to report the name of the firm's client consistent with ethical standards;

- Delegate Morhaim was not required to file a Form A because the evidence shows that he was not retained by or paid by Doctors Orders to represent the company before the MMCC, a State agency;
- Delegate Morhaim was not required to file a Form C because the evidence shows that he did not have the requisite financial interest in Doctors Orders, an entity that was seeking licensure from the MMCC, a State entity, but was not yet regulated;
- Delegate Morhaim's Form D filed on July 23, 2015, was sufficient for the purposes of disclaiming the appearance of or a presumed conflict of interest regarding his *legislative action* relating to House Bill 104 of 2016 because of his consulting relationship with Doctors Orders; and
- there is no legally required disclosure under the Maryland Public Ethics Law for his appearance as a delegate before the MMCC, *an executive agency*. The joint committee Form D disclaims a legislator's appearance of or presumed conflict of interest *only in legislative action* as defined in § 5-101(v) of the General Provisions Article, which does not include participation or involvement in matters before an executive agency.

### **Use of Prestige of Office or Public Position for Private Gain or that of Another**

The joint committee alleged that Delegate Morhaim's actions relating to his advocating to the MMCC as a delegate for a change in the method of awarding processor licenses in emails and public testimony as previously described, gave rise to a reasonable belief that his conduct may have violated § 5-506(a) of the General Provisions Article, which prohibits an official from intentionally using the prestige of the official's office or public position for the official's private gain or that of another, except for the performance of usual and customary constituent services without additional compensation.

### **Finding 1**

After a review of the available evidence and his written and oral statements to the joint committee, the joint committee finds that Delegate Morhaim used his public position as delegate to advocate to the MMCC that it change its method of awarding processor licenses to a method that could have resulted in a direct private gain to his client, Doctors Orders, and to himself.

### **Use of Public Position**

The evidence is clear that Delegate Morhaim only acted in his official legislative role as a delegate when communicating with the MMCC on this matter. He signed his emails using his title, “Delegate Dan Morhaim.” He was introduced at the July 12, 2016 meeting of the MMCC as “Delegate Dan Morhaim,” and he prefaced his public comments at that meeting with statements about his role as the most prominent legislative leader on medical cannabis.

### **Official’s Private Gain or that of Another: Employer Gain**

Delegate Morhaim specifically advocated that the MMCC change its method of awarding processor licenses to the members of the MMCC three separate times: in an email on May 25, 2016, in another email on June 11, 2016, and in public comments at a meeting of the MMCC on July 12, 2016. He proposed that the MMCC change the method by which it awarded processor licenses by lifting the processor license cap of 15 adopted by a vote of the MMCC on May 23, 2016, not ranking applications but grouping them according to compliance with a basic standard, and automatically granting a processor license to a successful medical cannabis grower license applicant, if the applicant’s processor license application met a basic standard.

To determine who would gain under this proposal, the joint committee applied the same analysis used to determine whether the benefit from a legislator’s legislative action is “direct and personal” to the legislator, a member of the legislator’s immediate family, or the legislator’s employer for recusal of conflicts of interest under § 5-513(a) of the General Provisions Article. Under this analysis, the joint committee finds that if the MMCC were to adopt Delegate Morhaim’s processor license proposal, only a small subset of the 1,080 total applicants would receive a direct benefit. First, 80% of all applications were for dispensary licenses; these applicants would not have been affected at all by his proposal. Of the remaining 20% of applications, only 95 applicants applied for both grower and processor licenses, including Delegate Morhaim’s client, Doctors Orders. Of those 95 applicants, only 15 medical cannabis grower applicants could be successful (due to the statutory cap in § 13-3306 of the Health – General Article) and have the opportunity to be automatically awarded a processor license under Delegate Morhaim’s proposal.

At the same time he was proposing this policy to the MMCC, Delegate Morhaim was employed by a medical cannabis company with medical cannabis grower and processor license applications pending before the MMCC. Delegate Morhaim told the joint committee that he believed that Doctors Orders medical cannabis grower license application had a high likelihood of success due to the company’s experience with its current operations in other states. Therefore, the joint committee concludes that Delegate Morhaim’s employer, Doctors Orders, could likely obtain a direct private gain under this proposal.

### **Official’s Private Gain or that of Another: Official’s Private Gain**

The evidence shows that Doctors Orders and Delegate Morhaim in his personal capacity through his consulting company, Whitebridge Associates, executed a consulting agreement on July 9, 2015. Under this agreement, Doctors Orders agreed to pay the consultant, Delegate

Morhaim, through his consulting firm, Whitebridge Associates, an initial fixed fee for his work in Maryland and the two other states in which the company was currently operating, with a promise of additional annual compensation for his part-time position as national medical director of the company if Doctors Orders obtained licenses in Maryland. Although Delegate Morhaim advised the joint committee that he believed the initial payment he received was nominal and the compensation under the consulting agreement fell well below what medical directors for medical institutions receive, the joint committee concludes that the amount of compensation was substantial enough to influence Delegate Morhaim's judgment and actions. Further, the joint committee concludes that if the MMCC adopted Delegate Morhaim's proposed method of awarding processor licenses, it was more likely that his employer could obtain a direct gain of at least two of the medical cannabis-related licenses it applied for and Delegate Morhaim could likely obtain a direct private gain of additional annual compensation.

## Finding 2

After a thorough review of the available evidence and Delegate Morhaim's written and oral statements to the joint committee, the joint committee finds that there is not sufficient evidence to support a finding that Delegate Morhaim intentionally used his public position as delegate to specifically obtain the private gain for himself or his employer, and therefore, did not violate § 5-506(a) of the General Provisions Article.

### Analysis of Intent

Section 5-506(a) requires that a legislator *intentionally* use their prestige of office or public position *for* that official's private gain or that of another. The joint committee interprets this provision to require the member to have the specific intent to obtain the gain by the use of their privilege. While some evidence supports a finding of purposeful conduct for gain, more evidence mitigates the finding that Delegate Morhaim's use of his public position to advocate for the policy change was designed to benefit him financially, notwithstanding the fact that it could have this effect.

The joint committee considered evidence of Delegate Morhaim's longstanding and passionate advocacy on the issue of medical cannabis inside and outside the General Assembly, his legislative action on this issue beginning in 2002, and his extensive interactions and involvement with the MMCC beginning since its inception in 2014, on policy and administrative matters both large and small. Also considered was the testimony of Doctors Orders. The company's representative advised the joint committee that the company was "furious" with Delegate Morhaim for advocating for the policy change relating to processor licenses because this position was contrary to the company's interest. However, the value of this testimony is limited because while Delegate Morhaim's suggested policy change was contrary to Doctors Orders *competitive interests*, the company would still have received a direct benefit in the award of a license they were seeking, and Delegate Morhaim did not learn of Doctors Orders displeasure with his proposal until late July, 2016, *after* he made the statements to the MMCC. The purpose of this analysis is to discern Delegate Morhaim's intent at the time the statements were made, not those

of Doctors Orders. This testimony makes it clear to the joint committee that Delegate Morhaim did not advocate this policy at the request of Doctors Orders.

## **Conclusions of the Joint Committee on Legislative Ethics**

After a careful and thorough consideration of the body of evidence before the joint committee, and given the totality of the circumstances, the joint committee has concluded that Delegate Morhaim's actions were improper because his actions were contrary to the principles of ethical standards of the Maryland Public Ethics Law in accordance with the intent of the law as stated in § 5-102 of the General Provisions Article.

As previously stated, the joint committee found in its analysis of § 5-506(a), that Delegate Morhaim used his public position as delegate to advocate before the MMCC with regard to changes to its proposed regulations and procedures for the award of medical cannabis-related licenses, and in particular, to advocate that it change its method of awarding processor licenses to one that could have resulted in a direct private gain of a license to his employer, Doctors Orders, and of additional substantial financial compensation to himself. The joint committee finds this conduct improper and contrary to the principles of ethical standards for several reasons.

First, despite the fact that Delegate Morhaim was advised by Ethics Counsel by email on October 26, 2015 that he "should not be involved with applications in your legislative capacity" because of his "involvement with the group through the consulting organization," he advocated a policy to the MMCC specifically involving the awarding of applications. The joint committee acknowledges that he consulted Ethics Counsel many times; however, as Delegate Morhaim himself, acknowledged, the advice given by Ethics Counsel is only as valid as the information provided to Ethics Counsel. Delegate Morhaim admitted to the joint committee that he never sought specific advice on the comments he made to the MMCC nor did he advise her that he was appearing before the MMCC after becoming affiliated with a potential license applicant. Ethics Counsel testified at the joint committee hearing on February 21, 2017, that had she been made aware that Delegate Morhaim was appearing before the MMCC, she would have advised him to "stay away," particularly from any discussion concerning the number of licenses because of his involvement with Doctors Orders.

Second, Delegate Morhaim should have disclosed to the MMCC that he had been hired by a potential license applicant when he was advocating policy and regulatory changes to the MMCC that would affect himself and his employer. Delegate Morhaim may have believed that he acted appropriately in not informing the MMCC of his consulting relationship with Doctors Orders because he did not want to impact the double-blind process for identifying potential license applicants but this belief showed poor judgment that impacted his impartiality and the independence of both the MMCC and the legislature. Delegate Morhaim simply could have notified the MMCC that he was working with *an* applicant without identifying the applicant by name, thereby preserving the confidentiality of the process and giving the MMCC what the joint committee considers necessary context in which to consider the comments and suggestions made by Delegate Morhaim. The joint committee also notes that given the double-blind system, the

members of the MMCC were never aware of the identity of the applicants and had previously committed to accept the order of rankings made by the third party vendor. The joint committee does not believe that a brief conversation over coffee with the Executive Director of MMCC is sufficient notice to the MMCC given the limited information he provided her and the confusion as to the nature of his relationship and status with Doctors Orders. Nor does the joint committee find Delegate Morhaim's position credible that "notice" to the executive director is sufficient given the fact that Delegate Morhaim believed the MMCC was without an executive director for four months after the former executive director he met with had resigned in January, 2016, and did not take any steps to notify her replacement of his relationship with Doctors Orders.

As a prominent legislative leader and long-time advocate for medical cannabis in the General Assembly, Delegate Morhaim knew he had a level of credibility, influence, and access to the MMCC that other persons, including other legislators, did not. He leveraged that influence to advocate for a policy that he should have known could have resulted in gain to himself or his employer. Delegate Morhaim was given a substantial amount of deference by the MMCC because of his role as a legislative leader and his chairmanship of the Government Operations Subcommittee of the House Health and Government Operations Committee that considered medical cannabis legislation. He had a direct line of communication to the executive director and other members of the MMCC and he used it frequently to comment on a wide variety of issues relating to medical cannabis and the MMCC. Delegate Morhaim was permitted to speak at public meetings of the MMCC when others were prohibited. He always did these things in his role as a delegate appearing to be an objective policymaker even at times when he had a conflicting personal interest. The standards embodied in the ethics law acknowledge that a legislator's influence derived from their public position is not limited to the function in which the member has decisional authority, but extends to their interaction with other governmental bodies and agencies.

In summary, it is the opinion of the joint committee that had the MMCC been made aware of Delegate Morhaim's consulting role with a medical cannabis license applicant, it may well have impacted the weight it would have given his communications and testimony. His belief that he could keep his role as a legislator, advocating for the implementation of policy and regulations for the use of medical cannabis, separate from his position as a paid consultant for a company seeking to enter the medical cannabis business reflects poor judgment to the detriment of the broader interests of the public, and it has eroded the confidence and trust of the public and other governmental officials who work with legislators, bringing disrepute and dishonor to the General Assembly. Delegate Morhaim's failure to disclose and be transparent undermines the public's confidence in an independent legislature that it not be influenced by the potential for personal financial gain. As a part-time citizen legislature, the members must be ever vigilant that they do not cross the line between their personal interest and the interests of the citizens who they are elected to serve.

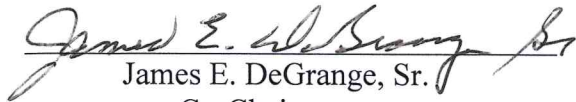


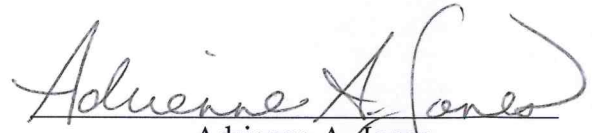
## **Recommendation of the Joint Committee on Legislative Ethics**

The joint committee believes that Delegate Morhaim now recognizes the impact his conduct has had on himself and the General Assembly, but consistent with the mandate of the Maryland Public Ethics Law that members of the legislature adhere to certain minimum ethical standards, and the requirement that the joint committee and the General Assembly construe these requirements and its provisions liberally in accordance with § 5-102(c) of the General Provisions Article, and in recognition of the duties and authority established under Article III, § 19 of the Maryland Constitution, which provides that each House of the General Assembly, “shall be the judge of the qualifications and election of its members,” including the authority to punish or expel one of its own members, pursuant to its authority under § 5-521 of the General Provisions Article, the joint committee unanimously recommends to the Speaker of the House that he submit to the House a resolution of reprimand expressing the House of Delegate’s disapproval of Delegate Dan Morhaim’s actions as described in this Report of the joint committee on Legislative Ethics, which the committee believes is an appropriate sanction to maintain the public’s faith in their elected officials and ensure that this conduct is not repeated.



Respectfully submitted,

  
James E. DeGrange, Sr.  
Co-Chairman

  
Adrienne A. Jones  
Acting Co-Chairman