March 3, 2022

Honorable Delores G. Kelley, Chair
Senate Finance Committee
11 Bladen Street
Annapolis, MD 21401

Re: **SB 833 – Support, with amendments**

Dear Chair Kelley:

On behalf of SunMed Growers, LLC ("SunMed"), I am writing to support passage of SB 833, with amendments. SunMed is generally supportive of the comments on SB 833 separately submitted by CANMD and SunMed submits the following additional comments.

Introduction

SunMed Growers, LLC ("SunMed") appreciates the opportunity to comment upon Senate Bill 833. SunMed is beneficially owned by me, Jake Van Wingerden, a fourth-generation family greenhouse grower. I am a long-time resident of Cecil County and for decades have operated Tidal Creek Growers, a wholesale greenhouse operation producing bedding plants, flowers and other horticultural products, with facilities in Anne Arundel County and Cecil County. When the Maryland Medical Cannabis Commission ("MMCC") began accepting applications for medical cannabis cultivation licenses in 2017, I formed SunMed in hopes that my horticultural skills could benefit the needs of Maryland's patients for safe, high-quality medical cannabis. SunMed was fortunate to have been awarded a medical cannabis cultivation license and, since that time, SunMed and I have actively worked with legislators, regulators and industry participants to help make Maryland's medical cannabis program a success.

SunMed appreciates the hard work of the sponsor, Senator Brian Feldman, and others in bring an adult-use bill to the session for consideration. SunMed supports the comprehensive approach of SB 833 - addressing criminal justice and expungement reform, and keeping social justice and equitable economic opportunity at the forefront of the bill. SunMed and I have been active in supporting initiatives to help diversify the medical cannabis industry, including consulting and advising policy makers and working to increase the number of diverse grower and processor licenses as emerged in 2018 with House Bill 2.

SunMed submits the following comments and suggestions in hopes that legislation that ultimately emerges from this session can create an equitable, diverse and successful adult-use cannabis program in the State of Maryland.

Comments

It is essential that existing medical cannabis licensees should be able to participate in the adult-use industry from its inception.

Every state that has moved from medical cannabis to adult-use cannabis has recognized the imperative of allowing medical licensees to participate in the adult-use license structure without additional qualification. SB 833 allows existing medical licensees to participate at the inception of the adult-use system. SunMed fully supports this provision of the bill for the following reasons.

- Allowing medical licensees to immediately participate in adult-use upon payment of a fee for funding social equity can decrease illicit market activity in cannabis. It may take some time for the regulatory body to award new adult-use licenses. Once cannabis is legalized, however, many people will want the ability to procure cannabis on an immediate basis. Medical cannabis licensees, already subject to inspection and testing required in the medical cannabis arena, can immediately serve this need. If there is a gap in time between legalization of cannabis and licensure of dispensaries/Retailers, cannabis consumers will likely turn to the illicit/non-legal market when seeking to obtain cannabis in this gap period. From a public policy standpoint, Maryland is obviously motivated not to inadvertently support or benefit the illicit market in cannabis.

- Allowing medical licensees to immediately participate in adult-use upon payment of a fee for funding social equity enables the funding of new start-up minority businesses. As structured in SB 833, an existing medical licensee could immediately participate in the adult-use market by submitting application paperwork and a license fee to the Department and, importantly, paying a substantial additional fee to the Social Equity Start-Up Fund ("SESUF"). The purpose of the SESUP is to provide no-interest loans and grants to support businesses in the legal cannabis industry that are social equity applicants. To insure that SESUF is timely and adequately funded for disbursements to new social equity licensees, it is imperative that the SESUF is funded as soon as possible by fees paid by existing medical licensees seeking to participate in the adult-use market. SB 833 achieves this objective by permitting medical licensees to immediately operate in the adult-use market upon funding of the SESUF.

- Allowing medical licensees to immediately participate in adult-use upon payment of a fee for funding social equity enables the new adult use industry to realize upon the successes of the medical cannabis industry. Existing medical cannabis licensees are accustomed to the stringent inspection, reporting, testing and operational requirements that are applicable to medical cannabis. Maryland's medical cannabis program has been deemed by many other states as a model to follow. By enabling existing medical cannabis licensees, in good standing with the MMCC, to immediately participate in the adult-use market, the legislature is doing what is prudent to help promote a viable, compliant and well-regulated adult-use market at its inception.

Medical and adult use cannabis should be subject to the same regulatory stream, with differentiation occurring solely at the point of consumer purchase for taxation purposes.

The medical cannabis regulatory program has resulted in a safe, inspected, tested and compliant cannabis product for Maryland patients. Conceptually, there is no sound basis for differentiating in general standards that would be applied to adult use cannabis and those that apply to medical cannabis. Both recreational consumers and patients are entitled to the same safe, independently tested and regulated cannabis product. Laudably, SB 833 substantially recognizes this concept by providing that procedures for inventory management and tracking may not require the differentiation between adult-use and medical cannabis before the point of sale. SunMed suggests that SB 833 should be clarified to affirmatively provide that there should be no differentiation in testing and inspection standards applied to medical and adult use cannabis. By having a single stream of regulated testing and inspection of all cannabis products (medical and adult use) the Maryland consumer benefits with ease of choice and comfort in product safety.

To account for the fact that medicine is not taxed in Maryland, SB 833 wisely provides that taxation of cannabis occurs solely at the point of sale to the consumer and not upon any transfer of cannabis between cannabis establishments. If the consumer is a patient and produces an MMCC card, the transaction is not subject to taxation. If the consumer is not a patient but an adult-use purchaser, the transaction is subject to taxation collected by the Retailer. This system is administratively easy to manage and should require much less systemic burden and cost as compared to a minority of states that impose taxes in the production stream prior to the consumer point of sale purchase.

The Social Equity Start-Up Fund purposes should include guarantee of third-party loans

One of the most significant hurdles to inaugurating a business in the cannabis arena is the amount of capital required and access to capital. Given that cannabis remains illegal under federal law, many banks and traditional lending sources decline to consider cannabis business loans. This hurdle is appropriately recognized in SB 833 with the creation of the Social Equity Start-Up Fund ("SESUF"), which is tasked with providing no-interest loans and grants to social equity applicants.

After operating for about four years, SunMed recently was able to close a financing facility with a lender to refinance some of its privately raised debt. After closing, and in anticipation of newly formed social equity licensees entering the adult use market, I specifically asked my lender whether it would be interested in offering financing to newly formed cannabis social equity licensees. The lender responded that it was incentivized to make its loan to SunMed based upon SunMed's four year operating history. The lender said that it might consider loans to new start-ups who have no operational history if those loans were guaranteed by the State or a state agency, similar to FHA or SBA federally guaranteed loans. This lender seemed willing to help address the capital needs of newly formed cannabis businesses if some of the underwriting risk attributed to new businesses could be mitigated with a State guarantee.

As an additional method for providing capital access to social equity applicants, it might be prudent for the legislature to allow SESUF to issue loan "guarantees", in addition to no-interest loans and grants, and SB 833 should be amended to allow such guarantees by SESUF. SunMed and I are willing to assist legislators, lenders and borrowers in structuring additional opportunities to help solve the "access to capital" issue that newly formed social equity licensees will encounter.

The number of new dispensaries/Retailers should be increased to be more proportional to number of new cultivators

SB 833 would authorize the issuance of an additional 50 cultivator licenses, but only an additional 47 dispensary/Retailer licenses. SunMed supports issuance of additional licenses for the adult use market and believes that, based upon what has been experienced in the medical cannabis market, more Retailer licenses should be authorized.

In 2017, at start of sales in the medical cannabis system, there were 15 authorized cultivator licenses and 109 authorized dispensary licenses (2 per senatorial district plus 1 per cultivator). In 2018, in response to a disparity study of the medical cannabis industry, HB 2 increased the number of cultivator licenses to 22 but did not increase the number of dispensary licenses. SB 833, by adding a roughly equal number of Cultivator licenses and Retailer licenses, may be disproportionately increasing potential supply of cannabis by cultivators without providing sufficient retail outlets for Maryland consumers.

As the chart below indicates, in the medical cannabis market, the ratio of dispensaries to cultivators in 2017 was 7.27: 1; in 2018 it decreased to 4.95:1; and SB 833 would decrease the ratio to 1.91:1.

	Cultivator Licenses: Total	Dispensary Licenses: Total	Ratio: Dispensary/ Retailer to Cultivator
2017	15	109	7.27
2018	22	109	4.95
SB 833	74	141	1.91

While a dispensary/Retailor to cultivator ratio of 4.95:1 might be sufficient to serve solely medical cannabis patients and medical dispensaries, but is likely insufficient to serve adult use retail market in addition to medical patients.

Legalizing adult use of cannabis will likely create a demand for **more** convenience and **more** retail outlets, likely generating a demand by the public for substantially **more** dispensary/Retailer locations. An increase in the number of growers, but not proportionately increasing the number of retail outlets for product, could also detrimentally impact growers because there are proportionately fewer outlets for sale, particularly where multi-state operators in cultivation dominate the existing dispensaries that they own.

If the legislature deems it appropriate to increase the number of cultivation licenses, SunMed suggests that SB 833 be amended to increase in number of dispensaries/Retailers to correlate more closely with prior ratio of cultivators. Increasing the number of dispensaries/Retailers would align with several objectives of the legislature, including:

- **An increased number of dispensaries/Retailers would provide more opportunities for new business ownership, particularly for social equity applicants - capital required for opening a dispensary/Retailer is substantially less than capital required to open a grow operation**

- **An increased number of dispensaries/Retailers would better serve the customers in the adult-use market**

For these reasons, SunMed suggests that SB 833 be amended to authorize licensure of an additional 141 Retailers (instead of an additional 50 as provided in SB 833). SunMed suggests that 94 of such new Retailer licenses could be allocated at two (2) licenses per senatorial district. SunMed further suggests that the remaining 47 new Retailer licenses should not be tied to a senatorial district, but might be located in any district based upon demand and other market forces. We suggest that increasing the number of Retailers, and including the ability to site some

Retailers based upon market demand and not senatorial district limitations, might best insure the success of the new adult use market.

<u>The number of dispensaries/Retailers owned by a single licensee should not be increased</u>

As currently drafted, SB 833 would raise the number of dispensaries/Retailers that could be owned/managed by a licensee from 4 currently permitted to 5 dispensaries/Retailers. Raising the number of dispensaries/Retailers permitted to be owned by a single licensee would cause unintended consequences (as borne out by Maryland's historical experience) and could be counterproductive to a goal of promoting diverse ownership of business in the cannabis arena.

In 2017, at the beginning of medical cannabis sales, a person/business could not own more than **<u>one</u>** grower license, processing license and/or dispensary license. In light of the limitation of ownership a single dispensary license, some multi-state operators ("MSO's) entered in "management agreements" by which the MSO would "manage/operate" a number of dispensaries. Responding to this scenario, the General Assembly amended the state law in 2019 to specifically provide that ownership restrictions applied to "manage or operate" and changed the single dispensary limitation to a **<u>four</u>** dispensary limitation to reflect existing management of dispensaries in the marketplace. 2019 Laws of Maryland, ch. 501.

Since raising the number of dispensaries/Retailers that could be owned or managed from one dispensary to four dispensaries, data published by the Commission indicates that multi-state operators ("MSO's) currently own approximately 40% of existing dispensaries. These MSO's, who own licenses for cultivation and processing, naturally tend to favor the dispensaries they own when they sell products as a grower or processor. This circumstance is potentially detrimental to independently owned [non-MSO] dispensaries and new entrants to the adult-use market.

A significant goal of the legislature in enacting adult-use legislation evinces an intent to promote business opportunities to Maryland residents, particularly historically disadvantaged persons/businesses. The legislature should encourage ownership of dispensaries/Retailers by local small businesses, particularly social equity licensees. This goal could be stymied if MSO's could own up to 5 dispensaries/Retailers, as opposed to the current cap of no more that 4 dispensaries owned by a single licensee.

SunMed suggests that the number of dispensaries/Retailers that can be owned by a single licensee should not be increased from 4 to 5 dispensaries/Retailers.

Miscellaneous Amendments

- Diversity data. Pages 49-50 of SB 833 requires that the Commission adopt regulations to collect data regarding diversity of participation in the Maryland cannabis industry. Lines 27-29 would require that "each cannabis establishment…report on the diversity of its workforce, management, ***contracts,*** and ownership on or before January 1 each year." (Emphasis added). SunMed agrees that all reasonably available diversity data should be collected to promote, evaluate and assess diversity in the industry. It would, however, be highly impractical for a cannabis establishment to collect diversity data on any person or business with whom the establishment might have a "contract." A cannabis establishment might have hundreds of "contracts" entered into over the course of a year and it may not be possible to obtain data pertaining to the diversity of many businesses that have a "contract." For example, if a "contract" existed for servicing of a photocopier, it would be impractical for the cannabis establishment to require that the photocopier servicer provide data pertaining to the diversity of the servicer's ownership, employees, etc. SunMed suggests that "contracts" should be excluded from regulations for collection of diversity data.

- Tiers and Total Growth Canopy. Pages 52-53 describe "Tiers" for a Cultivator and subparagraph F [lines 4-6] refers to "Additional Tiers necessary to accommodate the Total Growth Canopy of any Dual Licensee as of the date of licensure." A number of current cultivators are in the midst of expansion plans. SunMed suggests that language be added to the bill to clarify that "Total Growth Canopy" as used in subparagraph F "includes any area under development or construction as of the date of licensure."

- Transfer of License from a Social Equity Applicant to a Nonsocial Equity Applicant. Page 56 of SB 833 requires the Commission to promulgate regulations governing transfers of licenses. The bill specifically provides that there cannot be a prohibition of transferring a license from a Social Equity Applicant to a Nonsocial Equity Applicant, but the Commission can require that "a reasonable period of time elapse before the transfer." SunMed suggests that, given the significant interest of the State in creating and maintaining a diverse cannabis industry and empowering Social Equity Applicants, the legislature should specify a minimum period (e.g. 5 years) before a license from a Social Equity Applicant could be transferred to a Nonsocial Equity Applicant. Such a minimum period might also deter out of state MSO's from acquiring and dominating Licenses designed to be held by Social Equity Applicants.

- Clarification of whether Cultivation Licenses may be issued to Nonsocial Equity Applicants. On page 61, lines 27-29 of SB 833, the bill provides that the Commission "shall issue to Social Equity Applicants" 50 Cultivation licenses, broken down by Tiers.

On page 49, lines 30-32 and page 50, line 1 of SB 833, the bill provides that the Commission shall issue "regulations allowing social equity applicants to apply for, and be licensed for, Cultivator and Processor licenses not less than 180 days before applicants that are not social equity applicants or that do not hold dual licenses." This second provision implies that nonsocial equity applicants could apply for a cultivation license, but the first provision indicates that the 50 Cultivation Licenses "shall" be issued to "Social Equity Applicants". Clarity is needed. If 50 new Cultivation licenses are authorized by SB 833, can nonsocial equity applicants apply for Cultivation licenses only if all 50 new Cultivation Licenses are not awarded to Social Equity Applicants?

Conclusion

SunMed applauds the efforts of the sponsor, Senator Brian Feldman, this Committee and the legislature for thoughtfully crafting a bill to enable adult use of cannabis in the State. SunMed looks forward to continuing to work with all interested stakeholders in helping to realize a safe, just, equitable, and remedial cannabis adult use program in the State of Maryland.

Respectfully,

SunMed Growers, LLC

by: _Jacob J. Van Wingerden_
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