

June 20, 2024

*Via Electronic Mail*

The Honorable Karen E. Spilka  
Senate President  
State House, Room 332  
Boston, MA 02133

The Honorable Ronald Mariano  
Speaker of the House  
State House, Room 356  
Boston, MA 02133

The Honorable Bruce E. Tarr  
Senate Minority Leader  
State House, Room 308  
Boston, MA 02133

The Honorable Bradley H. Jones, Jr.  
House Minority Leader  
State House, Room 124  
Boston, MA 02133

**Re: Response to the OIG's June 18, 2024 Letter to the Legislature**

Dear President Spilka, Speaker Mariano, Minority Leader Tarr and Minority Leader Jones:

I write in response to the June 18, 2024 letter from Inspector General Jeffrey Shapiro. Before I share my individual concerns as Acting Chair of the Cannabis Control Commission (Commission / CCC) regarding the Office of the Inspector General's (OIG) directive, I want to center my correspondence on the productive work and accomplishments of the Commission on behalf of the people and communities we serve, particularly those harmed by cannabis prohibition and enforcement.

The Commonwealth's \$7 billion regulated cannabis industry is a national trailblazer, hosting delegations from other jurisdictions looking to adopt our best practices and learn from our missteps. After a brief six years in existence, the industry is producing \$1 billion in sales annually from adult-use marijuana establishments, generating more revenue for state coffers than the long-established alcohol industry. In fact, at budget time you may be particularly attuned to the fact that the industry provided \$322 million in tax and non-tax revenue in fiscal year 2023 alone.

What's missing from the public narrative and ignored by the OIG's directive is the Commission's remarkable success. Just last week the Commission approved a measure that provides for legal transportation of cannabis to Dukes and Nantucket counties to counter an illicit market surge during the tourist season.<sup>1</sup> Our recent enforcement actions include one of the largest fines ever [issued to Trulieve](#), stemming from unsanitary conditions and workplace safety

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<sup>1</sup> Cannabis Control Commission, Cannabis Control Commission Approves Administrative Order Regarding Transport of Marijuana and Marijuana Products to and from Licensees Located in Dukes County and Nantucket (June 14, 2024), <https://masscannabiscontrol.com/2024/06/cannabis-control-commission-approves-administrative-order-regarding-transport-of-marijuana-and-marijuana-products-to-and-from-licensees-located-in-dukes-county-and-nantucket/>.

issues. This fine clearly signals that we insist that members of this industry provide safe working conditions without exception.

Further, we are a national leader in promoting equity in our industry. At great effort and on a short timeline, we developed regulations and implemented landmark legislation expanding opportunities for social equity businesses.<sup>2</sup>

With all this in mind, I was surprised to read that the OIG is calling for the Legislature to urgently appoint a receiver for an organization that is effectively regulating 634 open and operational adult-use licensees, including 28 Economic Empowerment Applicants, 51 Social Equity Program Participants, 79 Disadvantaged Business Enterprises, with hundreds more applicants in our licensing queue, and 15,161 registered Marijuana Establishment agents, as well as 87,335 certified active patients and 6,690 active caregivers, and to do so in the final weeks of this legislative session.

What is urgent, is filling 22 vacancies (in an agency now staffed at 134), including the Executive Director's position, and addressing concerning personnel issues that have been widely aired in news reports. That's why last week the Commission voted to ensure the Acting Executive Director can prioritize the human resources function she was hired to fulfill as Chief People Officer. This decision was reviewed and approved by the Commission's legal team and interpreted to be consistent with G. L. c. 10, §76 (j).

The Acting Executive Director remains the head of agency and continues to have Department Head Signature Authorization. She is "responsible for administering and enforcing the law relative to the commission and each unit thereof" and "employ[ing] other employees, consultants, agents and advisors, including legal counsel." The intent was to provide public direction to realign her job responsibilities to ensure the work gets done and that she relies upon those individuals specifically contemplated in G. L. c. 10, §76 (j), including the General Counsel and Chief Financial and Accounting Officer.

The challenges at the Commission are far from secret. We are committed to resolving them. In fact, we have a blueprint for a governance structure that is in its final stages of legal review and will be taken up at a public meeting.

Going back to the drawing boards with the OIG's proposal of receivership (a concept undefined and with no statutory basis provided) is ill-advised. And increasing government secrecy by removing the Commission from the purview of the Open Meeting Law is hardly a solution.

### **Concerns with the OIG's process**

I have significant concerns with both the process the OIG has engaged in, and the substance of the directive itself. In sum, it appears the OIG, whose website states its purpose "promotes

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<sup>2</sup> Cannabis Control Commission, Cannabis Control Commission Approves Historic Regulatory Changes to Implement Commonwealth's Equity Reform Law (September 27, 2023), <https://masscannabiscontrol.com/2023/09/cannabis-control-commission-approves-historic-regulatory-changes-to-implement-commonwealths-equity-reform-law/>.

transparency,” instead is advocating for greater government secrecy and concentration of power at the Commission. I disagree with that approach.

In the fall of 2023, the OIG informed the Commission of an investigation. The Commission has been under review by other agencies in the past (including the OIG), and routinely cooperates to ensure the agency is held to the highest standards of good government.

On both January 19 and February 13, 2024, the Commission lodged its concerns that the OIG was overstepping its statutory authority, which is limited to waste, fraud, and abuse of public funds. See G. L. c. 12A. I have enclosed our correspondence for your reference.

Most notably, the OIG appeared to step into the exclusive purview of the Legislature, regarding the structure of the Commission. *See* February 13, 2024 Commission Letter to the OIG General Counsel at 2. The OIG also appeared to step into the exclusive purview of the constitutional appointing authorities, regarding the qualifications and appointment of Commissioners. *Id.* at 4.

Despite our objections, it appears that the OIG has escalated its quest to insert itself into Commission business. I reiterate our concerns that the OIG has failed to demonstrate a statutory basis pursuant to G.L. c. 12A to review the structure of an agency created by the Legislature or Commissioner appointments made by the constitutional appointing authorities. Now, the OIG has failed to cite legal authority to support its position regarding receivership.

As the Commission understands it, the OIG’s investigation remains open. Surprisingly, the Inspector General chose to make recommendations to the Legislative leadership and publish their correspondence through a press [release](#) while the OIG’s investigation is still pending. The IG has not offered evidence to warrant issuing conclusions before it completes its investigation.

Indeed, the Inspector General concedes his office has conducted a “limited review.” *See* June 18, 2024 OIG Letter to the Legislature at 1. The OIG’s letter cited a single media report and the fact that the Commission operates under the Open Meeting Law to justify its conclusions. On this basis—and before issuing any investigatory report or close out documentation—the OIG calls for profound changes to be made to a public entity’s structure, and with great urgency. The OIG in fact concedes it has not performed a substantive review or shared any findings with us before calling for the Legislature to make sweeping changes regarding our agency.

### **The OIG is advocating for greater government secrecy**

The OIG also calls for a structural change that would result in the Commission conducting its work in secret, outside the public view of an open meeting. This proposal has wide implications not only on our agency, but the Massachusetts Gaming Commission (MGC) (which operates under the same structure<sup>3</sup>), and potentially the Alcoholic Beverages Control Commission (ABCC), and the Massachusetts Commission Against Discrimination (MCAD). The OIG’s line of thinking on the Open Meeting Law could be reasonably applied to other boards and

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<sup>3</sup> G. L. c. 23K, §3. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter23K/Section3>.

commissions, both at the state and municipal level, resulting in less public awareness of government decisions.

This recommendation seems ill-advised given that cannabis, like gaming and alcohol, has a history of an illicit market. Furthermore, the OIG is aware of instances of public corruption surrounding cannabis licensure on the municipal level.<sup>4</sup> I disagree with the OIG's recommendation that increased secrecy at the Commission is the solution to any challenge.

With knowledge of that reality, the people, through their elected members of the Legislature crafted a regulatory structure that shared power,<sup>5</sup> with five appointed Commissioners operating under the Open Meeting Law.<sup>6</sup> The Commission must operate by consensus, as our statute requires three affirmative votes of Commissioners to act.<sup>7</sup>

In the instances of the CCC and the MGC, the Legislature separated power even further, by sharing the appointments of Commissioners among three independently elected constitutional offices, the Governor, Attorney General, and Treasurer and Receiver General. In total, the division of power protects the public interest by sharing in decision making, reducing the potential for public corruption.

In my view, the Open Meeting Law enhances public accountability by requiring Commission deliberations, including licensing decisions, to be conducted in public. The people of the Commonwealth can scrutinize our decision making because it is conducted openly. Unlike other jurisdictions, the Commission has largely avoided accusations of favoritism in its licensing decisions because we operate in public.

### **Request for partnership**

As the Legislature intended, we are operating effectively and regulating the industry of cannabis, the number one cash crop in the Commonwealth.<sup>8</sup> We are a national leader in promoting equity in our industry.

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<sup>4</sup> Office of Inspector General, Former Fall River mayor sentenced to six years in prison for extortion, fraud; ordered to pay more than \$878,000, September 2021, (Published, November 10, 2021), <https://www.mass.gov/news/former-fall-river-mayor-sentenced-to-six-years-in-prison-for-extortion-fraud-ordered-to-pay-more-than-878000-september-2021>.

<sup>5</sup> G. L. c. 10, §76. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter10/Section76>.

<sup>6</sup> I note that the 2016 ballot referendum, Question 4, passed by the people of the Commonwealth, also mandated a multi-member commission subject to the Open Meeting Law, <https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter334>.

<sup>7</sup> The OIG's letter notes that there is not always agreement amongst Commissioners. That is correct and by design. Three independently elected constitutional officers make Commissioner appointments, and thus as a democratic body, there may be policy disagreements from time to time.

<sup>8</sup> Hill, Marta, Boston.com, Cannabis passes cranberries as the state's top crop (November 3, 2022), <https://www.boston.com/news/local-news/2022/11/03/cannabis-passes-cranberries-as-the-states-top-crop>.

We do not have to look very far to see other jurisdictions struggling to replicate the success of the Massachusetts cannabis industry.<sup>9</sup> We must be judicious to ensure we do not take steps to destabilize a regulated multibillion dollar market that provides access to medicine, and thousands of businesses and jobs.

With a new Executive Director on the horizon, the Commission is on the precipice of writing a new chapter. One that builds on our work, expanding and maintaining a safe, well-regulated, and equitable cannabis industry. We must continue to ensure that our Commonwealth is the best market for such investment. Substantial capital, economic development, and many jobs are on the line.

At this critical juncture, I am asking for your continued partnership and support. I welcome the opportunity to discuss areas for improvement, including potential statutory revisions.

Best regards,



Ava Callender Concepcion, Esq.  
Acting Chair

Enclosures:

Cc:

The Hon. Maura Healey, Governor  
The Hon. Kim Driscoll, Lieutenant Governor  
The Hon. Andrea Joy Campbell, Attorney General  
The Hon. Deborah B. Goldberg, Treasurer and Receiver General  
The Hon. Michael J. Rodrigues, Chair, Senate Committee on Ways and Means  
The Hon. Aaron M. Michlewitz, Chair, House Committee on Ways and Means  
The Hon. Adam Gomez, Chair, Joint Committee on Cannabis Policy  
The Hon. Daniel M. Donahue, Chair, Joint Committee on Cannabis Policy  
Kate Cook, Chief of Staff to Massachusetts Governor Maura T. Healey  
Nurys Camargo, Commissioner, CCC  
Kimberly Roy, Commissioner, CCC  
Bruce Stebbins, Commissioner, CCC  
Debra Hilton Creek, Acting Executive Director / Chief People Officer, CCC  
Kristina Gasson, General Counsel, CCC  
Jeffrey S. Shapiro, Esq., CIG, Inspector General

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<sup>9</sup> Adlin, Ben, Marijuana Moment, Multiple States Across the Country See Record-Breaking Marijuana Sales To Close Out 2023 (January 25, 2024), <https://www.marijuanamoment.net/multiple-states-across-the-country-see-record-breaking-marijuana-sales-to-close-out-2023>.