UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In the Matter of **Schedules of Controlled Substances: Proposed Rescheduling of Marijuana**	**DEA Docket No. 1362** **Hearing Docket No. 24-44**

ORDER DENYING MOTION TO RECONSIDER (OCO)

On November 19, 2024, this tribunal issued an order (Standing Order) which (in an arguably close call) authorized continued status as a Designated Participant (DP) in these hearing proceedings for Erin Gorman Kirk, of the Connecticut Office of the Cannabis Ombudsman (OCO). This holding maintains OCO's full rights to completely participate in these ongoing hearing proceedings, which are being conducted in connection with a Notice of Proposed Rulemaking (NPRM). The NPRM proposes to reschedule marijuana.

The Standing Order analyzed OCO's Preliminary Order Response (POR) and determined that standing under the Administrative Procedure Act was not supported by the representations in the filing (not at all a close call). Standing Ord. at 32-34. The POR filed by OCO was not altogether clear in its positions regarding the NPRM (*e.g.*, repeatedly citing "concerns" instead of positions). OCO defined its organization as one that is able to provide general advocacy and support, but its POR did not aver that it has any specific membership or serves a population that is defined in any clear way.

The Preliminary Order, issued by this tribunal on October 31, 2024, directed OCO, *inter alia*, to specify "why/how [OCO] would be sufficiently 'adversely affected or aggrieved' by the proposed scheduling action to qualify as an 'interested person' under the regulations [and] whether [OCO] supports or opposes the rescheduling action the DEA seeks in its NPRM." Prelim. Ord. at 3. Addressing the latter (straightforward) inquiry, OCO (as acknowledged in the MTR[1]) could muster no more than it "generally supports" the NPRM. Regarding the latter inquiry, OCO focused generally on some features of the Schedule I status quo, and not

[1] MTR at 5.

particularly any feared consequence of the proposed rescheduling that would adversely affect it. Specifically, OCO indicated that it objects to certain aspects of marijuana's current classification in Schedule I. For example, it expressed concerns about Schedule I criminal penalties (not part of the NPRM), Schedule I's affect on insurance availability (not part of the NPRM), Schedule I's impact on product availability (not part of the NPRM), and objects to the fact that Schedule I (the status quo) fails to provide some unspecified legal protections for patients (also not part of the NPRM). None of these concerns, even seen in their most positive and supportive light for this DP, directly impact the issue of whether/how OCO would be adversely affected or aggrieved by the rescheduling of marijuana. Although not altogether clear, OCO put forth arguments in favor of promulgation of the NPRM, not in opposition. Inasmuch as the POR alleged no membership, organizational standing is not part of the mosaic. Indeed, failing to provide any indication of adverse affect and/or aggrievement would have made an affirmative standing finding difficult to justify based on the four corners of its filing, even taking into account positive or neutral findings on the other four SC factors.

Yesterday this tribunal received a motion to reconsider (Motion to Reconsider or MTR) filed by the Connecticut Office of the Cannabis Ombudsman (OCO) in connection with the ongoing proposed rescheduling action. The MTR takes issue with the finding that OCO's POR did not sufficiently support its case for standing.[2] Specifically, the OCO asserts that the consideration was compromised in some way by language in the Standing Order that controlled substances have quota limitations. As a preliminary matter, since no coherent case for organizational standing was made out or alleged in its POR, it would be challenging to perceive how a potential quota limitation (even if potential cost marijuana increases were assumed as accurate) would result in adverse affect or aggrievement for OCO. This is particularly so in evaluating why the promulgation of the NPRM would aggrieve or adversely affect that organization. Beyond that, this aspect of the OCO's ambivalent POR played no significant role in the standing determination.

[2] Notwithstanding the plain language of the Standing Order, OCO's MTI incorrectly argues that OCO's participation in the hearing proceedings would be limited "in comparison to other DPs deemed to have [APA] standing." MTI at 1 n.1. The Standing Order explicitly states that each of Designated Participants will be afforded ninety (90) minutes each for the presentation of their case with twenty (20) minutes of cross-examination for witnesses offered in opposition to their position. Standing Ord. at 43. All DPs get equal time. At no point does the Standing Order state that Parties found to have APA standing will be afforded more time for the presentation of their case than those whose did not establish this type of standing in their PORs. The Standing Order notes that as a matter of discretion the issue of standing *may* be considered in this tribunal's ultimate recommendation.

The Courts of Appeal have been consistent in affording wide latitude to triers of fact in the exercise of discretion regarding motions to reconsider interlocutory decisions that are not case dispositive. Here, this MTR filed by OCO did not demonstrate a clear error of law, newly discovered evidence, or a need to prevent manifest injustice. *Intera Corp. v. Henerson*, 428 F.3d 605, 620 (6th Cir. 2005), *cert. denied*, 547 U.S. 1070 (2006); *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996); *EEOC v. Lockheed Martin Corp.*, 116 F.3d 110, 112 (4th Cir. 1997); *Virgin Atlantic Airways, Ltd. V. National Mediation Board*, 956 F.2d 1245, 1255 (2d Cir. 1992), *cert. denied*, 506 U.S. 820 (1992).

Accordingly, OCO's Motion the Reconsider is herein **DENIED**.

Dated: November 22, 2024

JOHN J. MULROONEY, II
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned, on November 22, 2024 caused a copy of the foregoing to be delivered to the following recipients: (1) James J. Schwartz, Esq., Counsel for the Government, via email at james.j.schwartz@dea.gov; Jarrett T. Lonich, Esq., Counsel for the Government, via email at jarrett.t.lonich@dea.gov; and S. Taylor Johnston, Esq., Counsel for the Government, via email at stephen.t.johnston@dea.gov; (2) the DEA Government Mailbox, via email at dea.registration.litigation@dea.gov; (3) Shane Pennington, Esq., Counsel for Village Farms International, via email at spennington@porterwright.com; and Tristan Cavanaugh, Esq., Counsel for Village Farms International, via email at tcavanaugh@porterwright.com; (4) Nikolas S. Komyati, Esq., Counsel for National Cannabis Industry Association, via email at nkomyati@foxrothschild.com; William Bogot, Esq., Counsel for National Cannabis Industry Association, via email at wbogot@foxrothschild.com; and Khurshid Khoja, Esq., Counsel for National Cannabis Industry Association, via email at khurshid@greenbridgelaw.com; (5) John Jones and Dante Picazo for Cannabis Bioscience International Holdings, via email at ir@cbih.net; (6) Andrew J. Kline, Esq., Counsel for Hemp for Victory, via email at AKline@perkinscoie.com; and Abdul Kallon, Esq., Counsel for Hemp for Victory, via email at and AKallon@perkinscoie.com; (7) Shanetha Lewis for Veterans Initiative 22, via email at info@veteransinitiative22.com; (8) Kelly Fair, Esq., Counsel for The Commonwealth Project, via email at Kelly.Fair@dentons.com; (9) Rafe Petersen, Esq., Counsel for Ari Kirshenbaum, via

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