Gary Thompson, Oregon Circuit Court Judge (Ret.)
Board President
CLEAR Alliance

John Trumbo, Umatilla County Sheriff
Board Vice President
CLEAR Alliance

1655 SW Highland Avenue, Suite 5
PO Box 1991
Redmond, OR 97756

RE: Request for response on laws, rules and regulations for Cannabis products,
CBD and THC

Dear Judge Thompson and Mr. Trumbo:

We received your letter dated February 1, 2018, inquiring about the sale and use of products containing cannabidiol (CBD).

The regulation of these products often depends on what type of cannabis was used to make the product - marijuana or hemp. So, first a brief background on the cannabis plant and the regulation of cannabis in Oregon.

A plant in the Cannabis family Cannabaceae contains a number of cannabinoids, including CBD and tetrahydrocannabinol (THC). Different varieties in the Cannabis plant family contain varying levels of THC and CBD. Hemp is generally considered to be a variety that is very low in THC but can be cultivated to be high in CBD. CBD is generally considered to be non-psychoactive and THC to be psychoactive.

For regulatory purposes, Oregon law divides cannabis into two types, industrial hemp and marijuana. Industrial hemp (“hemp”) is cannabis with an average THC content of 0.3 percent or less.¹ Marijuana is any cannabis that is not industrial hemp.²

Products containing CBD can be made from hemp or from marijuana. CBD products made from hemp likely contain some amount of THC. We understand that some processors may use techniques to remove the THC from their CBD products but that is not legally required in Oregon.

¹ ORS 571.300(5). THC content is measured by taking cuttings of the plants in the industrial hemp field (from the flowers where available) to create a representative sample. A laboratory then dries and homogenizes the sample to calculate the percentage of THC based on the dry weight of the plant material.
² ORS 475B.015(17).
Marijuana is regulated by the Oregon Liquor Control Commission (OLCC) and the Oregon Health Authority (OHA). Marijuana products, products made from marijuana, may only be sold by OLCC-licensed retailers or OHA-registered dispensaries. In contrast, the production and processing of hemp in Oregon is regulated by the Oregon Department of Agriculture (ODA). No license or registration is required for a business to sell hemp products. Thus, under Oregon’s regulatory scheme, CBD products made from marijuana are subject to OLCC and OHA rules. CBD products made from hemp are subject to ODA rules. There is one exception to this rule. To the extent that OLCC permits an OLCC licensee to produce, process or sell hemp or products made from hemp, that production, processing and sale is regulated by OLCC.

CBD products that purport to be made from hemp or the stalk or seed of the cannabis plant are also imported into Oregon from other states and countries. A new law passed in 2017 requires that any hemp product sold in Oregon, whether made in Oregon or imported, meet substantially the same requirements for hemp products processed in Oregon.3 Such requirements include testing for both THC and CBD.

You should also be aware that there are legislative proposals that if signed into law would change some of what we have outlined above.4

Now, let’s turn to some of your specific questions which we have reordered and abridged to facilitate our response.

1. May products marketed as containing CBD be sold by businesses not licensed or registered by ODA, OHA, or OLCC?

If the product is made from marijuana it is a marijuana product and may only be sold by retailers licensed by OLCC or dispensaries registered by OHA.

Under Oregon law, no license or registration is required for a business to sell CBD products made from hemp. OLCC-licensed retailers may also sell these products subject to OLCC’s rules, such as required testing. OHA-registered dispensaries are not permitted to sell hemp products.5

Under federal law, CBD products made from marijuana are clearly considered a Schedule I substance. The federal legal status of CBD products made from industrial hemp is less clear and such questions should be directed to the Drug Enforcement Agency (DEA) or the Food and Drug Administration (FDA).

3 ORS 571.339.
4 See SB 1544 B-Engrossed and HB 4089 B-Engrossed. Among other things, these bills would require any industrial hemp product that contains more than .3 percent THC be sold only by an OLCC licensed retailer. See SB 1544 B-Eng., Sec. 20 and HB 4089 B-Eng., Sec. 15a.
5 OAR 333-008-1200(10).
2. May CBD products be sold in cities or counties where the jurisdiction has banned the commercial sale of marijuana products?

Obviously, if a city or county has “opted-out” of allowing marijuana retailers or dispensaries to operate in their jurisdiction under ORS 475B.461 and ORS 475B.968, CBD products made from marijuana would not be allowed to be sold in the city or county because such products can only be sold in OLCC retail stores or OHA dispensaries. However, because CBD products made from hemp may be sold by businesses not licensed by OLCC or registered by OHA the opt-out would not prevent the sale of these items.

3. May CBD products be sold to children?

CBD products made from marijuana are marijuana items and therefore may only be sold to individuals over the age of 21 unless it is a medical grade product, in which case it may be sold to a patient registered with OHA who is 18 years of age or older or to a designated primary caregiver registered with OHA who is 18 or older.

Under current state law, there is no legal prohibition against the sale of CBD products made from hemp to individuals under 21. There is a general prohibition against the sale of inhalant delivery systems (IDS) or their components to individuals under 21 which would apply to a CBD product made from hemp that fell within the definition of an (IDS) or a component of an IDS. In addition, when CBD products made from hemp are sold by OLCC-licensed retailers, they are only sold to individuals 21 and older or to a medical marijuana patient 18 and older or a designated primary caregiver 18 and older. If signed into law, SB 1544 and HB 4089 would require that hemp products (including CBD products made from hemp) containing more than 0.3 percent THC be sold only through OLCC-licensed retailers. The bill does not prohibit the sale of CBD products made from hemp with 0.3 percent THC or less from being sold to individuals under 21.

4. How is the public informed that a business is selling CBD products?

There is no legal requirement that businesses inform the public that they are selling CBD products. Of course, if the CBD product is made from marijuana it can only be sold at an OLCC-licensed retailer or an OHA-registered dispensary.

A. Is each individual CBD product required to be labeled? If so, how?

CBD products made from marijuana are required to be labeled according to the same requirements for any other marijuana item. CBD products made from hemp are not required to be labeled based on their status as a CBD product but may have to be labeled pursuant to

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6 ORS 167.755.
7 OAR 845-025-1230(6).
8 See HB 4089 A-Eng., Section 15a.
9 See OAR 333-007-0010 to 333-007-0100; OAR 845-025-7000 to 845-025-7060; and 845-025-5700.
other laws. For example, a CBD product that is considered a food and that is sold at retail would likely have to be labeled in compliance with state food labeling laws.\textsuperscript{10}

Under SB 1544 a CBD product would have to be labeled in a way that identifies whether it was made from hemp or marijuana.\textsuperscript{11}

B. How are CBD levels tested, by whom, and what agency is responsible for regulating the accuracy of testing?

CBD products made from marijuana must be tested for CBD prior to retail sale by a laboratory licensed by OLCC and accredited by OHA.\textsuperscript{12} OLCC and OHA ensure that their licensees and registrants comply with testing requirements.

All products made from hemp that are intended for human consumption and that are processed in Oregon must be tested for CBD by a licensed and accredited laboratory prior to retail sale. CBD products by their nature are generally intended for human consumption and therefore must be tested. ODA ensures that industrial hemp handlers comply with testing requirements.

Imported CBD products made from hemp are also required to be tested for CBD. A person is prohibited from making a retail sale of industrial hemp products in Oregon unless the product, and the industrial hemp used to process the product, meets the same or substantially the same requirements for processing and growing industrial hemp in Oregon.\textsuperscript{13}

OHA’s Oregon Environmental Laboratory Accreditation Program (ORELAP) accredits laboratories and requires laboratories to meet proficiency testing to ensure the accuracy of testing.

5. May products marketed as containing CBD also contain THC?

Under state law, CBD products made from hemp or from marijuana may also contain THC.

A. What level and type of THC is allowed?

CBD products made from marijuana are by definition a marijuana item and therefore must comply with the concentration and serving size limitations established by OHA in rule.\textsuperscript{14} The THC that is measured is Delta-9 THC and tetrahydrocannabinolic acid (THCA).\textsuperscript{15} CBD products made from hemp must meet the same requirements for marijuana items described above.\textsuperscript{16} CBD products made from hemp that are sold by an OLCC-licensed

\textsuperscript{10} See for example, ODA rules governing food service establishments, OAR Chapter 603, Division 25 and OHA rules governing food sanitation, OAR Chapter 333, Division 150.
\textsuperscript{11} See SB 1544 B-Eng., Section 19.
\textsuperscript{12} ORS 475B.560, ORS 475B.565; OAR 333-007-0300 to 333-007-2000.
\textsuperscript{13} ORS 571.339, adopted in 2017.
\textsuperscript{14} See OAR 333-007-0210 for retail adult use items and OAR 333-007-0220 for medical marijuana items.
\textsuperscript{15} OAR 333-007-0200.
\textsuperscript{16} ORS 571.330.
retailer cannot exceed five percent THC. OAR 845-025-3285. In addition, under HB 4089, CBD products made from hemp in OLCC’s licensed system would be required to meet the concentration limits for the similar marijuana item.\textsuperscript{17}

B. Are sellers required to label or otherwise make the public aware that CBD and THC is in the CBD product?

As mentioned above, CBD products made from marijuana must be labeled according to the same requirements for any other marijuana item. If signed into law, SB 1544 requires CBD products made from hemp to be identified as hemp products.\textsuperscript{18} In addition, as noted above, HB 4089 would require that any product made from hemp meet the same labeling requirements as marijuana items, which require the amount of THC and CBD to be on the label.\textsuperscript{19}

CBD products made from industrial hemp sold outside the OLCC market are not required to be labeled with CBD and THC content unless another generally applicable labeling law applies that would require CBD and THC to be included on the label. Again, as noted above, if SB 1544 or HB 4089 are signed into law, a CBD product made from hemp that exceeds 0.3 percent THC could only be sold through an OLCC-licensed retailer.

c. Can sellers market products as “CBD only” even if they also contain THC?

CBD products made from marijuana sold by OLCC-licensed retailers or OHA-registered dispensaries are required to be tested for and labeled with both CBD and THC content. Therefore, if a product contains THC it would be required to be on the label.

Currently, as mentioned above, CBD products made from hemp sold outside the OLCC market are not required to be labeled based on their status as a CBD product,

d. How are CBD and THC levels tested, by who, and what agency is responsible for regulating the testing of these products?

See answer to 4B.

6. How does Oregon SB 1015 affect CBD and THC products marketed and/or sold?

State law now allows for ODA registered hemp growers and handlers to transfer hemp or hemp concentrates and extracts to an OLCC-licensed marijuana processor under certain conditions.\textsuperscript{20} This provides an explicit channel for CBD products made from hemp to be sold through the OLCC market and addresses the previously unregulated hemp import market by prohibiting sale of hemp products unless the hemp used to process the product and

\textsuperscript{17} HB 4089 B-Eng., Sec. 15(2)(c).
\textsuperscript{18} SB 1544, Sec. 19.
\textsuperscript{19} HB 4089, Sec. 15.
\textsuperscript{20} SB 1015 (2017) is now codified in ORS 571.300, ORS 571.336 - 571.339.
the product itself meets the same or substantially the same requirements for growing and processing hemp in Oregon.

7. **Has the FDA approved CBD to be infused in food or drinks?**

We are not aware of any such FDA approval.

8. **Is it possible for a person who consumes a CBD product that also contains THC to test positive for THC on a workplace drug screening or toxicology screening?**

Presumably, if there is THC in the CBD product and the THC level is high enough, it would be detected in a drug screen checking for THC. This question is likely more appropriately answered by a health care provider or someone who is involved in drug or toxicology screening.

Sincerely,

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Cc: Oregon Department of Justice Consumer Protection Division  
Oregon Bureau of Labor and Industries  
Oregon State Police Drug Enforcement Section  
Chair Chuck Hayes, Governor’s Advisory Committee on DUII