

SUPREME COURT OF NEVADA

Case No. 79669

GREENMART OF NEVADA NLV LLC,; and
NEVADA ORGANIC REMEDIES, LLC
Appellants/Cross-Respondents,

Electronically Filed
Apr 15 2020 10:50 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

ETW MANAGEMENT GROUP LLC; GLOBAL HARMONY LLC; GREEN
LEAF FARMS HOLDINGS LLC; GREEN THERAPEUTICS LLC; HERBAL
CHOICE INC.; JUST QUALITY LLC; LIBRA WELLNESS CENTER LLC;
ROMBOUGH REAL ESTATE INC. D/B/A MOTHER HERB; NEVCANN LLC;
RED GARDENS LLC; THC NEVADA LLC; ZION GARDENS LLC; and
MMOF VEGAS RETAIL INC.,
Respondents/Cross-Appellants,

and

THE STATE OF NEVADA DEPARTMENT OF TAXATION,
Respondent,

Appeal from the Eighth Judicial District Court,
Clark County, Nevada
District Court Case # A-19-797004-B
The Honorable Elizabeth Gonzalez

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| 29 | Nevada Wellness Center, LLC's Notice of Appeal | 12/6/19 | AA 007164 - AA 007166 |
| 26, 27 | Nevada Wellness Center, LLC's Reply in Support of Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 9/30/19 | AA 006493 - AA 006505 |
| 27, 28 | Nevada Wellness Center, LLC's Reply in Support of Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 10/17/19 | AA 006701 - AA 006816 |
| 2 | Nevada Wellness Center, LLC's Summons to State of Nevada, Department of Taxation | 1/22/19 | AA 000373 - AA 000375 |
| 28, 29 | Nevada Wellness Center, LLC's Supplement in Support of Reply in Support of Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 10/30/19 | AA 006955 - AA 007057 |
| 29 | Notice of Entry of Order and Order Denying MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction | 11/23/19 | AA 007127 - AA 007130 |
| 23 | Notice of Entry of Order and Order Granting Motion for Preliminary Injunction | 8/28/19 | AA 005544 - AA 005570 |
| 29 | Notice of Entry of Order and Order Regarding Nevada Wellness Center, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction | 11/6/19 | AA 007058 - AA 007067 |
| 20 | Order Granting in Part Motion to Coordinate Cases for Preliminary Injunction Hearing | 7/11/19 | AA 004938 - AA 004940 |
| 22 | Order Granting Preliminary Injunction (Findings of Fact and Conclusions of Law) | 8/23/19 | AA 005277 - AA 005300 |
| 46, 47 | Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report | n/a | AA 011408 - AA 011568 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 2018 List of Applicants for Marijuana Establishment Licenses 2018 | n/a | AA 011569 - AA 011575 |

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| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5025 Nevada Organic Remedies, LLC's Organizational Chart | n/a | AA 011576 - AA 011590 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter | n/a | AA 011591, AA 011592 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter as Contained in the Application | n/a | AA 011593 - AA 011600 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5038 Evaluator Notes on Nevada Organic Remedies, LLC's Application | n/a | AA 011601 - AA 011603 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5045 Minutes of ther Legislative Commission, Nevada Legislative Counsel Bureau | n/a | AA 011604 - AA 011633 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5049 Governor's Task Force for the Regulation and Taxation of Marijuana Act Meeting Minutes | n/a | AA 011634 - AA 011641 |
| 47 | Register of Actions for Serenity Wellness Center, LLC v. State of Nevada, Department of Taxation, Case No. A-18-786962-B | n/a | AA011642 - AA 011664 |
| 27 | Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 9/30/19 | AA 006506 - AA 006508 |
| 2 | Serenity Wellness Center, LLC et al.'s Complaint | 1/4/19 | AA 000343 - AA 000359 |
| 0 | Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint | 7/11/19 | AA 004907 - AA 004924 |
| 5, 6 | Serenity Wellness Center, LLC et al.'s Ex Parte Motion for Leave to file Brief in Support of Motion for Preliminary Injunction in Excess of Thirty Pages in Length | 4/10/19 | AA 001163 - AA 001288 |

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| 20 | Serenity Wellness Center, LLC et al.'s First Amended Complaint | 7/3/19 | AA 004889 - AA 004906 |
| 40 | Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction | 5/20/19 | AA 003603 - AA 003636 |
| 23 | Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Objection to Court's Exhibit 3 | 8/27/19 | AA 005540 - AA 005543 |
| 27 | Serenity Wellness Center, LLC et al.'s Joinder to Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 10/7/19 | AA 006528 - AA 006538 |
| 4 | Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction | 3/19/19 | AA 000769 - AA 000878 |
| 18 | Serenity Wellness Center, LLC et al.'s Reply in support of Motions for Summary Judgment | 5/22/19 | AA 004395 - AA 004408 |
| 29 | Serenity Wellness Center, LLC et al.'s Second Amended Complaint | 11/26/19 | AA 007131 - AA 007153 |
| 5 | Serenity Wellness Center, LLC et al.'s Summons to State of Nevada, Department of Taxation | 3/26/19 | AA 001031 - AA 001034 |
| 19 | Serenity Wellness Center, LLC et al.'s Supplemental Memorandum of Points and Authorities in Support of Preliminary Injunction | 6/10/19 | AA 004564 - AA 004716 |
| 6 | State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Amended Complaint | 4/17/19 | AA 001313 - AA 001326 |
| 19 | State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Second Amended Complaint | 6/4/19 | AA 004513 - AA 004526 |
| 5 | State of Nevada, Department of Taxation's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint | 4/10/19 | AA 001150 - AA 001162 |

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| 6 | State of Nevada, Department of Taxation's Answer to Nevada Wellness Center, LLC's Complaint | 5/2/19 | AA 001342 - AA 001354 |
| 15 | State of Nevada, Department of Taxation's Answer to Serenity Wellness Center, LLC et al.'s Complaint | 5/20/19 | AA 003637 - AA 003648 |
| 20 | State of Nevada, Department of Taxation's Answer to Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint | 7/15/19 | AA 004949 - AA 004960 |
| 11 | State of Nevada, Department of Taxation's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction | 5/20/19 | AA 002704 - AA 002724 |
| 11-14 | State of Nevada, Department of Taxation's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix | 5/20/19 | AA 002725 - AA 003444 |
| 24 | State of Nevada, Department of Taxation's Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 9/23/19 | AA 005984 - AA 005990 |
| 28 | State of Nevada, Department of Taxation's Opposition to Motion to Nevada Wellness Center, LLC's Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 10/24/19 | AA 006827 - AA 006832 |
| 28 | State of Nevada, Department of Taxation's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants | 10/24/19 | AA 006889 - AA 006954 |
| 10 | State of Nevada, Department of Taxation's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction | 5/9/19 | AA 002273 - AA 002534 |
| 19-20 | State of Nevada, Department of Taxation's Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative | 6/10/19 | AA 004717 - AA 004777 |

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| 20 | State of Nevada, Department of Taxation's Supplement to Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative | 6/24/19 | AA 004879 - AA 004888 |
| 5 | Stipulation and Order to Continue Hearing and Extend Briefing Schedule for Motion for Preliminary Injunction | 4/8/19 | AA 001144 - AA 001149 |
| 46 | Transcripts for Hearing on Objections to State's Response, Nevada Wellness Center, LLC's Motion Re Compliance Re Physical Address, and Bond Amount Set | 8/29/19 | AA 011333 - AA 011405 |
| 29 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 1 | 5/24/19 | AA 007170 - AA 007404 |
| 30 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 2 Volume 1 | 5/28/19 | AA 007405 - AA 007495 |
| 30, 31 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 2 Volume 2 | 5/28/19 | AA 007496 - AA 007601 |
| 31 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 3 Volume 1 | 5/29/19 | AA 007602 - AA 007699 |
| 31, 32 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 3 Volume 2 | 5/29/19 | AA 007700 - AA 007843 |
| 32, 33 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 4 | 5/30/19 | AA 007844 - AA 008086 |
| 33 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 5 Volume 1 | 5/31/19 | AA 008087 - AA 008149 |
| 33, 34 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 5 Volume 2 | 5/31/19 | AA 008150 - AA 008369 |
| 34, 35 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 6 | 6/10/19 | AA 008370 - AA 008594 |
| 35, 36 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 7 | 6/11/19 | AA 008595 - AA 008847 |

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| 36 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 8 Volume 1 | 6/18/19 | AA 008848 - AA 008959 |
| 36, 37 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 8 Volume 2 | 6/18/19 | AA 008960 - AA 009093 |
| 37 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 9 Volume 1 | 6/19/19 | AA 009094 - AA 009216 |
| 38 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 10 Volume 1 | 6/20/19 | AA 009350 - AA 009465 |
| 38, 39 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 10 Volume 2 | 6/20/19 | AA 009466 - AA 009623 |
| 39 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 11 | 7/1/19 | AA 009624 - AA 009727 |
| 39, 40 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 12 | 7/10/19 | AA 009728 - AA 009902 |
| 40, 41 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 13 Volume 1 | 7/11/19 | AA 009903 - AA 010040 |
| 41 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 13 Volume 2 | 7/11/19 | AA 010041 - AA 010162 |
| 41, 42 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 14 | 7/12/19 | AA 010163 - AA 010339 |
| 42 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 15 Volume 1 | 7/15/19 | AA 010340 - AA 010414 |
| 42, 43 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 15 Volume 2 | 7/15/19 | AA 010415 - AA 010593 |
| 43 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 16 | 7/18/19 | AA 010594 - AA 010698 |

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| 43, 44 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 17 Volume 1 | 8/13/19 | AA 010699 - AA 010805 |
| 44 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 17 Volume 2 | 8/13/19 | AA 010806 - AA 010897 |
| 44, 45 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 18 | 8/14/19 | AA 010898 - AA 011086 |
| 45 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 19 | 8/15/19 | AA 011087 - AA 011165 |
| 45, 46 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 20 | 8/16/19 | AA 011166 - AA 011332 |

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT NEVADA ORGANIC REMEDIES, LLC'S OPENING BRIEF** was filed electronically with the Nevada Supreme Court on the 17th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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/s/ David R. Koch

Koch & Scow

1 listed as owners --

2 Q Okay.

3 A -- and they can send and modify the --

4 Q Is there an automatic notification procedure or
5 anything of the sort when you get a bounceback, an email
6 bounceback?

7 A If the email -- if the email bounces back, then the
8 owner will receive a email to that effect, providing that
9 email server was set to that.

10 Q The owner referring to the State employee?

11 A Correct.

12 Q Okay. So if there were bouncebacks Mr. -- assuming
13 Mr. Plaskon was that employee, he would get an email from who?

14 A From the Listserv itself. It's all automatic.

15 Q It's all automatic. Okay. And as we sit here today
16 do you know whether or not there were bounceback emails with
17 regards -- or notifications with regards to Exhibit Number
18 2022?

19 A There is no report that tells me that information.

20 Q Okay. Well, the earliest email date I see on 2021
21 is sometime in 2014, more specifically September 10th, 2014;
22 yes?

23 A Correct.

24 Q And this email from Mr. Plaskon -- you know, I
25 apologize I've been butchering his name, from Kyle [sic],

1 okay. You know him as Kyle? Do you even know who this person
2 is?

3 A No.

4 Q Okay. All right. That email date is July 30th,
5 2018, which is about three and a half years after the first
6 email was given; right?

7 A Okay.

8 Q Yes?

9 A I'll accept that, yes.

10 Q Okay. Now, during that three-and-a-half-year period
11 do you know if people unsubscribed or they changed their email
12 or anything of the sort?

13 A No. That information's not available in the
14 reports.

15 Q Okay. Would you agree with me that there's the
16 potential that in three and a half years people would change
17 their emails?

18 MR. KOCH: Objection. Speculation.

19 THE COURT: Overruled. You can answer.

20 THE WITNESS: Yes.

21 BY MR. KEMP:

22 Q And, in fact, three and a half years is quite a long
23 period. If you had hundreds of people on the email list, you
24 would expect quite a few of them to unsubscribe or change
25 their emails; right?

1 A Depending on the list, yes.

2 Q Okay. And so what was done to determine that these
3 people who had actually subscribed at one point actually got
4 the email, if anything, that you know of?

5 A There is no way to determine that --

6 Q Okay.

7 A -- with this product.

8 MR. KEMP: All right. No further questions.

9 THE COURT: Anyone else from the plaintiffs or those
10 who are participating wish to examine?

11 Mr. Parker.

12 MR. PARKER: Yes, Your Honor. May I check with the
13 clerk for a second, Your Honor?

14 THE COURT: You can.

15 (Pause in the proceedings)

16 MR. PARKER: Your Honor, may I approach the witness?

17 THE COURT: You may.

18 CROSS-EXAMINATION

19 BY MR. PARKER:

20 Q I only have a few questions for you, Mr. Davidson.
21 Looking at Exhibit 307, is that the first?

22 A Yes.

23 Q If you could go to page DOT-NVWELL10.

24 A I am there.

25 Q And the second box says "Applying entity

1 information." Do you see that? First one right above the top
2 box says, "General information," right? But below that box it
3 says, "Applying entity information." Do you see that?

4 A Correct. I see it, yes.

5 Q All right. And then you see the third line down
6 says, "telephone number," and to the right of that it says,
7 "email address." Do you see that email address?

8 A Yes, sir.

9 Q And what is that email address?

10 A frank@frankhawkins.com.

11 Q Do you see that email address listed in any of the
12 Listservs that have been presented to you?

13 THE COURT: 2021 and 2022?

14 MR. PARKER: Yes, Your Honor.

15 THE COURT: Okay.

16 THE WITNESS: That would take a little while to find
17 out.

18 BY MR. PARKER:

19 Q All right. Let me ask this question. If that email
20 address is not either of those or any of those Listservs,
21 would you agree with me that in all likelihood that email
22 address did not receive notification via those Listservs?

23 MR. KOCH: Objection. Speculation.

24 THE COURT: Overruled.

25 THE WITNESS: The email address could have received

1 information and then been deleted afterwards, or the person
2 could have unsubscribed. If there were bounce notices coming
3 back, the email could have been removed. I would not know
4 that --

5 BY MR. PARKER:

6 Q Okay.

7 A -- if they were on the list then. As of now if
8 they're not on that list then, they were not on the list at
9 that time.

10 Q Which meant that they would not have received notice
11 via that Listserv if they were not on that list; is that
12 correct?

13 A That is correct.

14 Q All right. And the reason why I didn't ask about
15 bouncebacks was because I believe Mr. Kemp asked those
16 questions of you previously.

17 A Bouncebacks only apply if the email server is
18 configured to send bouncebacks. Some email servers do not
19 send those bouncebacks, in which case the name will not be
20 removed from the server.

21 Q Do you know whether or not -- the way you had these
22 Listservs set up whether or not the State would receive
23 notification of bouncebacks?

24 A Yes, it would.

25 Q Okay. So --

1 A Providing the recipient's email server send them
2 back. That's what I'm trying to qualify.

3 Q And how would that information be confirmed in terms
4 of bouncebacks?

5 A The bounceback would actually come to the Listserv,
6 the Listserv would then send an email message to the owners
7 that this particular email address had received bounces.
8 After three bounces it will be removed from the list.

9 Q In your search of the State's archives did you
10 determine whether or not there were any bouncebacks?

11 A There is nothing in the archives concerning
12 bouncebacks. Listserv does not track that information. It is
13 sent out, and that's the last time we would know that there
14 was a bounce.

15 Q So sitting here today you don't know whether or not
16 there were bouncebacks reflected by the Listservs?

17 A That is correct.

18 Q Thank you. Is it also true, sir, that the
19 notifications were simply a notification, and if you wanted
20 the additional information you had to download that
21 information?

22 A For this particular email that there was in here the
23 information would have come with an email.

24 Q How about in terms of an application? Would the
25 application be a part of the notification, or would you have

1 to download the application?

2 A You do not have to download the application.

3 Q And how do you know this?

4 A Well, maybe I should qualify. Are you talking about
5 download the application of the Listserv or download the
6 attached documents?

7 Q Attached documents.

8 A The documents would have come with the email.

9 Q Okay. And would they be in a link, or would it be
10 shown on the screen when you pulled up the email?

11 A When you pull up your email it will list the
12 attachments. And it looked like there was two attachments.

13 Q Okay. And then you'd have to download the
14 attachments?

15 A They should have already been downloaded with the
16 email itself. So if you want to -- if you double clicked on
17 it you would have seen the whole email, but it would have been
18 in your email client.

19 Q Okay. You indicated that there were -- there's one
20 server and four, five, or six lists; is that correct?

21 A Of the marijuana lists; correct.

22 Q Right. Is there only one list related to the
23 recreational marijuana?

24 A I do not know that.

25 Q How would you figure that out?

1 A Whoever is the owner of the lists would be the one
2 who knows which -- how many lists they actually added. I
3 mean, if they named it recreational marijuana, then it would
4 be under the R's instead of the M's. And so I could search
5 for the marijuana and see what came up, but I wouldn't know
6 exactly how many lists are offhand.

7 Q Okay. And in the manner in which the lists were set
8 up, was that directed by the Marijuana Enforcement Division?
9 How did you determine how the list should be created?

10 A We have a form online that's only accessible to
11 State employees. They fill it out, and then we generate the
12 list for them. And then from there on out it is their list to
13 manage. I manage the server itself, not the individual lists.

14 Q So when four or five or six lists were created were
15 you directed by the Marijuana Enforcement Division to set up
16 all four, five, or six lists?

17 A I would have gotten four or five or six requests,
18 yes.

19 Q Okay. And was there any effort taken to determine
20 if all subscribers for each list -- if all subscribers were
21 actually populated for all lists?

22 A That would not be done by me. That would be done by
23 the owner of the individual lists.

24 Q Okay. And is there a way for you to check to
25 determine whether or not a subscriber on one list would also

1 be on the four or five or six other lists?

2 A The only way to do so would be for me to search for
3 that person on each individual list.

4 Q And finally, were you given any direction prior to
5 coming here today to determine whether or not any particular
6 applicants were on any of the four, five, or six lists?

7 A I don't have any clue of any of the applicants.

8 Q And so as a result, you cannot tell the Court today
9 whether or not Frank Hawkins was on the list?

10 A That is correct.

11 MR. PARKER: No further questions, Your Honor.

12 THE COURT: Any of my other -- yes, Mr. Cristalli.

13 MR. CRISTALLI: Thank you, Your Honor.

14 (Pause in the proceedings)

15 MR. CRISTALLI: Your Honor, the State has agreed to
16 stipulate to Plaintiffs' 135.

17 THE COURT: 135?

18 MR. CRISTALLI: Yes, Your Honor.

19 THE COURT: Be admitted.

20 (Plaintiffs' Exhibit 135 admitted)

21 CROSS-EXAMINATION

22 BY MR. CRISTALLI:

23 Q Mr. Davidson, can you pull -- or do you have
24 Exhibit 135 in front of you?

25 A I believe so. It's on the screen.

1 Q You can see it on the screen. And specifically --

2 THE COURT: How many pages is 135?

3 MR. CRISTALLI: It goes from DOT044539 to DOT044551.

4 THE COURT: Sir, in case you'd like to look at a
5 hard copy, the clerk has handed it to me to hand to you.
6 Please don't remove the sticky.

7 THE WITNESS: Right.

8 MR. CRISTALLI: Specifically, if we could turn to,
9 Shane, DOT044546.

10 BY MR. CRISTALLI:

11 Q And let me know when you get there, Mr. Davidson.

12 A I'm there.

13 Q Okay. And about a quarter of the way down the page
14 it has an email, chad@pisoslv.com. Do you see that?

15 A Yes.

16 Q Okay. And next to chad@pisoslv.com the next line
17 appears that you could have an identifiable name, but in that
18 line item it says, "No name available." Correct?

19 A Correct.

20 Q Okay. And then going forward to the date, it
21 appears it says April 10th, 2018. Correct?

22 A Correct.

23 Q Okay. Obviously April 10th, 2018, is prior to the
24 July 31st, 2018, notification; correct?

25 A Correct.

1 Q Okay. Now if we can go to DOT044550, the third
2 entry down. Do you have that?

3 A Yes.

4 Q And you see it says chadc@pisoslv.com. Correct?

5 A Correct.

6 Q And it has an identified person as Chad Christensen;
7 correct?

8 A Correct.

9 Q That would be a point of contact, I would assume;
10 right?

11 A I would assume so, but I don't know who entered the
12 information, so I have no idea. You could put any name you
13 want into the name category, and it would have no effect on
14 the email.

15 Q And that's January 30th, 2019; correct?

16 A Correct.

17 Q And that is after the July 31st, 2018, notification;
18 correct?

19 A Correct.

20 Q And that email address is different than the
21 previous email address that we just identified as
22 chad@pisoslv.com; correct?

23 A Correct.

24 Q Okay. And there's nothing in that first entry that
25 we looked at to indicate whether or not that particular email

1 was read and received or received and read; correct?

2 A That is correct.

3 Q And there's nothing in that entry that indicates
4 whether or not there was a bounceback on that particular email
5 in the document that you reviewed?

6 A That is correct. There is no bounceback listed in
7 the report, but the name is still on the list. So it's
8 assumed that the email didn't bounce, because otherwise the
9 name would have automatically been removed from the list.

10 Q And if Mr. Christensen wasn't receiving emails at
11 chad@pisoslv.com, but rather at chadc@pisoslasvegas.com, then
12 he in all likelihood would not have received that first email;
13 correct?

14 MR. KOCH: Objection. Speculation.

15 THE COURT: Overruled.

16 BY MR. CRISTALLI:

17 Q If he was not receiving emails at --

18 A Yeah, if he was not receiving it as Chad, then that
19 is correct.

20 Q Would you be able to go back and verify whether or
21 not that particular email received notification of July 31st,
22 2018, notification and whether or not there was a received and
23 read response to that?

24 A The Listserv does not track that information.

25 Q Can we go to State's 2022, I think you have in front

SUPREME COURT OF NEVADA

Case No. 79670

GREENMART OF NEVADA NLV LLC,; and
NEVADA ORGANIC REMEDIES, LLC

Appellants/Cross-Respondents,

v.

MM DEVELOPMENT COMPANY, INC., A NEVADA CORPORATION, INC.,
and LIVFREE WELLNESS LLC, dba THE DISPENSARY, a NEVADA
LIMITED LIABILITY COMPANY,

Respondents/Cross-Appellants,

and

THE STATE OF NEVADA DEPARTMENT OF TAXATION,

Respondent

Appeal from the Eighth Judicial District Court,

Clark County, Nevada

District Court Case # A-18-785818-W

The Honorable Elizabeth Gonzalez

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| 29 | Notice of Entry of Order and Order Denying MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction | 11/23/19 | AA 007127 - AA 007130 |
| 23 | Notice of Entry of Order and Order Granting Motion for Preliminary Injunction | 8/28/19 | AA 005544 - AA 005570 |
| 29 | Notice of Entry of Order and Order Regarding Nevada Wellness Center, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction | 11/6/19 | AA 007058 - AA 007067 |
| 20 | Order Granting in Part Motion to Coordinate Cases for Preliminary Injunction Hearing | 7/11/19 | AA 004938 - AA 004940 |
| 22 | Order Granting Preliminary Injunction (Findings of Fact and Conclusions of Law) | 8/23/19 | AA 005277 - AA 005300 |
| 46, 47 | Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report | n/a | AA 011408 - AA 011568 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 2018 List of Applicants for Marijuana Establishment Licenses 2018 | n/a | AA 011569 - AA 011575 |

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| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5025 Nevada Organic Remedies, LLC's Organizational Chart | n/a | AA 011576 - AA 011590 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter | n/a | AA 011591, AA 011592 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter as Contained in the Application | n/a | AA 011593 - AA 011600 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5038 Evaluator Notes on Nevada Organic Remedies, LLC's Application | n/a | AA 011601 - AA 011603 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5045 Minutes of ther Legislative Commission, Nevada Legislative Counsel Bureau | n/a | AA 011604 - AA 011633 |
| 47 | Preliminary Injunction Hearing, Defendant's Exhibit 5049 Governor's Task Force for the Regulation and Taxation of Marijuana Act Meeting Minutes | n/a | AA 011634 - AA 011641 |
| 47 | Register of Actions for Serenity Wellness Center, LLC v. State of Nevada, Department of Taxation, Case No. A-18-786962-B | n/a | AA011642 - AA 011664 |
| 27 | Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 9/30/19 | AA 006506 - AA 006508 |
| 2 | Serenity Wellness Center, LLC et al.'s Complaint | 1/4/19 | AA 000343 - AA 000359 |
| 0 | Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint | 7/11/19 | AA 004907 - AA 004924 |
| 5, 6 | Serenity Wellness Center, LLC et al.'s Ex Parte Motion for Leave to file Brief in Support of Motion for Preliminary Injunction in Excess of Thirty Pages in Length | 4/10/19 | AA 001163 - AA 001288 |

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| 20 | Serenity Wellness Center, LLC et al.'s First Amended Complaint | 7/3/19 | AA 004889 - AA 004906 |
| 40 | Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction | 5/20/19 | AA 003603 - AA 003636 |
| 23 | Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Objection to Court's Exhibit 3 | 8/27/19 | AA 005540 - AA 005543 |
| 27 | Serenity Wellness Center, LLC et al.'s Joinder to Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 10/7/19 | AA 006528 - AA 006538 |
| 4 | Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction | 3/19/19 | AA 000769 - AA 000878 |
| 18 | Serenity Wellness Center, LLC et al.'s Reply in support of Motions for Summary Judgment | 5/22/19 | AA 004395 - AA 004408 |
| 29 | Serenity Wellness Center, LLC et al.'s Second Amended Complaint | 11/26/19 | AA 007131 - AA 007153 |
| 5 | Serenity Wellness Center, LLC et al.'s Summons to State of Nevada, Department of Taxation | 3/26/19 | AA 001031 - AA 001034 |
| 19 | Serenity Wellness Center, LLC et al.'s Supplemental Memorandum of Points and Authorities in Support of Preliminary Injunction | 6/10/19 | AA 004564 - AA 004716 |
| 6 | State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Amended Complaint | 4/17/19 | AA 001313 - AA 001326 |
| 19 | State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Second Amended Complaint | 6/4/19 | AA 004513 - AA 004526 |
| 5 | State of Nevada, Department of Taxation's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint | 4/10/19 | AA 001150 - AA 001162 |

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| 6 | State of Nevada, Department of Taxation's Answer to Nevada Wellness Center, LLC's Complaint | 5/2/19 | AA 001342 - AA 001354 |
| 15 | State of Nevada, Department of Taxation's Answer to Serenity Wellness Center, LLC et al.'s Complaint | 5/20/19 | AA 003637 - AA 003648 |
| 20 | State of Nevada, Department of Taxation's Answer to Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint | 7/15/19 | AA 004949 - AA 004960 |
| 11 | State of Nevada, Department of Taxation's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction | 5/20/19 | AA 002704 - AA 002724 |
| 11-14 | State of Nevada, Department of Taxation's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix | 5/20/19 | AA 002725 - AA 003444 |
| 24 | State of Nevada, Department of Taxation's Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 9/23/19 | AA 005984 - AA 005990 |
| 28 | State of Nevada, Department of Taxation's Opposition to Motion to Nevada Wellness Center, LLC's Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction | 10/24/19 | AA 006827 - AA 006832 |
| 28 | State of Nevada, Department of Taxation's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants | 10/24/19 | AA 006889 - AA 006954 |
| 10 | State of Nevada, Department of Taxation's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction | 5/9/19 | AA 002273 - AA 002534 |
| 19-20 | State of Nevada, Department of Taxation's Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative | 6/10/19 | AA 004717 - AA 004777 |

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| 20 | State of Nevada, Department of Taxation's Supplement to Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative | 6/24/19 | AA 004879 - AA 004888 |
| 5 | Stipulation and Order to Continue Hearing and Extend Briefing Schedule for Motion for Preliminary Injunction | 4/8/19 | AA 001144 - AA 001149 |
| 46 | Transcripts for Hearing on Objections to State's Response, Nevada Wellness Center, LLC's Motion Re Compliance Re Physical Address, and Bond Amount Set | 8/29/19 | AA 011333 - AA 011405 |
| 29 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 1 | 5/24/19 | AA 007170 - AA 007404 |
| 30 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 2 Volume 1 | 5/28/19 | AA 007405 - AA 007495 |
| 30, 31 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 2 Volume 2 | 5/28/19 | AA 007496 - AA 007601 |
| 31 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 3 Volume 1 | 5/29/19 | AA 007602 - AA 007699 |
| 31, 32 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 3 Volume 2 | 5/29/19 | AA 007700 - AA 007843 |
| 32, 33 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 4 | 5/30/19 | AA 007844 - AA 008086 |
| 33 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 5 Volume 1 | 5/31/19 | AA 008087 - AA 008149 |
| 33, 34 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 5 Volume 2 | 5/31/19 | AA 008150 - AA 008369 |
| 34, 35 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 6 | 6/10/19 | AA 008370 - AA 008594 |
| 35, 36 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 7 | 6/11/19 | AA 008595 - AA 008847 |

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| 36 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 8 Volume 1 | 6/18/19 | AA 008848 - AA 008959 |
| 36, 37 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 8 Volume 2 | 6/18/19 | AA 008960 - AA 009093 |
| 37 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 9 Volume 1 | 6/19/19 | AA 009094 - AA 009216 |
| 38 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 10 Volume 1 | 6/20/19 | AA 009350 - AA 009465 |
| 38, 39 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 10 Volume 2 | 6/20/19 | AA 009466 - AA 009623 |
| 39 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 11 | 7/1/19 | AA 009624 - AA 009727 |
| 39, 40 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 12 | 7/10/19 | AA 009728 - AA 009902 |
| 40, 41 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 13 Volume 1 | 7/11/19 | AA 009903 - AA 010040 |
| 41 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 13 Volume 2 | 7/11/19 | AA 010041 - AA 010162 |
| 41, 42 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 14 | 7/12/19 | AA 010163 - AA 010339 |
| 42 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 15 Volume 1 | 7/15/19 | AA 010340 - AA 010414 |
| 42, 43 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 15 Volume 2 | 7/15/19 | AA 010415 - AA 010593 |
| 43 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 16 | 7/18/19 | AA 010594 - AA 010698 |

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| 43, 44 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 17 Volume 1 | 8/13/19 | AA 010699 - AA 010805 |
| 44 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 17 Volume 2 | 8/13/19 | AA 010806 - AA 010897 |
| 44, 45 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 18 | 8/14/19 | AA 010898 - AA 011086 |
| 45 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 19 | 8/15/19 | AA 011087 - AA 011165 |
| 45, 46 | Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 20 | 8/16/19 | AA 011166 - AA 011332 |

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPELLANT APPENDIX was filed electronically with the Nevada Supreme Court on the 17th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Employee of Koch & Scow, LLC

1 of you, as well.

2 A Got it.

3 Q And the second page of State's 2022, specifically
4 DOT044722, that is the official announcement that was dated
5 July 31st, 2018; correct?

6 A Correct.

7 Q Okay. And then there was an application attached to
8 that; right?

9 A Correct.

10 Q Okay. Mr. Davidson, were you responsible for
11 uploading the application for the 2018 recreational marijuana
12 licenses on the Department of Taxation Website?

13 A No, I was not.

14 Q Do you know who was responsible for that?

15 A No, I do not.

16 Q Do you know that there was -- do you know whether or
17 not -- after this official announcement whether or not there
18 was a change to the application that was on the Department of
19 Taxation Marijuana Division Website that would have included
20 the application with the changes as it relates to this
21 particular announcement?

22 A I would not know that.

23 Q And you don't know whether or not that particular --
24 the particular application that was attached to this
25 notification was uploaded to the Department of Taxation

1 Marijuana Division Website prior to the application period?

2 A I would not know that. I have no knowledge of the
3 Taxation's Website and how it's run or maintained.

4 MR. CRISTALLI: No further questions, Your Honor.

5 THE COURT: Any of -- Mr. Fetaz.

6 MR. FETAZ: Just one quick.

7 CROSS-EXAMINATION

8 BY MR. FETAZ:

9 Q Mr. Davidson, what does the IT Department do when an
10 error is indicated when someone is trying to subscribe?

11 A The error would go to the owners unless they have --
12 unless it's enough of an error that they forgot to tell the
13 Listserv which list they were trying to subscribe to. You can
14 subscribe to the Listserv via email; and if you do so, you
15 need to send it to that list, then you'll be added to the
16 list. But if they sent it to just the Listserv itself, that
17 would be an error, because they did not specify the list.

18 Q And do you know when the owner would receive that if
19 there's a certain protocol that the owner would follow in
20 attempting to cure that error?

21 A It varies upon the list. The error would bounce --
22 well, if it's to the list itself and there was a problem, it
23 would bounce to the owner of the list. If the person
24 subscribing tried to subscribe to a nonexistent list or they
25 misspelled it, then that error would come to my attention.

1 And I very seldom get any of those.

2 Q Understood. I don't know if this obvious question
3 has been asked, but turning to Exhibit 135, in the fifth
4 column there there are the subscription dates. So it can be
5 assumed that if anyone has subscribed after the July 30, 2018,
6 date, which was the date Exhibit 2022 was sent, they wouldn't
7 have received that email?

8 MR. KOCH: Objection. Speculation.

9 THE COURT: Overruled.

10 THE WITNESS: If they subscribed after that email
11 was sent out, they would not have received that email. They
12 would have to log into the Listserv and then go into the
13 archive to find it. Anyone who is a subscriber to a specific
14 list is allowed to review the archives of that list.

15 BY MR. FETAZ:

16 Q And how would one review those archives?

17 A Just log into the Listserv.

18 Q Turning to Exhibit 135 again at DOT044550. And
19 you'll see an email address near the middle top of the list
20 there, dave@nevcann.com. A little bit farther down.

21 A Okay.

22 Q Can you go all the way across. You'll see that
23 their subscription date was the 30th of January 2019. Do you
24 see that?

25 A I see that.

1 Q And I'll represent to you that NEVCANN is a
2 plaintiff in this lawsuit, and if this is the subscription
3 date for dave@nevcann, it's your understanding that he would
4 not have received the July 30, 2018, email?

5 MR. KOCH: Objection. Speculation.

6 THE COURT: Overruled.

7 THE WITNESS: This particular email address would
8 not have received it.

9 MR. FETAZ: Thank you.

10 THE COURT: Any more questions, Mr. Fetaz?

11 Mr. Shevorski.

12 MR. SHEVORSKI: Not from the State, Your Honor.

13 THE COURT: Mr. Koch.

14 DIRECT EXAMINATION

15 BY MR. KOCH:

16 Q While we're on that subject, that individual at --
17 that person at NEVCANN, the fifth column listed a subscription
18 date in January of '19. What if that person were on the list,
19 maybe they subscribed in 2016, took their name off the list,
20 then added back on in 2019? What would be the indication
21 that subscription --

22 A It would be the latest date when they signed up.
23 They would not --

24 Q Would it be possible that someone would be on the
25 list, take themselves off the list, put themselves on, and

1 there's only one date listed?

2 A That is correct.

3 Q Possible that they were on the list in 2018?

4 A That is always possible.

5 Q Okay. Generally you said that the State has how
6 many Listservs that it uses?

7 A Over 500.

8 THE COURT: The State or the marijuana group?

9 BY MR. KOCH:

10 Q The State.

11 A The State itself has over 500 lists.

12 Q That's a pretty standard way for State agencies to
13 communicate; is that right?

14 A Correct.

15 Q Do you believe that using Listservs is an efficient
16 way for state agencies to communicate with a large group of
17 people?

18 A It has been so far.

19 Q Is it more efficient, in your opinion, than sending
20 out individual emails to people wherever they may be on a
21 manual list?

22 A Very much more efficient.

23 Q So it's a fairly standard way of communicating; is
24 that right?

25 A Correct.

1 Q Do you think it's a reasonable way of communicating
2 with a large group of people?

3 MR. CRISTALLI: Objection. Calls for speculation.

4 THE COURT: Overruled. You can answer.

5 THE WITNESS: Yes, it is a reasonable and
6 inexpensive method.

7 BY MR. KOCH:

8 Q In your opinion or your experience would it be a
9 better way to communicate than say putting a notice in a
10 newspaper, perhaps, of information that wants to get out
11 there?

12 A For those people who are interested in a specific
13 topic it is. That's where this particular product excels, is
14 in focusing on specific topics.

15 Q All right. The subscription date that's listed
16 there, that subscription, is that -- an individual has to list
17 themselves to be able to be subscribed; is that right?

18 A Or they can be added to the list through the owner.
19 The owner can do a bulk insert or a single insert as they so
20 desire.

21 Q Do you have any knowledge as far as who was required
22 to be listed on the marijuana Listservs that we've been
23 talking about for a particular applicant or establishment?

24 A I do not know that information.

25 Q And you don't know whether one or more individuals

1 would be required to be listed for that applicant; is that
2 right?

3 A I wouldn't know.

4 Q And do you know if the State would go out and
5 affirmatively seek out individuals and ask them to be added to
6 the Listserv in order to receive information?

7 A My department would not.

8 Q Okay. And so it would be up to that applicant or
9 the officers or owners of that applicant or establishment to
10 put themselves on; is that right?

11 A That is correct.

12 Q And I want to clarify the questions that you were
13 just asked. It sounded like, from what you said, if someone
14 was not on the list in June or July of 2018, but then they
15 added themselves let's say in August of 2018, they could then
16 go back and search and find everything that was sent out from
17 that Listserv prior to their subscription; is that right?

18 A Yes. The archives contain everything from that list
19 from when it was conceived in 2014.

20 MR. KOCH: All right. Thank you.

21 THE COURT: Anyone further? Mr. Kemp.

22 RECROSS EXAMINATION

23 BY MR. KEMP:

24 Q Mr. Koch asked you if it would be reasonable to use
25 the email. Do you remember those questions?

1 A I'm sorry?

2 Q It would be reasonable to notify people by using the
3 email to the Listserv. Do you remember his questions that he
4 read?

5 A Yes.

6 Q Okay. In this case the official announcement that
7 originally came out was posted. Do you understand that one
8 way or the other? It wasn't email. There was a post.

9 A Okay.

10 Q Okay. Do you think it would be more reasonable to
11 both post it and to email it to the Listserv? If you gave the
12 original notice by posting, should you not continue that
13 mechanism?

14 A In my opinion, the more methodologies that you would
15 use the more likely you would be to reach your recipient or
16 your audience.

17 Q The more types of notice --

18 A But that is just -- I'm not a marketing person, so I
19 don't really --

20 Q So the more types of notice the better?

21 A That would be my opinion.

22 Q And that would also apply, I think we've already
23 covered, you could send it to all six of the marijuana
24 Listservs not just the one. That would have been more
25 reasonable or reasonable --

1 A You could cover more -- if the other lists had
2 different people, you would end up covering a larger amount of
3 recipients.

4 Q It's just a push the button for the State's point of
5 view; right?

6 A Kind of, yeah. You'd just send an email to it.

7 Q It doesn't cost any more?

8 A No, it does not.

9 Q Okay. In some of the questions you were focusing on
10 the attachment, and I think you said that they should have
11 used the attachment that was sent out by the email, as opposed
12 to something that was on the Website. Do you recall that
13 testimony?

14 A No.

15 Q Okay. Well, if you take a look at 2022 -- you have
16 it there --

17 A Okay.

18 Q -- doesn't the official announcement specifically
19 say that they should go to the State's Website and download
20 the latest version of this submission? That's what it says.
21 It doesn't say, use the one that's attached. It says, go to
22 the Website and download the latest version.

23 MR. KOCH: Objection. Document speaks for itself,
24 and personal knowledge.

25 THE COURT: Overruled. You can answer.

1 BY MR. KEMP:

2 Q Right?

3 A Okay. It does say that in the email.

4 Q Okay. And if the State Website -- in fact, until
5 this hearing started the State Website had the old version.
6 Whose responsibility is that to ensure that the State Website
7 had the latest version, this July 30th or 31st version?

8 A That would depend on which particular page on the
9 Website it is and who maintains that particular page. EITS
10 might be housing it, but we don't actually maintain the
11 content. That's handled by the individuals.

12 Q So assuming for the sake of argument that the State
13 kept the old application on the Website and the official
14 announcement that was emailed to some but not all people on
15 July 30th, 2016, said to download the one on the Website, can
16 you see how people would potentially be confused as to which
17 was the appropriate attachment to use?

18 MR. SHEVORSKI: Objection. Speculation.

19 THE COURT: Overruled.

20 THE WITNESS: I can see where people could be
21 confused on almost anything, actually.

22 BY MR. KEMP:

23 Q Well, they would be confused by virtue of the fact
24 that the State didn't update the application on the Website.
25 That's not their fault, is it? That's not the applicant's

1 fault, is it?

2 MR. KOCH: Objection. Argumentative.

3 THE COURT: Overruled.

4 BY MR. KEMP:

5 Q If the State tells you to download an application in
6 an email and then that application it says to download is not
7 the one -- the new one it just emailed out, that's not the
8 applicant's fault, is it?

9 A I would assume not.

10 Q Okay. It's the State's fault, isn't it?

11 MR. KOCH: Objection. Argumentative.

12 THE COURT: Overruled.

13 THE WITNESS: I would assume so.

14 MR. KEMP: Okay. Thank you.

15 THE COURT: Anybody else? Mr. Cristalli.

16 MR. CRISTALLI: Just a quick followup, Your Honor.

17 RECROSS-EXAMINATION

18 BY MR. CRISTALLI:

19 Q Mr. Davidson, with regard to Plaintiffs' Exhibit
20 135, you don't know whether or not -- I can ask you -- you
21 don't need to have it in front of you -- you don't know
22 whether or not that that particular list on that Listserv is
23 accurate, do you?

24 A I do not.

25 Q In fact, we've identified at least one entry where

1 it said Chad versus Chad C, and that appears to be different
2 emails; correct?

3 A Correct.

4 Q No way to verify whether or not Chad actually
5 received that particular email correspondence; correct?

6 A There is no way to verify whether or not he received
7 the email. The Chad email, however, is valid. Whether it's
8 his email or someone else's I do not know.

9 Q And this particular Listserv goes back to 2014;
10 correct?

11 A Correct.

12 Q The application for -- well, the notification for
13 the 2018 application that came out was July 30 or 31st of
14 2018; correct?

15 A Correct.

16 Q The State has notification as to who the applicants
17 would be with regard to the 2018 application process, would
18 they not?

19 MR. SHEVORSKI: Objection. Speculation.

20 THE WITNESS: That's not my --

21 THE COURT: Sustained. Can you rephrase the
22 question.

23 THE WITNESS: -- department. It would be --
24 Taxation would know that, I assume, or whoever was in charge
25 of the list.

1 THE COURT: Was that the first one?

2 MR. SHEVORSKI: That was the first one, Your Honor.

3 MR. CRISTALLI: No further questions, Your Honor.

4 THE COURT: Anyone else?

5 All right. Thank you, sir. I appreciate your time.

6 Have a very nice day. Can you hand me back the one document
7 that has the sticky on it.

8 THE WITNESS: Let me find it. Okay. Here it is.

9 THE COURT: Thank you.

10 THE WITNESS: Thank you.

11 THE COURT: Dulce, here's yours.

12 Next witness.

13 MR. SHEVORSKI: Thank you, Your Honor. The State
14 calls Ms. Kara Cronkhite.

15 THE COURT: Ms. Cronkhite, if you'll come forward,
16 please.

17 KARALIN CRONKHITE, DEFENDANT STATE'S WITNESS, SWORN

18 THE CLERK: Please be seated. Please state and
19 spell your name for the record.

20 THE WITNESS: Karalin Cronkhite, K-A-R-A-L-I-N
21 C-R-O-N-K-H-I-T-E.

22 THE COURT: And, ma'am, there's water in the pitcher
23 next to you, there are M&M's in the dispenser behind you, and
24 there are a ton of exhibits counsel may ask you to look at.

25 THE WITNESS: Thanks, Your Honor.

1 THE COURT: All right. You may proceed, Mr.
2 Shevorski.

3 MR. SHEVORSKI: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. SHEVORSKI:

6 Q Good afternoon, Ms. Cronkhite. Thank you for being
7 here. I'm with the Attorney General's Office. I'm going to
8 try to get you out of here today. I can't make any promises,
9 though.

10 Can you tell us a little bit about your background
11 starting with your education.

12 A Yeah. I have a Bachelor's degree in food science
13 and nutrition from California Polytechnic State University in
14 San Luis Obispo, California. And I have a Master's degree in
15 public health with a concentration in epidemiology and
16 biostatistics from UNLV. I am a registered Environmental
17 Health Specialist with the National Environmental Health
18 Association.

19 Q The MPH, what does that mean? What are your -- the
20 specialty that you received your MPH in, epidemiology, what is
21 that?

22 A Epidemiology, I like to tell people to think of the
23 word "epidemic," like disease outbreaks. It's a scientific-
24 based study where you look at parasites, bacteria, fungi, you
25 know, any pathogens, chronic diseases, as well, like diabetes,

1 and you look at how they affect populations, how they spread,
2 things like that.

3 Q And the other thing you mentioned started with an S.
4 What was that, statistics?

5 A Biostatistics.

6 Q Biostatistics. What is that?

7 A It's definitely not my passion. It's the study of
8 -- the statistics of basically like diseases is really where
9 my focus was. So if there was -- you would look at certain
10 populations and how that disease affects that population and
11 the statistics associated with that disease in that area
12 really.

13 Q Okay. And any further education besides the BS the
14 MPH? And I think you also mentioned you had a certificate?

15 A Yeah, my REHS, Registered Environmental Health
16 Specialist, and I have several others. I'm a certified
17 professional in food safety with the National Environmental
18 Health Association. I'm a certified proctor for ServSafe to
19 certify people as food protection managers, and a few other
20 similar ones. I think I'm even a certified pool operator,
21 because I inspected pools at one point.

22 Q Swimming pools?

23 A Yeah. There's been a few.

24 Q Very good. And how do you obtain those certificates
25 as --

1 A For the registered environmental health specialist,
2 for example, that's the most difficult one, you have to have a
3 Bachelor's degree or equivalent in a scientific field and two
4 years of work experience in environmental or public health
5 just to be considered eligible to sit for the exam. And then
6 you have to pass the exam. I think the passing score is over
7 70 or something like that.

8 Q Okay. And are there classes you have to take to
9 obtain that certificate, or is it an exam?

10 A It's an exam.

11 Q Okay.

12 A There are classes offered. You're not required.
13 But it's an exam, but you have to have that Bachelor's degree
14 education to be eligible to register for the exam.

15 Q And you passed that exam?

16 A Yes.

17 Q Okay. And when did you obtain that certificate?

18 A That was probably around 2011, I would say. And
19 then I have to take continuing education courses to maintain
20 it. So we call them CEUs. They're credits you have to
21 maintain. I think it's 24 credits -- 24 hours of learning
22 every two years to maintain that certification.

23 Q And what were the other certificates?

24 A Certified Professional in Food Safety. That's also
25 through the National Environmental Health Association.

1 Q And how do you obtain that one?

2 A That's an exam that you have to take. I don't
3 remember the prerequisites for sitting for the exam.

4 Q Did you pass that exam?

5 A I did.

6 Q Okay. All right. What other certificates do you
7 hold?

8 A I'm a Certified Proctor for ServSafe, which is a
9 certification program to get people certified as food
10 protection managers.

11 Q Is that an exam, or how do you obtain that
12 certificate?

13 A That is an exam.

14 Q Okay. Did you pass that exam?

15 A Yes.

16 Q Any other certificates?

17 A Nothing coming to mind. I know there's more, but --

18 Q Other than the pool?

19 A Yeah.

20 Q Now. let's talk a little bit about your work
21 experience. Did you work at a place called the Ecolab?

22 A Yes.

23 Q And what is that?

24 A Ecolab is a huge company worldwide. They do a lot
25 of things, but the division I worked for was an Ecolab with

1 the Chemicals Division. I was a food safety sanitarian where
2 I conducted third-party food safety audits for grocery
3 accounts throughout Southern Nevada and Southern Utah and
4 across the country as needed.

5 Q And did you have a title for that job?

6 A Yes. I was a Food Safety Sanatarian.

7 Q And how long did you work there?

8 A Probably about 18 months, a year and a half.

9 Q Also worked at the Mirage?

10 A Yes. At the Mirage I was the food safety manager --
11 food safety and sanitation manager, sorry.

12 Q And what were your duties, if any, at the Mirage?

13 A My role was -- I was responsible for all of the food
14 and beverage outlets inside of the Mirage. I had to make sure
15 that they maintained the standard from the local Health
16 Department, the FDA, USDA, OSHA. I also applied for permits
17 with the Southern Nevada Health District, whether it was for a
18 temporary event or we were doing a facility modification or
19 providing plans to them, any applications, I was in charge of
20 those, as well. And I accompanied the health inspector
21 anytime they were on property.

22 Q And how long approximately did you work for the
23 Mirage?

24 A I think it was just under two years. Maybe about a
25 year and a half, two years.

1 Q Then did you go on to work for the Southern Nevada
2 Health Service?

3 A Yeah, I was with the Southern Nevada Health
4 District. There I was an Environmental Health Specialist II.

5 Q And what duties, if any, did you have for the
6 Southern Nevada Health Service?

7 A I conducted health inspections for mostly food
8 establishments. That'd be anything from processing centers,
9 bakeries, warehouses, festivals, anything that makes and/or
10 sells food or beverages. There was a short period of time
11 where I inspected pools, which is why I have the one
12 certificate.

13 Q And what goes into an inspection that you d -- you'd
14 go out to a facility and what do you do?

15 A I mean, it's a lot, but if I -- just to summarize
16 briefly, you go in and you make sure that all of their
17 practices, the way that they're storing products, preparing,
18 handling, receiving products is in a manner that's going to
19 protect public health and not pose any, you know, unnecessary
20 risks to the public. Mitigating any risks of becoming ill
21 from consuming those products.

22 Q Okay. Did you eventually go to work for the State
23 of Nevada in terms of the Department of Public Health?

24 A Yes. I went to the Department of Public and
25 Behavioral Health, and at that time we were the medical

1 marijuana program.

2 Q Do you know approximately what year you started?

3 A I started in 2015.

4 Q And when you started in 2015 what title did you
5 have?

6 A Medical Marijuana Program Supervisor.

7 Q Okay. And what duties, if any, did you have with
8 respect to that title?

9 A I was responsible for supervising all of the
10 marijuana inspectors, the marijuana auditors, a few
11 administrative staff, and writing policies, like internal
12 policies for staff and also policies and procedures for
13 industry to follow, as well. I assisted with any revision of
14 the regulations and the decision-making processes with
15 management.

16 Q Okay. And that was in 2015?

17 A Yeah.

18 Q Okay. And you mentioned inspectors. Who are the
19 inspectors?

20 A The marijuana inspectors go out and conduct what I
21 would compare to a health inspection, but for a marijuana
22 facility. They inspect the cultivators that grow the
23 marijuana, the producers that extract the marijuana and turn
24 it into different products such as edibles or vape pens, the
25 dispensaries that sell the marijuana, and also the

1 laboratories that test the marijuana.

2 Q Any other people that you supervised?

3 A At that time, no.

4 Q Okay. In 2016 did you still work for the Department
5 of Public Health?

6 A Yeah.

7 Q Okay. And eventually -- are you aware of an
8 initiative that the voters approved in 2016 commonly called
9 Question 2?

10 A Yeah. Ballot Question 2 initiative.

11 Q Ballot Question 2?

12 A Uh-huh.

13 Q Did you eventually move over to the Department of
14 Taxation --

15 A Yes.

16 Q -- sometime after Ballot Question 2 was approved by
17 the voters?

18 A Yeah. After the initiative passed, everyone from
19 the medical marijuana program moved over to the Department of
20 Taxation Marijuana Enforcement Division.

21 Q Okay. What duties, if any, did you have upon
22 arriving with the Department of Taxation?

23 A My duties remained mostly the same. However, we
24 grew at that time, so we had a lot more staff. So I
25 transitioned out of supervising the auditors. That became the

1 role of the Chief Compliance Audit Investigator, and so I
2 assisted him with the supervision of the auditors until he
3 became comfortable in that role.

4 Q What is an auditor in the context we're talking
5 about here?

6 A So an auditor accompanies the inspectors when they
7 go out on their visits, we call them routine inspections of
8 the facilities. The auditors are looking more at inventory
9 control, facility security, building safety, things like that,
10 not the public health side, but the security of the product
11 and the security of the building.

12 Q And you were supervising them?

13 A I was.

14 Q Okay. And how long did that go on?

15 A That I supervised them?

16 Q Yes, ma'am.

17 A From 2015 until we started phasing that out in late
18 2017. And then Damon Hernandez started taking over that role.

19 Q Okay. And do you have a brother?

20 A I do have a brother.

21 Q Does he work in the marijuana industry?

22 A Yes, he does.

23 Q Okay. Do you know what company he worked for -- has
24 he worked for multiple companies or just one?

25 A Just one. However, they've had several changes in

1 ownership and names. It's currently titled Exhale.

2 Q Did Exhale apply for a retail marijuana license in
3 2018?

4 A Yes, they did.

5 Q Did they succeed?

6 A No, they did not.

7 Q Okay. Did your brother ever contact you about the
8 application process?

9 A No, he did not.

10 Q Okay. Were you aware that there was a Governor's
11 Task Force with respect to Question 2?

12 A Yes.

13 Q And we're still talking about the Question 2 in the
14 context of the 2016 election cycle. Is that fair?

15 A Yeah.

16 Q Did you work on the Governor's Task Force?

17 A Yes. I was assigned to the retail operations
18 working group.

19 Q And what did the retail operations group -- working
20 group do?

21 A We came up with recommendations for the retail
22 stores for the regulations. So we talked about advertising,
23 labeling, receiving product, delivery, all sorts of things,
24 anything that a retail store might do.

25 Q And you talked about them. Did you come up with any

1 recommendations that you can recall?

2 A We did come up with several recommendations. I
3 don't remember specifically what they were, several regarding
4 warning labels, several with advertising. I don't remember
5 off the top of my head. I know there were some with delivery,
6 as well.

7 Q Delivery of marijuana?

8 A Correct.

9 Q And how long, if at all, did you work on the
10 Governor's Task Force?

11 A I believe we started meeting in March of 2017, and we
12 met for 10 weeks. So I believe they were 10 consecutive
13 weeks, but I'm not positive.

14 Q Any of those weeks that you missed or sick or went
15 on vacation?

16 A There was one where I was on vacation, but I called
17 in anyway. So I don't believe I missed any, but it's
18 possible.

19 Q Okay.

20 A And then I did sit in on other meetings just to
21 listen for other working groups, but I wasn't involved in the
22 processes.

23 Q Were you involved at all in the training of --
24 strike that. Have you ever heard of a name Manpower --

25 A Yeah.

1 Q -- in the context of retail marijuana?

2 A Yeah.

3 Q Okay. And were you involved at all in the hiring of
4 any person from Manpower in the context of scoring retail
5 marijuana applications?

6 A No.

7 Q Okay. Were you involved in the training of any
8 person who eventually was hired from Manpower?

9 A Yes.

10 Q Okay. Did you share those training duties with
11 anyone, or were you working by yourself?

12 A Yes. I shared the training duties with David
13 Witkowski as part of the non-ID section.

14 Q When you say non-ID what do you mean by that?

15 A That was the part of the application that was non-
16 identified, where the scorer is not aware of who they're
17 scoring. They don't have any names of owners, the facility
18 name, any identifying information whatsoever.

19 Q Did you provide any training with respect to the
20 adequacies of the size of the proposed marijuana
21 establishment?

22 A Yes, I did.

23 Q And what training did you provide?

24 A I basically went through the application form, the
25 evaluator guidelines and old applications as examples, went

1 through them line by line explaining to the scorers what they
2 should be looking for, where they might find that information,
3 why it's important, and examples of poor, you know, responses.
4 They might see average responses, they might see excellent
5 responses or they should expect to see, and what would be
6 ideal versus what would be just considered adequate.

7 Q And in using those examples can you describe, if you
8 recall, what you tried to describe as or trained on what an
9 excellent response would be.

10 A Yes. It was different for every category, but if
11 the category was zero to 10 points an excellent response would
12 fall into the 8- to 10-point range. Adequate I think was the
13 middle one, which was the average that was 4 to 7, and
14 inadequate would be zero to 3.

15 Q Okay. Did you train Manpower personnel to be
16 looking for any particular materials that the applicant may
17 submit with respect to that category we're talking right now,
18 the adequacy of the size?

19 A Yes. They are all trained to look at the entire
20 non-ID portion of the application for every single section no
21 matter what. Just because it says it's supposed to be in
22 Tab 3 or Tab 7, wherever, doesn't necessarily mean that's
23 where they'll find that information. So I was very clear that
24 even if they added at the very end of the application where it
25 shouldn't have been, to still consider that they may have to

1 revise their score or go back and look for other things. They
2 were to look at the floor plan, which is the aerial view, the
3 layout of the equipment, very heavy focus on the flow of the
4 consumers that are coming in the store, the staff that's
5 walking through the store and the flow of the product, as
6 well, to ensure that, you know, you don't have -- for example,
7 you don't want a consumer going to use the restroom in the
8 back of the store down by the receiving area, something like
9 that. You'd want to make sure that the flow makes sense for
10 the operation. We'd look at -- I told them how to look for
11 hand-washing sinks, where they should be located ideally,
12 single entrance, cameras, security cameras not only inside but
13 also the perimeter, lighting, plumbing. So not just the floor
14 plan, but the building plan in itself as a whole, any
15 documents that were provided.

16 They might have provided finish schedules, which
17 would say the material of the floor, as well as ceilings,
18 plumbing to make sure sewage lines aren't going over where
19 product's stored, things like that. There is a lot of
20 information that went into that section, and the timeline --
21 the proposed timeline to complete that, as well as resources
22 that would be required to meet that timeline.

23 Q If the building was already built, there wouldn't
24 necessarily be a timeline; correct?

25 A Not necessarily. I would say it depends. Because

1 it depends on if they're going to make modifications to that
2 facility.

3 Q Okay. Did you train Manpower personnel how to
4 evaluate a building that is already built for adequacy?

5 A Yes. So the difference for that would be where you
6 have a building that's not already built you need to look at
7 did they consider pouring the concrete, do they have power, do
8 they have water to the building, are they, you know, building
9 from nothing, or do they have a skeleton that -- you know, or
10 foundation to pour, things like that. With an existing
11 building you don't need quite as much detail in that aspect,
12 because you would think it already possibly has those things.
13 However, you would still want to know that the power's still
14 functioning, they don't have to wait to have it turned back
15 on. You'd still want to know that they still have water to
16 the building, that they're not going to be tearing down walls
17 to facilitate better flow. There's a lot of information
18 that's still goes into it. Any improvement, modification, if,
19 you know, those are the things that they would still be
20 looking for in an existing building.

21 Q Okay. And if a building is in existence and has not
22 been shut down by the health inspector, does that mean that
23 it's an excellent building?

24 A Are you referring to a building that's operational
25 as a marijuana facility?

1 Q Correct.

2 A Can you restate the question again.

3 Q Certainly. A building that's in operation as a
4 marijuana facility and hasn't been shut down, it's in
5 compliance with the regulations, does that necessarily mean
6 that it's an excellent building or entitled to an excellent
7 score?

8 A No. I could actually say there's a lot of current
9 buildings that are not in my opinion excellent. However --
10 no. Just because a building is compliant with the
11 regulations, that just means they're meeting the minimum
12 standards. That doesn't mean that they're excellent above and
13 beyond our ideal facility, couldn't score better. It just
14 means that they're meeting the bare minimum requirements.

15 Q Did you provide training with respect to care,
16 quality, and safekeeping?

17 A Yes.

18 Q What training, if any, did you provide?

19 A The same as the other section, going through line by
20 line with the evaluator guidelines telling them what they
21 mean, what to look for, what's important, good and bad
22 examples that I've been familiar with, things like that.

23 Q Okay. What training, if any, did you provide with
24 respect to testing?

25 A For laboratory testing, that section, it was -- I

1 believe that section involved what the products get tested
2 for, what products get tested, you know, if there -- I told
3 them to keep an eye out for if they're only mentioning batches
4 or lots and they're never mentioning productions runs being
5 tested. The responsibility of product being sold is on the
6 dispensary, on the retail store, that even though the
7 facilities they receive it from need to be the ones testing
8 it, they're responsible for ensuring that has been tested
9 prior to sale and receipt, handling of the product, storage of
10 the product. I'm trying to remember off the top of my head
11 what else was in that section, but it was a very detailed
12 section about when and how to test the product and how to
13 store it in a facility to prevent any additional
14 contamination.

15 Q What training, if any, did you provide with respect
16 to the transportation plan?

17 A For the transportation plan section same thing. I
18 went through it line by line. But it was really we're looking
19 to make sure that they have existing procedures in place,
20 existing policies in place, not we will plan to do this, we
21 will do this. It's what are you doing. So you can't have --
22 you know, no unmarked -- or no marked vehicles. It has to be
23 non-identifiable as a marijuana delivery vehicle. They have
24 to have a means of communication. I told them to keep an eye
25 out for things like, we will have a means of communication.

1 Okay, well, we're asking for your plan, what means of
2 communication are you providing is the type of stuff I told
3 them to look out for. A plan for receipt, a plan for, you
4 know, how many drivers are in the car, if there's theft or an
5 accident how they're going to report that incident to law
6 enforcement and the Department. I'm sure there was other
7 information in that section.

8 Q That's your best testimony as you sit here today?

9 A Yeah.

10 Q Okay. What training, if any, did you provide with
11 respect to building security?

12 A Building security was about the security of the
13 physical structure itself. So we have guidelines in our
14 regulations for bare minimum requirements, 19-inch monitor for
15 example, an alarm, backup battery in case the power goes out,
16 things like that. So in the application they needed to at
17 least meet the bare minimum requirements, but I told them to
18 keep an eye out for people going above and beyond, that would
19 be more ideal. The minimum requirement for battery backup
20 would be five minutes, that's bare minimum, maybe average.
21 But if someone responds that they do 10 minutes, 30 minutes,
22 3 hours, 8 hours, we've seen a lot, that would be going above
23 and beyond. Also armed guards, mantraps, things like that,
24 those would be ideal, not necessarily required, but ideal.

25 Q What's a mantrap?

1 A A mantrap is where when you walk in the front door
2 or through the front door but into the secondary area there's
3 a spot where the door you just entered through locks, and this
4 door won't open until that one's shut and someone opens it for
5 you. So you're trapped in that area until you're physically
6 permitted to pass through. It's just an added level of
7 security so that you don't get, you know, 10 people running
8 through the door and robbing you.

9 Q That's basically for what I want to know, because
10 I'd never heard of it before. Have you ever heard the phrase
11 "product security"?

12 A Product security?

13 Q Product security, yes.

14 A Uh-huh.

15 Q And what is that?

16 A Product security is security of the physical
17 inventory that's onsite. So that would be these of metric,
18 for example, having an inventory control system that would
19 track your product from seed to sale and just knowing where
20 your product is physically at all times. If it's stored
21 behind lockable counters, we require that the locks be at
22 least meeting UL standards, University Laboratory standards,
23 and the flow of product. So another thing to consider in that
24 section is where they're storing the product during business
25 hours, if they're keeping it all in their vault at all times.

1 What tends to happen is people are constantly going in and out
2 of the vaults, and it creates a security risk. If they're --
3 you know, if you have a bank teller situation where it's glass
4 and they have a pass-through window that, would be better
5 than, you know, the swinging door where they can just jump
6 over the counter. So there's acceptable, and there's ideal,
7 and so I went over with them examples of what they might see
8 in the applications.

9 Q And that was the training you provided to the
10 Manpower personnel?

11 A Yeah.

12 Q Okay. What about inventory control? Did you
13 provide any training with respect to inventory control?

14 A Yes. So inventory control section in the
15 application was about their physical system that they have, a
16 software system that can account for the inventory. Some
17 facilities just use metric and manual, enter manually. Some
18 facilities have a POS system that has an interface with
19 metric.

20 Q And what does POS mean?

21 A Point of sale. I had to think about that. Point of
22 sale system. So usually a lot of them will interface. I let
23 the scorers know that there are a lot of common companies for
24 those systems they might see. We don't have a preference one
25 over the other, but just to be familiar with words they might

1 see. But we wanted their actual plan, how to use it, not
2 just, we use metric.

3 Q Okay. And how does that fit in with operating
4 procedures for electronic verification?

5 A So electronic verification is the age verification
6 device. So in that I talked to the scorers about how every
7 retail store has to have an age verification device, some sort
8 of scanning device that would scan a government-issued valid
9 ID to verify that the individual's over 21 years of age and
10 eligible to purchase marijuana in the State. So, you know,
11 I'd let them know like, we'll get a scanner, is a poor
12 response. This is the scanner we will be using, this is how
13 it works, and here's our policy for our staff to reference
14 when scanning an ID, that would be more ideal.

15 Q Did you provide any training with respect to
16 proposed impact on the community?

17 A Yes.

18 Q And what training, if any, did you provide?

19 A The community impact entailed a lot of different
20 information. It not only covered the benefits to the
21 community, but also mitigating nuisances, potential negative
22 impacts to the community. So, you know, if they say they'll
23 let staff volunteer during working hours at, you know, some
24 wherever that'd be great. If they want to encourage -- I
25 don't know. There are a lot of different things they could

1 have gone with for community impact, shopping local, hiring
2 local. For mitigating nuisance side of things, you know, if
3 they're opening and handling and processing marijuana in any
4 way, repackaging it common in some retail stores, then odor
5 mitigation would be an issue I'd want to see discussed.
6 Security. No matter where they are there's a risk of theft,
7 which we've seen not just employee theft but, you know,
8 outside sources, and so we'd want to see their security plan
9 for boosting security in the neighborhood, not just causing a
10 risk. Yeah. But there were all -- there was a lot of
11 information.

12 I think that section also included providing
13 educational materials to the consumers that were in there
14 purchasing products. So in that we wouldn't want to just see,
15 we will provide educational materials. I would want to see
16 the actual educational materials that they'll be providing.
17 That would be the differentiation between acceptable and
18 ideal. But there was -- there's a lot more information in
19 that section I can't think of right now.

20 Q Some applicants submitted a property address, many
21 did not. How did lack of a property address factor into the
22 training for the community impact?

23 A It was irrelevant. The property address wasn't
24 looked at for that part. I don't know if it was looked at at
25 all actually. So it doesn't really matter where you're

1 located. A good plan is a good plan. So it doesn't really
2 matter to the State what community you're benefiting, what
3 local jurisdiction is getting this benefit, what street corner
4 is getting a benefit from that. What matters to us is that
5 you're making an effort to benefit the community that you're
6 in. If that helps. So it was irrelevant to the scoring
7 process.

8 MR. SHEVORSKI: Pass the witness, Your Honor.

9 THE COURT: Anyone at the defense table who's an
10 intervenor wish to examine Ms. Cronkhite? No?

11 All right. Mr. Kemp, you're up.

12 MR. KEMP: Your Honor, I think Mr. Parker wants to
13 go first.

14 THE COURT: Mr. Parker, you wanted to step ahead of
15 Mr. Kemp?

16 MR. PARKER: I do.

17 THE COURT: All right.

18 MR. PARKER: I would like to.

19 CROSS-EXAMINATION

20 BY MR. PARKER:

21 Q And as I get set up, Ms. Cronkhite, the last thing I
22 think you said was --

23 (Pause in the proceedings)

24 BY MR. PARKER:

25 Q The last thing I believe you said was, it does not

1 matter, the location, it's just what community is going to be
2 benefitted; is that correct?

3 A Correct.

4 Q How do you know what community will be benefitted if
5 you don't know the location?

6 A It doesn't matter.

7 Q Ms. Cronkhite, you're speaking in circles. So let
8 me ask it one more time. You said it only matters as to what
9 community you're benefitting. Would you agree with me that
10 there's more than one community within the Summerlin area?

11 MS. SHELL: Objection. Misstates testimony.

12 THE COURT: Overruled.

13 THE WITNESS: I'll clarify by saying that it doesn't
14 matter which community you're benefitting, it matters that you
15 are benefitting a community within the state of Nevada.

16 BY MR. PARKER:

17 Q Ms. Cronkhite, how familiar are you with the
18 statutes and the Administrative Code that govern this process?

19 A I would say I'm pretty familiar with them.

20 Q Good. Good. That should make it quicker.

21 Ms. Cronkhite, tell me what you understand to be the
22 requirements of the statute pertaining to location.

23 MR. KOCH: Objection. Vague.

24 THE COURT: Overruled.

25 THE WITNESS: There are requirements as to how --

1 the distancing requirements from schools, playgrounds,
2 churches, things like that. Is that what you're referring to
3 BY MR. PARKER:

4 Q I am. I am. And that's under the statute; is that
5 correct?

6 A Correct.

7 Q In fact, I believe it's under NRS 453D.210(d)(1)
8 through (5), just to be more precise. Are you familiar with
9 that?

10 A I'd have to look at it to verify that that's exactly
11 where it is, but I'm familiar with the requirements.

12 THE COURT: You left out a section (5) before D.

13 MR. PARKER: Thank you, Your Honor.

14 BY MR. PARKER:

15 Q So if you don't know the location, how would someone
16 know if it -- if the proposed establishment would actually
17 comply with the statute?

18 A So we're looking at the adequacy of the proposed
19 building in that section. We're not looking at the physical
20 location of it. When a facility applies for their conditional
21 license we're not looking at their physical location at that
22 time. When they start going through the process of becoming
23 operational it would have to get a special land use permit
24 with a land survey, and that would tell us that they are in a
25 compliant zone. And that would be required prior to becoming

1 approved and operational and fully licensed.

2 Q Would you agree with me that the statute does not
3 have that caveat or condition? It doesn't say, we're going to
4 look at this later; it actually says, this is what has to be
5 met.

6 A It says this is what has to be met. But, like I
7 said, we would not approve a facility for a final license
8 unless that information was met.

9 Q All right. So we agree that is not in the statute
10 the way you described it. You're saying there's this two-
11 pronged process here, you give us a building and then later
12 on, after we give you a license, we'll determine if this
13 building will be somewhere that fits the statute. That's what
14 you're telling me?

15 A They're providing floor plans.

16 Q Now, tell me. Do you see anything in this statute
17 that mentions the word "floor plan" at all? Take a look.
18 It's on the screen, it's on your screen. I want to make sure
19 we're clear here. Because I've pored over it, the Court has
20 pored over it. Do you see the word "floor plan" in that
21 section?

22 A No. But the statute does give the department the
23 authority to determine how to license.

24 Q Let me ask it one more time. And I'm going to ask
25 you to stick to the question. Do you see the word "floor

1 plan" in the statute?

2 THE COURT: Ma'am, because he's only given you one
3 section of the statute, I have handed you my statute book if
4 you feel it necessary to check all of Section 453D, most of
5 which is Ballot Question 2.

6 BY MR. PARKER:

7 Q That's true. So you can make yourself comfortable
8 and look through as much as you'd like. But do you recall in
9 the statute -- and I'll just put the question back out there
10 so you can take a look -- the word "floor plan" being used?

11 A Not to my knowledge.

12 Q Thank you.

13 Q So instead of simply sticking to the statute, which
14 describes the requirements in terms of location, you believe
15 that your Department had the authority to decide that we're
16 going to use floor plans and not consider for purposes of the
17 application the requirements of the statute; is that true?

18 A I don't understand the question.

19 THE COURT: Can you rephrase your question, Mr.
20 Parker.

21 MR. PARKER: Certainly, Your Honor. I sure can.

22 BY MR. PARKER:

23 Q Can you show me -- or can you tell me who gave you
24 the authority to use floor plans, as opposed to building
25 location?

1 MR. KOCH: Objection. Argumentative. Legal
2 conclusion.

3 THE COURT: Overruled.

4 THE WITNESS: So Ballot Question 2, the initiative,
5 created or led to NRS 453D, the development of NRS 453D, which
6 is the statute. The statute gives the Department the
7 authority to create the application for a marijuana facility.
8 So the NAC 453D was drafted based on the ballot initiative and
9 the statutes.

10 THE COURT: Why do you say that, ma'am?

11 MR. PARKER: Good question, Your Honor.

12 THE COURT: Can you not help me.

13 THE WITNESS: Your Honor, the ballot initiative
14 tasks the Department with licensing.

15 THE COURT: I know that. You just said that the NAC
16 represents the ballot question. And I'm trying to figure out
17 how that is, because I've read them both. So tell me why you
18 said that.

19 THE WITNESS: We -- Your Honor, we made sure that
20 the information from the ballot question to the best of our
21 abilities was including in the NAC.

22 THE COURT: Now, when you say we who do you mean?

23 THE WITNESS: The Department.

24 THE COURT: Well, when you say we the Department who
25 do you mean?

1 THE WITNESS: That would have been the management of
2 the Marijuana Enforcement Division, Jorge --

3 THE COURT: Okay. So how about we just give me
4 names of human beings, please.

5 THE WITNESS: Jorge Pupo, Steve Gilbert, I believe
6 Ky Plaskon was involved in that process.

7 BY MR. PARKER:

8 Q So we questioned --

9 THE COURT: So -- wait. I'm not done.

10 MR. PARKER: I'm sorry, Your Honor.

11 THE COURT: So that group of people that you just
12 identified and yourself got together and looked at Ballot
13 Question 2, and then you just came out of the NAC 453D out of
14 whole cloth?

15 THE WITNESS: No. The individuals named and myself,
16 we also used the recommendations from the Governor's Task
17 Force working groups. I believe we had over 70
18 recommendations from them. We had to make sure that all the
19 recommendations were compliant with NRS 453D and the ballot
20 initiative, as well.

21 THE COURT: Anything else you used to create the
22 Nevada Administrative Code 453D?

23 THE WITNESS: Yes. We also referenced NAC 453A, the
24 medical regulations.

25 THE COURT: And why did you think that was

1 appropriate?

2 THE WITNESS: Because they can be dual-license
3 facility, so they might have medical and recreational at one
4 facility, so we wanted to make sure that it was as easy as
5 possible for them to conduct both.

6 THE COURT: So where there was a conflict between
7 453A and 453D what won?

8 THE WITNESS: I believe it was 453D. I don't
9 recall.

10 THE COURT: And why do you believe that?

11 THE WITNESS: I believe that there's a statement in
12 NRS 453D that states so.

13 THE COURT: Show me. I gave you the book.

14 THE WITNESS: Might take a minute.

15 THE COURT: Yep. I'm waiting. And Mr. Parker's
16 going to be patient until I finish.

17 MR. PARKER: I am, Your Honor.

18 (Pause in the proceedings)

19 THE WITNESS: Is it possible to get a copy of
20 just --

21 THE COURT: No. Are you in the pocket part, the
22 back part?

23 THE WITNESS: Oh. No. I'm sorry.

24 THE COURT: That's where it is, because it's new.

25 THE WITNESS: Oh. Okay. Got you.

1 THE COURT: And because the State has limited budget
2 they don't print the books or let us get new books all the
3 time. We have to get the ones with the paper in the back.

4 THE WITNESS: Understood.

5 (Pause in the proceedings)

6 THE WITNESS: I don't see that in here.

7 THE COURT: Okay. So the Department determined that
8 453D should trump anything else; right?

9 THE WITNESS: No. We still have 453A, as well. We
10 use both sets of regulations.

11 THE COURT: Okay. So let's go back. So you
12 understand that ballot questions can't be modified for a
13 period of three years by Constitution; right?

14 THE WITNESS: Yes.

15 THE COURT: So why did the Department think it was
16 okay to modify the ballot question by referring to the medical
17 marijuana section?

18 THE WITNESS: I'm not -- I'm not aware of where we
19 modified.

20 THE COURT: So can you look for me at 453D.200(6).

21 THE WITNESS: Okay.

22 THE COURT: Could you tell me how the Department
23 complied with that, at least as far as you know, in the
24 regulation and application process. And I'm on the subsection
25 (6) that says, "The Department shall conduct a background

1 check of each prospective owner, officer, and board member of
2 a marijuana establish [sic] license applicant."

3 THE WITNESS: Yes. That is conducted prior to
4 issuing a final license.

5 THE COURT: Excuse me?

6 THE WITNESS: We conduct background checks of each
7 prospective owner, officer, and board member.

8 THE COURT: Before the final license?

9 THE WITNESS: Before we issue their license, yes.

10 THE COURT: So you don't do it as part of the
11 application process?

12 THE WITNESS: I do believe they do issue their
13 background checks in the application. However, that was part
14 of the ID section. I wasn't charged with reviewing that
15 section.

16 THE COURT: Okay. So can you tell me how -- and
17 let's just for a minute assume that I don't know anything at
18 all about how the Department of Taxation works. So you get a
19 brand-new statute that is a ballot question that no changes
20 can be made to.

21 THE WITNESS: Uh-huh.

22 THE COURT: How do you and the individuals you
23 previously named sit down and come up with regulations that
24 will be compliant with that for you to necessarily and
25 conveniently carry out the provisions of that statute?

1 THE WITNESS: We worked with members of LCB for
2 guidance. I believe the director at the time was Deonne
3 Contine. She assisted us, as well, with her legal background.
4 We also -- I believe -- I believe at that time QuantumMark was
5 assisting us with drafting the regulations, but that might
6 have been a prior year. I may be mistaken. But we used a lot
7 of references and a lot of assistance in our DAGS, as well.

8 BY MR. PARKER:

9 Q Your what, as well? I couldn't hear you.

10 A Deputy Attorney General.

11 THE COURT: DAGS, Deputy Attorney General, also
12 known as Mr. Werbicky.

13 THE WITNESS: Yes.

14 THE COURT: All right. If we could then step back.
15 You previously said that you also took the Task Force
16 recommendations into consideration in coming up with the
17 regulations. Can you tell me how you made a determination if
18 that was appropriate if you were the one who made that
19 decision or if somebody else did.

20 THE WITNESS: I believe it was a group effort for
21 most of them. We looked at whether we were lawfully able to
22 do so under statute, to accept their recommendation. We
23 considered if it was something that we had looked at doing in
24 the past, how it would create, you know, too many problems for
25 the facilities or too much risk to public health. We

1 considered anything that had come up in the past, any of the
2 outcomes that potentially might come from that. But for the
3 most part we accepted a good amount of their recommendations
4 from the Governor Task Force.

5 THE COURT: Even if they conflicted with Ballot
6 Question 2?

7 THE WITNESS: No.

8 THE COURT: Okay. So how did you then determine the
9 manner in which the marijuana was to be regulated in a manner
10 similar to alcohol? I haven't heard you mention that yet.

11 THE WITNESS: The similarity under -- to alcohol is
12 that it's regulated by the Department of Taxation. I'm not
13 familiar with how alcohol is regulated fully, but our Deputy
14 Director Jorge Pupo is also tasked with alcohol to some
15 extent, so he has that knowledge.

16 THE COURT: Well, he collects taxes from the liquor
17 establishments, but he doesn't regulate liquor, does he?

18 THE WITNESS: I don't have that information.

19 THE COURT: Okay. So you as part of the group who
20 did the regulations didn't look at the way that alcohol is
21 regulated at all, did you?

22 THE WITNESS: I can't say that I personally did, but
23 I don't know if other management members were looking at that
24 information.

25 THE COURT: But you told me it was a group effort,

1 you all got together and came up with these ideas and came up
2 with these regulations.

3 THE WITNESS: Are you referring to the Task Force?

4 THE COURT: No. I'm talking about the people you
5 named for me earlier.

6 THE WITNESS: Yeah. We took recommendations from
7 the Task Force, and we referenced 453A for the most part for
8 ease of transition. I can't testify as to whether or not
9 Steve Gilbert, Jorge Pupo, or Deonne Contine were involved in
10 looking at how alcohol is regulated; however, they're the ones
11 that are involved in that process.

12 THE COURT: Okay. Mr. Parker, I am not going to ask
13 any more questions at this point. Please do what you need to
14 do.

15 MR. PARKER: Thank you, Your Honor.

16 BY MR. PARKER:

17 Q Ms. Cronkhite, you've indicated group efforts at
18 times, and then when the Court asked you where this
19 information came from, the group, you seem to suggest you
20 don't know where the information came from. So then that
21 leaves me to try to figure out did these regulations drop from
22 the sky without any direction. Because that's what it seems
23 at this point.

24 MR. KOCH: Objection. Argumentative.

25 THE COURT: Just for the record, that's how it seems

1 to me, too.

2 MR. PARKER: Thank you, Your Honor.

3 THE COURT: Sorry. That's why I stopped asking
4 questions.

5 BY MR. PARKER:

6 Q So I'm going to try to go through this with you.
7 And let's start with the statutes. Because I thought we would
8 be able to go through this quicker, but it does not seem like
9 we'll be able to do it quicker than -- as quick as I was
10 hoping, all right.

11 You said one thing to the Judge that really threw
12 me, and I want to start there. You said, we accepted the Task
13 Force recommendations as long as we thought we could lawfully
14 -- lawfully able to accept them.

15 A Correct.

16 Q What would that -- what was the being able to
17 lawfully accept those recommendations come from? What's the
18 platform for that? Is it the ballot question, is it the
19 statutes, or is it ultimately the Administrative Code?
20 Where's the defining line?

21 A As long as it was in compliance with the ballot
22 initiative and the NRS 453D, then we could accept it.

23 Q How would you know?

24 A What do you mean how would I know?

25 Q How would you know if it was compliant with the

1 ballot question? Let's start there. The ballot question
2 required you to do certain things, and you couldn't go outside
3 of the parameters of the ballot question. Would you agree
4 with that?

5 A Yes.

6 Q So if you agree with that, everything that was done
7 following the ballot question had to comply with the ballot
8 question, be it the statute or the Code; is that correct?

9 A Correct.

10 Q So if I see a difference between the statute and the
11 Code, would you agree that someone made a mistake?

12 A If there was a differentiation between the two, then
13 there could be a possible error.

14 Q No. There would be an error, wouldn't there? For
15 example, if the statute says every -- and this is what the
16 Judge was asking you. If the statute says under paragraph (6)
17 that you will conduct a background check of every --

18 THE COURT: It says "each."

19 BY MR. PARKER:

20 Q -- of each prospective owner and officer, but the
21 Code says owner is someone with 5 percent interest, that's a
22 difference, would you agree?

23 A Yes.

24 Q So if we see a difference in the statute versus the
25 Code, wouldn't you agree that someone made a mistake there?

1 MR. KOCH: Objection. Argumentative.

2 THE COURT: Overruled.

3 THE WITNESS: Possibly.

4 BY MR. PARKER:

5 Q Right. And if your application says what the
6 statute says but is different than what the Code said, would
7 you agree that someone made a mistake?

8 A If it's different, yes.

9 Q All right. So we know that the application said
10 that the background check would be done of every owner or each
11 prospective owner, and we know the Code says 5 percent
12 interest or better, so we know that there's been mistakes made
13 between the statute, the Code, and the application; is that
14 correct?

15 MR. KOCH: Objection. Argumentative. Lacks
16 foundation.

17 THE COURT: Overruled.

18 BY MR. PARKER:

19 Q Isn't that correct, ma'am?

20 A Yeah. If it's different, then yes.

21 Q Thank you. So now let's see if we can hone in a
22 little bit more on why we have so many differences from the
23 ballot and what made this group think that it could deviate
24 from the ballot, okay. And that's what the Judge was asking,
25 and that's where I started, okay.

1 So when you're preparing or trying to create the
2 Administrative Code was there someone there holding that group
3 to the ballot question?

4 MR. SHEVORSKI: Objection. Vague.

5 THE COURT: Overruled.

6 THE WITNESS: I believe that -- like I said, I
7 believe that during that revision of the regulations we had
8 QuantumMark assisting us.

9 THE COURT: Hold on. Ma'am, you just said revision
10 of the regulations. What are you talking about?

11 THE WITNESS: Or, sorry, drafting. My apologizes.
12 Drafting.

13 THE COURT: Creation?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 BY MR. PARKER:

17 Q And the reason why that's an important question, Ms.
18 Cronkhite, is because we've heard testimony saying that 453D,
19 be it the Code -- let's stay with the Code for right now --
20 was perhaps modelled after in part 453A, but then, because
21 there are differences here, there are certain provisions that
22 are not like 453A. Do you understand?

23 A Yeah.

24 Q So certain portions of the Code had to be brand new;
25 right?

1 A Yes.

2 Q Who created the brand-new Code sections?

3 A I don't recall.

4 Q All right. Who created the brand-new statutes that
5 had nothing to do with medical marijuana?

6 MS. SHELL: Objection. Argumentative.

7 THE COURT: Overruled.

8 THE WITNESS: I don't know who created the statutes.

9 BY MR. PARKER:

10 Q All right. So when you were talking about this
11 group to the Court, to the Judge, do you know sitting here
12 today what members of that team of yours actually created the
13 new portions of the recreational statute, 453D NRS? Who did
14 that?

15 THE COURT: Are you talking about the Code?

16 MR. PARKER: I'm talking about the statute right
17 now. Then we'll get to the Code.

18 BY MR. PARKER:

19 Q So 453D NRS, the statute, one of the ones we just
20 looked at a second ago --

21 A Yes.

22 Q -- who from your team said -- okay. Wait a second.

23 THE COURT: I'm waiting for the objection.

24 MR. PARKER: I'm looking at you right now. I'm not
25 [unintelligible]. I don't want to get [inaudible].

1 THE COURT: He's going to get number two if he
2 objects.

3 MR. PARKER: Well, I'm not going to stop right now.
4 I'm not going to give him two.

5 THE COURT: So start over. And remember that
6 statutes are created by the legislature, not the Department of
7 Taxation.

8 THE WITNESS: Yeah.

9 MR. PARKER: I understand. But I think -- I thought
10 there was some help given.

11 THE WITNESS: No. No.

12 BY MR. PARKER:

13 Q But I'm going to stop.

14 MR. SHEVORSKI: Objection. Restate what the Judge
15 just said.

16 THE COURT: Doesn't count.

17 BY MR. PARKER:

18 Q Did someone from your team review the statutes as a
19 part of creating the Code sections?

20 A Absolutely. Yes.

21 Q All right. Who?

22 A Steve Gilbert, Jorge Pupo, Deonne Contine, myself, I
23 believe Damon Hernandez was involved, and I believe Ky Plaskon
24 might have been involved at that time. I don't recall.

25 Q All right. And if there was a mistake between the

1 statute and the Code, who would I attribute that mistake to?
2 Would it be the whole group?

3 A It would depend on the mistake. Some revisions were
4 made by LCB after we drafted them. There were a lot of people
5 working on them.

6 Q All right. Do you recall the Code section that
7 indicates 5 percent ownership?

8 A Yes.

9 THE COURT: And you're in the Nevada Administrative
10 Code now, Mr. Parker?

11 MR. PARKER: I am. It's NAC 453D I believe .255,
12 Your Honor.

13 BY MR. PARKER:

14 Q Do you have that?

15 MR. PARKER: Can you put it on the screen.

16 THE COURT: It's on the screen because I don't get
17 books of the Administrative Code. I have to look at them
18 online. And Mr. Parker was correct in identifying the
19 section.

20 BY MR. PARKER:

21 Q And it's paragraph (1) and (2).

22 A Yeah, I'm familiar with that section.

23 Q Okay. And so we looked at a second ago the statute,
24 and now I'm showing you the Administrative Code .255. Do you
25 see the difference between each prospective owner and now one

1 with 5 percent interest?

2 A Yes. But I don't recall if this was just for agent
3 cards or for obtaining a license. I'd have to look at it.

4 Q That's fine. Can you tell me who came up with the
5 5 percent?

6 A No. I don't recall.

7 Q Do you know why 5 percent was used?

8 A No, I don't.

9 Q You have no idea?

10 A No.

11 Q All right. Good.

12 THE COURT: It wasn't you?

13 THE WITNESS: It was not me.

14 THE COURT: Okay.

15 BY MR. PARKER:

16 Q Thank you. So going to 453D.205 --

17 THE COURT: Back to the statute?

18 MR. PARKER: Yes. Thank you, Your Honor.

19 BY MR. PARKER:

20 Q Oh. You know something? Let's see -- I want to
21 stick with NRS 453D.200 for a second. And we looked at
22 paragraph (6) a second ago. I want you to look at section
23 (1)(a) through (K) or (a) through (m). Do you see that?

24 A Yes.

25 Q All right. And you see where it speaks of the

1 requirements for licensure and it uses the word "directly and
2 demonstrably related to the operation of a marijuana
3 establishment" under (b)?

4 A Yes.

5 Q Do you see that?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yeah.

9 Q Okay. Good. And then after that there's certain
10 other criteria here. One is requirements for security of
11 marijuana establishments.

12 A Yes.

13 Q Now, did the Nevada Administrative Code include
14 these sections as a part of licensing requirements?

15 MR. SHEVORSKI: Outside the scope of the direct
16 examination, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: The security section I am aware of
19 being in the application.

20 THE COURT: That's not what he asked you, ma'am. He
21 asked you if it's in the Administrative Code for the
22 applications.

23 THE WITNESS: I don't know off the top of my head.

24 BY MR. PARKER:

25 Q Would you agree with me that the Administrative Code

1 should be consistent with the Nevada Revised Statute?

2 A Yes.

3 Q And would you agree with me that the application
4 should be consistent with the Nevada Revised Statute?

5 A Yes.

6 Q And all of them take direction from the ballot
7 question; is that correct?

8 A Yes.

9 Q So if the application failed to be consistent with
10 the statute, then the application was wrong; is that correct?

11 A If it is inconsistent, then that would be wrong.

12 Q Right. And if it was inconsistent with the ballot
13 question, it's also wrong?

14 A That would be correct.

15 Q And if the Administrative Code created by your
16 Department are inconsistent with either the statute or the
17 ballot question, it's wrong?

18 A If there's inconsistencies, then yes, that would be
19 wrong.

20 Q All right. So if the ballot question and the
21 statute -- let's just talk about the statute for a second --
22 believed that security was an issue and a criteria directly
23 and demonstrably related to the operation of a marijuana
24 establishment, then the application should also include that;
25 is that correct?

1 A Yes. It does.

2 Q All right. And if the statute indicates that
3 location is important, then the application should follow sit;
4 is that correct?

5 A That would be correct.

6 Q If for some reason your group decided location was
7 not important, then your group would have made a mistake in
8 terms of the application process; is that correct?

9 A I'm not sure if the physical location was looked at
10 at all. In my section that I trained on, which was the non-ID
11 section, it was not considered for that particular section.

12 Q I'm going to get to what you trained on. But you've
13 already told this Court that you were part of the group that
14 put together this Administrative Code; isn't that correct?

15 A Some parts of it, yes.

16 Q All right. As well as the application; is that
17 correct?

18 A Yes.

19 Q All right. So if the application did not include
20 location as a condition, would you agree with me that it was
21 wrong if it's included in the statute?

22 A If it says --

23 MR. KOCH: Objection. Vague. Lacks foundation.

24 THE COURT: Overruled.

25 THE WITNESS: If it says to do so in the statute,

1 then that would be wrong, yes.

2 BY MR. PARKER:

3 Q Thank you. Would it also be the case, ma'am, that
4 if the application is incomplete, then that application should
5 not have been considered?

6 A That decision would have been over my head.

7 Q Well, if it's in the statute --

8 A If it's in the statute, then that would be correct.

9 Q Take a look at 453D.210. Oh. You know something?
10 We'll get there. I want to go to (j) first under the State
11 statute we were looking at. And it says here, "Procedures and
12 requirements to enable the transfer of a license for a
13 marijuana establishment to another qualified person and to
14 enable a licensee to move from the location of his
15 establishment to another suitable location." Do you see that?

16 A Yes.

17 Q It didn't say a suitable floor plan, did it?

18 A No.

19 Q Suitable location. Do you have an understanding of
20 what a location -- or suitable location means?

21 A Yes.

22 Q All right. You would agree with me you cannot
23 determine a suitable location from a floor plan?

24 A No. However, we wouldn't issue a final license
25 without the location.

1 Q Remember when we started this line of questioning I
2 asked you to confine yourself to the application for right
3 now, as opposed to this second prong that you have introduced
4 during your testimony? Remember that? Just a second ago I
5 said, we'll get there, let's talk about the Administrative
6 Code and the application; is that correct?

7 A Okay.

8 Q Right. So you cannot determine a suitable location
9 by looking at a floor plan; is that correct?

10 A Correct.

11 Q And the statute requires here a suitable location;
12 is that correct?

13 A I can't read the header of this. Let me read it one
14 second.

15 Q It's on the prior -- you have the book, so you could
16 use the --

17 THE COURT: The old-fashioned way.

18 MR. PARKER: Yes. The way I typically use.

19 THE WITNESS: The way I'm reading this -- let me
20 read this real quick.

21 BY MR. PARKER:

22 Q Take your time.

23 A So .200 is about licensing of a marijuana
24 establishment.

25 Q Yes, ma'am.

1 A And it talks about how the Department "shall adopt
2 regulations to carry out such provisions. They shall
3 include, and then (j) that you spoke of, "enable a license to
4 move locations to another suitable location."

5 Q Right.

6 A This is about licensure, not necessarily the
7 application process.

8 Q In terms of the application, however, you have to be
9 -- you have to provide a suitable location; is that correct?

10 A Not that I'm aware of.

11 Q Well, the statute says suitable location; is that
12 correct?

13 A What I'm reading right now says for licensure, not
14 for application.

15 Q Okay. But the application is a predicate to a
16 license, isn't it?

17 A It's the first step to obtaining a license.

18 Q Right. And if the statute believes that a location
19 is important, that the location has to be suitable, you can't
20 determine that from a floor plan; is that correct?

21 MR. KOCH: Objection. Argumentative.

22 THE COURT: Overruled.

23 THE WITNESS: Not in the application.

24 BY MR. PARKER:

25 Q All right.

1 A But it would be confirmed before licensure.

2 Q So did you -- do you see anything in the application
3 that says, we're going to suspend the requirements of the
4 statute until after we decide whether or not you're going to
5 get a conditional license and before the final license?

6 MS. SHELL: Objection.

7 BY MR. PARKER:

8 Q Is there anything that says that in the application?

9 MS. SHELL: Objection. Argumentative.

10 THE COURT: Overruled.

11 THE WITNESS: Not to my knowledge, no.

12 BY MR. PARKER:

13 Q All right. So unless you told someone on the side,
14 hey, we're not going to look at this until after we give you
15 the conditional license, wouldn't you agree that the statute
16 provided that location was important and it had to be suitable
17 in accordance with the statute? And we've gone over the
18 suitability issues earlier; is that correct?

19 MR. KOCH: Objection. Legal conclusion. Misstates
20 the statute.

21 THE COURT: Overruled.

22 THE WITNESS: I don't believe it says that for the
23 application process, just for licensure.

24 BY MR. PARKER:

25 Q All right. And it doesn't have a -- you don't see a

1 distinction in the statute that says anything about
2 application process, distinguishing it from licensing process,
3 do you?

4 A I'd have to --

5 Q Well, take a look. Do you see anything in the
6 statute that says, we're going to give -- we're not going to
7 require you to comply with the statute during the application
8 process? Is there anything that says that that you can see?

9 A So NRS 453D.200 is about licensing facilities.
10 453D.210 is about acceptance of applications.

11 Q Yes.

12 A Can you restate your question? Can you remind me?

13 Q Yes. I looked at 453D.210. I'm looking at it right
14 now, as a matter of fact, and it says -- if you go to
15 paragraph (2) or (3), it says that "Receiving applications,"
16 and you can read further on, then it finally says, "pursuant
17 to this chapter." So I'm trying to figure out where you
18 believe that there's a different standard for the application
19 versus the license.

20 A Well, I would say -- I'm just looking at this
21 briefly right now. I would just say that .210 and .200 are
22 different requirements. One's licensure, one's an application
23 to be considered for a license.

24 Q Right. But does it say -- is there anything that
25 says here that your application does not have to comply with

1 the statute? Do you see that anywhere?

2 A I can't answer the question the way you worded it,
3 but I'll say that it doesn't say in .210 that the application
4 has to have the location. It says it has to be compliance.
5 But licensure is a separate issue. That comes later, after
6 the application process.

7 Q Well, let me help you out, Ms. Cronkhite, because I
8 want you to feel confident that .210 also says what I believe
9 .200 says.

10 So going down 453D.210 I want you to go to paragraph
11 (5)(c), where it talks about the property, again, "is not
12 located within," and then it goes through all the
13 requirements; right?

14 A Yes.

15 Q So would you agree with me under .210 that property
16 and location is important to the statute?

17 A Yes.

18 Q All right. Location is important under the
19 application, which is here, which we're looking at, or is that
20 application or licensing under .210 in your --

21 A .210 is application.

22 Q All right. So under the application process, .210,
23 again location is important; is that correct? So be it under
24 .200 or .210 location is important; is that correct, Ms.
25 Cronkhite?

1 A I would agree, yes.

2 Q Thank you. But despite .210 and .200 requiring
3 location to be discussed, be suitable, your Department decided
4 that it was not necessary for the application; is that
5 correct?

6 MR. KOCH: Objection. Argumentative. Lacks
7 foundation.

8 THE COURT: Overruled.

9 BY MR. PARKER:

10 Q Isn't that correct, ma'am?

11 A All I can testify to is that it was not reviewed in
12 the non-ID section.

13 Q It was not --

14 A Not reviewed in the non-identified section.

15 Q Okay.

16 A I was only responsible for the non-identified
17 section of the application.

18 Q But a second ago you said you and your team were
19 responsible for the Administrative Code.

20 A Yes.

21 Q All right. Would you agree with me that the
22 Administrative Code has to be consistent with the statute in
23 terms of location?

24 A Yes.

25 Q Thank you. Would you also agree with me now -- I've

1 shown you .200, which deals with licensing, and .210 that
2 deals with applications, that both statutes require suitable
3 locations?

4 A Yes.

5 Q So would you also agree with me finally that the
6 application in order to be consistent with the statute had to
7 consider suitable locations?

8 MR. KOCH: Objection. Argumentative.

9 THE COURT: Overruled.

10 THE WITNESS: It should be considered, yes.

11 MR. PARKER: Thank you very much.

12 Your Honor, can we take a break now?

13 THE COURT: I'm going to ask her one question --

14 MR. PARKER: Go right ahead.

15 THE COURT: -- that I have from Mr. Pupo's
16 examination where he specifically called her out, and I want
17 to see if it's true.

18 Did you do on-the-job training for regulators?

19 THE WITNESS: Yes.

20 THE COURT: Did that include training on the
21 importance of compliance for those who were already operating
22 medical marijuana establishments for recreational
23 establishments?

24 THE WITNESS: Yes.

25 THE COURT: And how did you do that?

1 THE WITNESS: How did I train the inspectors?

2 THE COURT: No. How did you train the --

3 MR. PARKER: Evaluators.

4 THE COURT: -- regulators, the evaluators, the ones
5 who were doing the grading --

6 THE WITNESS: Oh. The scorers?

7 THE COURT: -- the Manpower folks --

8 THE WITNESS: Yes.

9 THE COURT: -- how'd you train them on the
10 compliance aspect?

11 THE WITNESS: I trained them on the non-ID sections.
12 I'm not sure I understand your question.

13 THE COURT: So let me ask the question again. Is
14 compliance part of what you trained anybody on for the grading
15 process?

16 THE WITNESS: I would need to know what you mean by
17 compliance. There wasn't a section titled compliance that I'm
18 aware of.

19 THE COURT: Okay. Wasn't compliance supposed to be
20 an important part of the application process?

21 THE WITNESS: Yes.

22 THE COURT: How did it get in there if it wasn't
23 part of the application or your training?

24 THE WITNESS: I'm just not sure I understand your
25 question. Do you mean compliance with the regulations

1 throughout the application as a whole?

2 THE COURT: No, I don't. So you have people who are
3 currently operating either medical marijuana or recreational
4 marijuana, and they're mostly the people who are applying;
5 right? Some of them are cultivators, some of them are labs,
6 but they're mostly people who are already operating a
7 dispensary; right?

8 THE WITNESS: Uh-huh.

9 THE COURT: Okay. They have compliance reports
10 based on people that you supervise on how they're doing in
11 their operations; right?

12 THE WITNESS: I understand what you're saying.

13 THE COURT: Okay.

14 THE WITNESS: We have a file on every facility.
15 However, the section of the application that I trained on was
16 non-identified. They would have no way of even knowing who
17 they were scoring. So compliance was not considered.

18 THE COURT: In the non-identified part.

19 THE WITNESS: In the non-identified.

20 THE COURT: So in the identified part you
21 participated in that training of the Manpower folks.

22 THE WITNESS: No, I did not. Not for the
23 identified.

24 THE COURT: You didn't review that PowerPoint?

25 THE WITNESS: I may have looked at the PowerPoint,

1 but I didn't go into the detail of how they score. I wasn't
2 involved.

3 THE COURT: But I'm not asking how they were
4 scoring. I'm asking was it there at all.

5 THE WITNESS: I don't recall.

6 THE COURT: Okay. This is a non-requested break,
7 Mr. Shevorski. You can talk to her if you want.

8 MR. SHEVORSKI: Thank you, Your Honor.

9 (Court recessed at 3:10 p.m., until 3:20 p.m.)

10 THE COURT: Okay. I just want to remind you you can
11 take a break. All you ever have to do is you ask us for a
12 break. I make these lawyers go and go and go and do not give
13 them breaks, because we're in Day 13 or whatever it is. So if
14 you need a break, you let us know. If you run out of water,
15 you let us know. Because this is not an endurance test for
16 you. It is for them.

17 THE WITNESS: Thank you, Your Honor.

18 MR. PARKER: It is for them.

19 THE COURT: Mr. Parker, are you ready to continue?

20 MR. PARKER: I am ready, Your Honor.

21 THE COURT: Ma'am, you're still under oath.

22 BY MR. PARKER:

23 Q Ms. Cronkhite, do you still have NRS 453D.210 in
24 front of you?

25 A I can get there quickly. Yes.

1 Q When we left off I was talking about the physical
2 address under (5) (b). Do you recall that?

3 A Yes.

4 Q All right. Right above (5) (b) you see (5) (a);
5 right?

6 A Yes.

7 Q And right above that it says -- (5) says, "The
8 Department shall approve a license application if"; do you see
9 that?

10 A Yes.

11 Q So one of my colleagues wanted me to make sure that
12 we were on the same page in terms of the application, not just
13 the licensing required the location. You see that?

14 A Yes.

15 Q And it said, "The application will be approved if
16 such information is provided regarding the location." Do you
17 see that?

18 A Yes.

19 Q So would you further agree with me that when your
20 group decided to take the location requirement out of the
21 application that that was a deviation from the statute?

22 MR. KOCH: Objection. Legal conclusion.
23 Argumentative.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: I was not personally involved in that

1 decision. However, it would not be in compliance with NRS.

2 BY MR. PARKER:

3 Q Thank you very much.

4 Now, looking at from (5)(a) all the way through
5 (5)(f), would you agree with me that these conditions in terms
6 of location -- and actually it's more under (c) through
7 (d)(5), that would provide some understanding of the impact
8 the location would have on a community; right? Because it
9 can't be too close to a school, there's a concern there by the
10 government, of course by the State, can't be too close to a
11 church, those sorts of things; right?

12 A Correct. But we wouldn't approve one that was
13 located in this area for a final license. They would have to
14 relocate.

15 Q That's fine. I'm just talking about impact on the
16 community. That's non-identified; right? Or is that a part
17 of the identified?

18 A Community impact was non-identified.

19 Q That's right in your wheelhouse; right?

20 A Yes.

21 Q All right. So I'm giving you a look ahead in terms
22 of where we're going. Does this have any relationship to
23 community impact?

24 A Well, as I said, it would never get approved, so it
25 would never be an issue.

1 Q That's not the point. My point is is location
2 important to community impact.

3 A It wasn't relevant the way that we scored it -- or
4 the way that we trained them to score it.

5 Q Where did you -- what's your understanding of
6 community impact?

7 A We looked at -- I trained them with the evaluator
8 guidelines. So all the details for what they should be
9 looking for were in evaluator guidelines. But it was how they
10 would help the community be -- you know, with volunteering,
11 hiring local, buying furniture from local furniture stores,
12 using small businesses, rather than shopping at Walmart,
13 things like that would benefit the community. Having
14 fundraisers for local charities, things like that.

15 Q Uh-huh. Now, wouldn't you also have to know -- and
16 I used this example, I think, with Mr. Pupo. Summerlin has
17 several micro communities, I would say. Sun City Summerlin is
18 different than Downtown Summerlin, for example.

19 A Yes.

20 Q Would you agree?

21 A Yes.

22 Q So a marijuana operation in Summerlin would have a
23 different effect depending on where it is in Summerlin; right?

24 A I don't believe so.

25 Q There'd be a different demographic in terms of

1 financial?

2 A In Summerlin?

3 Q Yeah.

4 A Probably not.

5 Q For example, Sun City Summerlin is an older
6 demographic; right?

7 A Right.

8 Q As opposed to the area near Downtown Summerlin where
9 you have the Ridges and the Willows and some of the schools;
10 right? Is that yes?

11 A Yes.

12 Q So there would be a different -- there are different
13 communities within that Summerlin area; is that correct?

14 A They're all part of unincorporated Clark County,
15 which is the local jurisdiction.

16 Q Well, there's different jurisdictions. There's
17 unincorporated Clark County, and then you've got the City,
18 you've got North Las Vegas. And there's communities within
19 each; right?

20 A Right.

21 Q So what I'm -- I'm trying to get an understanding
22 what does it mean to you and what do you train on when it
23 comes to impact to the community. Did it have any
24 relationship to the statute and being directly and
25 demonstrably related to the operation of a recreational

1 marijuana establishment?

2 A It wasn't related to the location in the sense that
3 as long as they're benefitting a community within the state.
4 It doesn't matter if it's Sun City Summerlin, the Pueblo,
5 Downtown Summerlin as long as they're benefitting a community.

6 Q Uh-huh.

7 A It could even be a local statewide benefit to the
8 community as a state as a whole.

9 Q So if an application did not comply with the
10 statute, would it be deemed incomplete? And that goes back to
11 NRS 453D.210(4).

12 MR. KOCH: Objection. Incomplete hypothetical.

13 THE COURT: Overruled.

14 THE WITNESS: I'm not sure.

15 BY MR. PARKER:

16 Q You're not sure? The person who trained the
17 trainers, you're not sure?

18 A I only trained on the non-ID section.

19 Q Yeah. But you were part of the group.

20 MR. SHEVORSKI: Objection. Argumentative.

21 THE COURT: Overruled.

22 BY MR. PARKER:

23 Q It says here in 453D, "Upon receipt of a complete
24 marijuana establishment license application," then you go to
25 (4) to tell what a complete application requires. One is the

1 location. So for 20 or so applicants who did not provide a
2 location as required by the statute wouldn't that application
3 be deemed incomplete pursuant to 453D.210(4)?

4 MR. KOCH: Objection. Misstates the statute.

5 THE COURT: Overruled.

6 THE WITNESS: If that's what it says, then yes.

7 BY MR. PARKER:

8 Q Thank you.

9 So the Judge asked you a couple of questions
10 regarding compliance. Do you have an understanding of what
11 compliance means in terms of deficiencies in the operation of
12 a marijuana establishment?

13 A Yeah.

14 Q Tell me what your understanding of that is.

15 A Being compliant with the regulations would be
16 compliance. When the inspectors and auditors go out and
17 conduct their inspections or investigations they write
18 statements of deficiencies, and then those are responded to as
19 a plan of correction, and then we can either accept or deny
20 their plan of correction.

21 Q So selling to a minor would be a deficiency?

22 A Yes.

23 Q Would that be a serious deficiency?

24 A Yes.

25 Q Do you recall why -- well, strike that.

1 Your Department keeps track of deficiencies for all
2 the license holders; is that correct?

3 A Yes.

4 Q So could that information have been provided to the
5 evaluators or the scorers, we'll call them?

6 A No. Not for the non-ID section.

7 Q I'm talking for the ID section. Could that have
8 been provided to them?

9 A Yes.

10 Q All right. And would you agree with me that
11 licenses should only be issued to those who are in compliance
12 with the regulations governing marijuana sales?

13 A I mean, it would depend on the scope. Because I
14 think every single facility has had some sort of deficiency at
15 some point.

16 Q Okay. But the point is that information could have
17 been provided to the evaluators; isn't that correct?

18 A It could have been.

19 Q Right.

20 A It's available.

21 Q Why wasn't that information provided?

22 A If it was provided on the ID section, I don't -- I
23 don't know whether it was or wasn't.

24 Q Okay. If it wasn't, why wouldn't it have been? Was
25 that a decision made by the group?

1 A I wasn't involved in the ID section. I don't know
2 if they looked at it or not.

3 Q You don't recall there being a conversation between
4 yourself, Mr. Pupo, Mr. Gilbert, Mr. Plaskon saying, we're not
5 going to have the evaluators consider prior performance or
6 compliance?

7 A I don't recall.

8 Q All right. Let me have you take a look at 96,
9 please.

10 MR. PARKER: It's been admitted, Your Honor.

11 THE COURT: Thank you.

12 MR. PARKER: Can you put that on the screen, Shane.
13 Thanks.

14 BY MR. PARKER:

15 Q Take a second and tell me if you recognize this
16 document, Ms. Cronkhite.

17 A Yes.

18 Q And did you prepare this document?

19 A Yes.

20 Q Now, you just told the Court that you were not
21 involved with the ID side, the identified portion; is that
22 correct?

23 A Correct.

24 Q It appears here that you indicated that this
25 investigation involving the sale of marijuana to a minor would

1 not be included in the log for this particular licensee; is
2 that correct?

3 A The log -- no. That's incorrect.

4 Q Explain it to me, then.

5 A The log is an open investigation log. This was no
6 longer an open investigation. This information is still in
7 their file. If they did look at compliance for the
8 application process, they would see this information in their
9 file.

10 Q That's if your Department provided it to the
11 scorers; that is correct?

12 A Correct.

13 Q Now, this particular -- do you know what licensee
14 this refers to?

15 A Yeah. It says on the email. Yes.

16 Q What's the name of the licensee?

17 A Well, there's Integral, Nevada Organic Remedies, and
18 Henderson Organic Remedies.

19 Q All right. Do you know who owns or is a owner of
20 that company?

21 A I don't know the names off the top of my head, no.

22 Q Have you ever heard of Andrew Jolley?

23 A Yes.

24 Q Do you -- are you familiar with him being associated
25 with these -- or at least with Henderson Organic Remedies or

1 Nevada Organic Remedies?

2 A Yes, I believe he is.

3 Q All right. Did you have any conversations with Mr.
4 Jolley?

5 A Ever?

6 Q Ever.

7 A I've spoken to Mr. Jolley, yes.

8 Q On more than one occasion?

9 A Yes. I've been in his facilities for inspections.

10 Q Were you aware of the fact that he had -- and this
11 was his testimony -- over 30 or so deficiencies?

12 A That sounds common.

13 Q Okay. And are you aware that the Administrative
14 Code finds that compliance is important for purposes of
15 licensing?

16 MR. KOCH: Objection. Vague.

17 THE COURT: Overruled.

18 THE WITNESS: I'm not sure that it's in the
19 Administrative Code. I don't know.

20 BY MR. PARKER:

21 Q Well, let me help you. Let's take a look at NAC
22 453D.272.

23 MR. PARKER: And if you could blow up, Shane, for me
24 paragraph (g), (g) as in good. It should be (1)(g).

25 THE WITNESS: Can I see the header of this section,

1 as well?

2 BY MR. PARKER:

3 Q Certainly. It says, "Ranking of applications for
4 retail marijuana store." Do you see that?

5 A Uh-huh.

6 Q Is that a yes?

7 A Yes.

8 Q Okay. Are you familiar with this Administrative
9 Code section?

10 A Yes.

11 Q And (g) says, "Whether the owners, officers, or
12 board members of the proposed marijuana establishment have
13 direct experience with the operation of a medical marijuana
14 establishment or marijuana establishment in this state and
15 have demonstrated a record of operating such an establishment
16 in compliance with the laws and regulations of the state for
17 an adequate period of time to demonstrate success." Do you
18 see that?

19 A Yes.

20 Q If compliance is important based on the
21 Administrative Code, why wouldn't compliance information be
22 provided to the evaluators?

23 A I don't have that information.

24 Q You didn't make that decision?

25 A No.

1 Q Who made that decision?

2 A I don't know.

3 Q Uh-huh. All right. And you're telling me that had
4 that information been available to the scorers they would have
5 seen that Nevada Organics -- Organic Remedies had 30-plus
6 deficiencies, including this one selling to a minor?

7 A Yes.

8 Q Okay.

9 A They would see that.

10 Q And you would agree with me based upon your reading
11 of this Administrative Code section that compliance was
12 important for purposes of licensing?

13 A Yes.

14 Q Okay. Now, I believe that the Governor's Task Force
15 came up with 73 recommendations. Does that sound about right?

16 A That sounds right. Yeah.

17 Q Who decided of the 73 recommendations which ones
18 were accepted?

19 A It was a group effort. Some people were more
20 involved in certain areas than others. More scientific items
21 would have gone through me. But I don't recall all of them.

22 Q What do you mean by scientific?

23 A Anything that was based in something that could put
24 a potential threat to public health.

25 Q Okay.

1 A And then everything was run through the DAG and LCB,
2 as well.

3 Q When you said that your group put together the
4 Nevada Administrative Code sections how long did that take?
5 Was it a day, a week, couple of weeks, months? How long did
6 it take?

7 A I believe it was months. I don't recall it
8 specifically.

9 Q All right.

10 A But it was not an easy, quick process.

11 Q While you were doing this were you also developing
12 the application?

13 A I don't recall. I don't recall the timeline.

14 Q Did anyone -- was anyone charged with the task of
15 ensuring that the application was consistent with the ballot
16 question?

17 A I don't recall who would have been in charge of
18 that.

19 Q Were you?

20 A No.

21 Q Was anyone in charge to make sure that the
22 application was consistent with the Nevada Revised Statutes?

23 A Yeah. I don't remember who exactly --

24 Q It wasn't you.

25 A -- but any changes that were made, the individual

1 looking at it would look at the statute to make sure it was
2 compliant.

3 Q Let me find out from your personal knowledge whether
4 or not you did it.

5 A For some sections I may have, yes.

6 Q Okay. What sections did you do?

7 A For the NAC?

8 Q No, no. I started with the ballot question, and you
9 said you didn't know who did that. So then I went to the
10 statutes.

11 A Yes.

12 Q Who looked at the application, compared it to the
13 statute, and said, okay, it's consistent?

14 A I don't recall with that.

15 Q Did you do it?

16 A I may have done some parts. I don't recall.

17 Q All right. Do you recall having any questions in
18 terms of, well, this may be consistent or not consistent? Do
19 you remember that ever coming up?

20 A I don't recall.

21 Q All right. Same question in terms of Administrative
22 Code. Did anyone sit down with the application and compare it
23 to the Administrative Code to determine whether or not it was
24 consistent?

25 A Well, I know that LCB does that, as well, but -- and

1 as far as the Department, yes, I believe that that was done
2 during the process.

3 Q Now -- but you don't recall doing it yourself?

4 A I recall doing it sometimes, yes.

5 Q Sometimes.

6 A Yeah.

7 Q Okay. And that was before the application was made
8 available to the public?

9 A Yes.

10 Q All right. Now, did you have any part to play in
11 any changes made to the application itself? Because we have
12 two applications here. We've got application Exhibit 5,
13 application Exhibit 5A. Were you aware of that?

14 A Yes.

15 Q Were you involved in changing Exhibit 5, which is
16 the original application, I believe, to 5A, which is a
17 subsequent version of it?

18 A I don't believe so, no.

19 Q Do you know who did that?

20 A No, I don't.

21 Q If it's only a team of four of you, how did these
22 things happen without you knowing?

23 A I'm -- at the time I was only a supervisor level. I
24 wasn't a manager.

25 Q Okay. But it's still only four of you no matter

1 what your title is; right?

2 A Right.

3 Q So these things were happening without you knowing.
4 The changes to the application, for example.

5 A Yes.

6 Q So if you didn't know there was a different
7 application available, how did you expect applicants to know
8 that there was more than one application available?

9 A I did know it was --

10 MR. SHEVORSKI: Objection. Misstates prior
11 testimony.

12 THE COURT: Overruled.

13 THE WITNESS: I did know that it was available, the
14 new application was available. I was not involved in revising
15 it.

16 BY MR. PARKER:

17 Q Do you know the changes to them?

18 A Not off the top of my head, no.

19 Q Do you know if anyone looked at the new application
20 to see if it was consistent with the ballot, the statutes, or
21 the Administrative Code?

22 A I wasn't involved in that process.

23 Q All right. So Mr. Pupo told me that he did not want
24 to divulge the scoring metrics to the applicants. Were you
25 aware of that?

1 A Yes.

2 Q Do you know why he did not want the applicants to
3 know how to prepare their application to maximize the scoring?

4 MR. SHEVORSKI: Objection. Outside the scope.

5 THE COURT: Overruled.

6 THE WITNESS: No. I don't have that information.

7 BY MR. PARKER:

8 Q Are you aware of the fact that the Administrative
9 Code says that, "The Department will include in the request
10 for application the point values that will be allocated for
11 each applicable portion of the application"

12 MR. SHEVORSKI: Objection. Outside the scope.

13 THE COURT: Overruled.

14 THE WITNESS: Yes. And I believe that was provided
15 on the application.

16 BY MR. PARKER:

17 Q Did it provide the point values for the subparts?

18 A No, it did not.

19 Q Do you know why it did not?

20 A No, I --

21 Q You don't?

22 A No.

23 Q You'd agree with me that the NAC does not separate
24 subparts from broad parts, it simply says, "The point values
25 will be allocated to each applicable portion of the

1 application"; is that correct?

2 MR. KOCH: Objection. Legal conclusion.

3 THE COURT: Overruled. You can answer.

4 THE WITNESS: Yes, I believe so.

5 BY MR. PARKER:

6 Q And if you want, let's look at NAC 453D.260.

7 THE COURT: It'll be on your screen.

8 MR. PARKER: Shane --

9 BY MR. PARKER:

10 Q It'll be on your screen in a second. You can look
11 at paragraph (2). Do you see that?

12 A Uh-huh.

13 Q Is that yes?

14 A Yes.

15 Q All right. So did you check the application or the
16 information provided to the applicants to ensure that the
17 applicants knew where the points -- how the points would be
18 allocated?

19 A I'm sorry. Can you say the question again.

20 Q Sure. Did you review the application or the scoring
21 information provided to the public to determine whether or not
22 the public would know how the points would ultimately be
23 awarded?

24 A No. I was not charged with that task.

25 Q All right. Good enough.

1 Let's look at 453D.268. We talked about the
2 location and the importance of it in the ballot question and
3 in the statutes. Now I'm going to ask you about the
4 Administrative Code sections that pertain to location, okay.

5 A Okay.

6 Q NAC 453D.268(2)(e). It says here, "An application
7 on a form prescribed by the Department. The application must
8 include, without limitation," then you go down to (e) "the
9 physical address." Do you see that?

10 A Yes.

11 Q Now, somehow even despite the fact that your group
12 made up the Administrative Code and the application, you took
13 out physical address anyway; is that correct?

14 A I did not take it out.

15 Q Okay. Who took it out?

16 A I don't know.

17 Q So a mystery person took out physical address from
18 the application despite this group, including you, including
19 it in the Administrative Code; is that correct?

20 A I would say that decision would have been made by
21 someone at the director level, either Jorge Pupo or Deonne
22 Contine.

23 Q You would agree with me that it's inconsistent with
24 the Administrative Code?

25 MR. KOCH: Objection. Legal conclusion.

1 Argumentative.

2 THE COURT: Overruled.

3 BY MR. PARKER:

4 Q Isn't that true?

5 A It appears to be that way.

6 Q Right. Now, given what you have testified today
7 under direct examination, the resume that you have based upon
8 your examination by my friend Mr. Shevorski, you would agree
9 with me, Ms. Cronkhite, that you did not as a group have the
10 authority to violate the ballot or the statutes; is that
11 correct?

12 A Correct.

13 Q And you did not as a group after you made the
14 decisions on the Administrative Code not to violate the
15 Administrative Code in terms of the preparation of the
16 application; is that correct?

17 A Correct.

18 Q So after you made all these mistakes you compounded
19 it by changing the application itself, which resulted in
20 Exhibit 5A; is that correct?

21 MR. KOCH: Objection. Argumentative. Lacks
22 foundation.

23 THE COURT: Overruled.

24 THE WITNESS: I don't have that information. I'm
25 not aware.

1 BY MR. PARKER:

2 Q Okay. Well, let's just sum it up like this.
3 Exhibit 5A, the most recent version of the application,
4 violated the Administrative Code we just read; is that
5 correct?

6 MR. KOCH: Objection. Argumentative. Legal
7 conclusion.

8 THE COURT: Overruled.

9 BY MR. PARKER:

10 Q Isn't that correct?

11 A It appears to be that way. My background is
12 science, not law.

13 Q Yeah, but they used your background to create these
14 administrative codes, didn't they?

15 A To an extent for public health, public safety. Yes.

16 Q All right. Did you have any part to play in the
17 versions of the code that dealt with monopolies?

18 A No, I don't believe so.

19 Q Okay. Now, I'd like for you to explain to me on
20 non-identified. You said you had nothing to do with the
21 identified, is that correct?

22 A Correct.

23 Q All right. Would the building itself be a part of
24 the identified or non-identified?

25 A Non-identified.

1 Q Good enough. Can you tell me in terms of the
2 building what training was provided relative to adequacy of
3 building size?

4 A Oh, as I previously stated, I went through the
5 application form, the evaluator's guidelines, and then sample
6 applications from the 2014 period line by line. The three
7 scorers had a strong background in looking at floor plans and
8 building plans previously, so they were very familiar with
9 that aspect of it already. But I explained to them how to
10 look for cameras, where they should be, where hand sinks
11 should be located based on the operation, the flow of
12 products, the flow of people, you know, customers and staff;
13 all those aspects. The timeline for completion, the resources
14 needed for construction and everything in-between, how to get
15 from Point A to Point B.

16 Q All right. You said something that differed from
17 your predecessors, and I say predecessors in terms of people
18 coming before you to the stand. We were told that only one,
19 potentially, of the six evaluators had any construction
20 background whatsoever. So did you review resumes of these
21 scorers?

22 A No. I spoke with them about their background in
23 person.

24 Q Were their resumes provided to you?

25 A I don't recall.

1 Q Did you interview any of the evaluators before they
2 were hired?

3 A No, I did not.

4 Q Do you remember the names of the evaluators?

5 A Yes, I do.

6 Q Can you tell me the evaluators that actually had
7 some construction experience?

8 A I can't say that they had construction experience.
9 I don't have construction experience. However, they have
10 experience looking at floor plans and building plans. Dwayne,
11 I believe his name was, was a former health inspector. He was
12 an environmental health specialist, which is my background.
13 They are frequently tasked with looking at facility
14 modifications, plan reviews. And then Richard -- I might be
15 mixing up Dwayne and Richard. Richard was, I believe, a
16 building and fire inspector. They're always looking at floor
17 plans for exits, flow, you know, auxiliary areas, how much
18 space is available between the hallways. And I think the
19 third one's name was Tina and she had a background in
20 reviewing budgets and floor plans for real estate. So that's
21 the information that they shared with me.

22 Q All right. So in terms of floor plans versus
23 buildings, how could you tell adequacy of size of building
24 versus a floor plan? Because the application says building,
25 it does not say floor plan. You would agree with that; right?

1 A I believe that's correct.

2 Q All right. So the question was not -- the scoring
3 should not have been based on adequacy of size of floor plan
4 but adequacy of size of building; right?

5 A Correct.

6 Q All right. So wouldn't the application be
7 incomplete if you're only providing a floor plan and not a
8 building, since it's judging adequacy of building and not
9 adequacy of floor plan?

10 A Well, the floor plan is part of the building plan.
11 It's one part of it.

12 Q Well, what we saw earlier, Ms. Cronkhite, was some
13 applicants who just gave a P.O. box, some to, you know, a
14 Mailbox, Etcetera, and a floor plan, with 11 applications the
15 same floor plan. Didn't say anything about the building or
16 the size of the building or the availability of enlarging the
17 building, which is also a part of your non-identified building
18 size adequacy criteria. Do you remember that?

19 A Yes.

20 Q All right. So how do you judge adequacy of building
21 size if you're not given a building to look at, be it
22 construction plans of an address or anything else?

23 A I believe that they were to provide all that
24 information.

25 Q Okay. So if they didn't, then it would be

1 incomplete; right?

2 A To an extent, possibly.

3 Q Correct. Now, tell me, what importance is a sink in
4 a dispensary? I want you to -- in your mind I want you to
5 separate and divorce yourself from cultivation or production
6 and focus on dispensary. Why do you need a sink in the middle
7 of a dispensary?

8 A Well, I wouldn't say it needs to be in the middle of
9 the dispensary, but they need to have hand-washing sinks. For
10 example, a person might feel completely healthy -- and this is
11 a dispensary only handling packaged products, for example -- a
12 person might feel completely healthy, they're a young, healthy
13 individual but they're carrying norovirus, for example. That
14 comes out through your pores and your hands and your sweat.
15 You're handling the packages. You're giving them to people.
16 If you're not washing your hands frequently and you're
17 constantly touching your mouth, touching your face, you have
18 all this bacteria or virus all over your hands and then you're
19 touching the packages, they go home, they handle the product,
20 they consume it, they'll get norovirus. That is one reason.

21 Another reason is because a lot of dispensaries do
22 repackage products. They're physically handling open
23 products. They have the potential to contaminate those
24 products. Hand washing is the single most important factor
25 when it comes to reducing the spread of food-borne illness and

1 other diseases.

2 Q Okay. When I look at the ballot question and the
3 statutes, I don't see where the sink is mentioned. Do you see
4 it mentioned there?

5 A I don't think it goes into that detail.

6 Q All right. When I looked at the liquor statutes,
7 and I've been to a few liquor stores just for looking around,
8 I've never seen a sink in liquor stores.

9 A Liquor stores do have sinks.

10 Q Right there in Mr. Lee's?

11 A Not in the middle where the customers have access,
12 but for the staff they do.

13 Q Or Total Wine?

14 A Yes, they do.

15 Q Where?

16 A They have one in the restroom and outside of the
17 restroom.

18 Q Okay, that's fine. Restrooms. I've seen them.

19 A And one outside.

20 Q I haven't seen one outside, but that's fine.

21 A Well, you haven't gone in the back area, apparently.
22 They definitely have them.

23 Q In the back areas. Okay.

24 A Yes. Where the staff has access, yes.

25 Q Good enough. And I'll go with that. But I have not

1 seen them in the non staff areas. So that's what I'm asking
2 in terms of the adequacy of building. I didn't see it in the
3 ballot question and I didn't see it in the statute. Is it in
4 the administrative code?

5 A It wasn't required to have a hand sink in a non-
6 staff area.

7 Q So how can an applicant know that in terms of their
8 application if it's not in the ballot question, it's not in
9 the statute and it's not in the administrative code?

10 A It is in the administrative code that they need to
11 have hand sinks available.

12 Q Okay. Available.

13 A Uh-huh.

14 Q Does it say that it's a deficiency if you don't?

15 A It wouldn't be a deficiency. It does say that they
16 have to have one available for staff. If it's not available,
17 that would be a deficiency. If they have just one, that's the
18 bare minimum requirement. If they have one in specific areas
19 where people are handling products more frequently, that would
20 be an excellent response.

21 MR. PARKER: All right. Your Honor, may I approach
22 Madame Clerk?

23 THE COURT: You absolutely may.

24 BY MR. PARKER:

25 Q Can you take a look at Exhibit 307 DOTNV--

1 THE COURT: Mr. Parker, you're going to have to help
2 her.

3 MR. PARKER: I will. I will.

4 THE COURT: There is no way she's going to find
5 Exhibit 307 in the mass of paper that is gathered over there
6 by her.

7 MR. PARKER: I'm taking that as your authority to
8 let me come up here and find it for her.

9 THE COURT: Yes. You may approach the witness, find
10 it and turn it to the right page for her, please. Thank you.

11 MR. PARKER: Thank you, Your Honor.

12 BY MR. PARKER:

13 Q So you're looking at Exhibit 307, Bates stamped
14 DOT-NVWELL2. Do you see that?

15 A Yes.

16 Q And it's a letter dated September 18, 2018. Are you
17 familiar with these letters?

18 A It's a common letter that's sent out. I'm familiar
19 with the format. I'm not familiar with this specific letter.

20 Q All right. And can you tell me the importance of
21 this letter relative to the adequacy of the operation in that
22 building?

23 A It says that they're in compliance.

24 Q All right. Would that also mean that they have
25 sufficient sinks?

1 A It doesn't mean that they have -- necessarily that
2 they have a sink everywhere that they should, but it means
3 that they're meeting bare minimum requirements for hand sinks.

4 Q All right. Now, would that also mean that that
5 building and the configuration of it would be compliant for
6 purposes of perhaps replicating that building in the
7 application?

8 A It would be compliant, but it doesn't imply that
9 it's perfect.

10 Q Okay. So is there something that says compliant but
11 not perfect, or is it just compliance?

12 A Compliance is average. Compliance is acceptable.

13 Q Okay. So this inspection verifies that this
14 building and this format meets the requirements of the
15 Division; right?

16 A Yes.

17 Q So however many sinks it has, it's compliant?

18 A It's compliant. Yes.

19 Q Good enough. So if that same building was used as a
20 part of an application, then the scorers should not take away
21 points for that building; right?

22 A I don't know what you mean by take away points, but
23 they wouldn't be granted automatically full points because,
24 like I said, compliance doesn't imply perfection.

25 Q Okay. So the application is looking for perfection?

1 A You're being scored and then compared to others --

2 Q Right.

3 A -- so the better score is going to be ranked higher.
4 So, yeah, we are looking for comparing and ranking. We're
5 saying who's better.

6 Q Good enough.

7 A So one hand sink is not better than three hand
8 sinks, no.

9 Q All right. Which also means that if the application
10 is not complete in the first place it shouldn't even be
11 ranked. You've got to be at least compliant with the statute,
12 the regulations before you can get considered; right?

13 A That decision would be over my pay grade.

14 Q All right. So what was the barometer or the
15 threshold for adequacy of size? I didn't see that in any of
16 the training modules.

17 A You mean square footage, specifically?

18 Q Yes.

19 A There was no specific requirement for adequacy of
20 size. What a lot of -- what we like to see, and I mean the
21 Department and the scorers like to see is where they explain
22 the population area, how many people they expect to see, how
23 much product that would equate to and their storage area to be
24 able to store that much product to meet the needs of that many
25 people. But the physical size, I mean, a dispensary that's a

1 little mom and pop dispensary versus a huge tourist attraction
2 isn't necessarily what we were looking for.

3 Q Would you agree with me that there were no modules
4 that provided training for adequacy of size, be it 10,000
5 square feet or 5,000 square feet? There's nothing that talked
6 about that, is that correct?

7 A The size wasn't a major issue, no.

8 Q Okay, but the training on the size?

9 A Like I just said, I explained how they should look
10 at the size --

11 Q Okay.

12 A -- if it was adequate. If the applicant provided
13 information about the number of consumers that were expected
14 to be coming in and the size of the facility, how many people
15 they could hold in the facility, as long as they had a well
16 thought out plan and it made sense to their proposed
17 operation, that would be considered acceptable.

18 Q All right. So if we'd keep that same document open,
19 that same exhibit, go to page 418.

20 A Page 418?

21 Q Yes, ma'am.

22 A Okay.

23 Q This says Tab 5.3.3, Building Establishment
24 Information. Do you recall this being a part of the
25 application criteria?

1 A Yes.

2 Q All right. And it says, "Documentation concerning
3 the adequacy of the size of the proposed recreational
4 marijuana establishment to serve the needs of persons who are
5 authorized to engage in the use of marijuana must be included
6 in this tab. The content of this response must be in a non-
7 identified format, include the building and general floor
8 plans with supporting details." What details were you
9 speaking of?

10 A I mean, it says in the notes, start-up plans,
11 potential expansion. We were looking -- the scorers were
12 looking for information such as, like I stated before, the
13 flow, the cameras, making sure that they don't have a public
14 restroom in the back area where consumers are going to go and
15 have access to all their receiving and their vault. You're
16 not walking through the vault to get to the, you know,
17 receiving area, things like that. You want to make sure that
18 the flow makes sense for the operation.

19 Q All right. Again it says to include the building?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes.

23 Q Okay. And the floor plan?

24 A Yes.

25 Q Not just the floor plan; right?

1 A Yes.

2 Q All right. And if an applicant provided building
3 plans, and I want you to go to page 505, you actually see the
4 landscaping plan, the parking. Page 506 you see the
5 elevations. And then page 508 you see a floor plan; right?

6 A Yes.

7 Q Did you provide any training to your evaluators on
8 how to evaluate elevations, parking, any of those things?

9 A Yeah, I don't believe we looked at parking, other
10 than the fact that it was available and they have handicap
11 spaces available. But, yes, all those things were discussed.

12 Q And all those things are important?

13 A Yes.

14 Q Handicap parking, the amount of parking?

15 A Yes.

16 Q Wouldn't you agree with me that there's no parking
17 afforded to a floor plan?

18 A Yes.

19 Q There's no handicap information when you just get a
20 floor plan?

21 A Correct. Well, sometimes they are but not always,
22 no.

23 Q All right. And right behind that, 509, it's the
24 start of a subcontract agreement indicating the location where
25 this place would be, the amount of the contract and an

1 indication of this applicant's readiness to get going, is that
2 correct?

3 A I've never seen this. I would have to review it.

4 Q Well, I'm asking only because I don't think you've
5 seen it. My point in showing it to you is did you provide any
6 training to your evaluators to determine and to consider
7 construction contracts?

8 A Yes.

9 Q All right. I didn't see it in the training modules.
10 What training did you provide them in that respect?

11 A That was verbal. We were going through sample
12 applications and I was showing them in the 2014 applications
13 that we were using as examples things that they could expect
14 to see and how to evaluate those.

15 Q All right. Now, when an evaluator had a question or
16 was confused by building plans or construction contracts, who
17 answered those questions?

18 A Typically I would.

19 Q Okay. Do you recall any of your evaluators coming
20 to you with any questions regarding construction plans,
21 adequacy of building size, floor plans, any of those things?

22 A I can't recall any specific questions.

23 Q All right. Were you the person who they were
24 supposed to go to, since you were training on the non-
25 identified for questions?

1 A Yes.

2 Q And were you also responsible for doing any quality
3 control or quality assurance regarding their scoring?

4 A Once they began scoring, I was not involved in the
5 process any longer.

6 Q And why is that?

7 A I can't say the reason, but Department staff were
8 not involved in the scoring process.

9 Q Weren't you supposed to be involved in the quality
10 control for the scoring?

11 A I personally was not, no.

12 Q All right. Let's take a look, then, at -- let's
13 take a look at Exhibit 205. It's not going to be in that
14 book.

15 A Oh.

16 Q Yeah, it's not going to be in that book. It's going
17 to be on your screen. Exhibit 205, this is the training
18 information we got from the Department of Taxation. And page
19 27. You're familiar with this document, aren't you?

20 A It looks familiar. It's probably been a long time
21 since I've seen it.

22 Q All right. Is this you?

23 A Yes. This was during the training period before
24 they were physically scoring real applications.

25 Q Okay. So you only did quality assurance during the

1 training period, you never did -- no one did any quality
2 assurance in terms of Department of Taxation employees of the
3 scorers after the real scoring started?

4 A I'm not sure nobody did, but I did not.

5 Q So in terms of the non-identified, you did nothing
6 in terms of quality assurance?

7 A Once they physically started actually scoring real
8 applications, no, I was no longer involved.

9 Q So one of your colleagues testified that they
10 expected the evaluators to QC their own work. Is that your
11 understanding or not?

12 A Yes. There is a process involved with it.

13 Q So if the evaluators made mistakes, QC-ing their own
14 work wouldn't help; would you agree?

15 A They did it as a team. No, I've personally been
16 involved with this and it was a huge help. I can give more
17 information if you'd like.

18 Q Yeah. Yeah, certainly I would like.

19 A So when they score, each individual scores
20 independently.

21 Q Okay.

22 A No communication with the other two scorers for that
23 section. They go through it. They write down the scores that
24 they're going to give independently. Then they all three meet
25 together as a group and then they compare scores. And if

1 they're not in line, then they discuss with each other why
2 they're not in line. Maybe one person didn't see a section
3 and gave them a low score and they said, oh, it's actually
4 down here in a completely different area. Then they'd go look
5 through that together as a group and say, oh, yeah, I missed
6 that and then they could revise their score at that point.

7 Q But if they all made mistakes, then that would just
8 be a perpetuation of the mistake; right? If they all didn't
9 know what they were doing, then it would never get corrected,
10 right, because they didn't come to you, is that correct?

11 A We -- they came to me before they started grading
12 actual applications.

13 Q Right.

14 A So they were coming to me prior to the start of
15 actual scoring.

16 Q But was there an opportunity to come to someone
17 after the real grading started if they were confused?

18 A I believe they could have gone to Ky or asked
19 someone if they were confused during the actual scoring
20 process.

21 Q Was there a process identified in the training for
22 them to come to someone?

23 A I'm not sure. Ky conducted that training, that
24 portion of the training.

25 Q I thought you did the training for the non-

1 identified.

2 A I trained how to score. I did not train on who to
3 go to if they had questions or things like that.

4 Q So you don't know if they had anyone to go to?

5 A I believe they were going to Ky.

6 Q All right. And in terms of your construction
7 knowledge, you're familiar with construction plans?

8 A Yes.

9 Q Okay. How are you familiar with construction plans?

10 A I used to do plan reviews for the Southern Nevada
11 Health District for proposed buildings.

12 Q Okay.

13 A And I also review all production plans for proposed
14 facilities, marijuana production facilities.

15 Q Why were there no training slides on that topic?

16 A That wasn't the general overview. That was the more
17 detailed focus, one-on-one training sessions that I conducted.

18 Q Why aren't there any written information related to
19 that?

20 A I don't know.

21 Q Okay. Did you have actual plans that you showed
22 them and said, hey, this is what a plan looks like?

23 A I used samples from previous applications, yes.

24 Q Okay. So while there may not have been any training
25 modules in written form, you recall doing that in person?

1 A Yes.

2 Q All right. And the same with signage and security.
3 Did you have examples of signage and security?

4 A Yes. We used all -- full non-ID sections from
5 previous applications for all of it.

6 Q So you used the signage and security from medical
7 marijuana locations to judge recreational?

8 A Well, I explained to them in the process what the
9 differences would be, what to keep an eye out for, what
10 changes to expect.

11 Q All right. And how did you do that? For example,
12 because I don't see anything in the paperwork that describes
13 this. On a 3,000 square foot building, how many cameras do
14 you need?

15 A Well, your camera angles should be shown on some
16 sort of floor plan or layout that would show the angle of the
17 cameras so that we can see where the coverage shows.

18 Q So if that wasn't provided in the floor plan, then
19 that would be an incomplete application?

20 A You would be considered inadequate, not necessarily
21 incomplete.

22 Q And in terms of security, you know, beyond cameras,
23 would you have to show the location of the vault, would you
24 have to show locking mechanisms for the product? I mean, what
25 do you have to do? Is there any kind of threshold that's in

1 writing that we could refer to, as the Court could or I could
2 to determine whether or not these scorers had it right or
3 wrong?

4 A I would look at the evaluator's guidelines, but I
5 did explain to them to look for vaults, where the location of
6 the vaults is in relation to where customers are,
7 accessibility, things like that.

8 Q So take a look at Exhibit 209 and I want you to take
9 a look at -- we'll start at page 391. Are you familiar with
10 this document, the application criteria points breakdown?

11 A Yes.

12 Q Did you use this to train on the non-identified
13 portions of the application?

14 A No, this isn't the version that I was using.

15 Q Okay. Who was using this version?

16 A I don't know.

17 Q This is nothing you used?

18 A This is the ID section.

19 Q Okay. If we go to the next page it speaks about a
20 transportation plan and the adequacy of security measures for
21 building security.

22 A Yeah. I mean --

23 Q At the top, 392.

24 A It looks like it's possibly the same information,
25 but the one that we were using to train on had a lot more

1 detail. It had a blue bar across the top. I don't --

2 Q You don't recognize this?

3 A I've probably seen this, but no, it's not formatted
4 in the same way as the one I used for training.

5 Q Do you know what a transportation plan is?

6 A Yes.

7 Q What is it?

8 A It's a plan on how they're going to be transporting
9 the product, whether it's to consumers or to another
10 dispensary. How much they can store at one time; where they
11 can deliver to; what the vehicle has to look like. The
12 communication -- form of communication has to be listed in
13 their trip plan. All that information is in the
14 transportation plan.

15 Q All right. And I didn't see any of that in the
16 training modules. Was that provided in the training modules?

17 A It's in the evaluator guidelines.

18 Q Okay. So the community impact is also a part of
19 this document. I want to show it to you and if you'd tell me
20 if this, again, is something that you used or did not use,
21 okay?

22 A Okay.

23 Q Look at the same exhibit, I believe, page 401. Did
24 you use this?

25 A Yes.

1 Q Okay. So this is taken from the same information.
2 I'm trying to figure out why portions of it --

3 MR. PARKER: Your Honor, Mr. Rulis says it's also
4 Exhibit 10.

5 THE COURT: Okay.

6 MR. PARKER: But this -- both of them have been
7 admitted.

8 THE COURT: Great.

9 MR. PARKER: This may be easier for her to read. If
10 I could approach, Your Honor?

11 THE COURT: You can. And we switched to Exhibit 10.

12 MR. PARKER: Yes, we have.

13 THE COURT: It's on the screen.

14 MR. PARKER: It is.

15 THE COURT: Thank you, Mr. Rulis.

16 Mr. Parker, how much longer have you got with her?

17 MR. PARKER: Your Honor, maybe 20 minutes.

18 THE COURT: Okay.

19 MR. PARKER: I'm trying to get through it.

20 THE COURT: It's all right, Mr. Parker. I have no
21 anticipation that she's finishing today.

22 MR. PARKER: Good.

23 BY MR. PARKER:

24 Q So, you're familiar with this; correct?

25 A Yes.

1 Q The first line that I'm reading, and I don't know
2 if it's the same that you're reading from, I'm using this one,
3 it says, "The likely impact of the proposed marijuana
4 establishment in which it is proposed to be located in." Do
5 you see that?

6 A Uh-huh.

7 Q So again, we're not speaking floor plans, we're
8 talking location; right?

9 A This would be location, like the local jurisdiction.

10 Q But see, it doesn't say jurisdiction here. It says
11 community. It speaks about community. It does not say
12 jurisdiction. Would you agree?

13 A It's about community, not necessarily the specific
14 address of the facility.

15 Q Well, it says, "Community impact serving authorized
16 persons in need."

17 A Yes.

18 Q But again, it doesn't say jurisdiction. There's a
19 distinction between jurisdiction and community, isn't there?

20 A I would say that a jurisdiction can be a community.

21 Q Right. But we know that there are certain
22 jurisdictions that you can apply for?

23 A Yes.

24 Q The City. North Las Vegas. Unincorporated Clark
25 County. Henderson. Those are all jurisdictions under the

1 definition under the statute; right?

2 A Yes.

3 Q All right. Community is different than jurisdiction.
4 Isn't that a smaller subset of a jurisdiction, potentially?

5 A I mean, community can have a lot of different
6 definitions. I wouldn't agree with that necessarily.

7 Q All right. And it says here the criteria response
8 clearly demonstrates how the establishment intends to provide
9 their local community with community benefits. Again, I think
10 that if you wanted to use jurisdiction, you could have. You
11 chose to use community; right?

12 A Yes.

13 Q Okay. And so what was the training given -- were
14 there any training modules on this topic or this criteria?

15 A I'm not aware of any training modules. Like I said,
16 my portion of the training was going line by line through it
17 and through example applications.

18 Q All right. And it also refers again to location;
19 right?

20 A It doesn't say physical address, but yes, it does
21 say location.

22 Q Good enough. Can you tell me who provided the -- or
23 were you involved in any of the training related to education?
24 Are you familiar with the fact that education is a part of the
25 identified criteria?

1 A You mean the education plan or what do you mean?

2 Q No. Education levels of the applicants, the
3 owners --

4 A That's the ID section.

5 Q I know. I'm asking if you're familiar with the fact
6 that that is part of the criteria?

7 A Yes.

8 Q All right. Did you have anything to do with
9 establishing that criteria?

10 A No, I don't believe so.

11 Q That was not a part of the team effort that you were
12 involved in?

13 A It may have been, but I don't recall. It doesn't
14 sound familiar.

15 Q Do you remember whether or not or how it was
16 determined what the scoring would be for that criteria?

17 A No, I don't. I believe it was mostly based off of
18 what was provided by QuantumMark back in 2014.

19 Q So that was just a repeat of the 2014 application
20 process?

21 A I believe so.

22 Q Do you recall ever seeing anything in the ballot
23 question that dealt with education levels?

24 A Not that I recall.

25 Q Nor did I. How about in the statutes?

1 A I don't recall.

2 Q How about in the administrative code?

3 A I don't recall.

4 Q Do you know how it found its way into the
5 application process if it's not in the ballot question, the
6 statutes or the administrative code?

7 A Well, I believe that the statutes give us the
8 authority to create the application, so I believe it just came
9 from there.

10 Q Okay. And do you know who decided the -- how the
11 scoring would be done for education? For example, if you had
12 ten owners and ten of them had B.A.'s and five of those also
13 had Master's Degrees and three of them had Doctorates, how you
14 would score those? Did you have anything to do with that?

15 A I don't recall. I may have been in the room, but I
16 wasn't involved in the decision.

17 Q Do you know how that could be directly and
18 demonstrably related to the operation of a retail marijuana
19 establishment?

20 A I'm sorry, I didn't hear you.

21 Q Yes. How could that be -- is that related at all to
22 operating a marijuana establishment?

23 A Yes.

24 Q How is it?

25 A Well, for me the most important aspect is public

1 health, so if you have people with scientific backgrounds that
2 understand how pathogens can grow or spread then, yes, that
3 scientific education would be very beneficial to them.

4 Q So then you would not just be judging education but
5 the type of education. So someone who was an Art History
6 major, had a B.A. in Art History, wouldn't score as high as
7 someone who was in a medical science?

8 A Art History might be relevant to a dispensary, but
9 not to my knowledge. I don't know how they scored that
10 section.

11 Q So you have no idea how education was scored?

12 A I wasn't involved in that process.

13 Q All right. And just so I want to make sure we're
14 clear so I don't have to come back to it, you don't recall
15 seeing education as a part of the ballot question, the
16 statutes or the administrative code?

17 A It's not something I remember seeing off the top of
18 my head, no.

19 Q All right. Would your answers be the same in terms
20 of the financial brackets determined for tax purposes?

21 A I was in the room when that was being discussed.

22 Q Okay.

23 A I was not a decision maker in the process.

24 Q Did you see taxes identified in the ballot question?

25 A I don't recall. I don't know.

1 Q Did you see them in the statutes?

2 A I don't know.

3 Q You have no idea?

4 A I would have to look.

5 Q Well, let's take a look at least at the statutes.

6 Do you see it anywhere there?

7 A For the application process?

8 Q Yes. And you can take a look at 453.210 and see if
9 you see taxes paid. And while you're looking, see if you see
10 anything about education levels.

11 A I do not see those mentioned in 210.

12 Q So how was it decided that that would be added to
13 the application process if it's not in the statutes and it's
14 not in the ballot question?

15 A I don't know personally. I do know if we only did
16 what was in the ballot question it would be a very short
17 application.

18 Q Well, that's why I also included the statutes.
19 Would you agree with me there's no indication in the statutes
20 that the application must contain information regarding
21 educational levels?

22 A It is a not a requirement, no.

23 Q Same in terms of taxes paid; right?

24 A Correct.

25 Q But you added it to the application anyway; right?

1 A I did not personally add it, but it is in there,
2 yes.

3 Q Your group did?

4 A Yes.

5 Q Thank you. Same with -- how about with in terms of
6 financial strength?

7 A I do not see that in here, either.

8 Q All right. But it was added to the application
9 process; right?

10 A It is in there, yes.

11 Q In terms of the signage and that's under, again,
12 200, paragraph -- 453D.200, paragraph (1)(h). It says,
13 "Reasonable restrictions on signage, marketing, display and
14 advertising." Do you see that?

15 A Yes.

16 Q Now, that's something that the statute requires,
17 right --

18 A Yes.

19 Q -- consideration of? Can you get signage out of a
20 floor plan?

21 A It was part of that section and they were to provide
22 documentation showing that they had a professional appearance.
23 Signage would show your professional appearance. But it was
24 non-identified, so any identifying information should be
25 removed.

1 Q But these are the things the statute required, not
2 reflected -- that should have been reflected in the
3 application. And then we've discussed just now things that
4 were added to the application not a part of the statutes;
5 right?

6 A Correct.

7 Q All right. Did anyone ever say, hey, let's pump the
8 brakes here, we're putting things in this application that has
9 nothing to do with or not specifically provided for under the
10 ballot question or the statutes, mainly the education, the
11 taxes, financial strength, any of those three things?

12 A I believe we had approval from LCB to go ahead with
13 it.

14 Q Do you have a name?

15 A I believe we were working with Asher. I don't know
16 the last name.

17 Q All right. Now, you've heard of seed to sale?

18 A Yes.

19 Q Tell me what your understanding of seed to sale is.

20 A Seed-to-sale is the tracking, the State tracking
21 system for all inventory statewide. It communicates with
22 every single facility. We use metric so we can track a
23 product from the point of -- you know, when it began all the
24 way until the point that it's sold.

25 Q Okay. Were the seed-to-sale considerations a part

1 of the application for retail?

2 A Yes.

3 Q Can you tell me why, since they're not dealing with
4 the seed, really, they're simply selling the finished product?

5 A Yes. They're required to make sure that the product
6 that they receive is traceable back to seed-to-sale --

7 Q Okay.

8 A -- so that that information is in the system. And
9 then they're responsible for it from receipt into the point
10 that it is sold.

11 Q Do you see anything within the -- within NRS 453D
12 that says seed-to-sale for dispensaries?

13 A I would have to look through the whole NRS, but it
14 might -- I think it says inventory. I don't know.

15 Q I'm not seeing anything that says that they're
16 required to use the seed-to-sale system.

17 A All right. Good enough. And so let me ask you this
18 question. Were you -- this is kind of jumping around. I'm
19 trying to get you out of here in terms of me, Ms. Cronkhite.
20 Were you responsible for in any way taking application 5,
21 Exhibit 5 or application Exhibit 5A off the Website at any
22 given time?

23 A No. I don't handle the website.

24 Q That wasn't your --

25 A No.

1 Q Do you know who was responsible for, as the owner,
2 managing the website? We heard earlier today that -- from the
3 I.T. person, Mr. Davidson, that he simply provided the
4 platform. He set up the Listserv in terms of having it on the
5 server. But the owner, I'm assuming that's the Department of
6 Taxation, the Division of Marijuana Enforcement was the owner
7 of that website. Is that correct?

8 A Yes.

9 Q Did you manage the website?

10 A No.

11 Q And do you recall there being public hearings for
12 the medical marijuana? Were you around when that came out?

13 A What do you mean by public hearings for medical
14 marijuana?

15 Q Well, were there any public hearings to address how
16 the application process would be done for 2014 for the medical
17 or 2018 for the recreational?

18 A We had public presentations where we took -- I'm
19 drawing a blank on the name of the forms that they give us but
20 -- impact, the impact statements from Facilities. We present
21 the regulations, the proposed regulations. They submit their
22 impact statements. Those are considered and they're revised
23 based on that. So, yes, they were publicly -- they were
24 presented publicly.

25 Q Do you know Amanda Connor?

1 A Yes, I do.

2 Q Have you spoken to her many times?

3 A Yes.

4 Q Has she attended a lot of meetings?

5 A I believe so.

6 Q Did you ever have any conversations with her where
7 you discussed the application process?

8 A I don't believe so, no.

9 Q Or how -- what would be required of applicants?

10 A No.

11 Q Never have?

12 A I don't believe so.

13 Q Why do you say you don't believe so?

14 A I don't recall any conversation where she asked
15 about the application process.

16 Q Okay. You don't recall her asking you questions
17 regarding location versus P.O. boxes?

18 A I don't think she would have asked me about that.
19 That was kind of out of my scope. It's possible, but I don't
20 recall.

21 Q Okay. Do you -- there was a training reference in
22 an exhibit, Exhibit 109. I wanted to know if you could tell
23 me what this reference is. Exhibit 109, SG91, top left
24 corner. So it says, "That training was dumb." It appears to
25 be written by you, is that correct?

1 A It appears that way, yes.

2 Q What training were you referring to?

3 A I don't know. That's not my -- oh, yeah, that's my
4 work number. Yeah, I don't know what that was. January 2019.

5 Q All right. The -- I'm almost done, Ms. Cronkhite.
6 There was a phone interview -- I'm sorry. There was an
7 interview that was conducted with Nevada Wellness Center on
8 January 17, 2019. Do you recall that?

9 A An interview?

10 Q Well, it was a meeting at your office, 555
11 Washington. I don't know if that's your main office, but at
12 that location.

13 A Uh, I'd have to know more information.

14 Q You and Mr. Hernandez were there.

15 A Was it a score review meeting?

16 Q It was.

17 A Yes.

18 Q Now, are there any requirements that you have
19 available at that meeting the application itself for the
20 applicant that's coming to meet with you and discuss it?

21 A Can you state the question again?

22 Q Yes. Do you recall having a meeting like that
23 before?

24 A Yes.

25 Q All right. So on January 17th you met with Nevada

1 Wellness Center, Mr. Hawkins, Frank Hawkins was there. Do you
2 remember that?

3 A It's possible.

4 Q Okay. Did you go over or was it a part of the
5 process to go over the application itself?

6 A No.

7 Q Okay. What information did you or were you allowed
8 to give at those meetings?

9 A We were only allowed to share their actual numbers,
10 the scores that they received compared to the average
11 statewide.

12 Q And why were you not allowed to give any more
13 information than that?

14 A I believe there is an NRS that states -- I don't
15 know the number off the top of my head, that states that
16 they're allowed to have a meeting and the only information
17 that can be provided is their scores.

18 Q Was there someone listening in by phone? Is that a
19 yes?

20 A Yes. Ky Plaskon.

21 Q All right. So why was there someone listening over
22 the phone during that meeting with you and Mr. Hernandez?

23 A He was taking notes.

24 Q All right. And that's what we thought, too. So
25 we've asked the State for the notes. To your knowledge were

1 all notes provided from those meetings provided to the State?

2 A To my knowledge. I didn't have the notes.

3 Q All right. But Mr. Plaskon would have had the notes?

4 A Yes.

5 Q And do you recall informing Mr. Hawkins that
6 diversity would only be used as a tie breaker during that
7 discussion?

8 A No, I don't recall that at all.

9 Q Okay.

10 A That would be incorrect.

11 Q All right. Why wasn't QuantumMark used to do the
12 evaluations?

13 A I don't have that information. I don't know that
14 they are scorers. I just know that they assist with drafting
15 regulations, creating application processes, things like that.
16 I don't know if they actually conduct the work, if that's even
17 in their scope.

18 Q All right. Do you have any understanding of how
19 many licensees, conditional licensees are completely, 100
20 percent minority owned?

21 A No. I don't have that information.

22 Q And then experience in the marijuana industry in
23 Nevada, that was one of the -- a part of the criteria. Do you
24 recall that?

25 A I believe that was the identified section.

1 Q It was. Did you have anything to do with how that
2 was scored?

3 A No, I don't believe so.

4 MR. PARKER: Okay. Your Honor, I think that's all I
5 have. Thank you very much.

6 THE COURT: It's 4:34. Mr. Kemp, do you want to
7 start or Mr. Rulis, do you want to start for 11 minutes?

8 MR. RULIS: I do.

9 THE COURT: While you're coming up, I'm going to ask
10 her a question.

11 Ma'am, were you aware that some of the non-
12 identified applications were grouped together for purposes of
13 the graders' grading?

14 THE WITNESS: I don't know if I have that
15 information. Do you mean multiple locations with one
16 application?

17 THE COURT: Multiple application numbers with one
18 set of results.

19 THE WITNESS: If it was one physical application for
20 multiple locations then, yes, I'm aware of that.

21 THE COURT: Well, let me say it a different way.
22 Multiple application numbers to me means that there were
23 different applications, each of them with an individual
24 number. Are you aware for non-identified purposes of those
25 being grouped together for grading?

1 THE WITNESS: The only knowledge I have is that a
2 lot of applicants submitted one complete application for
3 several different locations and that would be scored as one
4 application, I believe, if all the information was exactly the
5 same.

6 THE COURT: Where did you come by that understanding?

7 THE WITNESS: I'm not sure I understand what you
8 mean.

9 THE COURT: How did you learn that?

10 THE WITNESS: When Facilities were -- when we were
11 discussing how they would submit their applications, it had
12 been mentioned that they could submit the same application for
13 multiple locations.

14 THE COURT: Who said that?

15 THE WITNESS: I believe Jorge Pupo, Steve Gilbert,
16 Ky Plaskon.

17 THE COURT: Those are three different people. Which
18 one?

19 THE WITNESS: I mean, there was just a conversation.
20 I don't recall exactly. But I know that they had said that
21 they could submit one application. And even on the
22 application form itself -- you can submit one application and
23 there's several check boxes for different locations, different
24 jurisdictions to apply for.

25 THE COURT: Okay. Thank you, ma'am.

1 THE WITNESS: You're welcome.

2 THE COURT: Sorry, Mr. Rulis.

3 MR. RULIS: That's all right, Your Honor.

4 So just to follow up with that, Shane, can you pull
5 up Exhibit 48, please?

6 This one is already admitted, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. RULIS:

9 Q If you go to -- do you recognize what this is?

10 A Yes.

11 Q It's tally sheets that the Department put together
12 after the scores were done; right?

13 A Yes.

14 Q So this first page, that's the identified portion;
15 right?

16 A Yes.

17 Q And so if you go to the second page, that's the
18 scores for the non-identified portion?

19 A Yes.

20 Q So if you look up at the top right-hand corner where
21 it says, Finalized, and then it has a box that says MEID.

22 A Yes.

23 Q So this one happens to cover the scores for -- it
24 looks like 12 if my math is correct, 12 different
25 applications; right?

1 A Yes.

2 Q So it's -- this is what Her Honor was talking about,
3 is that you have one score sheet but it's covering 12
4 different non-identified portions; right?

5 A Right.

6 Q Okay. And you're aware that that happened with
7 multiple applicants?

8 A Yes.

9 MR. RULIS: So -- thanks, Shane.

10 BY MR. RULIS:

11 Q When Mr. Parker was asking you some questions, you
12 mentioned that at the time of the application process you were
13 just a supervisor, you weren't a manager. Do you remember
14 that?

15 A Correct.

16 Q Who were the manager level Department employees at
17 that time? Was that Jorge Pupo and Steve Gilbert?

18 A Yes. And Deonne Contine.

19 Q And Deonne. Well, so let me ask you about that
20 because you mentioned Deonne Contine. Her last day with the
21 Department was, as I recall, February of 2018, wasn't it?

22 A Oh, I don't remember.

23 Q Okay.

24 A Yeah.

25 Q Well, assuming that her last day was I believe

1 February 8th of 2018, she wouldn't have been around when the
2 application was being put together, would she?

3 A I don't recall when we were building the application
4 itself or revising it. I thought she was still around, but I
5 may have been mistaken. It may have been Bill Anderson.

6 Q Okay. So, sorry, back to the manager level. So it
7 would have been whoever the director was at the time --

8 A Correct.

9 Q -- whether that was Ms. Contine or Mr. Anderson,
10 Jorge Pupo and Steve Gilbert?

11 A Correct.

12 Q And as I understand it, you are now a manager,
13 though; right?

14 A Correct.

15 Q Because I think it was -- congratulations, by the
16 way. I think it was February you got a promotion?

17 A That sounds right, yeah.

18 Q And that's -- you actually got promoted, as I
19 understand it, into Steve Gilbert's old position; right?

20 A Correct.

21 Q And Steve Gilbert got bumped up. Is that a new
22 position?

23 A Yes. He's Health Program Manager III.

24 Q Okay. So at the time of the application, though,
25 what we're talking about is, as I understand the hierarchy, is

1 it's kind of a straight line. You've got Jorge at the top,
2 Steve Gilbert and then you're below Steve Gilbert and then a
3 number of people reported to you; right?

4 A Correct.

5 Q So when you're going through the application process
6 and revising the application, you're reporting to -- directly
7 to Steve Gilbert; right?

8 A Correct.

9 Q So to the extent that -- and one of the things that
10 Mr. Parker went through with you and you were talking about is
11 the grading on the building construction sections of the
12 applications. Do you remember that?

13 A Yes.

14 Q And I know Mr. Parker referred to Exhibit 209. I'm
15 going to have Shane pull up Exhibit 209 and specifically page
16 DOT396. And I think you mentioned that you weren't exactly
17 familiar with this document; right?

18 A That looks more in line with this.

19 Q Right.

20 A Yes.

21 Q Well, and that's just -- I want to clear up any
22 confusion. I'm going to have Shane also pull up Exhibit 9.

23 A Okay.

24 Q And I'm going to want to compare them just because
25 when I read them it's the exact same language. I just want to

1 make sure that you understand that and you're comfortable with
2 that.

3 A Okay.

4 MR. RULIS: So, Shane, will you show her Exhibit 9
5 just in total real quick.

6 BY MR. RULIS:

7 Q So the one there, is that the document that you were
8 talking about earlier with the blue bar on it?

9 A Yes.

10 Q Okay. So these are the grading tools that you went
11 through with the Manpower graders?

12 A Correct.

13 Q Okay. So if you -- Shane, if you'll pull back up
14 209, and specifically I'm going to have you look at the
15 grading criteria as far as an excellent response goes. And
16 what I want to talk about is when Steve Gilbert was asked
17 about this the question to him was -- and this was back on May
18 31st, quite some time ago, but the question to him was, "The
19 prime focus of a building construction section was to make
20 sure that the building could actually be built in 12 months?
21 That's what you were looking to do?"

22 A That was a part of it, yes.

23 Q Okay. And Steve said, "Yeah, with the budget." But
24 we confirmed that "you wanted to make sure that the plans were
25 good enough, the budget was good enough to make sure that

1 there was actually a dispensary built in 12 months." That's
2 what the objective was with the building construction. And
3 Mr. Gilbert said "Yes." Are you telling me it's something
4 different or do you agree with Mr. Gilbert?

5 A That is a portion of it. So I don't know how it was
6 worded to him or what information he had, but that is a
7 portion of it.

8 Q Well, if he was looking right at 209, page DOT396,
9 and I actually just read from the transcript, it's pages 117
10 and 118 from May 31st, so that's what was asked. And he said
11 yes. So are you telling me that Mr. Gilbert is wrong?

12 A I don't think he had all the information. I don't
13 think he was fully aware of all the information. He was not
14 wrong, it's a portion of it. It's an important portion of it,
15 but it's not the complete section.

16 Q But now if it came down to determining Mr. Gilbert
17 or your opinion of it, he's your supervisor; right?

18 A He's my supervisor, yes.

19 Q And he at that time was at manager level --

20 A Yes.

21 Q -- you were not?

22 A Correct.

23 Q Now, one of the other questions that was -- or
24 topics that was asked to you, it was about compliance history
25 and I think you said you didn't deal with that, that would

1 have been identified portion, not the non-identified portion;
2 right?

3 A If it was provided, yes.

4 Q So my question was just who would know if it was
5 provided to the graders?

6 A I'm not sure. Maybe Damon Hernandez or Steve
7 Gilbert or Jorge Pupo.

8 Q Okay. So if Mr. Gilbert said he didn't believe any
9 of that compliance history was provided to the Manpower
10 graders, you don't have any reason to disagree with him?

11 A Correct.

12 Q And I think you said it but I just want to make
13 sure, the grading criteria that we were just looking at in
14 Exhibit 9 or Exhibit 209, that's the same grading criteria
15 that was just copied over from 2014; right?

16 A For the most part. There may have been some
17 revisions based on the revisions to the regulations.

18 Q So if Mr. Gilbert said, yeah, we just copied it
19 over, do you disagree with him?

20 A Like I said, it may have been revised to be in line
21 with the 453D versus 453A.

22 Q Do you know of any revisions that were done to these
23 specific grading criteria?

24 A No. Not off the top of my head, no.

25 Q Now, one of the other things that came up, I think

1 it was during your direct examination, was that you started
2 with the DPBH in 2015; right?

3 A Correct.

4 Q So you weren't around at the time that they were
5 doing the evaluation of the medical marijuana applications in
6 2014, were you?

7 A Correct.

8 Q You started afterwards?

9 A Yes.

10 THE COURT: So would this be a good place to break,
11 because it's 4:45?

12 MR. RULIS: Sure, Your Honor.

13 THE COURT: All right. I have -- I'm down to on the
14 9:30 calendar four pretrial or three pretrial conferences, so
15 if you guys could be here at 9:45, I can probably get those
16 people in and out of here faster than ten o'clock.

17 MR. KOCH: Can we leave some books and binders here
18 if we put them under the table?

19 THE COURT: You may leave as many books and binders
20 as you want. I am down to four Rule 16's at 8:30, two nine
21 o'clock hearings that are both very short from what they look
22 like, and three pretrials at 9:30. So hopefully the pretrials
23 will be early so I can get done with them and we get started
24 and get her out of here tomorrow.

25 MR. GENTILE: Your Honor, before we adjourn --

1 THE COURT: Yes, sir.

2 MR. GENTILE: I have to appear before Judge Crockett
3 tomorrow at 1:00 p.m.

4 (Off-record colloquy re unrelated case)

5 THE COURT: Well, we will manage. If you have to
6 leave and Mr. Cristalli and Mr. Miller can't handle it with
7 Ms. Cronkhite, then we'll wait until you get back.

8 MR. GENTILE: Well, I don't know if she'll still be
9 on. That's my concern because she was my witness. I don't
10 have any intention of doing cross-examination on her, but.

11 THE COURT: Based on what you currently heard?

12 MR. GENTILE: Based on the status of the record.

13 THE COURT: Yeah.

14 MR. GENTILE: But rule number one prevails.

15 THE COURT: Yes, it does. Things always change.

16 MR. GENTILE: Yes.

17 THE COURT: Okay. So anybody who wants to leave
18 your stuff, please feel free. I show that we're having --
19 after we finish this witness, Damon Hernandez.

20 MR. SHEVORSKI: Very possibly, Your Honor.

21 THE COURT: And then Ms. Contine.

22 MR. SHEVORSKI: Well, Ms. Contine is the person you
23 were just talking to. Oh. No.

24 THE COURT: That's Ms. Cronkhite.

25 MR. SHEVORSKI: Cronkhite. That's right. That's

1 subpoenaed by Joseph.

2 THE COURT: And then after that maybe Mr. Groesbeck?

3 MR. SHEVORSKI: Well, there's also a subpoena out
4 for other witnesses.

5 THE COURT: How many more?

6 MR. SHEVORSKI: Ms. Durrit (phonetic) and there is
7 Mr. Scolari.

8 (Colloquy among counsel)

9 THE COURT: Jill, you can go off. I'm just trying
10 to figure out how many more witnesses.

11 (Court recessed at 4:47 p.m. until the following day,
12 Thursday, July 11, 2019, at 9:45 a.m.)

13 * * * * *

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PLAINTIFFS' WITNESSES

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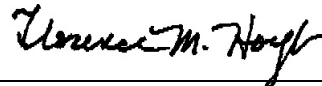
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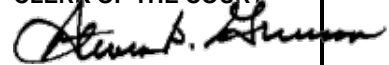
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FLORENCE M. HOYT, TRANSCRIBER

7/11/19

DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)

Plaintiffs,)

vs.)

STATE OF NEVADA DEPARTMENT OF)
TAXATION,)

Defendant.)

CASE NO. A-19-786962-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

THURSDAY, JULY, 11, 2019

EVIDENTIARY HEARING - DAY 13

VOLUME I OF II

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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WITNESSES FOR THE DEFENSE:

KARALIN CRONKHITE

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, JULY 11, 2019, 9:44 A.M.**

2 * * * * *

3 THE COURT: Anything outside -- anything
4 housekeepingwise? Since I have no jury, there's nothing
5 outside the presence.

6 MR. RULIS: Your Honor, I think we're just trying to
7 talk scheduling today because we may have to, depending on how
8 long we're going to go with redirect, we may need to take a
9 break between --

10 MR. SHEVORSKI: Just in terms of Director Contine's
11 schedule.

12 THE COURT: Okay. So Ms. Cronkhite is here, and I
13 told her yesterday as I left the courtroom that today would not
14 be as bad. So let's work to make sure that I'm not a liar.

15 For those of you who just walked in, I told
16 Mr. Gentile as he walked in that my lunch arrangements have
17 canceled. So we can, if everyone's agreeable, work in to the
18 lunch hour. I asked my staff already so that we will have less
19 of a loss of time while he goes over to visit with Judge
20 Crockett. Is everybody okay that, taking a late lunch?

21 I see a bunch of nods of the head. Nobody says no.
22 Great.

23 MR. SHEVORSKI: It's only -- I think -- when is
24 Director Contine coming?

25 MR. BHIRUD: We -- she was available at noon, but we

1 told her to come at 12:45 since we knew about the lunch --

2 MR. RULIS: And I think that's the issue is we'll
3 have to have a gap between when we finish up with Ms. Cronkhite
4 and, depending on how long it takes, and Ms. Contine.

5 (Pause in the proceedings.)

6 THE COURT: Mr. Rulis, how much is your continued
7 examination of Ms. Cronkhite?

8 MR. RULIS: Five, ten minutes.

9 THE COURT: Who else has examination?

10 Mr. Gentile told me that he had none yesterday, but
11 said remember Rule 1, which we all mean -- knows mean things
12 happen. So that means we may be done with Ms. Cronkhite this
13 morning.

14 And then if Mr. Hernandez is testifying, we have him,
15 but I heard yesterday we were withdrawing him, and I crossed
16 him off my list.

17 We may need Ms. Contine this morning.

18 MR. GENTILE: Your Honor, she's available at noon
19 apparently.

20 THE COURT: I heard that. Did you like how I said we
21 may need her this morning? Because I was just trying to do
22 math and I'm running out of people, but, you know, I can go
23 stay in my office and do things.

24 (Pause in the proceedings.)

25 THE COURT: Okay. So are we ready to resume?

1 Ms. Cronkhite, if you'd come on back up, we're going
2 to reswear you since it's a new day. It sounds like from our
3 math you will be up here for the morning.

4 Remember, if you need a break you're to let us know,
5 okay, otherwise, the lawyers will know they don't really get a
6 break unless it's an emergency.

7 **KARALIN CRONKHITE**

8 [having been called as a witness and being first duly sworn,
9 testified as follows:]

10 THE CLERK: Thank you. Please be seated.

11 Please state and spell your name for the record.

12 THE WITNESS: Karalin Cronkhite. K-a-r-a-l-i-n,
13 C-r-o-n-k-h-i-t-e.

14 THE COURT: Mr. Rulis, you may continue your
15 cross-examination.

16 MR. RULIS: Thank you, Your Honor.

17 CONTINUED CROSS-EXAMINATION

18 BY MR. RULIS:

19 Q Good morning, Ms. Cronkhite.

20 A Good morning.

21 Q Now, yesterday you were talking about during your
22 testimony using portions of the 2014 applications to go over
23 with the Manpower graders part of the training. Do you
24 remember that?

25 A Yes.

1 Q And those, the specific portions that you were going
2 through with the Manpower graders, those were for the building
3 plans sections?

4 A Yes.

5 Q And those would have been for the medical marijuana
6 applications from 2014, just so we're clear?

7 A Yes.

8 Q Now, you are aware that the applicants in 2014 were
9 required to have actual physical locations as a part of their
10 application; right?

11 A Yes.

12 Q And as a matter of fact, if they didn't have physical
13 locations, their applications were rejected in 2014; right?

14 A That sounds right.

15 Q Okay. Now, did you convey that information to the
16 Manpower graders?

17 A I don't believe that came up because it wasn't listed
18 in that section.

19 Q Okay. So you didn't discuss with them the fact that
20 physical locations were required and that -- in the
21 applications that they were reviewing?

22 A They were informed and trained that physical
23 locations were not required for the 2018 application period,
24 but I don't recall if that came up during my portion of the
25 training at all, but it was part of their general training.

1 Q But nothing about whether physical locations were
2 required in 2014?

3 A Right. I don't believe so.

4 MR. RULIS: All right. That's all I have, Your
5 Honor.

6 THE COURT: Anyone else have further examination of
7 Ms. Cronkhite.

8 (No audible response)

9 THE COURT: Redirect.

10 REDIRECT EXAMINATION

11 BY MR. SHEVORSKI:

12 Q Good morning again, Ms. Cronkhite.

13 A Good morning.

14 Q My friend Mr. Parker asked you quite a bit about, and
15 the Court indeed asked you quite a bit about which took
16 precedent: The stat -- and the initiative, the statute and the
17 code. Do you recall that? And whether or not the department
18 was aware that the initiative controlled? Do you recall that?

19 A Yes.

20 Q Okay. Can you, hopefully I can help you with this,
21 go to Exhibit 235. There should be a binder.

22 MR. SHEVORSKI: May I help, Your Honor?

23 THE COURT: You may.

24 MR. SHEVORSKI: Or attempt.

25 THE CLERK: Mr. Shevorski, it's on the cart next to

1 her on the witness stand, and it's probably going to be in the
2 second or third level of that cart.

3 MR. SHEVORSKI: On the cart.

4 (Pause in the proceedings.)

5 BY MR. SHEVORSKI:

6 Q Ms. Cronkhite, you've been handed what's been marked
7 as Exhibit 235. It's already in evidence. Would you please --
8 and I believe you're at page 14.

9 A Yes.

10 Q And you under -- if you wouldn't mind just flipping
11 back to the first page real quick. If you could hold that,
12 just hold it. Keep your hand on 14 though.

13 A Okay.

14 Q And obviously in part of your job you're aware of who
15 the Nevada Tax Commission is?

16 A Yes.

17 Q Okay. Does this appear to be minutes of a public
18 hearing?

19 A Yes.

20 Q And the date is January 16th, 2018?

21 A Yes.

22 Q Look at the bottom of page 14. It starts, Director
23 Contine stated.

24 A Uh-huh. Yes.

25 Q Do you see where that's indicated?

1 A Yes, I do.

2 Q If you look at the second to let's call it maybe the
3 third to last sentence, it says, There are limitations.

4 A Yes.

5 Q Do you see where that's indicated?

6 A Yes, I do.

7 Q It says, There are limitations that we have by
8 statute. The initiative cannot change for three years?

9 A Yes.

10 Q Did I read that correctly?

11 A Yes, you did.

12 Q So based on that, was the department aware that it
13 could not change the initiative in January of 2018?

14 A Yes, we were.

15 Q My friend Mr. Parker asked you about NRS 453D.210,
16 specifically Subpart 5. Do you remember that?

17 A Yes.

18 Q It says, The department shall approve a license
19 application if, and then it has a colon. I'm not going to ask
20 you to pull up the book again.

21 A Yes, I remember.

22 Q Okay. And Subpart D talks about a physical address,
23 and it's a physical address that is owned by the applicant or
24 has written permission of the property owner; is that correct?

25 A Yes.

1 Q In 2016, was retail marijuana legal in Douglas
2 County?

3 A I believe they had a moratorium at that time.

4 Q In 2017 is that true?

5 A Yes.

6 Q In 2018?

7 A I believe so, yes.

8 Q In 2019, as we sit here today?

9 A I believe that they never lifted the moratorium.

10 Q Okay. Do you know if someone could lawfully give
11 permission to operate a marijuana establishment in Douglas
12 County?

13 A No, not with their moratorium.

14 Q Okay. Do you believe it's the intent of this statute
15 for someone to put a false address into their application if
16 they were applying for Douglas County?

17 A No, it's not.

18 Q Because they couldn't get written permission, could
19 they?

20 A Correct.

21 Q In the city of Henderson, was retail marijuana
22 approved in 2016?

23 A No. They had a moratorium at that time.

24 Q And then in 2017, I believe in September of 2017,
25 they approved I think five retail licenses. Does that sound

1 about right?

2 A Yes, that sounds right.

3 Q Okay. And the requirement was that they be
4 co-located with a medical marijuana establishment?

5 A Correct.

6 Q I'm going to propose a hypothetical to you. If --
7 And the applications are submitted in September 2018;
8 correct?

9 A Yes.

10 Q And they were scored in October of 2018?

11 A Yes.

12 Q If the city council met in Henderson in October
13 of 2018 and changed its requirement for address and said it's
14 no longer required to be co-located, should we just throw out
15 the application process and not have scoring because the city
16 of Henderson has changed its zoning laws?

17 A I would say no.

18 Q And you've testified that you're familiar with
19 NRS 453D. We talked about some of its provision. In Subpart
20 5 of 210 that we just talked about, it uses the word
21 "approve" --

22 THE COURT: Just in case.

23 THE WITNESS: Thank you.

24 BY MR. SHEVORSKI:

25 Q -- the department shall approve. Do you know if

1 there's any definition of what approve means?

2 A Not to my knowledge.

3 Q In Subpart 453D.200, Subpart 1A, it says, Procedures
4 for issuance renewal suspension, revocation of a license. Do
5 you know if there's any definition in the statute that defines
6 what procedures the department shall use?

7 A I believe it says that it gives us authority to make
8 that determination.

9 Q The Judge asked you about one provision in particular
10 in Subpart 6 of 453D.200. It says, The department shall
11 conduct a background check of each prospective owner, officer
12 and board member.

13 With respect to the word "owner," I want you to
14 presume that the applicant is owned by a publicly traded
15 corporation. In order to do that background check, wouldn't
16 you have to know how often the company gets its list of
17 shareholders from the transfer agent?

18 A I suppose.

19 Q Because otherwise the company wouldn't know who owns
20 its shares, the public company, would it?

21 A Correct.

22 Q Now, it says "prospective owners." Does that mean
23 you don't background check current owners?

24 A We do background check current owners, but it does
25 read that way.

1 Q Okay. So you'd have to interpret that, wouldn't you?

2 A Yes.

3 Q All the time when my friend Mr. -- oh, I forgot his
4 name --

5 MR. GENTILE: He's got too many friends.

6 BY MR. SHEVORSKI:

7 Q -- Mr. Parker -- when Mr. Parker was --

8 UNIDENTIFIED SPEAKER: Not much of a friend.

9 THE COURT: Will you make sure Teddy finds that out.
10 Just send him an email.

11 MR. SHEVORSKI: I'll call him, Your Honor.

12 BY MR. SHEVORSKI:

13 Q Mr. Parker is talking to you about consistency. He
14 never used the word interpretation. Wasn't it up to the
15 department to interpret the statute?

16 A Correct.

17 Q Do you know if anything in the statute will require
18 the department to reject an application that contained a
19 misspelling and therefore was incomplete or it misdescribed a
20 board member?

21 A No, not to my knowledge.

22 Q If they had misstated the address, if they put in a
23 proposed address, and they misstated it and misspelled it, is
24 there anything in the statute that says, and I'm talking about
25 453D here, that requires the department to reject that

1 application?

2 A No, not to my knowledge.

3 Q My friend Mr. Parker talked about my beloved
4 community of Summerlin and Sun City, and he didn't mention
5 Sienna. He mentioned some other age-restricted communities.
6 Are they all residential neighborhoods?

7 A I believe so, yes.

8 Q He mentioned The Ridges. Is that a residential
9 neighborhood?

10 A I think so. I'm not completely familiar with The
11 Ridges.

12 Q What about The Willows? Is that a residential
13 neighborhood?

14 A Again, I believe so, but I'm not completely sure.

15 Q Does Summerlin allow retail marijuana?

16 A They don't have a moratorium to my knowledge,
17 although I'm not aware of any dispensaries or facilities
18 whatsoever involving marijuana in the Summerlin area.

19 And I am a resident of Summerlin. So I would think I
20 would know.

21 Q I was going to make a statement about the head of
22 architecture for Howard Hughes Corporation, but I'll keep it to
23 myself.

24 THE COURT: Thank you.

25 / / /

1 BY MR. SHEVORSKI:

2 Q With respect to some of the rural counties, Douglas
3 County, is there a metropolitan neighborhood that might be
4 distinct from the rest of a rural county, in, for example,
5 Humboldt county?

6 A No. I believe they're pretty consistent. They're
7 out --

8 Q So you don't need to know which street the retail
9 dispensary is on in Humboldt County to know the community
10 impact, do you?

11 A Correct.

12 THE COURT: Do you mean in Winnemucca?

13 MR. SHEVORSKI: You know what, yes, where Mr. --

14 Where Mr. Jenae [phonetic] is from, another one of my
15 friends.

16 THE WITNESS: Correct.

17 MR. SHEVORSKI: No further questions, Your Honor.

18 THE COURT: Any further questions for Ms. Cronkhite?
19 Yes, Mr. Koch?

20 MR. KOCH: Yes.

21 REDIRECT EXAMINATION

22 BY MR. KOCH:

23 Q Good morning, Ms. Cronkhite. My name is David Koch.
24 I represent Nevada Organic Remedies in this matter. I just
25 want to follow up on a few of the things I think you were asked

1 about by Mr. Parker.

2 You were asked about the deficiencies. So you have,
3 well, you're aware of what the deficiency is in the context of
4 a marijuana establishment?

5 A Correct.

6 Q What is a deficiency?

7 A A deficiency is any -- any violation of the
8 regulations, and it could be anything from, you know, a hole in
9 the wall to a light out to even, you know, something more
10 extreme, like, selling products that weren't tested for
11 contaminants or something like that.

12 Q So there's a range of deficiencies; is that right?

13 A Absolutely.

14 Q And how is a deficiency -- what's the process for the
15 department to issue a deficiency? How does that take place?

16 A The inspectors and auditors go out into the facility.
17 They conduct their inspection and audit. After they're
18 complete, they go back to the office and type up their report.
19 We call that a statement of deficiencies, also termed SOD.

20 That gets sent to the facility, and the facility has
21 10 business days to respond with all their corrective action
22 plans for every single deficiency, and then the -- they send
23 that back to the inspector and auditor. They review that
24 information and determine if it's acceptable or if it needs
25 more attention.

1 Q And so there's a process for the statement of
2 deficiency to be issued and then the establishment to
3 propose -- is it a plan to fix that deficiency?

4 A Correct. It's either what they have already done or
5 what they're going to do going forward.

6 Q All right. And what happens if an establishment just
7 doesn't even respond to the statement of deficiency?

8 A We would send them several reminders, follow up
9 regularly, and if they never responded to that, eventually it
10 would lead to a suspension, and they'd be closed for operation.

11 Q All right. Has that ever occurred with any existing
12 medical establishment? Have they ever been suspended for
13 failure to respond to a statement of deficiency?

14 A One to my knowledge.

15 Q Okay. Do you know which one? Can you --

16 I don't know if it's public or private. Is it public
17 information?

18 A It was a dispensary. I can't remember the name. I
19 think they go by ShowGrow.

20 Q ShowGrow?

21 A I know their facility ID. I just don't know the
22 name.

23 Q Okay. So you don't know which entity that is,
24 ShowGrow?

25 A Correct.

1 Q Is it GB --

2 A That sounds; right.

3 Q All right. And that's Mr. Viellion. Do you know --
4 have you heard that name?

5 A No, that doesn't sound familiar.

6 Q Have any other dispensaries ever had their license
7 suspended or put on hold for any period of time?

8 A Yes, several.

9 Q Several. How many others would you estimate?

10 A At least 10 suspensions I would guess.

11 Q Okay. And have those establishments had their
12 licenses been put back into good standing after that period?

13 A Yes. They took necessary corrections and were
14 approved to resume operations.

15 Q Okay. Do you know which dispensaries were actually
16 suspended?

17 A Not off the top of my head I don't.

18 Q When an inspection takes place, how common is it for
19 at least one deficiency to be issued by the department?

20 A It's extremely common, almost always. I would say no
21 deficiency letters are very rare.

22 Q How often do inspections take place?

23 A The inspectors go out in the field approximately
24 three days a week and conduct three inspections per day, so
25 approximately nine a week, unless there's something else going

1 on that needs their attention in the office.

2 Q And is that nine a week of the same establishment, or
3 how many times is an establishment inspected?

4 A Actually, that would be nine a week per inspector.
5 We have eight inspectors statewide. All different facilities,
6 each facility inspected at least once a year. We shoot for
7 twice a year, sometimes more based on complaints and
8 investigations.

9 Q All right. So each establishment would be inspected
10 at least once a year?

11 A Correct.

12 Q Probably more?

13 A Correct.

14 Q But not like every week or every month or anything
15 like that?

16 A Correct.

17 Q All right. I'm going to show you Exhibit 96.

18 (Pause in the proceedings.)

19 BY MR. KOCH:

20 Q Exhibit 96 is an email we looked at earlier. I think
21 you talked about this for a few minutes with Mr. Parker. So
22 this email, it's kind of interesting. It doesn't look like an
23 electronic print out. It looks like it might be some sort of a
24 photo or screenshot or something like that. Did you produce
25 this to the plaintiffs in this case?

1 A No, I did not.

2 Q The blacked out section there, the "To" and the "CC,"
3 do you know why that's blacked out?

4 A I am not sure. I'm assuming the person that did send
5 it didn't want their name to be on it. I do have the original
6 email though. So I do know who it was sent to. The original
7 email --

8 This copy also cut off the very bottom where I have
9 my confidentiality statement saying that it cannot be
10 distributed without my permission.

11 Q All right. So you didn't give authority for this to
12 be distributed to the plaintiffs in this case?

13 A No, I did not.

14 Q Do you know how they got it?

15 A It would have had to have come from somebody who I
16 emailed it to initially, or it would have been forwarded from
17 someone they sent it to.

18 Q All right. And do you know as you sit here today who
19 actually sent this or forwarded this email?

20 A I have an idea, but I don't know for certain.

21 Q All right. Does that raise any concern with you that
22 a document like this with your confidentiality provision there
23 removed was provided to entities in this case?

24 A Yes, it is concerning.

25 Q All right. Well, let's take a look at what they said

1 because this has been offered as an exhibit in this case as
2 apparently an important thing for the plaintiffs here. And you
3 talked about it for a few minutes yesterday. This was relating
4 to Investigations Letter on the subject -- or sorry, the
5 attachment's investigations letter, and you said that it
6 related to Henderson Organic Remedies. I'm looking at the
7 attachments Routine Nevada Organic and Investigations SOD
8 letter to Integral Associates. Were there three letters that
9 were at issue there? Do you know?

10 A I believe there were three letters, yes.

11 MR. KOCH: Okay. Let's put that back up. Keep that
12 up.

13 EXHIBIT TECHNICIAN: 96?

14 MR. KOCH: 96, yeah.

15 BY MR. KOCH:

16 Q And Mr. Parker asked you a little bit about this
17 letter, but can you just tell us why you sent this email --

18 A Yeah.

19 Q -- what was the purpose of this email?

20 A Absolutely. We had just started a incident report
21 form that's available on our website which gave facilities the
22 opportunity to basically tell us if something went wrong before
23 we come out and find it ourselves. I gave them the opportunity
24 to report any deficiency that might have occurred to us and let
25 us know that they already took care of it; it's not a problem;

1 here's what happened.

2 It's also required for situations like power outages
3 where their security systems go down for an extended period of
4 time or something to that effect. So we had just initiated
5 this plan and this form.

6 We had situations where three different facilities
7 had self-reported. I don't know if they were all for sales to
8 a minor or if it was a variety of things. The auditors or
9 inspectors that were assigned to those investigations started
10 writing up statements of deficiencies.

11 After myself and Jorge Pupo discussed it, it -- we --
12 and I believe other people may have been in the discussion as
13 well, but we were talking about how writing them up and issuing
14 civil penalties for self-reporting would discourage
15 self-reporting, and that really wasn't the intention of this.

16 If we continued taking corrective -- or taking action
17 against facilities that went out of their way to tell us that
18 something went wrong, how they fixed it and how it won't happen
19 again, if we took action against them, then there would be no
20 incentive for them to self-report ever again, and we just would
21 never have that information. So we decided it's more important
22 that we have the information, we know it occurred, rather than
23 penalizing them.

24 So we said just send an acknowledgment letter and
25 thank them for notifying us. All the information is still in

1 their file, and it's something that we still keep track of, but
2 it just wasn't any longer listed as an open investigation on
3 the complaint and investigation log.

4 Q Okay. And were these three self-reports by Henderson
5 Organic Remedies, Nevada Organic Remedies and Integral
6 Associates, were these the first of the self-reports that you
7 received?

8 A I believe so.

9 Q So these three entities were jumping right in and
10 reporting any issues that they perceived?

11 A Absolutely, yes.

12 Q And do you believe that that was, the self-reporting,
13 do you believe that's a necessary part of the compliance
14 process?

15 A I do.

16 Q And is compliance -- do you view compliance as --
17 well, let me ask you what do you view the purpose of compliance
18 to be, the compliance process as a whole?

19 A The process, the purpose of being compliant is to
20 protect the public health and safety, make sure that product
21 isn't ending up in the wrong hands, making people sick,
22 basically protection of the public is the main point of
23 compliance.

24 Q All right. And would you view an entity that
25 self-reported a potential issue to be more compliant than an

1 entity that did not self-report but tried to conceal that
2 violation?

3 A Absolutely.

4 Q The issue you state in the email here, you talk about
5 the letter, and it goes on in the middle to say, We received
6 your incident report. This was -- I'm sorry. This was the
7 letter. It should state something to the effect of, We
8 received your incident report. The corrective actions taken
9 were deemed appropriate or not, parentheses.

10 And so would it be possible that the corrective
11 action suggested by the self-reporting party would not be
12 deemed appropriate?

13 A It's possible, and so what we would do at that point
14 is work with the facility to come up with an appropriate
15 corrective action that would be acceptable to the department.

16 Q All right. It goes on to say, No further action is
17 necessary at this time, parenthetical, or please take the
18 following actions to remedy the issue.

19 Again, there appears to be -- the department still
20 considered the corrective action to determine if they were
21 appropriate or not; is that correct?

22 A Correct.

23 Q And then it states, These investigations should be
24 removed from the log. There's been insinuation by certain
25 parties in this case that the removal of the investigations

1 from the log was somehow unduly influenced by either the
2 entities that are listed here or somebody else. Do you believe
3 that the removal of investigations from the log was in any way
4 improper based upon what you've testified to?

5 A No, I don't believe it was improper because that is
6 just an internal document only. There's actually probably only
7 four people that really look at it in the office.

8 I'm the person that maintains the log.

9 My administrative assistant is the one who enters the
10 information into it and marks investigations as open or closed
11 or adds them and removes them.

12 Q And so if an entity self-reported an incident,
13 proposed a corrective action, that corrective action were
14 approved and corrective action were taken, would you consider
15 that entity to be compliant with that, with respect to that
16 incident?

17 A Yes, I would. And I -- I mean, things happen at
18 facilities that are out of their control sometimes, and so we
19 take that into consideration.

20 Q And that was something Mr. Parker made -- asked you
21 questions about the fact that Nevada Organic Remedies may have
22 had 30 deficiencies during the course of its operation, and you
23 said that was about normal. Is that what you said?

24 A Correct, especially considering the amount of time
25 that Nevada Organic Remedies has been operational. They

1 were -- they've been open for several years now, and so I'm
2 including the medical days. So with that amount of time being
3 operational, the number of facilities that they have, yes, I
4 would say that's -- that's probably on the lower end.

5 Q Are there any establishments that have been open
6 since the time of medical that have never received a deficiency
7 from the department?

8 A I would be surprised if there was, but it's possible
9 that maybe a facility that doesn't actually operate but
10 maintains their license could potentially do that, but it
11 would -- it would surprise me if there was one.

12 Q All right. What about a facility that actually
13 operates? Would you be surprised if a facility that actually
14 operates did not have a deficiency?

15 A I would be surprised. I'd probably have to go there
16 for myself and verify.

17 Q And maybe the investigators weren't doing their job
18 very well?

19 A Yeah. I'd probably have a question or two for them.

20 Q All right. Have you ever -- do you know the entity
21 Nevada Wellness Center, Mr. Parker's client?

22 A Yes, I do.

23 Q Has that entity ever received deficiency?

24 A I believe they have, yes.

25 Q Do you know how many?

1 A No, I don't off the top of my head.

2 MR. KOCH: Let me -- I'm going to -- I could read
3 them to you, but I'm just going to provide you a list if I can,
4 Your Honor --

5 THE COURT: Sure.

6 MR. KOCH: -- to the plaintiffs in this case.

7 THE COURT: Could you please show counsel for
8 Mr. Hawkins. Can we drop off a copy there.

9 Thank you.

10 MR. KOCH: Does the Court want one?

11 THE COURT: No.

12 MR. KOCH: All right.

13 THE COURT: If it's not admitted, I don't want it.

14 MR. KOCH: Just a list of names.

15 BY MR. KOCH:

16 Q Ms. Cronkhite, this I believe is a list of the
17 entities that are plaintiff's in the actions that have been
18 coordinated for purposes of this hearing. I think it's
19 complete, but correct me if I'm wrong, anyone, on this.

20 As you look at this list of names, are there any of
21 these entities that have been operational that have never
22 received a deficiency?

23 A Not to my knowledge.

24 Q And if any of these entities that are plaintiffs in
25 this case are operational, you would expect that they have at

1 least one or more deficiencies?

2 MR. GENTILE: Objection. That's speculation.

3 THE COURT: Overruled.

4 You can answer.

5 THE WITNESS: I would expect that, yes.

6 BY MR. KOCH:

7 Q All right. And so the fact that an entity or an
8 establishment had a deficiency at some point in time was not a
9 disqualifying factor when the applications for retail licenses
10 came -- were submitted in September 2018; is that right?

11 A Correct.

12 Q But you're aware that an establishment needed to have
13 an existing medical certificate to apply in 2018?

14 A Correct.

15 Q And if that medical certificate were not in good
16 standing or suspended, would that applicant be able to apply
17 and receive a recreational license?

18 A If they were currently suspended during the time of
19 application, no, I don't believe they were allowed to apply,
20 but I could be mistaken.

21 Q All right. As you look at that list of names there,
22 do you know if any of those entities have had a suspended
23 license --

24 A Yes.

25 Q -- at any point in time?

1 Which ones?

2 A Fidelis is the first one I see. I know that they've
3 had multiple facilities suspended.

4 I believe Libra Wellness has had a suspension. I
5 can't say for sure, but I do think that they have.

6 MR. GENTILE: Object and move to strike.

7 THE COURT: Overruled.

8 THE WITNESS: And I believe Rombough may have had a
9 suspension, but I believe that was for a taxation issue.

10 MR. GENTILE: Same objection. Move to strike.

11 THE COURT: Overruled.

12 THE WITNESS: I think THC Nevada also. I know they
13 had some major issues. I believe it led to a suspension, but
14 again I could be mistaken.

15 MR. GENTILE: Object and move to strike.

16 THE COURT: Overruled.

17 BY MR. KOCH:

18 Q All right. That is as far as your review as you sit
19 here today?

20 A Yes.

21 Q Okay. All right. Let me move on to a different
22 topic. You were asked a lot of questions about one of the
23 statutes we've spent a lot of time with, and that's
24 NRS 453D.200.

25 MR. KOCH: And, Bryan, if you could put that up.

1 BY MR. KOCH:

2 Q And this statute describes, is titled Duties of the
3 Department Relating Regulation and Licensing of Marijuana
4 Establishments. When Mr. Parker was asking you questions, you
5 drew a distinction between regulation and licensing. What is
6 that distinction in your mind?

7 A Between regulation and licensing or application and
8 licensing?

9 Q Well, you said -- I think you said -- look back at my
10 notes -- that there was licensure and regulation, and they may
11 be two different things. If you could at least explain what
12 you were thinking along those lines.

13 A I think, yeah, well, licensure is the process of
14 becoming -- so I'll just go over the process real quick if
15 that's easier.

16 Initially they apply for a conditional license. That
17 doesn't give them the license. It doesn't give them approval
18 to operate. It's just saying that your application is
19 acceptable, and you can start the process to become
20 operational.

21 Q And let me stop you there. So in this case, we've
22 had a lot of discussion about the fact that the licenses that
23 were issued in December 2018 were conditional. You're aware of
24 that?

25 A Yes.

1 Q And what is the condition or what are the conditions
2 that -- why is it called a conditional license based on what
3 you've explained?

4 A It's called a conditional license at that point
5 because they have not yet met all the conditions to become
6 operational. So they have -- we have a checklist they have to
7 follow, and they have to get their business licenses, both
8 state and local. They have to get their special land use
9 permit that says that the location has been surveyed and meets
10 all of the legal requirements. They have to get their
11 certificate of occupancy for the building. They have to have
12 fire and building inspections. Their scales have to be
13 certified for example.

14 There's a lot of different things that go into it.
15 We have to verify that all of the owners, officers and board
16 members had their background check and agent cards completed
17 and any other information that we require.

18 Once we get all that information, we go through it,
19 verify that it's all there and complete. I would sign off for
20 the southern facilities. Steve Gilbert would sign off for the
21 northern facilities, and then we would notify the
22 administrative assistant to print and finalize their
23 certificate, and then they would be allowed to start operating,
24 and at that point we would begin regulating them in compliance
25 with the administrative code.

1 Q Okay. So let me ask I guess a couple questions on
2 that. One, let's say my client, Nevada Organic Remedies, they
3 had a conditional license, and they submit a location that is
4 directly -- let's say it's inside of a church. Got a big
5 church building. They say we're going to take one of the
6 kiosks there, and that's where our establishment will be. Will
7 that be approved?

8 A No.

9 Q And if they insist that that's the only location they
10 want to have, what happens to their conditional license after
11 the time period ends?

12 A It would expire.

13 Q So they're not able to actually sell marijuana; is
14 that right?

15 A Correct.

16 Q What if my client he has a conditional license, has
17 not got an approved location but they just start selling
18 marijuana from somewhere? Again, just put a kiosk on the
19 street and they start selling marijuana. Are they permitted to
20 do that?

21 A No. That would be illegal.

22 Q What would happen -- do you know what the penalty or
23 the provision would be if somebody did that?

24 A That would be a revocation of their license if they
25 had one with the conditional we would revoke -- well, I don't

1 know if you revoke a conditional, but we would remove the
2 conditional. They would not be allowed to get their final
3 license, and we would notify law enforcement for that area as
4 well, as well as the local jurisdiction for business licensing.

5 Q Okay.

6 A I believe the fine is -- or the, not fine, sorry, the
7 civil penalty is \$30,000 for doing so.

8 Q Let's look at the bottom of this section 453D.200,
9 Number 7, Subsection 7.

10 MR. KOCH: It should be the next page, Bryan.

11 BY MR. KOCH:

12 Q The very last Subsection here which says,
13 The department shall inspect marijuana
14 establishments as necessary to enforce this
15 chapter or the regulations adopted pursuant
16 to this section.

17 A client such as mine, Nevada Organic Remedies, that
18 has a conditional license, before they are approved and
19 finalized, can you inspect their establishment?

20 A Yes. It's actually one of the requirements. They
21 can ask for a preliminary walk-through in which we would give
22 them advice on how to proceed and if they're going in the right
23 direction. If they choose not to do so, they don't have to.
24 It's not required.

25 And then prior to becoming operational, prior to

1 finalizing that file, the inspector and auditor assigned to
2 that facility would conduct a -- we call it a preopening
3 inspection. It's always required. You cannot become
4 operational without it, and at that point they would conduct a
5 full inspection as they would on any unannounced inspection
6 except there's no product on site at that time.

7 Q Did you conduct any inspections, did the department
8 conduct any inspections of any applicants when their
9 applications were submitted in September of 2018 of their
10 establishment?

11 A During the time that they submitted an application?

12 Q Right.

13 A I -- I don't believe so. If we did, it wasn't
14 associated with the application. It was just a routine
15 unannounced inspection.

16 Q There wasn't a requirement to have an inspection
17 conducted in connection with the application itself; right?

18 A No, it was not.

19 Q And would there be an inspection -- if the
20 application were denied, didn't score high enough, would there
21 be any reason to conduct an inspection?

22 A No.

23 Q And so the inspection referenced in paragraph 7,
24 Subsection 7 could only take place after at least a conditional
25 license was issued; is that right?

1 A Right. Correct.

2 Q Let's go back a little bit in that statute. We're
3 going to go up to Item 3, Subsection 3 of 453D.200. And
4 Item 3 says,

5 The Department may by motion or on
6 complaint, after investigation, notice of the
7 specific violation, and an opportunity for
8 hearing, pursuant to the provisions of 233B
9 of NRS, suspend, revoke, or fine a licensee
10 for the violation of this chapter or for a
11 violation of a regulation adopted by the
12 Department pursuant to this section.

13 The way that that's written it talks about a
14 licensee; is that right?

15 A Correct.

16 Q And can an entity have a -- can you conduct an
17 investigation of an entity that does not have a license? Can
18 the department do that?

19 A Only if they have a conditional license and they ask
20 for an inspection stating that they are ready to become
21 operational and we do a preopening inspection.

22 Q Okay. And so this investigation, notice of a
23 specific violation, do you anticipate that that process would
24 happen before or after at least a conditional license were
25 awarded?

1 A It would have to be after.

2 Q What about before or after the establishment becomes
3 operational in some fashion?

4 A It would likely be after the -- during the preopening
5 inspection is basically a pass or fail.

6 Q Okay. So Item 3 and Item 7 are both after the
7 conditional license has been awarded. That's what the
8 department [indiscernible] 4.

9 The Department may immediately suspend
10 the license of any marijuana establishment if
11 the marijuana establishment knowingly sells,
12 delivers, or otherwise transfers marijuana in
13 violation of this chapter.

14 It goes on, et cetera, from there. Again, to suspend
15 a license, I assume that an entity has to have a license?

16 A Yes, they would have to have received their final
17 license by that time.

18 Q Okay. So Item 4 under 453D.200 also would be a power
19 the department would have after licenses were issued and
20 finalized?

21 A Correct.

22 Q And what about 5?

23 To ensure the individual privacy is
24 protected, the department shall not require a
25 consumer to provide a retail marijuana store

1 with identifying information other than
2 government-issued identification to determine
3 the consumer age --

4 Et cetera. Would you expect that provision relating
5 to the provision of information -- identifying information take
6 place before or after a license was finalized?

7 A That would have to be after the final license was
8 issued and they were operational.

9 Q I think we've established that all of these
10 subsections here -- 3, 4, 5 and 7 -- would all take place after
11 a license, either a conditional or more likely final were taken
12 place.

13 What about Number 6?

14 The department shall conduct a
15 background check of each prospective owner,
16 officer and board member of the marijuana
17 establishment license applicant.

18 Do you know if that background check had to take
19 place before or after a license was awarded?

20 A For a conditional license, I'm not sure if that was
21 part of the ID section of the application. I can't say, but I
22 know that it is required prior to issuing a final license.

23 Q All right. And do you believe that that's a
24 reasonable requirement to have a background check? Is that
25 right?

1 A Yes, I do.

2 Q And an owner, officer, board member can't have a
3 felony, can they?

4 A They cannot have specific felonies. They're
5 restricted felonies.

6 Q Right. Excludable --

7 A Yes.

8 Q Excluded felonies?

9 A Yes. Uh-huh.

10 Q And that would come up in the background check
11 presumably?

12 A Yes.

13 Q Does the department have a process for conducting
14 background checks that you're aware of?

15 A Yes. Fingerprints go to DPS, Department of Public
16 Safety, for processing, and we get the report back from them.

17 Q And do you know what the authority for the department
18 to take fingerprints, where that comes from?

19 A I believe it's NRS, but I can't say for sure.

20 Q Do you know if it came from the initiative?

21 A I don't recall.

22 Q All right. Let's jump back up to the top of that
23 section, 453D.200, and we're just going to look at Item 1, and
24 this is one again we spent a lot of time on. This talks about,
25 The Department shall adopt all

1 regulations necessary or convenient to carry
2 out the provisions of this chapter.
3 Regulations must not prohibit the operation
4 of marijuana establishments, either expressly
5 or through regulations that make their
6 operation unreasonably impracticable.

7 So first of all, I understand based on your testimony
8 from Mr. Parker that you took part -- you're part of the group
9 that did endeavor to adopt regulations to carry out the
10 provisions of the chapter; is that right?

11 A Yes.

12 Q And that group was aware of the initiative; is that
13 right?

14 A Yes.

15 Q It was aware of NRS 453D, which encoded the
16 initiative; is that right?

17 A Yes.

18 Q And when the group was meeting, was there discussion
19 about regulations and whether they were compliant with 453D?

20 A Yes.

21 Q Let's suppose somebody in that group, Jorge comes in
22 and says, hey, I've got a great idea for regulation, proposes a
23 regulation and he says, I don't know if this complies with the
24 statute or not, but let's just throw it in there. Would the
25 group just say, okay, fine, let's just throw it in?

1 A No. We would express our concerns.

2 Q Would there be discussion about whether that section
3 or the proposed regulation complied with the law?

4 A Yes.

5 Q And so if somebody just arbitrarily came in and said,
6 hey, let's have every -- every marijuana establishment, let's
7 make their names all start with the letter N. Would that be
8 something that the department would have put into place just
9 because somebody came in and asked for that?

10 A No, we would not.

11 Q Okay. Do you think that would be kind of a silly
12 regulation?

13 A Yes.

14 Q All right. The other items that are listed here,
15 let's look at what it says here because I think Mr. Parker
16 asked you about a few of these things, and his question I think
17 was more about the fact that all these had to be a part of the
18 application, that these all need to be considered then.

19 So first of all, the regulation shall include, A,
20 procedures for the issuance, renewal, suspension and revocation
21 of a license to operate a marijuana establishment.

22 Which of those words listed there would come into
23 play before an application or concurrent with an application?

24 A The only one would be "issuance"?

25 Q The renewal, suspension, and revocation will be

1 afterward; is that right?

2 A Yes.

3 Q The qualifications for licensure that are directly
4 and demonstrably related, the operation of a marijuana
5 establishment, was that discussed by the department as part of
6 the regulation process?

7 A I believe so.

8 Q Okay. Were there any -- do you remember any
9 qualifications that were proposed that -- brought up by
10 somebody and somebody said, no, I don't think that relates to
11 the operation of a marijuana establishment?

12 A Not that I recall.

13 Q Okay. And to determine this qualification, do you
14 remember what the department considered in order to decide upon
15 potential qualifications?

16 A I know we relied heavily upon the medical
17 requirements. So that was used as a template.

18 Q Let's actually look at that. We'll come back to this
19 in a minute, and if we can, the medical regulations, if we
20 could go to -- or it's actually the statute, NRS 453A.328, the
21 criterium.

22 MR. KOCH: Bryan, do you have that? You can take the
23 other one off for now and just blow this one up.

24 BY MR. KOCH:

25 Q All right. So this was a medical marijuana

1 regularity -- or sorry, statute; is that right?

2 A Yes.

3 Q And if we look at the bottom of the statute, there's
4 a date. It says added by NRS-- to the NRS by 213, and in the
5 section there and then amended in 2017. So when the department
6 was considering regulations for adoption in January of 2018,
7 did the department had this statute that had been passed by the
8 legislature in 2013 and then amended in 2017?

9 A Yes. And if it had not yet been codified, then we
10 would still have the senate bills and assembly bills that
11 would've gone into that.

12 Q All right. So we look at the items there if we can
13 go up to the top. It states that,

14 In determining whether to issue a
15 medical marijuana establishment registration
16 certificate pursuant to NRS 453A.322, the
17 department shall in addition to the other
18 factors set forth in that section consider
19 the following criteria of merit.

20 Did the department, did you or anyone else in your
21 group look at what was listed here as criteria of merit?

22 A Yes. It appears that it's very similar.

23 Q Including Item 1, the financial resources, both
24 liquid and illiquid?

25 A Correct.

1 Q The previous experience of the persons?

2 A Correct.

3 Q And here it talks about operating other businesses or
4 nonprofit organizations. Did anyone say, hey, I know the
5 legislature says criteria under merit, but I don't think so, so
6 let's get rid of it?

7 A No, we did not.

8 Q All right. So some of the direction was taken
9 apparently from the legislature; is that right?

10 A Yes.

11 Q Educational achievements in Number 3, that was a
12 criterium that the department believed would be part of the
13 process?

14 A Yes.

15 Q I think Number 4 is about compassionate use of
16 marijuana to treat medical conditions. That wouldn't be
17 necessarily directly related to recreational, would it?

18 A Correct.

19 Q Okay. And then 5 is also about medical use. Let's
20 go down a little bit more. We have likely impact of the
21 proposed medical marijuana establishment on the community and
22 which it is proposed if you locate it.

23 If you -- that word "community," and you were asked a
24 lot about it, and some people have some view of how why that
25 community is, some people have -- do you know if there's a

1 definition of community in the statute?

2 A There's a definition of community facility --

3 Q Right.

4 A -- but I don't think that the word community itself
5 is defined.

6 Q What's a community facility? Do you understand how
7 that's defined?

8 A Yeah. That would be like a place where the community
9 gathers of all age groups, so like a church, a playground, and
10 things of that nature.

11 Q Right. And that's in NRS 453D; correct?

12 A Yes, I believe so.

13 Q If it's .030, it's the definition section?

14 A You're better than I am at that.

15 Q All right. Well, we probably looked at it more than
16 we need to.

17 Community though itself is not defined; right?

18 A Not to my knowledge, no.

19 Q There's no radius for a community or anything like
20 that?

21 A No.

22 Q It doesn't say the community is the township in which
23 the establishment will be located?

24 A No, not that I'm aware of.

25 Q It doesn't have anything about the city blocks or

1 anything like that, does it?

2 A No.

3 Q Okay. So the department have to exercise some
4 discretion in deciding what the community would be or the
5 community impact would be?

6 A Correct.

7 Q All right. Item 7, and maybe we'll come back to this
8 but it says,

9 The adequacy of the size of the proposed
10 medical marijuana establishment to serve the
11 needs of the persons who are authorized to
12 engage in the medical use of marijuana.

13 What is a medical marijuana establishment?

14 A A medical marijuana establishment is any cultivator,
15 producer, dispensary or laboratory that's affiliated with the
16 growing, processing, dispense, selling or testing of medical
17 marijuana.

18 Q Okay. Is an establishment -- there's a lot of talk
19 about the adequacy of the size of the building. Do you know if
20 there's any regulation either here or in medical or in
21 recreational that specifically says the adequacy or the size of
22 the building is important?

23 A I don't know off the top of my head.

24 Q All right. Well, we'll come back to that then.

25 And then we have a few other items that are listed

1 here.

2 Integrated plan, in Number 8, for the care, quality
3 and safekeeping from seed to sale. That was something that was
4 considered in recreational; is that right?

5 A Yes.

6 Q The amount of taxes paid to the State of Nevada.
7 That was something that was considered as well?

8 A Yes.

9 Q And the 10, diversity on the basis of race, ethnicity
10 or gender of the applicant.

11 A Yes.

12 Q That was something that was incorporated in the
13 recreational license; is that right?

14 A Yes, it was.

15 Q And did the department come up with the diversity
16 component on its own, just decided, hey, this would be
17 something we want to include?

18 A No. We got the guidelines from the Equal Employment
19 Opportunity guidelines. We used those.

20 Q Okay. But what about the decision just to simply
21 consider diversity at all? Was that something that somebody
22 just said, hey, this would be a good idea, or where did that
23 come from?

24 A No, it came from -- I believe it was from one of the
25 bills that passed through legislation, but it was very clear

1 during all the hearings that and the drafting of 453D that it
2 was very important to legislation and the public that diversity
3 be included.

4 Q All right. Could it have been this actual section
5 where this was added as a criterium of merit?

6 A Yes.

7 Q In 2017?

8 A Yes.

9 Q Was that addition made after the initial medical
10 license requirements were drafted in earlier 2014?

11 A Yes.

12 Q And was there discussion about getting rid of
13 diversity because it may not be related to the operation of
14 medical -- or to a marijuana establishment?

15 A No, that was not discussed.

16 Q All right. And then it says, Item 11, lastly, Any
17 other criteria of merit that the department determines to be
18 relevant.

19 So any criteria that was discussed or considered, was
20 there discussion among the group about that criteria?

21 A Yes.

22 Q Was there ever disagreement about potential criteria?

23 A Possibly. I don't recall specifics. It was quite a
24 while ago.

25 Q Okay. Then let's go back if we could to NRS 453D.200

1 where we were looking a minute ago. And so those
2 qualifications for licensure in Subsection 1B that are directly
3 and demonstrably related to the operation of medical -- or with
4 marijuana establishment, we looked at that.

5 Item C requires the security of marijuana
6 establishments. Was that something that was considered as part
7 of the application process?

8 A Yes. We had sections about building security and
9 product security and inventory control.

10 Q What about D: Requirements to prevent the sale or
11 diversion of marijuana and marijuana products to persons under
12 21 years of age?

13 A Yes. That was under the verification section of the
14 application.

15 Q And these regulations were in place prior to the
16 applications being submitted; is that right?

17 A Yes.

18 Q And so an applicant would be aware of these
19 requirements and be expected to submit a plan that would
20 address these requirements?

21 A Yes.

22 Q What about Item E: Requirements for the packaging of
23 marijuana and marijuana products, including requirements for
24 child-resistant packaging? Was that part of it?

25 A Yes, that was in there.

1 Q Okay. And child-resistant packaging, is that
2 something that's regulated by the department?

3 A Yes, it is.

4 Q Even after a license is issued; is that right?

5 A Yes.

6 Q And so regulations that relate to child-resistant
7 packaging don't just apply to applications; they apply
8 throughout the operation of that business. Is that right?

9 A Correct.

10 Q Okay. What about Item F: Requirements for testing
11 and labeling of marijuana and products, including numerical
12 indication of potency? Is that something that the department
13 regulates?

14 A Yes, we do. The labels have to state the potency.

15 Q And that's --

16 A From the lab report.

17 Q After a licensee is operational, they need to put
18 those labels on?

19 A Correct.

20 Q And if they don't, they could be penalized for that?

21 A Correct.

22 Q Recordkeeping, Item G, that something -- is that --
23 was that part of the application, the recordkeeping
24 requirements?

25 A Yes. There was a section in policies and procedures

1 for recordkeeping?

2 Q Okay. And the restrictions on signage, marketing,
3 display and advertising, is that something that is regulated by
4 the department?

5 A Yes.

6 Q Was signage scored in the application? Do you know?

7 A There was a part in the building adequacy about
8 having a professional appearance.

9 Q All right. And so signage would have been a part of
10 that?

11 A Yes.

12 Q Procedure for the collection of taxes in Item I, fees
13 and penalties imposed by this chapter, was that something that
14 needed to be addressed in the application?

15 A Taxes paid was part of the application, and I believe
16 that they looked at if they owed taxes.

17 Q Okay. And then future taxes, did the applicant need
18 to provide a plan to pay future taxes?

19 A They did have to provide a budget, and certain taxes
20 were supposed to be listed in there, yes.

21 Q Okay. What about in J, Procedures and requirements
22 to enable the transfer of a license for a marijuana
23 establishment to another qualified person and to enable a
24 licensee to move the location of its establishment to another
25 suitable location? Did you expect or did you see I guess in

1 any application a proposal to transfer the license being
2 applied for?

3 A I didn't review the 2018 applications. I wasn't part
4 of the scoring team; however, in previous applications, I've
5 scored that's never been something that we saw or looked for.

6 Q And the relocation from one spot to another, another
7 suitable location, without be something you would expect to be
8 before or after a license were granted?

9 A After a license is granted, at least a conditional,
10 we wouldn't -- we wouldn't process change of location for a
11 facility that doesn't have a conditional or final license.

12 Q So if somebody got their application rejected or
13 didn't score high enough, you wouldn't worry about transfer of
14 licenses; right?

15 A Yeah. There would be nothing to move. Yeah.

16 Q Or transfers of location either?

17 A Correct.

18 Q All right. But if someone's operational and they
19 wanted to move, they'd have to get that approved by the
20 department; right?

21 A Yes, they do.

22 Q And the department has regulations about that?

23 A Yes, we do.

24 Q And those regulations are adapted in accordance with
25 this section; is that right?

1 A Yeah.

2 Q Okay. Just lastly then, let's go down to L:

3 Procedures to establish the fair market value of wholesale of
4 marijuana. Is that something that was part of the application?

5 A No. That's actually something determined by the
6 department that all operational facilities are held to.

7 Q All right. So this would be something that
8 operational facilities would have to look to based on
9 regulations after they're operational?

10 A Yes. Correct.

11 Q So if we looked at, and then N talks about the civil
12 penalties for failure to comply. Civil penalties -- are civil
13 penalties imposed on nonlicensees?

14 A No, it is not.

15 Q Okay. So it appears to me A through M on 453D.200,
16 Subsection 1, that there are a number of items there. Some of
17 them were part of the application process. Some of them were
18 regulations that would only apply after a licensee was actually
19 operational; is that right?

20 A Yes.

21 Q And I think as we established also they would also
22 apply to the subsequent Sections 2 -- well, actually 2 we
23 didn't talk about, 3, 4, 5, 6 and 7?

24 A Yes.

25 Q Right? Okay.

1 MR. KOCH: While we've got 200 up, if we could scroll
2 up to the first paragraph, Subsection 1.

3 BY MR. KOCH:

4 Q There's language there that says, The regulations in
5 the second to last line, shall not -- sorry. I'll just read
6 it:

7 The regulations must not prohibit the
8 operation of marijuana establishments, either
9 expressly or through regulations that make
10 their operation unreasonably impracticable.

11 Was there ever any discussion about regulations that
12 may be unreasonably impractical?

13 A Yes, there were several, and we got statements from
14 industry as well as public with their concerns.

15 Q Do you recall what any of those potential regulations
16 may have been?

17 A There was one specifically that stands out to me. We
18 had included that laboratories needed to test for Clostridium
19 botulinum. Then we discovered that that is a federally
20 regulated bacteria, and they can't legally obtain it because
21 they're federally illegal with marijuana. So there was a
22 contradiction there. So they were unable to do so legally.

23 Q Okay. Any others that you recall?

24 A Not to -- not that I can remember.

25 Q What about these inspections? You talked about

1 earlier that those were going to take place on a regular basis.
2 What if there is a proposal that an establishment be inspected
3 on a daily basis? Would there be a discussion about whether
4 that's practical or not?

5 A Yes. We would absolutely discuss that. That would
6 be impractical both for the facility and for our staffing.

7 Q Okay. And so a decision was made that a reasonable
8 periodic inspection would take place based upon what the
9 department could do and not to interfere with the businesses;
10 is that right?

11 A Correct.

12 Q And you believe that the regulations that were
13 considered and eventually adopted by the department were
14 overall reasonable?

15 A I do.

16 Q And those regulations were considered or sent to
17 the -- is it the Legislative Counsel Bureau? Is that --

18 A Yes. That's correct.

19 Q -- who you talked to, the LCB?

20 A Uh-huh.

21 Q Okay. And did the LCB have any comments on the
22 regulations that you're aware of?

23 A They made several minor revisions. I'm not aware of
24 any major revisions that were made where they completely
25 changed anything.

1 Q All right. And as you consider the regulations that
2 are in place today, do you believe that those regulations are
3 necessary for the department to carry out it's role regulating
4 and overseeing the marijuana industry?

5 A Yes, I do.

6 Q Do you believe that those regulations are suitable to
7 the circumstances of the industry as it is today?

8 A Yes, I do.

9 Q The ownership requirements, there were some questions
10 yesterday about regulations relating to a threshold of
11 ownership in order to qualify as an owner of the regulated
12 [indiscernible]. Are you aware of those regulations?

13 A I'm familiar with them, yes.

14 Q You're aware that there's a 5 percent threshold in
15 the Nevada administrative code for owners?

16 A Yes.

17 Q Was that something that was discussed among the group
18 as part of the process of adopting regulations?

19 A That discussion was more with upper management. I
20 know I was given the direction, but I don't believe I was
21 involved in the decision-making process.

22 Q Okay. Are you aware of any similar regulation in the
23 medical marijuana side?

24 A Yes. I believe it's the same.

25 MR. KOCH: Okay. If we could pull up NAC 453A.302.

1 THE COURT: -302?

2 MR. KOCH: -302, yes.

3 BY MR. KOCH:

4 Q NAC 453A.302 is titled Applicability of Requirements
5 of Chapter to Certain Owners of Establishments, and it appears
6 based upon the phrasing on the bottom that it was added March
7 28th, 2014, and effective April 1st, 2014. Do you know
8 when the initiative itself went to the voters, the initiative
9 for recreational went to the voters?

10 A I know it -- I believe 2016 is when it went to the
11 voters.

12 Q Okay. This section here about the 5 percent
13 ownership -- and I guess I didn't present it to you, but
14 Item 1 says,

15 Except as otherwise required in
16 Subsection 2, the requirements of this
17 chapter concerning owners of medical
18 marijuana establishments only apply to a
19 person with an aggregate ownership interest
20 of 5 percent or more in a medical marijuana
21 establishment.

22 Are you aware of that limitation as it relates to
23 medical?

24 A Yes.

25 Q Okay. Do you believe that that's a reasonable

1 regulation with respect to ownership?

2 A Yes, I do.

3 Q Is there any reason that you think it's a necessary
4 regulation?

5 A There are publicly traded companies where there are
6 hundreds to thousands of people who have 0.01 percent interest
7 or somewhere around there that would be impossible to contact
8 everybody for background checks.

9 Also, I know that there was some discussion, when I
10 was given direction, I was informed of some discussion
11 regarding owners with less than 5 percent interest tended to be
12 hands-off and not physically in the facilities.

13 Q They wouldn't have control over the operation of the
14 facility; is that right?

15 A Correct.

16 Q And Item 2 here says,

17 If in the judgment of the department the
18 public interest will be served by requiring
19 any owner with an ownership interest of less
20 than 5 percent in a medical marijuana
21 establishment to comply with any provisions
22 of this chapter concerning owners of medical
23 marijuana establishments, department will
24 notify that owner, and he or she must comply
25 with those provisions.

1 Were you aware of that ability for the department to
2 essentially reach out and require less than 5 percent owners to
3 comply?

4 A Yes, I am.

5 Q Do you know if that's -- the department has ever sent
6 out a notice like that? Would you be privy to that?

7 A If an owner of less than 5 percent is physically
8 working in the facility, yes, we would require them to do that.

9 Q So if an owner is physically working in the facility,
10 they would need an agent card; right?

11 A Correct.

12 Q They would need to apply for that agent card?

13 A Yes.

14 Q Is that right?

15 And even if they owned .1 percent, they couldn't work
16 in the facility, couldn't be there unless they had an agent
17 card; right?

18 A Correct.

19 Q Each of the applicants in 2018 were licensed under
20 the medical program; correct?

21 A Yes.

22 Q And so this regulation, as you understood it, applied
23 to each of those applicants starting in 2014; is that right?

24 A Yes.

25 Q And did -- was there any discussion among the group

1 in discussing regulations for recreational to say, hey, we
2 should have different ownership requirements; we ought to just
3 do 10 percent or 20 percent as a threshold? Is anything like
4 that?

5 A No. We made our best effort to keep it the same and
6 consistent with medical on all possible levels to make it
7 easier for the operators.

8 Q And, in fact, if we put the language side by side,
9 and we won't do that, but I'll just represent to you if we look
10 at 453D.255, I believe, relating to 5 percent ownership under
11 NAC 453D.255, it has essentially the same language except for
12 medical is not there. Are you aware of that?

13 A Yes.

14 Q Okay. And that essentially that regulation of the
15 threshold was consistent with the previous medical and taken
16 over to recreational; is that right?

17 A Yes.

18 Q Did anyone ever tell you that we should regulate
19 recreational much differently than medical?

20 A No. In fact, I heard repeatedly the opposite.

21 Q You read the task force, the Governor's task force
22 report?

23 A Yes.

24 Q And did you read anything in there to the extent that
25 the task force proposed or recommended that recreational be

1 regulated much the same way as medical?

2 A Yes. That was consistent throughout.

3 Q And did anyone, was there any outcry from industry or
4 anybody else that we should regulate recreational differently?

5 A No, not that I'm aware of.

6 Q Okay. You were asked about buildings quite a bit.

7 A Yes.

8 Q Do you remember that discussion of building plans and
9 things like that?

10 Was there a magic number -- let say in financial. I
11 know in financial, that section of the application, there are
12 some thresholds there. If somebody had more than 3.5 million
13 in assets, they would get a certain number of points. If they
14 had a different range, they would get another number of points.

15 When it came to the size of the establishment, was
16 there a square footage that said, hey, if your facility is
17 bigger than 5,000 square feet you get a certain number of
18 points or any sort of cut off there?

19 A No.

20 Q So the square footage itself, was that specifically
21 relevant? Did you just look at the number?

22 A No.

23 Q When we talk about the size of the establishment,
24 what did that -- what is adequacy of size of the establishment?
25 What were the scorers looking at?

1 A They were looking at the ability for flow of the
2 people, the consumers visiting the facility, the staff working
3 in the facility and the flow of product through the facility
4 and the adequate space to store product in the facility.

5 MR. KOCH: Okay. And let's pull up NAC 453D.268.

6 EXHIBIT TECHNICIAN: Say that again.

7 MR. KOCH: NAC 453D.268.

8 BY MR. KOCH:

9 Q And while he's doing that, so if somebody had an
10 application that says, hey, we're going to have a 100,000
11 square-foot building and somebody else said, oh, we're just
12 going to have a 5,000 square-foot building, that hundred
13 thousand square-foot building does not automatically get more
14 points, does it?

15 A No, they would not. We would look at the way that
16 they laid out the facility and make sure that there was
17 adequate space for a typical operation.

18 Q Okay. So NAC 453D.268 talks about the submission of
19 an application by a person who holds medical marijuana
20 establishment registration certificate for marijuana
21 establishment of same type or different type. Okay. So this
22 regulation, are you familiar with this regulation?

23 A Yes.

24 MR. KOCH: Okay. Let's look at Item 6 if we can.

25 Keep going. I think that's -- I don't know why we do

1 our statutes this way. Number. Number.

2 BY MR. KOCH:

3 Q All right. Item Subsection 6 states,

4 As part of the application there should
5 be documentation concerning the size of the
6 proposed marijuana establishment, including,
7 without limitation, building and general
8 floor plans with supporting details.

9 The proposed marijuana establishment, is that the
10 same thing as a building structure?

11 A I suppose it could be.

12 Q Right. It could be. You could have a stand-alone
13 building that's housed as the establishment; right?

14 A Yes.

15 Q Can you have an establishment within a building that
16 also houses other businesses?

17 A Yes, as long as they're completely separated within
18 the building.

19 Q Right. So, for example, my client Nevada Organic
20 Remedies has an establishment on Eastern Avenue. I guess it's
21 Henderson Organic Remedies. Let's look at that one. I'm more
22 familiar with it. Establishment that's in the one of these
23 shopping centers there. It's in a shopping center. There's
24 other tenants and other stores around it. That's okay?

25 A Yes.

1 Q Okay. So they don't have to have a stand-alone
2 building?

3 A Correct.

4 Q All right. And then when it says -- goes on to say
5 the size of the proposed establishment, were you looking for my
6 client to submit the size of the entire building structure
7 within which the establishment would be housed?

8 A Just the portion that their physical establishment
9 would be consuming.

10 Q Okay. And it goes on to say, Including, without
11 limitation, building and general floor plans with supporting
12 details. Do you know if the word building is defined in the
13 statute or the regulation anywhere?

14 A No, I don't believe so.

15 Q Yeah, I don't think it is. I think there's actually,
16 well, very few places that it's listed there, but it's
17 certainly not defined as a structure.

18 What would be a building and general floor plan then
19 as you read this provision of the regulations?

20 A So the floor plan would be a portion of the building
21 plan. That's the aerial view. That's the most important part.
22 It shows the layout of all the rooms, the equipment, and you
23 can easily see the flow of the process through that floor plan.

24 Building plans would also potentially include you'd
25 have the elevator floor plans. You'd have the -- the finish

1 schedules, which would show the materials of the floors, walls,
2 ceilings, if they had base coating for cleanability, things of
3 that nature, plumbing lines, where they're getting their water
4 source from, sewage lines, things like that.

5 Q Was there a requirement -- let's say if an applicant
6 did not have an existing facility. There's empty lot, and they
7 say that's where we want to put it. Would they be required to
8 submit a plan to actually construct their facility within the
9 12 months?

10 A Yes.

11 Q And would these scorers look at the feasibility of
12 building that facility within 12 months?

13 A Yes. That was one of the criteria was if it was
14 reasonable within the time frame.

15 Q And so if my client again had proposed to put their
16 spot in one section of a building that houses many other
17 companies, do they need to submit an architectural drawing for
18 the entire building? Let's say they're in the mall. If my
19 client was to put his place in the mall, that's going to be the
20 location, do they need to submit architectural drawings of the
21 mall?

22 A No, they would not.

23 Q And if I said, well, my -- my location is going to be
24 in the mall, that's a really big building. Size is definitely
25 adequate. So would that get me extra points because the mall

1 is big?

2 A No, it would not.

3 Q It would just be the adequacy of the actual space
4 that I'm going to occupy; is that right?

5 A Correct.

6 Q Now, if we look at -- let's go to NAC 453D.446.

7 THE COURT: -446?

8 MR. KOCH: -446.

9 BY MR. KOCH:

10 Q So NAC 453D.446 says, Requirements for building used
11 as marijuana establishment or by dual licensee.

12 All right. So here we had a discussion more about
13 the building, and that seems to imply the talking about the
14 structure; is that right?

15 A Yes.

16 Q Okay. It says, Item 1,

17 A building used as a marijuana
18 establishment or by a dual licensee must
19 have, A, at least one toilet facility which
20 must contain a flushable toilet, mounted
21 toilet tissue and a hand sink with running
22 water which is capable of delivering hot
23 water --

24 With the temperatures described there, a bunch of
25 other things related to the rest room, which we probably don't

1 need to get into too much detail with.

2 But let's suppose somebody says, hey, I'm in a big
3 building. I'm in the mall again, and there's a rest room.
4 There's a toilet facility as it's called here down by
5 Dillard's, you know, a few hundred feet down there. That's
6 what I'm going to submit here as part of my plan. Would that
7 be adequate?

8 A No. It would need to be within their facility.

9 Q Okay. And it actually references the hand sink there
10 needs to be part of the -- in the toilet facility, but then
11 let's look at Subsection B, under 1:

12 Except for a marijuana distributor, the
13 building must have at least one hand-washing
14 sink not located in a toilet facility and
15 located away from any area in which edible
16 marijuana products are cooked or otherwise
17 prepared to prevent splash contamination.

18 We've talked probably more about hand-washing sinks
19 in this proceeding than I expected to, but here we go. You
20 talked yesterday about the need for a hand-washing sink.

21 A Yes.

22 Q There is a need for that; right?

23 A Yes.

24 Q And not just in the rest room for going -- after you
25 go to the bathroom, you wash your hands, but for other reasons

1 too; right?

2 A Correct.

3 Q And so if an applicant submitted their plan, they're
4 in a big building with lots of other tenants and they say, hey,
5 there's a sink outside by the food court in the mall, it's not
6 in a toilet, it's just out in the open, would that be adequate?

7 A No, it would not be.

8 Q It would have to be inside the establishment area
9 itself?

10 A Yes.

11 Q Okay. And there's a lot of requirements about
12 washing hands, aren't there?

13 A Yes, there are.

14 Q If we go to 453D.442, 453D.442 talks about
15 cleanliness and health of marijuana establishment agents, and
16 it says that each marijuana establishment must ensure that each
17 agent who's employed by or volunteers or provides labor in a
18 marijuana establishment does the following, and Item A is
19 cleans his or her hands or exposed portions of his or her arms
20 in hand-washing sink.

21 So there's a specific regulation about washing hands
22 and a hand-washing sink; right?

23 A Yes.

24 Q How you can't just do it in a drinking fountain, can
25 you?

1 A No, you cannot.

2 Q All right. It has to be a standalone sink?

3 A Yes.

4 Q There's been some implication that the sink needs to
5 be sitting in the middle of the retail area like a fountain in
6 the middle. Is that expected?

7 A No, it is not.

8 Q It just needs to be somewhere that's not in the
9 toilet facility; is that right?

10 A Correct. Ideally it would be conveniently located
11 for staff to wash their hands as needed.

12 Q Okay. And if we go on to look at these requirements
13 here, there's actually 11 items where if somebody needs to wash
14 their hands. I won't look at them all, but immediately upon
15 entrance into the establishment, immediately before working
16 with plants, before preparing concentrated marijuana,
17 et cetera, et cetera, coughing, sneezing. You talked about
18 that. So there are 11 different provisions for washing hands
19 and why somebody would need to do that; is that right?

20 A Correct.

21 Q And so having a hand-washing sink in a reasonable,
22 accessible place for all agents of the marijuana establishment
23 would be something that the department would be looking for?

24 A Yes. It would be required for compliance.

25 Q Is there any department think ever propose throwing

1 in a hand washing requirement just as a gotcha for people that
2 may not plan for hand-washing sinks properly?

3 A No, that's not the reason.

4 Q All right. There was a reason for that?

5 A Yes.

6 Q And then diversity. Mr. Parker asked you if you were
7 aware of any establishments that were 100 percent minority
8 owned that received a license in this recreational period. Did
9 you say -- did you have any knowledge about that?

10 A I said I didn't know of -- no, I think he asked how
11 many. I don't know the number. I am aware of one that's
12 all-female owned, but that's the only one that comes to my head
13 at the moment. I don't -- I don't -- I wasn't really involved
14 in that process.

15 Q Okay. And was there ever any discussion among the
16 group in considering regulations of simply saying, well, let's
17 just give a -- if somebody is 100 percent minority owned, let's
18 just give them a license because they're -- they've got
19 diversity?

20 A No. That would not automatically make them a
21 qualified applicant.

22 Q And when the applications were scored with respect to
23 let's say the floor plan, the establishment, the plan that's
24 there, did applicant's who had more diversity, were they scored
25 differently for those floor plans?

1 A No. That information wouldn't have been available to
2 the scorer because the floor plans were in the nonidentified
3 section whereas diversity was in the identified section.

4 Q Okay. Even in the identified section were you aware
5 of any different rubrics or frameworks for scoring diverse
6 applicants versus perhaps what we'll call nondiverse
7 applicants?

8 A The only section where it came into effect was the
9 diversity section itself.

10 Q Okay.

11 A No other sections were impacted by diversity.

12 Q And was there ever any discussion to do that, to say
13 let's change the financial thresholds for applicants that have
14 a diversity of ownership?

15 A No, there was not.

16 Q It was just one of many requirements?

17 A Yes.

18 Q They still have to comply with the rest of the
19 requirements?

20 A Correct.

21 Q And now, you know, you've been asked a lot of
22 questions. You've been able to sit back and think about this.
23 As you look back at the process, do you believe that the
24 department conducted the process of adopting regulations and
25 the application and scoring process in a manner that you

1 thought was reasonable under the circumstances?

2 A I believe so, yes.

3 Q Do you think it's perfect?

4 A No. I -- that's hard to say.

5 Q Okay.

6 A There's always room for improvement.

7 Q If you are running this application process again in
8 a couple years, do you think the department would do it exactly
9 the same way as it did in 2018?

10 A We would probably make some revisions.

11 Q Okay. And learn from the process in 2018 and
12 hopefully make it better the next time around?

13 A Absolutely.

14 Q And do you believe that in your consideration and
15 conversations with other department members as part of your
16 process that they use their good-faith judgment and discretion
17 in carrying out their functions in this process?

18 A Yes, I do believe that.

19 Q Do you believe that the process was impartial in the
20 scoring of the applications?

21 A Yes, I believe so.

22 Q You said you did not have any conversations with any
23 of the evaluators after the applications are submitted, did
24 you?

25 A No, I did not.

1 Q Those evaluators though, you did have a chance to
2 communicate with them prior to that time; is that right?

3 A Yes, I did.

4 Q Did you believe them to be competent?

5 A Yes, I do.

6 Q Did they believe -- appear to you to be reasonably
7 intelligent individuals?

8 A Yes, very much.

9 Q And some of those items that were talked about, the
10 floor plans and some of those things, some of those could be
11 kind of beyond the scope of a normal layperson. Did you
12 believe those individuals had experience to be able to properly
13 consider those characteristics of the application?

14 A Yes, I do.

15 Q All right. Did you see any partiality in the
16 application scoring process where someone was graded
17 differently than someone else simply because of who they were?

18 A Not that I'm aware of, but again I wasn't involved in
19 the scoring process.

20 Q All right. Thank you. I have no further questions.

21 THE COURT: Anyone else?

22 All right. Mr. Gentile --

23 MR. GENTILE: Your Honor, can I get --

24 THE COURT: -- I assume you now have questions.

25 MR. GENTILE: Yes. I now have questions. They were

1 opened up.

2 THE COURT: That's Rule 1.

3 MR. GENTILE: Can I get a five-minute break before we
4 start?

5 THE COURT: Yes, you may have a biological break.

6 I just told my assistant it looked like we would go
7 until 12:45 to break so Mr. Gentile can then walk across the
8 street to the Phoenix building to see Department 24, and then
9 we'll resume when he gets back hopefully around --

10 MR. GENTILE: Who knows.

11 THE COURT: Oh, my gosh.

12 MR. GENTILE: Well, in reality we are oh for about 20
13 in terms of predicting witnesses, like in this case, and I
14 don't even know what they're going to ask me over there.

15 THE COURT: Okay.

16 UNIDENTIFIED SPEAKER: He's not asking the questions.

17 THE COURT: No, he's answering the questions. So
18 maybe he will use the pretext or the advice we give to people:
19 Yes or no is good, and keep your answers short.

20 UNIDENTIFIED SPEAKER: Maybe.

21 THE COURT: But I don't know.

22 Ma'am, we're going to take a short break so they can
23 all use the rest room.

24 Maybe 10 minutes, guys?

25 (Proceedings recessed at 11:07 a.m., until 11:17 a.m.)

1 THE COURT: Are we ready?

2 (No audible response)

3 THE COURT: Okay. You're still under oath.

4 THE WITNESS: Yes.

5 THE COURT: Mr. Gentile --

6 MR. GENTILE: Ms. --

7 THE COURT: -- your examination.

8 RECROSS-EXAMINATION

9 BY MR. GENTILE:

10 Q Ms. Cronkrighty -- Cronkhite, is your middle name
11 spelled N-i-c-h-o?

12 A No.

13 Q It is not.

14 A It is N-i-c-h-o-l-e.

15 Q Oh, okay. Well, that makes sense. Okay.

16 You ever been to San Luis Obispo?

17 A Yes.

18 Q Okay. I want to call your attention to Exhibit 96,
19 which you've testified about. You created this document if I
20 understand your testimony.

21 A Oh, that's not on my --

22 Q Is that on your screen?

23 A No. But, yes, I see the document you're referring
24 to.

25 Q Well, I want to -- let's get you the hard --

1 THE COURT: Hold on a second. Jill is coming.

2 (Pause in the proceedings.)

3 THE COURT: It's okay. Jill is coming, and she knows
4 what to do.

5 (Pause in the proceedings.)

6 THE COURT: Better?

7 THE WITNESS: Yes. Thank you.

8 THE COURT: All right. The technology is back
9 working.

10 THE WITNESS: Yes.

11 BY MR. GENTILE:

12 Q Okay. Exhibit 96, it's dated May 2nd of last year.
13 Am I right?

14 A Yes.

15 Q Okay. And with regard to this document, it appears
16 that you are communicating with somebody about the sale of
17 marijuana to minors --

18 A Yes.

19 Q -- having occurred; am I correct?

20 A Yes.

21 Q And it appears as though it is three separate events
22 where marijuana was sold to minors?

23 A It appears that way. I don't recall if they were all
24 related to that.

25 Q Well, it's the only thing that is mentioned in this,

1 in the body of this letter. Am I correct?

2 A Correct.

3 Q All right. Now, do you consider yourself to be a law
4 enforcement officer?

5 A No, I do not.

6 Q Okay. Have you any experience with the criminal
7 justice system?

8 A Work experience, no, I do not.

9 Q You say "work experience"?

10 A No, I don't have any experience with the criminal
11 justice --

12 Q At all?

13 A I don't believe so.

14 Q Ever?

15 A I don't understand your question.

16 Q Ever? Ever means all the time you've been on the
17 planet.

18 A I don't understand it what you mean by do I have any
19 experience with them.

20 Q With them --

21 A I do work with people involving criminal justice, but
22 I personally do not work in criminal justice. No.

23 Q Okay. And you have no experience with the criminal
24 justice system outside of work?

25 A Correct.

1 Q Okay. With regard to these episodes, how did they
2 come to your attention?

3 A They were incident reports submitted by the facility
4 themselves.

5 Q Okay. And what did you do in response to the
6 reports?

7 A We accepted them --

8 Q No. I don't want to hear we. We is a -- when I use
9 the word you, I'm using it in the second person singular. Do
10 you understand?

11 A Yes.

12 Q All right. What did you do in response to receiving
13 these incident reports?

14 A I did not personally receive the incident reports.
15 They go to a separate email address. The administrative
16 assistant intakes them. I assigned them to people to
17 investigate. I was then directed to hold off on that. I had a
18 discussion with Jorge Pupo, and then I gave the direction to
19 the assigned people investigating to send acknowledgment
20 letters or look through them and see if there was room for
21 improvement.

22 Q Okay. You said you received a directive not to
23 assign these cases for investigation. From whom did you
24 receive that directive?

25 A Jorge Pupo.

1 Q All right. At the time that you -- now, are these
2 the only three times that you -- that it has come to your
3 attention that marijuana was sold to a minor by a dispensary in
4 Nevada?

5 A I can't say for certain. It may have occurred since
6 then.

7 Q Okay. Let's think about what you can't -- I want to
8 know if you remember even one other time that it came to your
9 attention that marijuana was being sold by a dispensary to a
10 minor.

11 A I believe it may have occurred another time.

12 Q What other time?

13 A I don't know for certain --

14 Q But then you're speculating. Am I right?

15 A I would have to check my files.

16 Q Okay. As of right now, on the stand, without
17 refreshing memory, you can't recall any other events?

18 A I can --

19 Q Such as these?

20 A I believe there may have been one.

21 Q Yeah, you're guessing. You believe. I'm not asking
22 you to believe. I'm not asking you to speculate. Here's what
23 the question I'm asking you to answer: Is it correct that as
24 of this moment you cannot remember another one?

25 A No.

1 Q That's not correct?

2 A No.

3 Q What is correct?

4 A I would say it's more likely that we have received
5 them than we haven't.

6 THE COURT: So wait. Let me --

7 THE WITNESS: I would have to check my files.

8 THE COURT: Let me, just so I can keep this on the
9 right playing field. Mr. Gentile is asking if you have a
10 specific recollection as you sit here. If you don't have a
11 specific recollection, you can tell him, no, and then
12 Mr. Shevorski will be happy to refresh your recollection with
13 any specifics that might help you remember, but Mr. Gentile is
14 just trying to get your memory as you sit here, and he doesn't
15 really mean to be argumentative. That's just the way he is.

16 THE WITNESS: No, I do not remember a specific
17 occurrence at this time.

18 BY MR. GENTILE:

19 Q Okay. You are aware, are you not, that the sale of
20 marijuana to anybody is a federal offense? Am I right?

21 A Yes.

22 Q Are you aware as to whether someone who knows of a
23 crime being committed has a duty to report it to law
24 enforcement?

25 A I'm not sure. I -- that sounds fair.

1 Q It "sounds fair"?

2 A That sounds right.

3 Q Sounds right. All right. You received an incident
4 report, and you were going to assign it for investigation, but
5 you did not. Am I right?

6 A I did assign it for investigation.

7 Q I thought you told me that -- I thought you said
8 under oath on the record to everybody in this courtroom that
9 you were told not to assign it?

10 A I did assign them, and then I was told to have them
11 just send acknowledgment letters.

12 Q I see. So with regard to the assignment of the only
13 three sales to minors that you can remember, what was it that
14 you were asking the investigators to do that ultimately you
15 changed?

16 A I was asking them to look into how it occurred and
17 what they're going to do going forward to prevent it from
18 occurring. The only thing that really changed is the facility
19 was not issued a statement of deficiency, and it was not on the
20 open investigation log, otherwise it was still followed
21 through.

22 Q Would it be correct to assume that had this been
23 assigned for investigation, and that investigation being
24 carried out, that you would learn from that investigation who
25 the specific person was that sold marijuana to a minor?

1 A We already had that information from the incident
2 report.

3 Q Okay. When you received that information, now, I
4 take it was it one person that sold it in three different
5 places, or was it different people that sold it in each of
6 these places?

7 A I believe it was different people.

8 Q Okay. You understand that oops is not a defense to a
9 criminal violation?

10 A Yes.

11 MR. KOCH: Objection. Argumentative.

12 THE COURT: Overruled.

13 BY MR. GENTILE:

14 Q And when you learned who the people were who sold
15 marijuana to a minor, you reported them to the Las Vegas
16 Metropolitan Police Department?

17 A I did not personally report them, no.

18 Q Did you direct that they be reported to the Las Vegas
19 Metropolitan Police Department?

20 A I don't recall if they had been reported or not.
21 It -- I don't remember.

22 Q That doesn't answer my question. Did you direct
23 someone to report them to law enforcement?

24 A I don't remember.

25 Q You don't remember if you -- what was the name of the

1 three people that sold marijuana to a minor?

2 A I don't remember.

3 MS. SHELL: Objection. Relevance.

4 THE COURT: Overruled.

5 THE WITNESS: I don't remember three specific names
6 from over a year ago.

7 BY MR. GENTILE:

8 Q Okay. How about one name? Can you remember one?

9 A No, I do not.

10 Q No, not even one?

11 A No.

12 Q Okay. And you can't remember whether you called it
13 to the attention of the Henderson Police Department. Am I
14 right?

15 A I personally did not. I do not know if I directed
16 the facilities to do so.

17 Q Well, let me ask you this. Do you have in place a
18 procedure in your Department of Taxation Marijuana Unit for
19 reporting crimes that are committed by dispensaries to law
20 enforcement?

21 A I'm not aware.

22 Q So you don't know of any procedure. Am I right?

23 A Correct.

24 Q Hang on.

25 Do you have any idea --

1 Now, you have a health background. Do you have any
2 idea the kind of damage that marijuana can do to a teenager?

3 A I believe that information is not fully researched at
4 this time.

5 Q Okay. So is your answer that there's no proof that
6 any damage can occur to a brain under 23 years old by using
7 marijuana?

8 A I don't have that information off the top of my head.
9 I know there's been suggestions that it can impact brain
10 development, but I can't say for certain that it's proven fact
11 at this time, but there -- there are suggested risks, and we do
12 have warnings in place. Yes.

13 Q And you have those warnings in place because there's
14 a health concern.

15 A There's a concern, yes.

16 Q Right. And you don't want to see that occur; right?

17 A Correct.

18 Q And you don't want to see people sell marijuana to
19 minors?

20 A Correct.

21 Q But you did not, to the best of your memory, report
22 any of these three sellers to law enforcement in the
23 jurisdiction --

24 MS. SHELL: Objection. Asked and answered.

25 BY MR. GENTILE:

1 Q -- in which --

2 THE COURT: Overruled.

3 BY MR. GENTILE:

4 Q -- in the jurisdiction in which they sold it?

5 A I don't recall if they were reported to law
6 enforcement or not. I did not personally report them.

7 Q All right. And as far as you know, nobody did.
8 Isn't that fair to say?

9 A They may have been.

10 Q Yeah, you're speculating. I said as far as you know,
11 not as far as you speculate, not what you wish would have
12 happened, as far as you know, none of these people were
13 reported to law enforcement for prosecution?

14 MS. SHELL: Objection. Argumentative.

15 THE COURT: Overruled.

16 THE WITNESS: Not that I can remember at this time.

17 BY MR. GENTILE:

18 Q Do you know what immunity is? Not in the health
19 sense but in the legal sense?

20 THE COURT: Because she does have a degree with
21 epidemiology. So --

22 THE WITNESS: In the legal sense I'm not as familiar.

23 BY MR. GENTILE:

24 Q As far as you know, does the Department of Taxation
25 Marijuana Unit, and if you picked up medical, I am withdrawing

1 it, okay. As far as you know, does the Department of Taxation
2 Marijuana Enforcement Unit have the power to grant immunity for
3 a criminal offense?

4 MR. SHEVORSKI: Objection. Legal conclusion.

5 THE COURT: Overruled.

6 If you know.

7 THE WITNESS: I don't know.

8 BY MR. GENTILE:

9 Q Now, you do have a relationship with the Attorney
10 General's office. Am I right?

11 A Yes.

12 Q Okay. And the Attorney General of the State of
13 Nevada is a law enforcement officer. Am I right?

14 A I -- I don't know.

15 Q He is the chief law enforcement officer of the State
16 of Nevada. Do you understand that?

17 A Yes.

18 Q Do understand that they prosecute criminal cases?

19 A Yes.

20 Q You do?

21 A If you say so, that sounds right.

22 THE COURT: You don't have to take it as true because
23 he said it. If you don't know, you can say I don't know.

24 THE WITNESS: I don't know. I don't really deal with
25 the Attorney General's office personally.

1 / / /

2 BY MR. GENTILE:

3 Q Ever?

4 A That's not part of my position. No.

5 Q So during the course of the framing of the
6 regulations that you participated in, you didn't deal with the
7 Attorney General's office?

8 A We dealt with Robert Rybicki [phonetic].

9 Q I didn't ask you about we. Understand when I say you
10 I mean the first -- the second person singular. Okay?

11 A I worked with Robert Rybicki, the Deputy Attorney
12 General. That is the only person I worked with.

13 Q Okay. Did you report to the attorney general, your
14 department's lawyer, the chief law enforcement officer of the
15 State of Nevada, that you had information that identified the
16 person who sold marijuana to a minor?

17 A No. I --

18 MR. SHEVORSKI: Objection. Vague.

19 THE COURT: Overruled.

20 THE WITNESS: No. I communicated that with Jorge
21 Pupo.

22 BY MR. GENTILE:

23 Q Okay. And Jorge Pupo said stop investigating, just
24 send the letter?

25 A Yes. And take corrective actions. Make sure

1 corrective actions were taken. Yes.

2 Q Corrective action in the sense of compliance,
3 administrative compliance; right?

4 A Yes.

5 Q Did he say anything at all to you about reporting the
6 person who sold the marijuana to a minor to law enforcement?

7 A Not that I recall.

8 Q Did you give any thought whatsoever to the fact,
9 forget about that a federal crime had been committed, did you
10 give any thought at all to the fact that a State crime under
11 Chapter 453, felony, had been committed?

12 A Yes, I thought about it.

13 Q And you chose then not to report it to law
14 enforcement?

15 A I don't remember if it had been reported or not.

16 Q You know you did not report it?

17 A I did not report it.

18 Q And to the best of your memory, you can't tell me
19 that anybody reported it. Am I right?

20 A I can't say. Correct.

21 Q Okay. And you have no experience with the criminal
22 justice system in your entire life?

23 A I would need you to be more specific with the
24 question.

25 Q What, about your life?

1 A I mean, I -- I communicate with law enforcement
2 sometimes, yes. I don't know what you mean.

3 Q Have you ever been convicted of shoplifting?

4 A Yes.

5 MR. GENTILE: Thank you.

6 Nothing further.

7 THE COURT: Anybody else?

8 MR. GENTILE: Oh, wait, there is something further.

9 BY MR. GENTILE:

10 Q When you applied for your job, did you disclose to
11 your employer that you had been convicted of shoplifting?

12 A My case was dismissed. So -- and it was over 10
13 years old.

14 Q So you didn't report it?

15 A It wasn't required.

16 MR. GENTILE: Thank you.

17 THE COURT: Anyone else?

18 Mr. Rulis.

19 MR. GENTILE: Wait a minute.

20 UNIDENTIFIED SPEAKER: Seriously.

21 MR. GENTILE: Well, I've got to correct this.

22 BY MR. GENTILE:

23 Q When did you apply for your job?

24 A Like -- 2015.

25 Q Just to refresh your memory, your shoplifting was in

1 2008. It wasn't over 10 years old.

2 A My case was dismissed.

3 MR. GENTILE: Thank you.

4 Nothing further.

5 THE COURT: All right. Mr. Rulis.

6 (Pause in the proceedings.)

7 RECROSS-EXAMINATION

8 BY MR. RULIS:

9 Q All right. Ms. Cronkhite, I'm going to take you back
10 to some of the questions that Mr. Shevorski was asking you
11 before.

12 A Okay.

13 Q And he had asked you about in NRS 453D there was no
14 definition of the word approved. Do you remember that
15 question?

16 A I believe so.

17 Q Okay. Now, at the end of the application period
18 here, 2018, the department did tell applicants that their
19 applications were approved; right?

20 A At the end of when? I'm sorry.

21 Q So at the end of the application period in 2018? I
22 believe --

23 A Yes.

24 Q -- I believe the date was December 5th of 2018.

25 A That sounds correct.

1 Q And now the department told certain applicants that
2 their applications were approved; right?

3 A Yes.

4 Q And that's -- I would say approved is actually the
5 word the department used; right?

6 A I believe so, yes.

7 Q That's -- I mean, if we want to -- I'll just show it
8 to you just so we can confirm it.

9 MR. RULIS: Shane, can you pull up Exhibit 131.

10 BY MR. RULIS:

11 Q So this is actually a letter that went from the
12 department to Clear River LLC. You know that Clear River LLC
13 is one of the applicants that had their application approved?

14 A Okay. Yes.

15 Q Okay. So if you go down in that first paragraph
16 there, it's actually the end of the second line, the beginning
17 of the third line, they actually say, This is to inform you of
18 the intent to conditionally approve, in all caps, your
19 application. So that's the department using the words that are
20 in the actual statute saying they're approving an application;
21 right?

22 A Conditionally approving, yes.

23 Q Still, you're approving it. I mean, it says, Approve
24 your application, does it not?

25 A Yes.

1 Q So to the extent that approve is defined or not,
2 that's the word that the department is using; right?

3 A Yes.

4 Q Now, Mr. Shevorski was also asking you questions
5 about the City of Henderson and a moratorium that they may have
6 had. Was there a requirement in NRS 453D that the department
7 allocate licenses to the City of Henderson?

8 A I don't --

9 MR. SHEVORSKI: Objection. Vague.

10 THE WITNESS: -- recall.

11 THE COURT: Overruled.

12 THE WITNESS: I don't recall. It doesn't specify
13 specific jurisdictions, but it does discuss populations.

14 BY MR. RULIS:

15 Q Right. It discusses populations, but it doesn't talk
16 about local jurisdictions, does it? It talks about counties?

17 A I believe so, yes.

18 Q Right. So to the extent that the city -- or excuse
19 me, the department is allocating to particular local
20 jurisdictions, that's not part of NRS 453D; right?

21 A I guess not, no.

22 Q So to the extent that they're talking about -- that
23 Mr. Shevorski was talking about there may have been a
24 moratorium in the City of Henderson, the department wasn't
25 required to allocate to the City of Henderson; right?

1 A No.

2 Q So he also talked to you about putting in false
3 addresses in Douglas County, and he said that, I think -- and
4 I'm going to paraphrase because I can't specifically quote, but
5 that applicants couldn't put in a false address in Douglas
6 County because of the moratorium there. Do you remember that,
7 those questions?

8 A Yes.

9 Q But an applicant could put in a false address for
10 jurisdictions like the City of Las Vegas; right? Because there
11 was no moratorium in the City of Las Vegas, was there?

12 A I think the point of what he was saying was that they
13 would have had to use a false address because nothing would
14 have been legally approved.

15 Q And that's not my question.

16 A I'm sorry. I don't understand.

17 Q There was no moratorium in the City of Las Vegas, was
18 there?

19 A No, there was not.

20 Q So there was no reason why they couldn't use a real
21 address; right?

22 A Correct.

23 Q Same with unincorporated Clark County, there's no
24 moratorium -- there was no moratorium there, was there?

25 A Correct.

1 Q So there was no restriction on finding an actual
2 physical location for the proposed dispensary, was there?

3 A Correct.

4 Q Now, Mr. Koch was asking you questions about
5 NRS 453A, and you understood that NRS 453A is different than
6 NRS 453D; right?

7 A Yes, I do.

8 MR. SHEVORSKI: Objection. Vague.

9 THE COURT: Overruled.

10 BY MR. RULIS:

11 Q And I believe you even said there were discussions
12 within the department that those were different statutes;
13 right? Different statutory schemes?

14 A Yes, I believe so.

15 Q And that just because something was in 453A didn't
16 mean that it complied with the requirements for 453D; right?

17 A Correct.

18 Q So just because something is included in NRS 453A
19 doesn't necessarily mean that it complies with the requirements
20 of NRS 453D?

21 A Correct.

22 Q So, for example, one of the questions that Mr. Koch
23 was asking you about was in the list of items talked about in
24 NRS 453A was diversity.

25 A Yes.

1 Q Diversity is nowhere in NRS 453D, is it?

2 A I don't believe so.

3 Q But even though it's not in NRS 453D, the department
4 decided to go ahead and include that because it was part of NRS
5 453A?

6 A Yes, and legislation was very clear that they wanted
7 it included.

8 Q Well, but again we get back to you understand with
9 the ballot initiative that can't be changed for three years;
10 right?

11 A Correct.

12 Q And so if there's legislature that's changing
13 NRS 453A, that doesn't apply to NRS 453D; right?

14 A Correct.

15 Q Now, one of the other things that Mr. Koch was asking
16 you about is changes of location, and you talked about changes
17 of location of licensees.

18 A Yes.

19 Q Is the department processing changes of location or
20 conditional licensees?

21 A Yes, we can for a conditional license, yes.

22 Q Well, you can.

23 A Yes.

24 Q Are you?

25 A Yes, we will. Yes. We do.

1 Q That's -- have you had conditional licensees that
2 have applied for a change of location already?

3 A For this current round, I'm not aware, but in the
4 past, yes, we have.

5 Q Okay. Well, that's -- and that's -- thank you for
6 clarifying. I want to be specific, and I'm talking about this
7 particular round because now you understand that there are
8 certain conditional licensees that have addresses on their
9 application that were for a UPS store?

10 A I've heard that, yes.

11 Q Okay. So do you -- are you aware that any of the
12 applicants that listed a UPS store, have they applied for a
13 change of location from that UPS store to open up a new
14 location?

15 A I'm not aware. I'm not involved with location
16 changes very much.

17 Q Now, you also talked about floor plans, and here's
18 one question that I have, is to the extent that floor plans
19 were submitted to the department as part of the applications,
20 was it the department's expectation that if an applicant was
21 granted a conditional license that the dispensary they were
22 going to build was compliant with the floor plan that was
23 submitted to the department as part of their application?

24 A Yes.

25 Q And if they are not building their dispensary in

1 compliance with the floor plan that was submitted to the
2 department, what is the department doing about that?

3 A They are to submit a facility modification request to
4 the department. We process and review and either approve or
5 make recommendations for modification.

6 Q So if they're not being held to the floor plans that
7 were submitted as part of the application, what's the point of
8 grading those floor plans?

9 A I can't answer that question.

10 Q Now, you also mentioned part of the -- and I might
11 need a little clarification here, but you talked about the
12 building plans and the training that you gave to the Manpower
13 graders as far as building plans go. One of the things you
14 talked about was they were supposed to evaluate the flow of the
15 building. Is that --

16 A Yes.

17 Q Is that accurate?

18 A Yes.

19 Q So where in the grading criteria is the word flow
20 mentioned?

21 A I would have to look at the grading criteria to see
22 where it's discussed.

23 Q Let's do that. If you take a look at Exhibit 9, and
24 it may be easier for me to get you the physical document so you
25 can flip through it.

1 MR. RULIS: And --

2 THE COURT: You may.

3 MR. RULIS: Thank you, Your Honor.

4 (Pause in the proceedings.)

5 THE COURT: Are you going to help her clean up the
6 area?

7 MR. RULIS: I'm going to try.

8 THE COURT: Thank you.

9 (Pause in the proceedings.)

10 BY MR. RULIS:

11 Q So did you have a chance to flip through there?

12 A Yes.

13 Q So I was looking at it. I don't see the word flow in
14 there anywhere; do you?

15 A It doesn't specifically say the word flow; however,
16 on page 3 it says,

17 Have a single public entrance and
18 demonstrate strict security measures to deter
19 and prevent theft and unauthorized entrance.
20 That's where I was talking about the flow of
21 product and the flow of people.

22 It also says,

23 Is of suitable size, construction and
24 location to facilitate cleaning, maintenance
25 and proper operation. The adequate space for