



**John Bel Edwards**  
Governor

# State of Louisiana

OFFICE OF THE GOVERNOR  
DRUG POLICY

**Dr. Chaunda Mitchell**  
Director, Drug Policy &  
Executive Director,  
Diversity and Inclusion

**Kristy Miller**  
Project Director

## DRUG POLICY BOARD January 10, 2019; 10:00 AM - 12:00 PM

### MINUTES

#### **Call to Order**

Dr. Chaunda Mitchell, Governor's Office of Drug Policy and Chair of the Drug Policy Board, called the meeting to order at 10:07 am.

#### **Welcome and Introductions**

Chaunda announced that there were 13 members present which means that we have a quorum. (Note: Two additional voting members arrived after quorum was declared.)

#### **Old Business**

##### *A. Review and approve minutes*

Chaunda reminded everyone that the minutes were emailed prior to the meeting. She asked everyone to make a final review of the minutes and then requested a motion to approve. Judge Jules Edwards, District Court Judge Representative, made a motion to approve. Michael Comeaux, Department of Education, seconded the motion. There was a unanimous vote for approval.

##### *B. Update: State Epidemiology Profile*

Kristy Miller, Governor's Office of Drug Policy, stated that the November meeting of the State Epidemiology Workgroup (SEW) had to be cancelled, and, thus, she was unable to share the feedback from the Drug Policy Board's October meeting to the SEW regarding the State Epidemiology Profile that was disseminated at that meeting. She explained that a new federal discretionary grant from the Substance Abuse and Mental Health Services Administration (SAMHSA) requires LDH/Office of Behavioral Health to hire a Data Analyst to support the SEW. Kristy anticipates that this individual will be able to take on the task of developing short, high-level data briefs as requested by the Drug Policy Board.

##### *C. Update: Issue Brief on impact of marijuana in Louisiana*

Kristy thanked those who provided feedback on the outline of the issue brief. She reported that the report is coming along well and she expects to have a first draft for review in the next week or two.

A discussion about the issue of marijuana ensued. Kristy mentioned that the passage of the 2018 Farm Bill by the U.S. Congress had implication for hemp in terms of making it legal by removing it from the Controlled Substances Act. Kristy also mentioned the fast moving issue of cannabidiol (CBD) and its proliferation in any number of forms and being sold by many industries for a variety of uses. Kristy asked all members and guests to forward any resources of relevance to her.

Michelle Augustine, Office of Alcohol and Tobacco Control, mentioned that ATC has posted to their website a list of banned substances that have been found to contain CBD as well as other controlled substances that were confiscated during the course of tobacco compliance checks. The document contains orders for retailers not to carry these products. In addition, the list contains the names of wholesalers selling illegal products. (statement posting: <http://www.atc.rev.state.la.us/docs/Updated%20List%20of%20Banned%20Substances.pdf>) Michelle reported that many of the recent hearing being held by the Board of the ATC are related to penalties levied due to the sales of products containing controlled substances.

Carl Aron, LA Board of Pharmacy, stated that his licensing board has developed a guidance document regarding the possession or selling of CBD oil by its licensees. (guidance document posting: [http://www.pharmacy.la.gov/assets/docs/GuidanceDocuments/Guidance\\_CBD-Oil\\_2018-1114.pdf](http://www.pharmacy.la.gov/assets/docs/GuidanceDocuments/Guidance_CBD-Oil_2018-1114.pdf)) The decision outlined in the guidance document is that, regardless of recent actions at the federal level, “no one, including board licenses, may possess or sell CBD oil...” because marijuana is still listed in Schedule I of the state’s list of controlled substances. Malcolm Broussard, LA Board of Pharmacy, offered to share the guidance document to the Office of Drug Policy for dissemination to all members and interested parties. Malcolm further explained that his role, as Executive Director, is to monitor the discrepancies between federal and state laws of relevance to any and all controlled substance licensees. To that end, he has drafted a proposal to change the state’s controlled substance law to align with the changes to the federal controlled substance law. His board will consider the proposed changes at its next Board of Pharmacy meeting in February.

Kristy asked if the Drug Policy Board members would like to receive links to the ATC document and Board of Pharmacy document just mentioned. Responses were positive.

Dr. Culotta, LA State Board of Medical Examiners, stated that LSBME has on its website a guidance document from three years ago. He explained that it is more obtuse than the LBP guidance document, but still well aligned. Further, he offered to post the ATC guidance document on his Board’s website as a way to provide updated guidance to license prescribers to address some doctors who are selling CBD oils in their offices.

Kristy turned to Dr. Janice Petersen, LDH/Office of Behavioral Health, to point out that LDH has a page with some factual information about medical marijuana in general in addition to information about Louisiana’s medical marijuana program. She asked if LDH would be willing to add some information specifically about CBD to its medical marijuana page in the event that the general public seeks out guidance from LDH on the purchasing and possession of CBD. Dr. Petersen responded that any information posted to the website would have to be reviewed and approved by LDH’s communications office, but that she would be happy to request from her Prevention Services department the development of language to be considered. Kristy offered to assist the Prevention Services team given their close relationship.

Malcolm offered a caveat about the Board of Pharmacy’s guidance document. He stated that it was approved by the board in November which was prior to the passage of the 2018 Farm Bill in December by Congress. So, the guidance document talks about federal law as it was at the time of passage by the LBP. The LBP will need to determine whether they want to alter the document based on these recent changes.

Rebecca Nugent, LA State Police Crime Lab, get products submitted by ATC as well as other state and local-level law enforcement agencies across the state. She stated the products that scare her the most are the gummies and candies because many of those are testing positive for the synthetic cannabinoid drugs such as mojo. These aren’t just CBD products; these are very

dangerous products that made a splash in 2014/2015 and can cause severe side effects. This is incredibly alarming if people are purchasing and consuming these products thinking its CBD and they will just relax or get a small high and then experience life threatening effects instead. The real danger lies in that some of these products are intentionally mislabeled.

Michelle echoed that this is a problem and is exacerbated by the fact that the candies and even some of the e-cigarette cartridges are being designed to appeal to youth.

Warren Montgomery, LA District Attorneys Association representative, asked how we make the public aware. He referenced a case in his judicial district where an individual pled guilty to 30 years for selling mojo to minors and one died as a result of consumption.

Rebecca responded that the results of the LSP Crime Lab's testing regarding illegal substances appearing in seemingly harmless products is provided back to the agency that requested the test. Warren asked how to get those agencies to report out better. Michelle stated that ATC could go out to St. Tammany and Washington parishes (the parishes in his JDC) to conduct presentations and town hall meetings to talk more about these issues as well as show the products to the audience. Rebecca followed up by stating an easy red flag is the higher cost of products that seem to be innocent. For example, if a bag of gummy bears cost \$20-25, they likely contain some sort of drug and are not just simple gummy bears. Also, while they won't be behind the counter, they will likely not be with all the rest of the candies. Instead, they will be grouped together and closer to the cashier to keep an eye on them.

Judge Edwards suggested to Warren that perhaps using the local public access channel to disseminate information about synthetics and other drug issues may be helpful. Secondly, he requested that when Malcolm disseminates the LBP guidance document, would he be willing to attach the current federal law that supersedes the federal law mentioned in the guidance document. Malcolm explained that it was within the 2018 Farm Bill which was over 500 pages, but he could extract the pages relevant to hemp. Kristy offered to provide a summary of the relevant points that she received from an advocacy group.

Vincent expressed his concern that now the federal law says one thing and state law says another. He explained that we have set a precedent with medical marijuana by saying state law trumps federal law in regards to allowing the use of marijuana for medicinal purposes. What is going to be the issue for these "nutritional supplements and therapeutic products" (i.e., CBD) as well as non-medical marijuana use. He asked the question, "Is the DPB going to make a recommendation that we continue to make these illegal or what?"

Malcolm responded that the list of controlled substances in state law has these substances in Schedule I, regardless of their marketed use, so, in his mind, they are still illegal. He went on to explain that the Farm Bill was rather interesting because a provision in it allows for the preemption of state law relative to transport of hemp across state lines. So question one is, what about after it's transported and is sitting there? Is the hemp (hemp is defined as marijuana that contains no more than 0.3 percent THC) legal or illegal according to state law? So, now we have a state law that is more stringent than federal law. Our state law doesn't make an exception for hemp. Malcolm explained that the legislative proposal he is preparing for the Board of Pharmacy to consider will allow for better alignment. Then, the LBP will recommend to the legislature to change state law. In the meantime, his advice to the Board is state law is more stringent than federal law and, thus, trumps federal law.

Carl and Malcolm asked the question about testing THC levels on the spot. Michelle responded that state law says it's illegal so it's illegal, regardless of whether it has less than 0.3 percent

THC. If any changes are made, it will make things much harder because there is no way to test on the spot. Rebecca responded that no other substance requires quantification like this. Rebecca explained it would be incredibly difficult and no other lab in the state has the ability to quantify either. Thus, she concluded that, if state law were changed, there would be an incredibly high fiscal note for getting the state resources (equipment and staff) to the point of being able to test.

Judge Edwards wanted to go back to Vincent's earlier question about rendering a legal opinion. He expressed that, in his mind, that isn't our responsibility. However, he does think we should identify areas of inconsistency in state and federal laws and then make a pronouncement that state law provides better public policy. Thus, anyone who is attempting to enforce the law should follow state law. Then, it would be the defendant's responsibility to raise the defense that federal law trumps state law. Or the Attorney General could render an opinion in advance that state law preempts federal law which would support law enforcement's ability to continue current actions.

Alberto DePuy, Attorney General's Office, offered some additional information about formal requests to the Attorney General for legal opinions. For the AG's Office to render an opinion, the request has to come from a state or local elected official or from a board or commission with a majority vote. Chaunda asked for clarification that the Drug Policy Board could vote and a majority would have to approve to make a request to the AG's office for a formal opinion about whether state law supersedes federal law in the case of the Controlled Substances Act; Alberto responded in the affirmative. Judge Edwards stated that the sequence would be better if we identified the inconsistencies between state and federal law and use those to craft our request to the Attorney General for a legal opinion. Alberto explained that the request would have to be specific so that's a good idea.

Kristy confirmed that the Office of Drug Policy could handle researching the inconsistencies and craft the request. Given that, she asked if we should attempt to come together in an emergency meeting. Alberto reminded them that a State Senator or Representative could also make the request; Warren stated that he could make the request as well as a local elected officials. The main issue is that the question has to be a clear one so the Attorney General can analyze it and render a clear opinion. Warren encouraged that we make the request sooner rather than later.

Carl asked whether we wanted to wait until after the February LBP meeting before we made the request for a legal opinion because they will be voting on whether they want to move forward with advocating for legislation to bring state law in line with federal law. Malcolm countered that he doesn't know whether it's necessary to wait. He concluded that the LBP may want to hear the legal opinion and then decide to hold back and not request the change.

Taking all opinions into account, the decision was made that the Office of Drug Policy and LA Board of Pharmacy would each move forward with their respective efforts, but the Office of Drug Policy would not find a champion to make its request to the Attorney General's office until after the LA Board of Pharmacy has its meeting on February 19, 2019.

## **New Business**

### *A. End-of-Year Reports*

Chaunda reminded members that the Drug Policy Board has several sub-boards and commissions. Some of those are required to develop year-end reports. With the end of 2018 having just passed, two boards developed reports. The Chairs were present to conduct brief presentations of the reports and request endorsement of the reports from the DPB.

a. Advisory Council on Heroin and Opioid Prevention and Education

Chaunda invited Dr. James “Jim” Hussey, LDH/Office of Behavioral Health and Chair of the Advisory Council on Heroin and Opioid Prevention and Education (HOPE Council), to come forward and make a brief presentation of the HOPE Council’s 2018 Year-End Report for the purpose of obtaining endorsement by the Drug Policy Board, the parent board of the HOPE Council.

As part of his introduction, Jim acknowledge several people in attendance who were instrumental in completing the report including Judge Edwards, Dr. John Morrison with Department of Corrections, Dr. Chaunda Mitchell, Dr. Petersen, Jay Besse with LDH/Office of Public Health, Catherine Peay, LDH/Office of Behavioral Health, Dr. Allison Smith with the Board of Regents, and Lisa Longfellow with LDH/Office of Behavioral Health.

Then, Jim proceeded to provide some brief background info on the HOPE Council. He explained that the Act which created the council did not charge them with finding a solution for the problem. Rather, it tasked them with collecting and analyzing data and developing an interagency coordination plan. Thus, the Year-End Report is essentially the interagency coordination plan. The major sections of the report are Description of the Problem, Impact Metrics, Addressing the Problem, and Recommendations. In the Description of the Problem, national, state, and parish level use and consequences rates were provided. In the Impact section, the Council outlines specific impacts to agencies in addressing prevention, education, treatment, overdose prevention, and recovery. The selected impacts were chosen because of the ability to measure over time. In the Addressing the Problem section, the Council provided copious information about all the various programs, policies, practices, and initiatives in the categories of prevention education, treatment, overdose prevention and recovery were conducted by local and state stakeholders over the past few years. Then, the Council detailed how it has and will continue to better coordinate and align efforts as the culmination of its Interagency Coordination Plan. Finally, in the Recommendations section, the Council identified three major recommendations with multiple strategies under each recommendation for action by high-level stakeholders that must be addressed for the HOPE Council to be able to continue with interagency coordination.

At this time, Vincent recommended an edit to Recommendation 1, Strategies 1 and 2. He explained that the current language regarding boards, organizations, and agencies that receive state funding does not capture most of the licensing boards because they generate their own funds from licensing fees. Thus, if the recommendation was enacted, the licensing boards would not fall under the requirement. So, he suggested add the following language – “and self-funded agencies that regulate in the interest of the public’s safety” - after “...that receive state funding” to Recommendation 1, Strategy 1 and Recommendation 1, Strategy 2. Everyone liked that idea and Jim agreed to have the text added.

In reference to Recommendation 1 in which the HOPE Council recommends that an organization, agency, or department should be designated through executive order or legislative action to have lead authority over the Interagency Heroin and Opioid Coordination Plan, Warren asked Jim if the HOPE Council had an preferences for which entity should be designated. Jim expressed that he did not have an opinion and the HOPE Council did not come to consensus on a preference. However, he stated that the LA Department of Health has been responsible for much of the opioid-related work thus far and, by virtue of the Act, has a leadership role in the HOPE Council. Kristy asked if Warren if he and the rest of the Drug Policy Board would like for the HOPE Council to render a recommendation as to who should be the agency. Warren said he sees no reason why they shouldn’t.

Judge Edwards referred everyone back to Recommendation 1, Strategy 3 related to supporting the designated lead agency with resources for the coordination of state and local responses. He expressed his major frustration with Act 88's inability to apportion staff resources. Chaunda validated his frustration, but also brought up the issue of attaching fiscal notes to any legislation we would try to move forward.

In reference to Recommendation 2 in which the HOPE Council recommends that resources should be provided to fill data gaps and enhance data collection, analysis, and reporting. Alberto asked where the data gaps seem to be most prevalent. Jim responded that local data can be particularly difficult to get because of the lack of resources to establish reporting systems. For example, cost data that was included came mainly from Medicaid because LDH manages that program; however, additional cost information is less centralized. Alberto followed up by asking for a specific local agency that would have a data gap to better understand. Judge Edwards explained that there are local behavioral health service providers that provide services, but aren't part of the state system. Alberto asked if they receive any state dollars, and if so, they should be mandated to report data to the state. Jim described that the national association of health officials has been offering advice and cautions around data sharing agreements as well as data systems. LDH is trying to take these issues into consideration to develop new data sharing agreements and improve existing data sharing agreements to get the data they actually want and need.

Warren brought up the multiple legal cases at the state and local levels and many will be won. He postulated that the results should be used to support the development of resources including staff and data gaps. It is obvious that a Data Governance group is needed to help inform processes for collecting more data.

Judge Edwards pointed out Recommendation 3, Strategy 5 as being relevant to item B under New Business – Laws and Policies Agenda for 2019. Rec 3, Strat 5 is about allowing methadone clinics to participate in prescription monitoring programs. Jim provided some background info in which he said, in addition to HIPAA, 42 CFR Part 2 has additional patient protection restrictions around any provider who holds themselves out to provide substance use treatment. So any provider that starts a substance use treatment program, such as methadone clinics, have additional federal restrictions in terms of sharing information so they don't inadvertently call out patients they are seeing as having opioid use disorders. This restriction prohibits them from participating in prescription monitoring programs (PMP) because the program ties patient identifiers with prescription data. That means the state can't allow for methadone clinics to participate in the state PMP.

Judge Edwards made a motion to accept and endorse the HOPE Council Year-End Report. Vincent seconded the motion. Then, Judge Edwards recalled his motion because he wanted to change it. Judge Edwards made a new motion to accept and endorse the HOPE Council report with the technical edits offered by Vincent as it related to adding self-funded agencies as additional entities that must be mandated to respond to data requests and status of initiatives requests. Dr. Vincent Culotta seconded the motion. The vote returned unanimous approval.

b. DWI Task Force

Lisa Freeman, Louisiana Highway Safety Commission and Chair of the DWI Task Force, was asked to provide a brief presentation of the DWI Task Force's 2018 Year-End Report for the purpose of obtaining endorsement by the Drug Policy Board, the parent board of the DWI Task Force.

Lisa spent approximately 15 minutes pointing out highlights of the nine-page report. At the end of her presentation, Warren asked whether the Task Force is providing any recommendations.

Lisa explained that there aren't any as of yet because the Task Force didn't explore any yet. Warren shared that, when appropriate, he knows LDAA has a major concern with the concept of affirmative defense which allows someone who is driving under the influence of a prescription drug as it has been prescribed covers the behavior of the driver. Lisa assured Warren that his colleague, Norma DuBois, who represents LDAA on the DWI Task Force has made a strong request to address this issue in the future.

At this time, Judge Edwards made a motion to accept and endorse the DWI Task Force Year-End Report. Warren seconded the motion. The vote returned unanimous approval.

Lisa asked if the Drug Policy Board members could get the notices for the DWI Task Force meetings.

#### *B. Laws and policies agenda for 2019*

Chaunda asked for member agencies that would like to notify the Drug Policy Board of any pieces of legislation that is expected to be presented during the 2019 session to be mentioned here.

- HOPE Council: Judge Edwards offered, on behalf of the HOPE Council, that he would like to formally request the Drug Policy Board's support to address Recommendation 1, Strategy 1 and Recommendation 3, Strategy 5 during the legislative session. His request is that the Office of Drug Policy staff should draft language to address these issues.
- LA Highway Safety Commission: DPS is looking to implement legislation that would require screening and/or assessments of substance use disorders for repeat offenders of impaired driving laws
- LA Board of Pharmacy: (1) Align the state Controlled Substance Act with the recent changes to the federal Controlled Substance Act; (2) Make a change to the prescription monitoring program that would allow for data sharing with any federally-managed prescription monitoring programs that currently exist or that will be developed in the future
- LA State Board of Medical Examiners: (1) Funding and develop of an adverse event reporting system for medical marijuana; (2) Funding and develop an outcomes analysis system for tracking impact of conditions which are allowed to be treated by medical marijuana

Janice offered the information that the next HOPE Council meeting is March 12 so if Office of Drug Policy plans to draft language for lead agency, it would be great to have that language by the meeting.

Warren referred back to the suggestion by Judge Edwards' that the Office of Drug Policy draft the language about the lead agency designee. He countered that he would prefer to see a recommendation from the HOPE Council as to which agency that should be.

#### **Other Business**

##### *A. Agency updates*

Deferred due to lack of time.

##### *B. Resource document*

Chaunda referred members to the resource document in the member packets. The resource document consisted of an article and infographics from *The Advocate* on teen vaping titled "Overcoming the impulse: How a teen vaping 'epidemic' is playing out in Louisiana."

### **Upcoming Meetings**

A list of dates for upcoming meetings of the Drug Policy Board and its various sub-groups was provided. The next Drug Policy Board meeting is scheduled for April 11, 2019 from 10 am – 12 noon.

### **Adjournment**

Chaunda announced that the meeting was adjourned at 12:00 pm.



**VOTING MEMBERS**

<b>Member Agency</b>	<b>Appointee/Designee</b>	<b>In Attendance</b>
Alcohol industry representative	Kody Thompson (for Buddy Schilling)	Yes
Attorney General's Office	Alberto DePuy	Yes
Board of Pharmacy	Carl Aron	Yes
District Court Judge	Judge Jules Edwards	Yes
Federal agency with AOD ed/treatment/prev responsibilities	Scott Arseneaux ( for Brad Byerley)	Yes
Governor's Office of Drug Policy	Dr. Chaunda Mitchell	Yes
House member, Committee on Health and Welfare	Representative Dodie Horton	
Louisiana Commission on Alcohol and Other Drug Abuse	Vacant	
Louisiana Commission on Law Enforcement	Linda Gautier	Yes
Louisiana Department of Children and Family Services	Alfreda Tillman Bester	
Louisiana Department of Education	Michael Comeaux	Yes
Louisiana Department of Health	Dr. Janice Petersen	Yes
Louisiana Department of Public Safety and Corrections	Dr. John Morrison	Yes
Louisiana District Attorneys Association	Warren Montgomery	Yes
Louisiana Highway Safety Commission	Lisa Freeman	Yes
Louisiana Office of Alcohol & Tobacco Control	Michelle Augustine (for Juana Lombard)	Yes
Louisiana Public Defenders Board	Jay Dixon	
Louisiana Sheriffs' Association	Shannon Dirman	
Louisiana State Police	Rebecca Nugent	Yes
National Guard	Major Marshall Snowden	Yes
Physician	Dr. Joseph Kanter	
Private organization involved in substance abuse prevention	Vacant	
Senate member, Committee on Health and Welfare	Senator Yvonne Colomb	

**OF-COUNSEL MEMBERS**

<b>Member Agency</b>	<b>Appointee/Designee</b>	<b>In Attendance</b>
LA State Board of Medical Examiners	Dr. Vincent Culotta	Yes
LA Department of Veteran's Affairs	Barry Robinson	Yes

**STAFF**

Kristy Miller, Governor's Office of Drug Policy

**GUESTS**

Dortha Cummins, Louisiana Highway Safety Commission  
Cathy Childers, Louisiana Highway Safety Commission  
Dr. Leslie Freeman, LDH/Office of Behavioral Health  
Dr. Allison Smith, LA Board of Regents/LaCASU  
Dr. Aimee Moles, Social Research and Evaluation Center at LSU  
Catherine Peay, LDH/Office of Behavioral Health  
Jay Besse, LDH/Office of Public Health  
Dr. James Hussey, LDH/Office of Behavioral Health  
Malcolm Broussard, LA Board of Pharmacy