



# HOUSE OF REPRESENTATIVES

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## **David Boyer**

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February 14, 2025

Senator Hickman, Representative Mastraccio and members of the Government Oversight Committee,

Thank you for considering my request for further investigation into the conduct of the Office of Cannabis Policy (OCP). As a member of the committee with jurisdiction, I feel that the trust between members of the Veterans and Legal Affairs Committee and the Office of Cannabis Policy has been permanently altered, if not broken. I believe the behavior of their office is a systemic issue that reaches the threshold for an independent review by the Office of Program Evaluation and Government Accountability. While the catalyst for this request was the conduct of one individual, there are other issues that I would like to bring to your committee's attention.

The areas of concern that I would like to express today are:

- The licensure of suspected illicit cannabis operations
- The appearance of a conflict of interest between OCP Director John Hudak and the state-mandated software company METRC
- The OCP's stakeholder and legislative relations

Between working on cannabis policy reform and serving on the VLA committee, I care deeply about the success of Maine's medical and adult-use programs.

### **Office of Cannabis Policies Stakeholder Relations**

The relationship between the regulated community and the regulator has always been strained when it comes to cannabis in Maine. I have been involved in cannabis policy reform for over a decade and over the last few years, the relationship has only gotten worse. Communication, transparency, and decorum have been issues with the OCP, not just with operators but with lawmakers too.

Stakeholder feedback indicates that the internal culture at the OCP may be contributing to inconsistent enforcement practices. Reports suggest that inspectors—who are critical to ensuring compliance among licensees—are exhibiting varied behaviors and inconsistent enforcement. Some inspectors have been

observed adopting an overly punitive approach for minor infractions, while others provide little in the way of technical guidance.

I have heard from multiple operators that when they ask their inspector or the OCP a question about compliance, they are often told that they cannot provide legal information. This lack of uniformity creates confusion among cannabis operators and undermines the regulatory framework.

Additionally, committee members have heard countless stories of OCP inspectors conflating the rules of the adult-use with the medical, or worse, citing operators for violations that don't exist in statute or rule. If the inspectors don't know the difference between the distinct rules of the medical and adult-use programs, how can they enforce them?

There have been anecdotal reports of inspectors engaging in intimidating behavior or failing to engage in a supportive manner. I have been told by multiple operators that sometimes the inspectors would request the operator speak to them without their lawyer present. Such behavior not only erodes trust between the regulated community and the agency but also affects the morale of OCP staff.

This is creating a culture of fear rather than one of constructive compliance and voluntary cooperation, further hampering the agency's efforts to ensure a safe and well-regulated market.

Here is just one example of the Kafkaesque situation operators must deal with. An operator had been hosting a trunk or treat in their store's parking lot for the past three years. On the third year, the OCP received a complaint about it and investigated. OCP saw no wrongdoing and gave them permission to hold the event. Fast forward to this year, they scheduled their annual event and advertised as normal, even partnering up with the local Fire Department. A few weeks before the event, OCP visited the operator and told them to cancel the event and gave them a violation over it, before it even happened!

This is just one example of the inconsistencies in OCP's enforcement. There are many, many more, and I would be happy to connect you with industry members if you would like.

The reason for this initial request is a disclosure by Deputy Commissioner Anya Trundy of The Department of Administrative and Financial Affairs to our committee regarding the 2023 Annual Reports for the Medical and Adult-Use Programs. These reports were statutorily required to be released to lawmakers and the public by February 15, 2024.

When asked about the fact that the VLA committee had yet to receive the report, which was nearly a year late, Commissioner Trundy stated that she made the decision not to release the report last year because we were having tense legislative discussions, and she didn't want to add to the tense environment. Commissioner Trundy said to the VLA Committee on January 15, 2025:

"We had a really difficult legislative session last year in this committee," Trundy said last week. "It was filled with a lot of acrimony, and that report is due in the middle of it. And when the draft came to me from the OCP, I put it on my desk, and I realized it needed some editing and that likely releasing that report would throw another log on the fire, and I didn't want to throw another log on the fire. What I really wanted to do is have a tone change. And at the end of the session we ended on a great note."

On January 24, 2025, Commissioner Trundy sent a letter to VLA chairs Sen. Hickman and Rep. Supica apologizing to the VLA Committee. While apologizing is certainly appreciated, it does little to quell the concern that an executive branch employee would take it upon themselves to withhold a statutorily required report from lawmakers and the public. This undoubtedly hindered legislative oversight last year and potentially skewed policy decisions. Additionally, in her letter, she states:

“I also want to be clear that my decision was mine alone, and that Commissioner Figueroa was not made aware of my decision at the time.”

This seems to run counter to information that I was provided last year by our committee analyst Lynne Caswell. I have attached email correspondence from last May, between myself and Ms. Caswell.

On May 16, 2024, I asked Ms. Caswell the status of the 2023 Reports. She replied that day stating that they had not submitted the required reports and that she would inquire further.

Later that day I received another reply from Ms. Caswell, quoted below:

“I just heard back from Anya Trundy. She said the reports are with the Commissioner for review (and have been there for a while) and that she hopes to release them by the end of this month. She also asked if the subcommittee, if approved, would discuss the due dates for these reports as mentioned in the GEA report.

Let me know if you need anything else.”

It is extremely concerning that Ms. Caswell stated that Commissioner Trundy said the reports are with Commissioner Figueroa and have "been there for a while" while seemingly saying the opposite in her letter to the VLA committee last month.

It is also frustrating for the industry, which tries its best to follow the letter of the law, only to see the folks in charge disregard it. It truly feels like one rule for them, one rule for us, and I suspect that is what is driving these folks to reach out to the Government Oversight Committee.

- Who made the decision to withhold the 2023 Annual Reports?
- What policies are in place to make sure that it won't happen again?
- Have other reports or documents been withheld from the VLA committee or other legislative committees?
- Are there any consequences for this gross misconduct?

### **Director Hudak's Appearance of Conflict of Interest**

Before becoming Maine's Director of the Office of Cannabis Policy in 2022, John Hudak co-founded Freedman & Koski, Inc. Hudak's LinkedIn states that he started that in January of 2017 and was with them until November 2022. His co-founders were Andrew Freedman and Lewis Koski. Freedman was

Colorado's Director of Marijuana Coordination and helped stand up their adult-use program in 2013. Lewis Koski was the Director of the Colorado Marijuana Enforcement Division.

In July of 2017, their firm responded to Maine's Request for Information for Rule-Making for Adult-Use Marijuana Policy Implementation, and Hudak is listed with Freedman and Koski under relevant team bios.

In October of 2018, Maine Department of Financial and Administrative Services filed a Waiver of Competitive Bidding Request form to hire Freedman & Koski, Inc. to consult on rule drafting for emergency legislation for LD 238, a medical cannabis bill. The estimated contract amount was \$32,200.

In January of 2019, the State signed an agreement with METRC, LLC for a Marijuana Inventory Control Tracking System. The contract end date is 1/31/2022, and it is for \$224,286.12.

In January of 2019, Maine DAFS posts RFP for Consultant Services for Rulemaking pursuant to LD 1719 and LD 1539.

In February of 2019, the Mills Administration creates the Office of Marijuana Policy within DAFS.

In March of 2019, Lewis Koski joins METRC as Chief Operating Officer and later became Chief Security Officer.

In March of 2019, RFP for Consultant Services is awarded to Freedman & Koski, Inc., and is worth \$189,335. Maine previously awarded the contract to BOTEC Analysis of California, but Freedman & Koski appealed, and the state restarted the process.

On March 6, 2019, the Portland Press Herald reported on this, and BOTEC felt there was a conflict of interest:

BOTEC Analysis, the California company that lost the state consulting job to Freedman & Koski, disagrees. In December, Maine awarded the consulting job to BOTEC, but Freedman & Koski appealed, claiming the state had unfairly scored the contract and failed to give it credit for partnering with a local firm. In response, DAFS pulled the plug on that deal in January and rebid the deal, deciding last month to hire Freedman & Koski as its marijuana consultant.

But on Monday, BOTEC Analysis asked the state to stay the award of that contract and give it time to appeal, filing paperwork that said the state had unfairly scored BOTEC's proposal in the second round. BOTEC also formalized an accusation that has been circulating for a week: that Freedman & Koski had failed to disclose "a very substantial and utterly obvious" disqualifying conflict of interest in its application for the consulting contract.

"Mr. Koski's business relationship with METRC and this conflict of interest clearly required disclosure," wrote attorneys Charles Dingman and Michael Smith of Preti Flaherty, which is representing BOTEC in its appeal. "If F&K has a contract to provide rulemaking consultant services to the state, then its co-founder, Lewis Koski, will be in a position to drive funds to a firm, METRC, from which he also derives income."

...

As one of the first dozen states to legalize adult-use sales in the high-dollar marijuana market, Maine must take steps to hold government contractors to the highest possible ethical standards, said Richard Painter, a University of Minnesota Law School professor who served as chief White House ethics lawyer under President George W. Bush. It should write stringent conflict of interest clauses into all of its rulemaking consulting contracts, he said.

“There is just no way to know this situation can work,” Painter said of Koski’s dual employment. “It’s ethics 101. You can’t have someone writing regulations that will benefit themselves, or their family or friend or a company they work for, directly or indirectly. Even if that person does the best job in the world, you’d never know if he were working in the best interest of the state or himself.”

In April 2019, the contract for the Marijuana Seed-To-Sale Tracking System is initially awarded to Bio-Tech Medical Software, Inc., doing business as BioTrackTHC.

However, in December of 2019, Maine DAFS announced they were mutually terminating the contract with BioTrackTHC and announced it would sign a new deal with the runner-up, METRC LLC.

In February of 2020, OMP signs a contract with METRC for a six-year deal.

In March of 2020, DAFS renews the contract with Freedman & Koski, Inc. for consultant services for rulemaking.

In April of 2021, DAFS renews the contract with Freedman & Koski, Inc. for consultant services for rulemaking.

In April of 2022, the 130th Legislature passes an "Act To Allow the State's Adult Use Marijuana Tracking System To Track Plants and Products by Group," which would allow seed to sale tagging by batch of plants rather than tagging every individual plant.

In October of 2022, Erik Gundersen steps down as Director of the OCP.

In December of 2022, John Hudak, co-founder of Freedman & Koski, Inc., is hired as the new director of the OCP.

In April of 2023, OCP finalizes contract negotiations with METRC to implement batch tagging. The contract amendment costs \$350,000 to change the software and brings the new total of the METRC contract to \$890,000.

Payments to Freedman & Koski, Inc. between 2019-2022 total \$629,071.14.

As lawmakers, we have been instructed to be very sensitive to conflicts of interest. State law under Chapter 21 Section 1011 even goes so far as to say:

“If public confidence in government is to be maintained and enhanced, it is not enough that public officers avoid acts of misconduct. They must also scrupulously avoid acts which may create an *appearance* of misconduct.”

I believe these standards hold true for executive branch employees as well.

Given Director Hudak’s previous relationships with Lewis Koski, he should have recused himself from negotiating a new state contract with a former co-founder.

- How can anyone claim to be impartial and objective when a former business partner is on the other side of the negotiation table?
- How do we know that Director Hudak negotiated the best deal for Maine’s taxpayers and regulated industry?
- What will Director Hudak’s involvement be in scoring applications and awarding the contract?

This is of timely concern, as the current METRC contract is expiring next year, and there is currently an RFP open for the contract to provide seed-to-sale tracking software in Maine.

### **Licensure of Suspected Illicit Cannabis Cultivators**

Over the last few years, there has been a proliferation of illegal cannabis cultivation outside both the adult-use and medical cannabis programs. This was addressed by Director Hudak at our committee’s briefing by their department on January 15, 2025. Director Hudak is aware of the issuing stating:

“Illicit operations in the state of Maine are an existential threat to the regulated programs. They are a problem for a variety of reasons and certainly the products coming out of those facilities present profound public health and safety threats to Mainers who chose to consume them.”

He went on to describe OCP’s role is largely to “advise” law enforcement partners and assist when requested. He acknowledged the toxic conditions of the cultivation sites:

“The conditions are horrid, to say the least. Black mold growing in every orifice in the rooms that these are in.”

Director Hudak also acknowledged that Mainers are concerned with these grow sites, that are largely in residential areas and wondering what OCP is doing to curb the growth of the illicit market:

“It’s a really lousy situation. It’s grotesque to look at. And so I did want to note that this is something we are focused on. It is something we are aware of. One of the things we hear frequently from local officials, the public, from participants in the program, is how to keep individuals from those addresses or in some cases individuals who have been charged with crimes out of the regulated programs.”

Director Hudak explains that these are not holdouts from prohibition but rather sophisticated and organized operators:

“What we are talking about here is an entirely differently class of operation. There have been instances where individuals have applied to our program, our medical program I should note, They have applied to our medical program and in some cases we have no grounds to bar them. We have no statutory authority to bar individuals from the program.

They haven't been convicted of a disqualifying offense. They haven't engaged in an activity for which we have statutory authority to deny. They filled out their form, they paid their fees. In some cases, they have worked with consultants who can help them with language barriers who have experience in the program. That gives a registration to participate. I recognize that this is troubling to people."

Director Hudak stated he wants to work with the committee to fix this issue and suggested that the individuals tied to these suspected grow sites apply to the department to shield themselves from law enforcement:

"I would like to work with this committee to figure out what we can do to help with this problem. I do believe in some of these cases, individuals who are getting arrested in connection with these search warrants or addresses connected to these search warrants. They are not applying to our medical program to come out of the shadows and into the light. They're applying so they can have a Get Out of Jail Free card, or what they perceive as a Get Out of Jail Free Card. To continue to do the operations that they're doing, which by and large is directing product out of state."

In response to a question regarding legislative solutions to give the OCP the tools necessary to maintain the integrity of the program Hudak said he was concerned that there are constitutional protections that exist and there were concerns that legislation could be unconstitutional to enforce. He explained that his office was working on internal controls to flag these suspected individuals:

"We do have some internal processes that we have tried to implement to at least identify when individuals are applying to enter the program from addresses that were previously associated with a search warrant. That gives us some visibility about what might be going on."

The Department of Homeland Security in 2022 estimated there were 270 illegal cultivation sites tied to organized crime. Many of these raided sites have made local, state and even national news. Senator Susan Collins has requested the Maine Drug Enforcement Agency look into these illicit operations and the Maine Delegation sent letters to U.S. Attorney General Merrick Garland requesting a briefing on the Department of Justice's efforts to address the illegal grow sites. As of today, there are over 1,600 registered caregivers in Maine.

I fear that a vacuum of information and leadership on this issue could lead to discrimination. The cannabis community is a diverse and welcoming place. With the revelation that these foreign organized crime operations are now operating in Maine's medical program, legal operators are faced with hard choices about who to do business with.

This practice potentially undermines the integrity of Maine's legal cannabis market by providing a cover for illegal activities under the guise of medical marijuana licenses. It also poses significant law enforcement challenges, as it complicates efforts to distinguish between legal and illegal operations.

- How many registrants does the Office of Cannabis Policy suspect are affiliated with organized crime?
- What aspects of licensing do OCP consider within its discretion under the current statute?
- What aspects of inspections do OCP consider within its discretion under current statute?
- Under current law, are you required to process applications within a certain period of time?

- What are the specific protocols and processes that the OCP has implemented to determine if the applicant is tied to the search warrants or addresses connected to search warrants tied to organized crime?
- What specific follow-up is the OCP doing to these suspected individuals after granting them licenses to ensure they are in compliance?
- Are they working with the Department of Agriculture to ensure that these caregivers have their Pesticide Applicators Certificate as required by law?
- Are they audit testing suspected caregivers' cannabis for pesticides as prohibited by law?

The issues outlined necessitate immediate action by the Government Oversight Committee to restore trust, ensure compliance with state law, and protect the integrity of Maine's cannabis industry. The OCP must operate with transparency, accountability, and an unwavering commitment to public interest. I thank you for your consideration and I would be happy to answer any questions the committee may have.

Sincerely,

Rep. David Boyer

Ranking House Republican

Veterans and Legal Affairs Committee



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RE: OCP 2023 report

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From Caswell, Lynne <Lynne.Caswell@legislature.maine.gov>  
Date Thu 5/16/2024 12:23 PM  
To Boyer, David <David.Boyer@legislature.maine.gov>  
Cc Hickman, Craig <Craig.Hickman@legislature.maine.gov>; Supica, Laura <Laura.Supica@legislature.maine.gov>

I just heard back from Anya Trundy. She said the reports are with the Commissioner for review (and have been there for a while) and that she hopes to release them by the end of this month. She also asked if the subcommittee, if approved, would discuss the due dates for these reports as mentioned in the GEA report.

Let me know if you need anything else.

Best regards,

*Lynne*

287-1670

From: Caswell, Lynne  
Sent: Thursday, May 16, 2024 9:56 AM  
To: Boyer, David <David.Boyer@legislature.maine.gov>  
Cc: Hickman, Craig <Craig.Hickman@legislature.maine.gov>; Supica, Laura <Laura.Supica@legislature.maine.gov>  
Subject: RE: OCP 2023 report

Hello Rep Boyer. OCP did not submit an annual report as required under section 2430-N of chapter 558-C and section 113 of Title 28-B (both due 02/15).

I did check the GEA report they submitted (<https://legislature.maine.gov/doc/10578>) to see if they intended the GEA to fulfill the annual report requirements. They did not state such but did mention annual report requirement a few times. Of note, they stated the following:

“Previously this report was due on April 1st of each year, which allowed the Office ample time to collect and analyze data from the previous calendar year to inform the report upon completing the annual report for the adult use program. It will be a tight turnaround to have just six weeks from the end of the calendar year to collect and analyze data and compile annual reports for two programs by February 15th. The Department of Administrative and Financial Services recommends moving the due date of both annual reports back to April 1st of each year, or change the period reported on to coincide with the fiscal year.”

I'll reach out and see what they say.

*Lynne*

287-1670

From: Boyer, David <David.Boyer@legislature.maine.gov>  
Sent: Thursday, May 16, 2024 9:26 AM  
To: Caswell, Lynne <Lynne.Caswell@legislature.maine.gov>; Hickman, Craig <Craig.Hickman@legislature.maine.gov>  
Subject: OCP 2023 report

Hi Lynn,

Hope you are well. Did we get the 2023 report yet? Thanks, David



**From:** Lisa Toles <lisa.toles@gmail.com>  
**Sent:** Friday, February 14, 2025 9:29:20 AM  
**To:** Boyer, David <David.Boyer@legislature.maine.gov>  
**Subject:** Re: OCP and illegal grows

**This message originates from outside the Maine Legislature.**

Dear Mr. Boyer,

I live in Somerset County, Maine's Capital for illegal grow operations. I use to work in the cannabis industry, but now it is unsafe for older women to farm cannabis/ hemp. My experience with OCP telling me to mind my own business, when I tried to report illegal Chinese grow operations. This was almost 2 years ago and at least 20 illegal grow operations later.

I drive around Somerset County and look for large number of New York cars. I also at our local Agway parking lot and watch Chinese buy hundreds of bails, of pro mix soil and drive away in a local box truck. I have followed them to houses in Anson, Madison, Solon, Cornville, Skowhegan and Smithfield. Our County has a huge problem and it isn't being taken seriously.

I have now been approached by Chinese real estate agents, to sell my home for cash. I will also be offered a special fee, if I convince my elderly neighbors to also sell them their homes/ land.

With all the high costs to Maine seniors, we are definitely thinking about these offers. Our Main Street, in Skowhegan, could be the new reality for Chinese grow operations. We have seen many sell and leave Maine. We have been told by the real estate agent, that the Chinese buying homes, they legally become residents due to loop hole written by OCP, the Chinese then can legally grow in Maine.

How did a Chinese real estate agent get my info, they told me it was given to them from OCP. I saw a printed off list ,one with caregivers on it and another list of people who work in the cannabis industry. My name was on the second list. The real estate agent was reaching out to everyone on the lists to see who would sell out for cash. Everyone I have told this story too can't change the wave of illegal grows in Maine and sadly I will be forced to sell out soon.

Respectfully, Lisa Toles

Sent from my iPad

