



April 20, 2022

Via Email: publichealth.rules@dhsosha.state.or.us

Oregon Health Authority
500 Summer Street, NE, E-20
Salem, OR 97301-1097

Statement Regarding the Oregon Health Authority's Notice of Proposed Rulemaking Submitted by the Religious Use Committee of the Psychedelic Bar Association

The Psychedelic Bar Association ("the PBA") is an association of attorneys and legal professionals dedicated to solving the novel legal and policy issues impacting the emerging psychedelics sector. The PBA Religious Use Committee provides expertise around the intersections of law, policy, psychedelics, and religion. The PBA Religious Use Committee offers this Statement of Concerns regarding the proposed regulations governing the Oregon Psilocybin Service Act ("the Act").

At the outset of our statement, we express our full support for the Oregon Health Authority's ("OHA") interest in and commitment to promulgating thorough regulations that provide for the safe administration of psilocybin-facilitated mystical experiences; preventing diversion into illicit markets; and ensuring the expeditious rollout of the regulations by the end of the year to comply with the Act.

Measure 109 was a breakthrough in state law, providing the nation's first statutory framework for the supervised, adult use of psilocybin. The statute promised voters an alternative to the medical and therapeutic models for healing by providing supported adult use of psilocybin. An established and critical component of adult use psilocybin is religious use.

Religious/Spiritual Community Use Is Currently Unprotected under State and Federal Law

Many religious communities have worked tirelessly to secure the freedom to use religious sacraments that contain psychedelics. Yet this freedom is far from secure. Currently, no state or federal law protects religious communities or practitioners who utilize psilocybin from being prosecuted by Oregon law enforcement. As charitable non-profit organizations, most if not all of these communities and practitioners lack the resources to hire attorneys to secure their rights. Measure 109 promised to welcome these communities into a legitimate legal framework. However, we believe that some of the proposed rules for implementing Measure 109 would substantially burden such communities and force them to operate illegally while remaining in the shadows. We respectfully request that OHA amends its proposed rules to accommodate the unique practices of religious organizations and practitioners.

This sincere religious practice is a matter of considerable public interest. We note nearly half (49%) of the respondents to your Community Interest Survey indicated that their interest in accessing psilocybin under Measure 109 was for spiritual purposes. For context, the interest in spirituality ranks higher than interest in psilocybin for trauma-related issues (47%), addiction and substance use (17%), end of life psychological distress (10%), or "other" reasons (9%). No option was offered in the survey to indicate a "religious" interest in psilocybin, although we know that interest to be substantial. Given the long history of religious psilocybin

use, the failure to include religious practitioners, and the overrepresentation of medical practitioners on the Oregon Psilocybin Advisory Board (“the OPAB”) was a significant oversight.

Reasons to Reconsider the Proposed Regulations in Light of Religious/Spiritual and Communal Use

Given the fact that Measure 109 created an adult use model, rather than a medical and therapeutic-only framework, we believe that religious practitioners and their perspectives must be acknowledged in the proposed rules. For the following reasons, we strongly recommend the OPAB reconsider some of its proposed regulations to provide for the regulatory protection and support of religious and ceremonial use of psilocybin:

- To mitigate the risk of future litigation by adherents who have been shut out of their long-standing practices by failure to provide for religious use;
- To embrace the added safety that can come from entheogenic practice within sincere religious communities, which requires adapting rules to suit their unique needs;
- To provide a way for religious practitioners to avail themselves of oversight and services when they would otherwise be forced to remain underground by the regulations as written.
- To honor the history of religious use as well as the emergence of new religious traditions; and
- To avoid scientific reductionism that is at odds with Indigenous and religious ways-of-knowing to heal our psycho-spiritual ailments.

Burdens on Religious/Spiritual Exercise

The regulations as proposed risk imposing a western medical and therapeutic paradigm that reduces the impacts of psilocybin and its mechanisms of action to purely neurobiological and psychopharmacological terms. This is antithetical to the religious views of many communities who work with psilocybin and regard psilocybin as an unknowable, ineffable catalyst for personal, spiritual and religious development. More specific issues in the proposed regulations that burden religions that use psilocybin include but are not limited to:

- Failure to provide for a manufacturing endorsement specifically related to the religious beliefs about psilocybin;
- Mandatory potency testing for psilocybin, which imposes a western reductionist approach on the use of psilocybin in a religious context and contributes to affordability challenges;¹
- Prohibiting the manufacture and dispensing of all but one species;
- The potential for training programs to discriminate against experienced entheogenic practitioners who apply for accelerated training credit;
- Potentially limiting dosage based on clinical trial limits not taking into account a long history of safe entheogenic use that may utilize different dosing protocols; and
- The potential for OHA to deny or delay approval to entheogenic practitioners who apply for training program approval because they lack access to a licensed service center to satisfy the required practicum.

OHA’s Authority to Regulate for Religious/Spiritual Use

Measure 109 provides the OHA with broad statutory authority to implement psilocybin rules tailored to religious practice and practitioners. *Section 8(1)* grants OHA the powers “necessary or proper to enable the authority to carry out the authority’s duties, functions and powers under sections 3 to 129” of the Measure. The words “necessary and proper” indicate that the OHA has not only those powers specifically enumerated in sections 3 through 129; it also has implied powers that have not been spelled out. Measure 109 has not

defined the phrase necessary or proper. However, the Supreme Court of the United States has interpreted “necessary and proper” to mean something that is useful or beneficial to achieving a certain task. Therefore, the OHA can arguably exercise implied powers not listed in sections 3 to 129 of the Measure if exercising them would be useful or beneficial to the exercise of the powers spelled out in sections 3 to 129. That alone gives the OHA broad discretion.

The following non-exhaustive list includes sections of Measure 109 that empower the OHA to create rules to accommodate religious practitioners.

Section 24 empowers the OHA to adopt rules that designate different types of manufacturing activities and endorsements that allow licensed entities to engage in those activities. The section gives the agency broad discretion to determine the types of manufacturing activities and endorsements it will allow. Nothing in Section 24 prohibits the OHA from creating a religious manufacturing endorsement as recommended by OPAB's Licensing Subcommittee.

Section 25 empowers the OHA to create rules that limit psilocybin product quantities. Nothing in the rules prohibits the agency from creating different rules regarding quantity limits for different types of licensed entities such religious and secular organizations.

Section 26 empowers the OHA to create rules regarding service center licenses and fees. Subsection 3(b) gives the OHA the power to set application, licensure, and renewal fees for psilocybin service center operators. It does not require those fees to be uniform across the industry, which gives the OHA discretion to establish different fee structures for different types of service centers such as religious and secular organizations.

Subsection 3(d) gives the agency power to require service center operators to meet public health and safety standards and industry best practices established by the agency. It explicitly gives the OHA the power to set those standards and best practices and does not prohibit the agency from creating different standards and best practices for various types of service centers.

Section 8(c) empowers the OHA to adopt rules necessary to carry out the intent and provision of sections 3 to 129, "including rules that the authority considers necessary to protect the public health and safety." The addition of the word **Including** suggests that public health and safety are two examples of the goals of sections 3 to 129 rather than an exhaustive list. Otherwise, Section 8(c) would have included words such as "consisting of," or "comprising rules that the authority considers necessary to protect the public health and safety." Consequently, Section 8(c) indicates that the powers given to the OHA to carry out provisions 3 to 129 are broader than those that protect public health and safety. In other word , the agency is empowered to adopt rules that promote other values such as the free exercise of religion or the accessibility of psilocybin services.

Finally, in addition to Section 8(c), which applies only to sections 3 to 129, *Subsection (C)* empowers the OHA to regulate the use of psilocybin products and psilocybin services "for other purposes" deemed necessary or appropriate by the authority. The phrase "for other purposes" indicates that the OHA may create rules that achieve purposes that are not explicitly stated in sections 3 to 129 or implied from them. This too means that OHA can

create rules for the purposes of accommodating religious practice.

The religious and ceremonial context has been the container for psychedelics since humanity has used these sacraments and healing technologies. We believe that incorporating measures such as the religious manufacturer endorsement, as recommended by the OPAB's Licensing Subcommittee, and the "Entheogenic Practitioners Privileges and Duties" framework, approved by the Health Equity and Licensing Subcommittees, into Oregon's psilocybin regulatory framework will secure freedoms consistent with the privileges that have been afforded medical and corporate interests. Implementing these suggestions, in whole or in part, would help safeguard religious liberty and public health through carefully crafted measures that balance both important interests. Oregon should not regulate the activities of religious communities the same way it regulates psilocybin service centers that resemble luxury resorts. Fortunately, Measure 109's broad language provides OHA with the statutory authority to create rules tailored to accommodate both equally.

In short, the promise of Measure 109's adult use paradigm must include a religious paradigm. We feel strongly that the rules Oregon adopts ought to be drafted in such a way that Maria Sabina could run a training program, operate a service center or manufacturing facility, afford to participate in a ceremony^d or hold religious ceremonies with psilocybin. We strongly urge you to reconsider the OHA's proposed regulations in light of the long-standing religious use.

Finally, our committee kindly requests a meeting with the OHA to discuss our concerns and strategize on solutions.

Sincerely,

Religious Use Committee
Psychedelic Bar Association

**This statement is offered by the attorney and legal professional members of the Religious Use Committee of the Psychedelic Bar Association as a result of a consensus process and should not be ascribed to the Psychedelic Bar Association membership as a whole.*

¹The lack of inclusion of religious use of psilocybin in Oregon's proposed regulations also touches upon serious issues of equity, affordability, and access, and reproduces inequalities inherent in the western medical and therapeutic models. While these issues are substantial, they deserve full and separate consideration not within our committee's direct scope. That said, we take seriously the concerns expressed by members of the public that the proposed rules would create a program that is unaffordable to many people. 516,000 Oregonians and 37.2 million Americans live in poverty. BIPOC communities, members of the LGBTQIA+ community, people living with disabilities, victims of domestic violence, and single mothers experience poverty at much higher rates than the general population. Although OHA notes in its Statement on racial equity that there is "no data available to suggest that racial populations will use psilocybin services at different rates," there is data to suggest that racial and other marginalized populations will be unable to afford psilocybin services at higher rates than the general population. There is also new research that suggests that psilocybin and other psychedelics are effective in helping to heal racial trauma.