



# Considering Complexities with Measure 109 Implementation

Jonathan Perez-Reyzin and  
Ismail Lourido Ali, J.D.

In **MAPS' Winter 2021 Bulletin** article, “Beyond Oregon: A New Drug Policy Horizon in the U.S.,”<sup>1</sup> we discussed hopes for Oregon’s regulatory implementation of Measure 109,<sup>2</sup> the Oregon Psilocybin Services Act. In that article, we sorted our recommendations and reservations into three categories:

1. **“Resist stigma by divesting from coercion, pathologization, and criminalization”**
2. **“Lower barriers to entry while maintaining quality of care”**
3. **“Protect consumers while regulating responsibly”**

Nearly nine months later, we are approaching the end of the deliberations over the [Oregon Health Authority’s final rules](#)<sup>3</sup> for psilocybin services — the regulations will be officially set by December 30, 2022. At this pivotal moment, it is worth reflecting on how the process has played out, and on which of our hopes and concerns from last year have come to pass. Notably, many of the most central unresolved challenges with which the Oregon Psilocybin Advisory Board (OPAB), the Oregon Health Authority (OHA), and the general public have been struggling with implicate each of the categories we originally outlined. In this article, we discuss two such challenges: the regulation of microdosing and the potential creation of an entheogenic or community-based practitioner framework, with an eye towards supporting the effective implementation of Measure 109 with safety, accessibility, and equity in mind.

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<sup>1</sup> Ali, I. L., J.D., Booher, L., J.D., & Ginsberg, N. L. (2021, March 9). Beyond Oregon: A New Drug Policy Horizon in the U.S. *MAPS Bulletin – Winter 2021*, 31(1).

<sup>2</sup> Measure 109 was a ballot measure passed by Oregon voters in 2020 which directs the Oregon Health Authority to license and regulate the manufacturing, transportation, delivery, sale, and purchase of psilocybin products and the provision of psilocybin services.

<sup>3</sup> The final rules promulgated by the Oregon Health Authority can be found on the Oregon Secretary of State’s website—specifically Chapter 333, Division 333.

## Regulation of Microdosing

The topic of whether and how to allow psilocybin [microdosing](#)<sup>4</sup> has been hotly debated, both during OPAB meetings and during the recent OHA [public listening sessions](#).<sup>5</sup> Measure 109 itself does not prohibit—or even mention—microdosing, and the only potential OPAB [proposal](#)<sup>6</sup> explicitly using the term, the Equity Subcommittee’s proposal that “OHA stratify allowed psilocybin products into two categories: a) Hallucinogenic psilocybin products (hallucinogenic doses) b) Sub-hallucinogenic psilocybin products (micro doses)” narrowly failed to make it into OPAB’s final recommendations. But even without such an explicit categorization, microdosing will be permitted in practice if OHA declines to set a minimum dose, as the primary drafter of Measure 109 [noted](#)<sup>7</sup> in April. Regarding dosage generally, OPAB [recommended](#)<sup>8</sup> that a standard serving of psilocybin be 25 milligrams, with a typical administration session employing one serving. However, neither a maximum nor a minimum dose was set—indeed, the recommendation allows that “a product package may be subdivided into amounts that are less than one serving.” If OHA were to follow this recommendation, dosage regulations would not be a barrier to microdosing. However, two areas of forthcoming OHA rules will certainly affect the feasibility of microdosing under Measure 109: preparation session requirements and administration session duration regulations. OPAB made recommendations with respect to each.

OPAB made a [recommendation](#)<sup>8</sup> regarding duration that there be neither a minimum nor a maximum required time for an administration session. Notably, the text of the approved recommendation includes language implicating microdosing, even if it does not name the practice explicitly: “Framing the required duration of administration sessions in this manner leaves room for the administration of subperceptual doses of psilocybin products...” For such subperceptual (or perhaps

more accurately, subhallucinogenic) doses, a short administration session could allow clients to take a microdose, and after a short period of monitoring, go on to resume their day. OPAB also addressed preparation session requirements in the context of potential group services, [recommending](#)<sup>8</sup> that group preparation sessions be permitted and allowing preparation sessions to be conducted remotely. If OPAB’s recommendations are incorporated into OHA’s final rules, microdosing could be permitted, although certain rules that OPAB has not made recommendations about—including the possibility of requiring only one preparatory session for multiple administration sessions—will affect microdosing’s cost and practicality.

At July’s OHA [public listening sessions](#)<sup>5</sup> at which OHA listened to questions and recommendations but made no comments on them, microdosing was perhaps the most discussed topic. All three sessions—but especially the final one, on products—included multiple members of the public speaking up in favor of OHA permitting microdosing and making it easily accessible. None spoke out against microdosing. Comments highlighted the perceived benefits of microdosing for mood and mental health, and implored OHA not to ban a practice that is permitted by the language of Measure 109.

OHA has not explicitly signaled its view of microdosing, but could nevertheless come out against the majority public opinion, especially if it shares the concern of [some scientists](#)<sup>9</sup> that microdosing could pose a potential heart health risk and placebo-controlled trials have not demonstrated clear benefits. However, this heart health risk has not been observed in people who engage in microdosing and so is at this point theoretical. Furthermore, very recent evidence from [a large controlled](#)<sup>10</sup> study suggests that microdosing may indeed improve mood and mental health. Perhaps more importantly, those curious about or committed to the benefits of microdosing will likely continue to microdose regardless of OHA’s decision. From a harm reduction standpoint, it is important to make microdosing safer for those folks—creating a legal, affordable, and well-regulated framework for microdosing would do precisely that.

<sup>4</sup> NYT article

<sup>5</sup> *Oregon psilocybin – public listening sessions*. Oregon Health Authority : Oregon Psilocybin – Public Listening Sessions : Prevention and Wellness : State of Oregon. (n.d.). Retrieved from <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Pages/Psilocybin-Public-Listening-Sessions.aspx>

<sup>6</sup> <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Documents/OPAB%20AGENDA%20FINAL,%206.22.22.pdf>

<sup>7</sup> Staff, T. P.-F. C. (2022, April 19). *Microdosing under the Oregon Psilocybin Services Act: A definite maybe*. Bill of Health. Retrieved from <https://blog.petrieflom.law.harvard.edu/2022/04/19/microdosing-under-the-oregon-psilocybin-services-act-a-definite-maybe/>

<sup>8</sup> *Approved OPAB recommendations – Oregon*. Retrieved from <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Documents/Approved-OPAB-Recommendations.pdf>

<sup>9</sup> Staff, T. P.-F. C. (2022, April 13). *Safety first: Potential heart health risks of microdosing*. Retrieved from <https://blog.petrieflom.law.harvard.edu/2022/04/13/safety-first-potential-heart-health-risks-of-microdosing/>

<sup>10</sup>Rootman, J.M., Kiraga, M., Kryskow, P. et al. Psilocybin microdosers demonstrate greater observed improvements in mood and mental health at one month relative to non-microdosing controls. *Sci Rep* 12, 11091 (2022). <https://doi.org/10.1038/s41598-022-14512-3>

## Entheogenic or Community-Based Practitioners Framework

If psilocybin microdosing is the most publicly discussed concern with Measure 109's implementation, the creation of an entheogenic or community-based practitioners framework is undoubtedly a close second. From the start of OHA's process, observers have been concerned with equity and accessibility, particularly because—despite the important work of OPAB's [Equity Subcommittee](#)<sup>11</sup>—Indigenous practitioners have not been [adequately represented](#)<sup>12</sup> on OPAB or at OHA. Many thus welcomed a proposal for an [entheogenic practitioners framework](#),<sup>13</sup> drafted by Jon Dennis (who is not a member of OPAB) and subsequently recommended for adoption by both the Licensing and Equity Subcommittees. As lawyer Jon Dennis has [explained](#),<sup>14</sup> the entheogenic framework aims to increase access to the legal framework and protections of Measure 109 for religious and spiritual organizations—including Indigenous groups—who may otherwise be unable to afford or comply with the requirements of facilitator and manufacturer licenses. It would also decrease the cost of psilocybin services for those clients receiving services with an entheogenic practitioner. For example, an entheogenic practitioners framework would create a pathway for communities to employ “peer-support assistance” to replace the role of some paid facilitators, and to manufacture psilocybin in a cheaper and less restricted way.

Despite subcommittee support for the entheogenic framework, OHA appeared unsure about its legal or administrative ability to implement it. In a [letter](#)<sup>15</sup> accompanying its first set of rules, which were released in May, it wrote: “Many members of the public expressed support for an ‘Entheogenic Framework’ for licensing.... Because the framework proposes exceptions to rules that have not yet been drafted, and because the Oregon Psilocybin Advisory Board has yet to consider the proposal, OPS [Oregon Psilocybin Services] did not address these comments in the current rulemaking. OPS is committed to understanding the impact of statute and rules on entheogenic practices through collaboration and partnerships with communities.” Eventually, OPAB did take up the proposal, but not before OHA consulted the Oregon Department of Justice as to the feasibility of creating an entheogenic framework. The Department of Justice

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<sup>11</sup> *Oregon psilocybin – equity subcommittee*. Oregon Health Authority : Oregon Psilocybin—Equity Subcommittee : Prevention and Wellness : State of Oregon. (n.d.). Retrieved from <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Pages/Psilocybin-Equity-Subcommittee-Meetings.aspx>

<sup>12</sup> Marks, M. [@masonmarksmd]. (2022, May 26). *Psychotherapist Rebeca Rocha's letter to the Oregon #Psilocybin Advisory Board explains how Measure 109 rule making excluded Indigenous & other marginalized voices. Instead of acknowledging it or reading it into the record as requested, the Board ignored it. Please read & share.* [Tweet]. Twitter. <https://twitter.com/MasonMarksMD/status/1529849974527123456>

<sup>13</sup> Dennis, J. *Privileges and Duties of Entheogenic Practitioners*. Retrieved from [https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Documents/Privileges%20and%20Duties%20of%20Entheogenic%20Practitioners\(DRAFT%20v.9%20-%20REDLINE\).pdf](https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Documents/Privileges%20and%20Duties%20of%20Entheogenic%20Practitioners(DRAFT%20v.9%20-%20REDLINE).pdf)

<sup>14</sup> Psychedelics Today. (2022, April 7). *Religious practice under Oregon Measure 109*. Retrieved from <https://psychedelictoday.com/2022/02/03/religious-practice-under-oregon-measure-109/>

<sup>15</sup> Retrieved from <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Documents/Letter-to-Public-5.20.2022.pdf>

publicly released its [memorandum](#),<sup>16</sup> which concluded that OHA cannot adopt rules that would apply different standards to entheogenic (i.e., spiritual) practitioners, since doing so would “likely violate the establishment clause protections of the Oregon and United States constitution.”

Based in part on those grounds, OPAB subsequently [rejected](#)<sup>17</sup> the entheogenic framework. A proposal to consider a “community-based” framework that would have potentially avoided the establishment clause issues by prioritizing community non-profit organizations instead of spiritual groups also narrowly [failed](#)<sup>18</sup> before the full board. Ultimately, OPAB made no recommendations at all regarding such alternative frameworks, despite the early enthusiasm of some of its subcommittees. At July’s OHA [public listening sessions](#),<sup>5</sup> issues of access and equity for Indigenous practitioners and lower income clients came up repeatedly, and many implored OHA to create a framework — even if not the original entheogenic framework — that would solve some of the issues that Jon Dennis’s original proposal was designed to solve. But without any OPAB-recommended framework to draw from, it is unclear what OHA may seek to do to promote the barrier-reducing and equity-enhancing goals many of us are so keen to see promoted. We hope that OPAB will return to consider these approaches when more data has been collected about the de facto application and practical impact of the final rules.

## Conclusion

Much work has been done since the start of the Measure 109 implementation process, and much work still remains. MAPS commends OPAB and OHA for their efforts and consistent hard work creating an entirely novel model for psilocybin services. At the same time, some of our concerns about access, consumer protection, and criminalization remain — as the two controversies explored here show. We hope that OHA charts a path forward that will reduce barriers to access, and, as we said in our first [article](#),<sup>1</sup> “prioritize safety and support for those most impacted by prohibition and insufficient access to mental health care.” Overly complicating or fully disallowing microdosing, or insufficiently considering marginalized, Indigenous, or community-based providers would be an unfortunate divergence from this path.

**Jonathan Perez-Reyzin** is a J.D. Candidate at Yale Law School and was MAPS’ Policy and Advocacy Team’s legal intern during the summer of 2022. He is also an affiliated researcher with the Project on Psychedelics Law and Regulation (POPLAR) at the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School.

**Ismail Lourido Ali, J.D.** is MAPS’ Director of Policy and Advocacy. Ismail also serves on the Board of Directors for Sage Institute in the California Bay Area. Ismail advises, is formally affiliated with, or has served in leadership roles for numerous organizations in the drug policy reform ecosystem, including Students for Sensible Drug Policy (SSDP), Chacruna Institute, and the Ayahuasca Defense Fund. Ismail is also a co-founder and founding Board Member of the Psychedelic Bar Association.

<sup>16</sup> Retrieved from <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Documents/Legal-Memorandum.pdf>

<sup>17</sup> Lekhtman, A. (2022, June 6). *Oregon Board rejects plan to boost psilocybin access, but fight goes on*. Filter. Retrieved from <https://filtermag.org/oregon-psilocybin-religious-access-fight/>

<sup>18</sup> Retrieved from <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Documents/OPAB%20Meeting%20Minutes%205-25-22%20Approved.pdf>

