

## A Closer Look at Pennsylvania Medical Marijuana Legalization

### Doing Business With PA Medical Marijuana Organizations & Patients

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*Presented by:*

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# What We Will Do

- Where things stand: Short overview of PA Medical Marijuana Act (MMA).
  
- Doing business with medical marijuana organizations.
  - What are the issues? How do you navigate them?
  
- Employing a medical marijuana patient.
  - What are your rights? What are your obligations?
  - What are the employee's rights?

# PA Medical Marijuana – Where Things Stand

- **April 17, 2016** – Pennsylvania becomes the 24th state to legalize medical marijuana to treat specific medical conditions.
- **June 8, 2016** – Ohio becomes the 25th state to legalize.
- **August 2016** - Currently, more than 275 million Americans now live in states with medical marijuana laws – about 85% of U.S. population.
- **November 2016** – Recent polling suggests five (5) more states will legalize marijuana in 2016 – California, Maine, Arizona, Nevada and Massachusetts.

# Back to the Future?

C. E. KING & SON  
PRESCRIPTION DRUGGISTS  
109 MARKET STREET  
DURHAM, N. C. TELEPHONE F. 6341

190830  
5/24/30

Rx *Ms S. J. Chamberlain*

*In Hyocyamin*  $\mathfrak{zvi}^{12/6}$   
*In Cambris Indicae*  $\mathfrak{ziii}$   
*Elem Hyatom*  $\mathfrak{zvi}$   $\mathfrak{zvi}$

*ij: zii in water qd & hinc or x  
times daily.*

*A. W. Boone*

*call for*

# Back to the Future?

VALUE, ONE CENT.

ORDER FORM FOR OPIUM, ETC.  
Act of Congress, Approved December 17, 1914.

6th District of Cal.

ORIGINAL Registry No. 4736

To be filled in by Collector

N41412 (Name of Purchaser) G. C. NICHOLS

To Couch Doug Don Dept 26 1917  
Santa Paula Calif.

SERIES 1915

Please ship goods by Personally as follows:

SPECIFIC DESCRIPTION OF ARTICLES	QUANTITY	THIS SPACE TO BE RESERVED FOR PERSON FILLING THIS ORDER
25 Hypo Tablets		
Morphine Sulph 1/8		3 1/8 grs
<del>Atropine Sulph 1/100</del>		
25 Tablets Local Anesthetics		
Cocaine 1/2 gr		12 1/2 grs
Morphine 1/8 gr		3 1/8 "
50 Hypo Tablets Morph Sulph 1/4		12 1/2 "
Atropine 1/100		

Geo. Nichols, Physician & Surgeon  
Santa Paula Calif.

5

UNITED STATES INTERNAL REVENUE

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ATTORNEYS AT LAW

# Pennsylvania Medical Marijuana Act

- ❑ **Limited Medical Conditions** – MMA limits use of medical marijuana to specific medical conditions, including chronic pain that has not responded to other treatments.
- ❑ **Medical Certification** – To qualify for medical marijuana a patient must be certified by a licensed physician who is himself/herself certified by the Commonwealth to issue medical marijuana certifications.
- ❑ **Limited Forms of Medical Marijuana**– Medical marijuana can only be prescribed in the form of a pill, oil, topical cream or ointment, liquid or through vaporization (excluding dry leaf marijuana).
- ❑ It remains unlawful to smoke marijuana or use edible marijuana products.

# Pennsylvania Medical Marijuana Organizations (“MMOs”)

- Businesses
  - Grower/Processor
  - Dispensary
  - Ancillary Businesses
    - Labs
  
- G/P applications likely due to Department of Health by end of year.
  - MMOs most likely to be up and running 1<sup>st</sup> or 2<sup>nd</sup> quarter, 2018 (if all goes well).

# Impact of Marijuana Legalization

- Legalization of marijuana affects multiple industries, including:
  - Accounting
  - Agriculture
  - Banking/Financial Services
  - Employment
  - Health Care
  - Information Technology
  - Insurance
  - Law
  - Pharmaceuticals
  - Real Estate
  - Security
  - Transportation

# Doing Business With Medical Marijuana Organizations

- The Key Questions:
  - Key Question 1. Can I do business with an MMO?
  - Key Question 2. Will I (we) get paid for the products/services we provide?

# Doing Business With Medical Marijuana Organizations

The fundamental problem:

- While the MMA makes it legal to use medical marijuana pursuant to state law, marijuana REMAINS an illegal, Schedule 1 drug pursuant to the federal Controlled Substances Act.

# Doing Business With Medical Marijuana Organizations

## Answering Key Question No. 1

- Rule No. 1: Are you dealing with a state certified entity?
  - Pennsylvania will likely have a process to verify that your counterparty is PA permitted.
  - Identify activities that the State permit authorizes.
    - Medical Marijuana Organizations from other states.

# Doing Business With Medical Marijuana Organizations

- Rule No. 2: Is your counter party operating in accordance with State legal authority with respect to activities in which you are implicated?
- Rule No. 3: Is MMO operating consistent with Federal law?

# Doing Business With Medical Marijuana Organizations

- Rule No. 3: Is MMO operating consistent with Federal Law?
  - Trick Question!
  
  - An MMO cannot operate consistent with Federal Law.
  
- An MMO can operate consistent with US Justice Department Enforcement Priority Memos.
  - Interstate transportation
  - Sales to minors

# Doing Business With Medical Marijuana Organizations

- Rule 4: Does your business have special restrictions or rules on interacting with marijuana organizations?
- Special Restrictions or Rules. For e.g.,
  - Federally Insured Banks
  - Insurance Companies
  - Real Estate
  - CPAs
  - Lawyers

# Doing Business With Medical Marijuana Organizations

## Special Restrictions or Rules

- Real Estate Owners/Lessees
  - Will renting to a MMO violate bank loan covenants?
  - Will leasing to a MMO invalidate insurance policies?

# Doing Business With Medical Marijuana Organizations

## Lawyers

- ❑ Are lawyers ethically permitted to advise clients on doing business with MMOs?
- ❑ In other words, is this presentation unethical?
- ❑ Current Rule 1.2(d): “a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer *knows* is criminal or fraudulent,” although the lawyer *may discuss* the legal consequences of any proposed course of conduct with a client.
- ❑ Because it is a federal crime to manufacture, distribute, dispense, or possess marijuana, even in jurisdictions where some aspects of such conduct are authorized under state law, Rule 1.2(d) *potentially* bars a lawyer from counseling or assisting a client in such conduct.
- ❑ Growing marijuana is illegal, but so is “aiding and abetting” an illegal operation.

# Doing Business With Medical Marijuana Organizations

## Proposed Amendments to Rule 1.2:

All lawyers shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, except as stated in paragraph (e) . . . .

**(e) A lawyer may counsel or assist a client regarding conduct expressly permitted by the law of the state where it takes place or has its predominant effect, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct.**

# Doing Business With Medical Marijuana Organizations

## Answer Key Question No. 2

- General sale of goods/provision of services
  - Does your insurance cover the shipment of goods to a MMO?
    - Employee hurt at a MMO site?
    - Specialized insurance available to MMOs
  - Is contract for sale of goods or provision of services enforceable?
    - Federal v. State venue
    - Choice of law in contract
    - Indemnification

# Employing a Medical Marijuana Patient

## Emerging Employment Questions\*

- ❑ Is an employer required to accommodate the use of medical marijuana?
- ❑ What do I do when an employee fails a random drug test and then whips out a state-issued card authorizing use of medical marijuana?
- ❑ What if the employee is a truck driver? An elementary school teacher?

\*Prepared by Michael McAuliffe Miller  
Eckert Seamans/Harrisburg

# Do I Have to Accommodate the use of Medical Marijuana?

- Generally speaking, laws like the Americans with Disabilities Act that protect employees specifically exclude from disability any employee or applicant who's currently engaging in the illegal use of drugs.
- The Drug-Free Workplace Act of 1988 requires employers to maintain a no-drugs environment in order to become a federal contractor or receive federal funding.
- The upshot: Federal employees and employees of companies that work with the federal government may be terminated for drug use.

# Do I Have to Accommodate the use of Medical Marijuana?

- Current Law: An employer does **not** have to allow for an employee to be actively under the influence while at work.
  - Employees who are impaired at work for any reason—alcohol, prescription medication or medical marijuana are not protected.
  
- However, under the MMA, Pennsylvania employers now **may not** discharge, refuse to hire, or otherwise discriminate against an employee solely on the basis of an employee's certification to use medical marijuana.

# Do I Have to Accommodate the use of Medical Marijuana?

- Employers are not required to permit certified employees to:
  - (1) use medical marijuana on company property or any place of employment,
  - (2) be under the influence on company property, or
  - (3) accommodate an employee whose “conduct falls below the standard of care normally accepted for that position.”

# Do I Have to Accommodate the use of Medical Marijuana?

- PA MMA – While “under the influence”
  - Patient may not handle certain chemicals requiring federal or state permit:
    - Work with high-voltage electricity or other “public utility,”
    - Work at heights or in confined spaces (mines), or
    - In setting that an employer defines as life threatening
  - Under the influence: blood content of more than 10 nanograms of THC per milliliter of blood.

# Do I Have to Accommodate the use of Medical Marijuana?

- Cannot discharge, refuse to hire or otherwise discriminate solely due to medical marijuana use.
  
- But, other than the areas specifically referenced in the law.
  - Does an employee need to try to make “reasonable accommodation” for an employee who used medical marijuana?
  - No federal right under ADA.

# Do I Have to Accommodate the use of Medical Marijuana?

Bottom Line:

- Need to investigate circumstances if employee tests positive for marijuana.
- More likely than not that PA courts will find a way to treat medical marijuana the same as other treatments for disability.



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Questions?

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LEGAL PRIMER: 2016 UPDATE

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