

Weeding Through the Workplace Impact of Medical Marijuana

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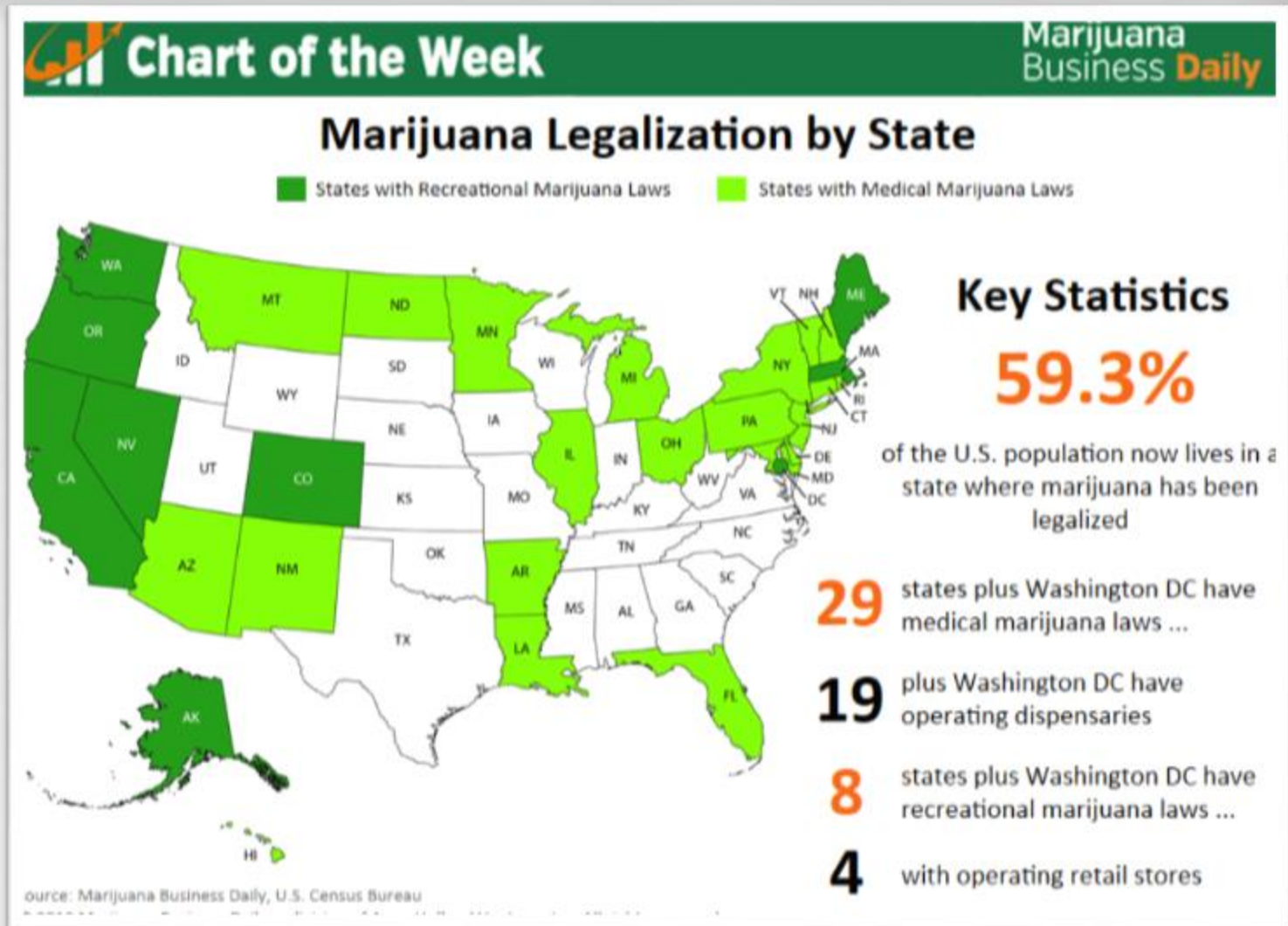
Steven T. Boell, Shareholder

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The Landscape in General



Medical Marijuana is Big Business

- In 2015 estimated legal U.S. cannabis sales were **\$5.7 billion**, projected to increase to **\$7.1 billion** in 2016, and to top **\$22 billion** by 2020*
- Pennsylvania's initially limited market is estimated to start at **\$125 million** and increase at annual rate of **180%** until it makes up **9.2% of the U.S. market share** by 2020

In General

Pennsylvania Medical Marijuana Act (“Act”), 35 P.S. § 10231.101 et seq.

- Effective May 17, 2016
- Allows certain individuals to use, possess, and distribute marijuana for medical purposes
- Regulated and overseen by the Pennsylvania Department of Health

Qualifying Medical Conditions

- Terminal illness
- Cancer
- HIV/AIDS
- Amyotrophic Lateral Sclerosis
- Parkinson's disease
- Multiple Sclerosis
- Epilepsy
- Inflammatory Bowel Disease
- Neuropathies
- Huntington's disease
- Crohn's disease
- Post-traumatic stress disorder
- Intractable seizures
- Glaucoma
- Autism
- Sickle Cell Anemia
- Damage to the nervous tissue of the spinal cord
- Severe chronic or intractable pain of neuropathic origin
- If conventional therapeutic intervention and opiate therapy is ineffective

The Process

- To qualify, a patient must be under ongoing care of a physician who issues a certification during an in-person visit
- Certification must state that patient has a qualifying medical condition and that physician believes he or she could benefit from medical cannabis
- Patient must then apply to the DOH for an identification card
- Once patient receives an identification card, he or she can purchase medical marijuana at an authorized dispensary
- ID Card is generally valid for 1 year

Physician's Role

What must a doctor do before making a certification?

- Currently licensed and in good standing to practice medicine in PA
- Be responsible for the ongoing care of the patient
- Include in the medical records of the patient, a diagnosis of a qualifying condition
- Complete a four-hour course developed by the DOH
- Register with the DOH
- Ongoing obligation to notify DOH if there is no longer therapeutic benefit

Physician's Role

What can't a doctor do when making a certification?

- Receive pay from or refer patients to marijuana businesses
- Conduct exams at location where medical marijuana is sold
- Have a direct or indirect economic interest in a cultivator or dispensary
- Advertise in a cultivation center or dispensary
- Physicians are strictly prohibited from issuing certifications for themselves, their family members, and their household members

Form of Distribution

Pursuant to the Act, Medical Marijuana may be distributed in the following forms:

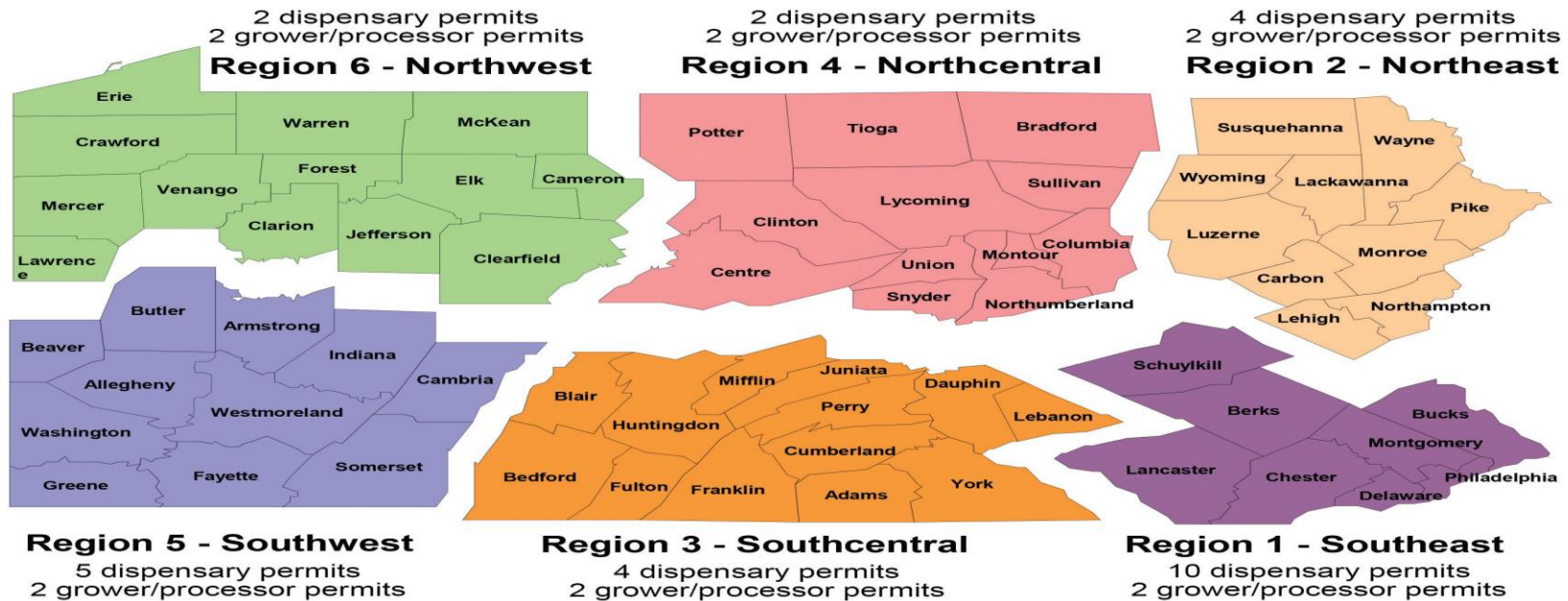
- Pill
- Oil
- Topical forms, including gel, creams or ointments
- A form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form
- Tincture
- Liquid
- Unlawful to smoke or possess in dry leaf form
- Cannot be in edible form (e.g., candy/baked goods)

Growers / Processors / Dispensaries

- DOH allowed to issue permits initially for no more than 25 growers/processors
- No more than five grower/processors may be issued a dispensary permit
- DOH will issue permits initially for no more than 50 dispensaries

Map of the Medical Marijuana Regions

Pennsylvania Department of Health Medical Marijuana Regions



Requirements for Growers/Processors

- Complete a two-hour training course
- Submit a permit application with:
 - Initial non-refundable fee of \$10,000
 - Permit fee of \$200,000, which is refundable if the permit is not granted
 - Proof of \$2 million in capital (\$500,000 of which must be on deposit in a financial institution)
- Permit valid for 1 year

Current Status

- Department of Health indicated it received more than 500 applications for grower/dispenser permits
- Permits will be issued by the end of June

Federal Law Issues

- Marijuana illegal at Federal level
- U.S. Department of Justice has authority to enforce civil and criminal federal laws relating to marijuana possession and use, regardless of state law
- Obama Administration had indicated it does not consider state medical marijuana cases a priority
- Status under the Trump Administration = Unclear



Jeff Sessions personally asked Congress to let him prosecute medical-marijuana providers

(Ed Andrieski/AP)

By Christopher Ingraham

June 13 at 7:00 AM ET

Attorney General Jeff Sessions is asking congressional leaders to undo federal medical-marijuana protections that have been in place

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Basic Legal Protections for Employees

- Discharging, threatening, refusing to hire or otherwise discriminating or retaliating against an employee regarding his/her compensation, terms, conditions, location or privileges “solely on the basis of such employee’s status” as an individual who is certified to use medical marijuana

Employment While “Under the Influence”

- “[T]he Act shall in no way limit an employer’s ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee’s conduct falls below the standard of care normally accepted for that position.”
- Operating or being in physical control of chemicals which require a permit issued by government
- Operating or being in control of high-voltage electricity or any other public utility

Employment While “Under the Influence”

- Performing any employment duties at heights or in confined spaces
- Performing tasks that the employer deems life-threatening to either the employee or any employees of the employer
- Performing any duty that could result in a public health or safety risk
- “Under the Influence”: 10 nanograms of active tetrahydrocannabinols (THC) per milliliter of blood in serum for the purposes of certain safety-related activities

Possible Legal Claims

- Violation of the MMA
- ADA/PHRA disability discrimination and/or failure to accommodate disability
- Wrongful discharge based on public policy
- Invasion of privacy

Employment Drug Testing

- Mandated Drug-Free Workplace Programs (e.g., DOT)
- Tests for active vs. inactive/historic THC
- Marijuana can be detected in urine for up to 12 weeks; detection does not mean impairment
- Review testing protocol (active vs. inactive THC) and communicate w/ vendors and MROs
- Testing positive for an illegal drug, including medical marijuana, is a policy violation, but possible valid MM exception
- Employer reserves the right to take adverse action based on violation to the fullest extent under the law

Practical Takeaways

- The law bans blanket rejection/termination/discipline of card-holding medical marijuana applicants/employees
- Accommodation of underlying medical condition (does that mean accommodating use of MM?)
 - Not under ADA/Federal law
 - Under PHRA/State law?
 - Leave
 - Change in schedule
 - Reallocation of job duties, etc.
- Safety sensitive positions

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Questions?

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