

Legal Connections



LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

DECEMBER 20, 2019

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CANNABIS LAW IN COLUMBUS: RECONCILING WHAT'S LEGAL AND WHAT'S NOT

More than three years have passed since the Ohio Legislature legalized medical marijuana in the state, yet the process for making the product available to patients with prescriptions is far from glitch-free. One reason is that as of Dec. 1, only 43 dispensaries dot Ohio, although new ones do open on occasion. Initial plans called for 56 to be fully operational, but some locations are bogged down in the application process. Having that few limits the ability for some patients to travel to the outlets to purchase their medical cannabis because the nearest clinic may still be too far away.

"We were supposed to have all cultivators and growers (ready for business) in September 2018, but problems arose. Litigation arose and some parts (of the law) were ruled unconstitutional," said Walter (Chad) Blackham, as associate with MacMurray & Shuster, LLP.



TAMI KAMIN MEYER

Another issue plaguing Ohio's medical marijuana system, is that "a lot of licensing issues" remain, said Blackham. "That is particularly true since so few licenses are available," said Blackham. He called the landscape of the licensing dispensaries in Ohio as "adversarial," partly due to the number of entities competing for the limited number of

available licenses.

For lawyers, practicing cannabis law in the Buckeye State is complicated because marijuana is still illegal under federal law. According to Blackham, the fact that cannabis is not legal under Federal laws "makes it difficult to substantiate claims, because studies indicating how recreational or medicinal marijuana (impacts the user's health) do not exist in America."

He readily admitted there is "a tension" for

cannabis law attorneys in Ohio, and even in states where marijuana is legal, because of the Federal ban.

When Columbus cannabis law attorney Rachel Friedman Gold, an associate with Kegler Brown, first started practicing law in 2015, "Ohio attorneys were not permitted to counsel their clients on matters related to medical marijuana because of its federal illegality." However, in September 2016, the Supreme Court of Ohio added Rule 1.2(d)(2) in response. That promulgation permits Ohio attorneys to counsel or assist clients regarding "conduct expressly permitted under the Ohio Medical Marijuana Control Program (OMMCP). Now that Ohio attorneys are permitted to counsel their clients on conduct allowed by the OMMCP, we advise clients on all actions permitted by state law as well as the applicability and/or intersection of state law with federal law," said Friedman Gold.

Since then, some state legislatures,

including Ohio's, have enacted laws designed to reconcile the business needs of entities toiling in cannabis in some way, despite its illegality on the Federal level. Moreover, in August 2019, Ohio Attorney General Dave Yost publicly discouraged county prosecutors across the state from pursuing marijuana cases.

Another loosening of the noose occurred when the 2018 Farm Bill decriminalized hemp production containing .3% or less of THC and CBD derived from the hemp, explained Blackham.

Meanwhile, the Rohrbacher-Farr amendment, first introduced to the House of Representatives in 2001, has served as another brick in the wall against people being prosecuted for violating state medical cannabis laws. The amendment, which was set to expire Dec. 21, and whose future was unclear as of press time, prohibited the Justice Department from spending funds to prosecute defendants on medical marijuana charges. The measure had been consistently continued since its inception, but no action had been taken on it as of press time.

Read the full article on cbalaw.org/news

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FIDUCIARY DUTIES: AN IMPORTANT CONSIDERATION IN OWNING AND RUNNING A BUSINESS

If you own or control a business, you likely have responsibilities known as "fiduciary duties." Fiduciary duties exist with respect to most entity forms (other than sole proprietorships), but to varying degrees.

Corporations

Directors and officers are required to act in good faith, in a manner the director or officer reasonably believes to be in or not opposed to the best interests of the corporation (the duty of loyalty), and with

the care that an ordinarily prudent person in a like position would use under similar circumstances (the duty of care). In Ohio, these duties are owed primarily to the corporation.

The Ohio Revised Code does not impose fiduciary duties upon shareholders. However, Ohio courts impose duties upon shareholders of closely-held corporations (i.e., ones with relatively few owners) who exercise some control



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over the corporation. These duties are owed primarily to the other shareholders. Furthermore, a majority owner of a closely-held corporation owes a heightened duty to the minority shareholders. In these situations, the majority shareholder must be careful not to take actions that "squeeze out" or oppress the minority shareholder.

LLCs

Members of LLCs owe a duty to account to the company and hold as trustee for the company any property, profit, or benefit derived by the member in the conduct of the company's business or derived from a use by the member of the limited liability company's property,

including the appropriation of a company opportunity (the duty of loyalty); and, in the conduct of the company's business, to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law (the duty of care). These duties are owed to the LLC and the other members. Managers of LLCs who are not members owe duties only to the LLC. These are the same duties that directors and officers owe to a corporation. Ohio law permits fiduciary duties applicable to LLCs to be modified to a reasonable extent if set forth in an operating agreement. Corporations, on the other hand, are not permitted to alter the applicable fiduciary duties.

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MEDICAL
MARIJUANA
AND EMPLOYERS

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