

The West Virginia State Bar
Marijuana Law Seminar Agenda
May 23, 2018

I. Panel Discussion – The Future of Medical Cannabis in West Virginia

Jason Frame, Director of the West Virginia Office of Medical Cannabis

Brian J. Skinner, General Counsel

John Perdue, West Virginia Treasurer

Panel Discussion and Update – Recent recommendations of Medical Cannabis Board including changes to the type of medical cannabis available, changes to eligible serious medical conditions and changes to licensed medical marijuana businesses, proposed legislation and proposed legislative rules and changes to timelines for licensure.

II. Issues in Financing and Investing in Medical Marijuana Related Businesses

Charles M. Johnson, Esquire, Frost Brown Todd LLC

An outline of legal issues related to investing and financing strategies that have been used in other states and an update as to federal developments.

III. Recent Changes to Rule 1.2 and the Effect on Representation of Medical Marijuana Related Businesses

Rachel L. Fletcher Cipoletti, Esquire, West Virginia Office of Disciplinary Counsel

Jason R. Frame, Director

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Jason Frame is the director of the Office of Medical Cannabis within the Bureau for Public Health. Prior to assuming his current position in February 2018 Mr. Frame served as the Radiological Health Chief for 5 years with the Office of Environmental Health Services. Mr. Frame has also served as Director of Medical Imaging at various health care facilities in West Virginia.

John D. Perdue

West Virginia State Treasurer

The honorable John D. Perdue is West Virginia's 24th State Treasurer and is currently serving his sixth term. Treasurer Perdue is West Virginia's longest-serving state treasurer with 20 years in office. He gained that distinction in 2015 when he surpassed Richard Talbott (D-Barbour) who occupied the office from 1933-1951.

Treasurer Perdue has served the people of West Virginia for more than 40 years. He started his public service career with the Department of Agriculture in 1973. During his time there he held several positions, including the title of Assistant Commissioner. In 1989 he became executive assistant to former Governor Gaston Caperton and served as a member of his executive staff for eight years.

Since taking office in 1997, Treasurer Perdue has worked diligently to make West Virginia a better place for families, business owners and citizens of all ages. As the banker of state government, Treasurer Perdue manages more than \$13 billion of state money annually. The Treasurer's Office has set records in the Unclaimed Property Division by returning more than \$160 million to rightful owners over the course of his administration. In addition, he oversees the state's Board of Treasury Investments, the West Virginia Retirement Plus deferred compensation plan and the SMART529 college savings program.

The Treasurer's commitment to education is unparalleled. His NetWorth financial education program is the proud past winner of an Excellence in Financial Literacy Education Award. The Council of State Governments also gave the NetWorth program its Innovations Award for two consecutive years.

Treasurer Perdue is the only West Virginia State Treasurer to serve as president of the National Association of State Treasurers (NAST). He was honored as the organization's Treasurer of the Year in 2007. In 2012 he received the Unclaimed Property Lifetime Achievement Award from the National Association of Unclaimed Property Administrators (NAUPA).

John Perdue is a 1972 graduate of West Virginia University and a native of Boone County. He and his wife Robin have two adult daughters.

Treasurer Perdue's accomplishments include:

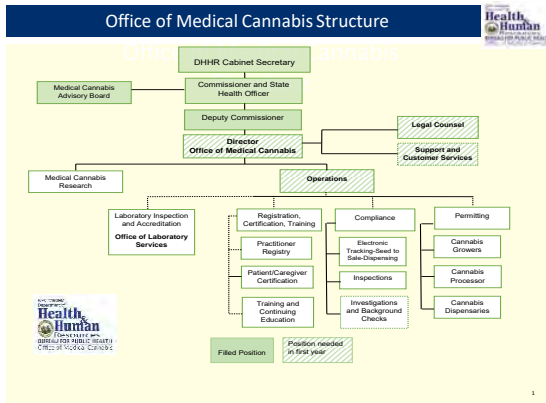
- The Board of Treasury Investments receiving Standard and Poor's AAAm, the highest rating available for a money market fund
- Establishment of the SMART529 college savings program
- Creation of nationally award-winning NetWorth financial education initiative
- Execution of dozens of workshops and conferences to help West Virginians better manage their financial assets
- Return of more than \$160 million in unclaimed property to state residents
- Taking control of West Virginia Retirement Plus, the state's deferred compensation plan
- Serving as past president of the National Association of State Treasurers and the National Association of Unclaimed Property Administrators
- Receiving NAUPA's lifetime achievement award

West Virginia Office of Medical Cannabis Structure

Jason R. Frame
Director, Office of Medical Cannabis
May 23, 2018



Office of Medical Cannabis Structure



Office of Medical Cannabis Milestones

- Establish Office of Medical Cannabis structure within the West Virginia Department of Health and Human Resources, Bureau for Public Health (BPH)
- Active Medical Cannabis Act website
- Confirm Medical Cannabis Advisory Board Membership
- Regular Advisory Board meetings
- Finalize and Public Notice Medical Cannabis Dispensary Regions
- Study to determine potential interest in Medical Cannabis
- File Emergency Rules
- Develop web based application for Growers, Processors and Dispensaries
- Submit a report to Legislature and Governor

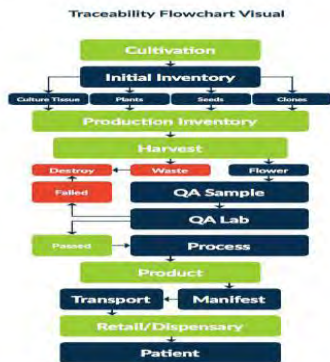
Office of Medical Cannabis Milestones (Cont.)



- Applications for Growers, Processors and Dispensaries Available
- File Legislative Rules for Growers, Processors and Dispensaries
- Complete 4-hour Training Course for Physician Prescribers
- Electronic Seed to Sale Tracking Procured Tested and Operational
- Finalize Physician Registry
- Electronic Physician Registry active
- Reciprocity Agreements in place with surrounding states as necessary
- Electronic Patient Registry System active
- Patient and Caregiver Identification Cards available

3

Seed to Sale System



4

Office of Medical Cannabis Operations



- Permitting of Medical Cannabis industry
- Onsite inspection of all Medical Cannabis Facilities
- Monitoring of all Medical Cannabis shipments
- Evaluation of Medical Cannabis inventories to prevent diversion
- Physician registration and training
- Investigation of medical cannabis related complaints
- Monitoring of Medical Cannabis prices
- Evaluate available supply of Medical Cannabis
- Ensure Medical Cannabis product safety through lab testing
- Initiate Medical Cannabis product recall if needed

5

Office of Medical Cannabis – First Year Work Plan



Objectives	Code Citation
Activity/Action: Establish draft start up organizational structure and long term tentative structure Justification: Required	16A-3-1(a)
Activity/Action: Identify all members of the Advisory Board and convene meeting Justification: Required	16A-11-1
Activity/Action: Draft position description for Office Director and key staff Justification: Required/necessary for Office of Medical Cannabis	16A-3-1(a)
Activity/Action: Conduct cost analysis of implementing Medical Cannabis Act; FY 2019 funds needed through improvement; supplemental FY 2018 funds for personnel and procurement Justification: Required	16A-3-1(a)
Activity/Action: Draft plan for conducting population study (patient health study/survey), oversee implementation and compile results Justification: Required	16A-6-3(d)

6

Office of Medical Cannabis – First Year Work Plan (Cont.)



Objectives	Code Citation
Activity/Action: Draft Emergency Rule for Laboratory certification, inspection and testing Justification: Required	16A-3-1(b)
Activity/Action: Procure electronic seed to sale agency facing tracking system Justification: Tracking required	Cannabis Tracking 16A-7-1
Activity/Action: Procedure for Certification of Trainers and Course Content for 2-hour grower, processor, dispensary training course Justification: Required	16A-3-1(a)(7)
Activity/Action: Procedure for Certification of Trainers and Course Content for 4-hour training course for physicians Justification: Required	16A-3-1(a)(6)
Activity/Action: Develop application/establish review and scoring process for Grower Permit Application Justification: Required	Medical Cannabis Organizations 16A-6-2
Activity/Action: Develop application/establish review and scoring process for Processor Permit Application Justification: Required	Medical Cannabis Organizations 16A-6-2

7

Office of Medical Cannabis – First Year Work Plan (Cont.)



Objectives	Code Citation
Activity/Action: Develop application/establish review and scoring process for Dispensary Permit Application Justification: Required	Medical Cannabis Organizations 16A-6-2
Activity/Action: Develop and implement Physician Registry and any associated rules or procedures Justification: Required	16A-4-1
Activity/Action: Develop/Implement Patient Registry, card issuance and associated rules or procedures Justification: Required	16A-5-1
Activity/Action: Obtain written approval from all local boards of health in counties and county commissions where a grower, processor or dispensary permit may be located. Justification: Required	16A-6-3(d)(6) 16A-6-13(b)
Activity/Action: Public notice WV Grower Permit Application availability Justification: Required	16A-6-2
Activity/Action: Public notice WV Processor Permit Application availability Justification: Required	16A-6-2

8

Office of Medical Cannabis – First Year Work Plan (Cont.)



Objectives	Code Citation
Activity/Action: Public notice WV Processor Permit Application availability Justification: Required	16A-6-2
Activity/Action: Public notice WV Dispensary Permit Application availability Justification: Required	16A-6-2
Activity/Action: Seed to Sale tracking final testing and operational Justification: Required	16A-7-1
Activity/Action: Initiate review, scoring and issuance of permits for growers, processors, dispensaries Justification: Required	16A-6-2
Activity/Action: Develop application for laboratory certification and public notice availability Justification: Required	16A-7-4
Activity/Action: Issue Laboratory Certifications and initiate inspections Justification: Required	16A-7-4

9

Contact Information



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10

The West Virginia Medical Cannabis Act

Brian J. Skinner
General Counsel, Bureau for Public Health
West Virginia State Bar Webinar
Charleston, West Virginia
May 23, 2018



West Virginia Medical Cannabis Act



- Senate Bill 386 (April 6, 2017).
- Signed by Governor Jim Justice on April 19, 2017.
- Authorizes, under limited conditions, the use, possession, growing, processing and dispensing of cannabis for the treatment of serious medical conditions.

1

Serious Medical Condition



- | | |
|--|--|
| • Cancer | • Huntington's disease |
| • Positive status for human immunodeficiency virus or acquired immune deficiency syndrome | • Crohn's disease |
| • Amyotrophic lateral sclerosis | • Post-traumatic stress disorder |
| • Parkinson's disease | • Intractable seizures |
| • Multiple sclerosis | • Sickle cell anemia |
| • Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity | • Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or has proven to be ineffective as determined as part of continuing care |
| • Epilepsy | |
| • Neuropathies | • Terminally ill |

2

Uniform Controlled Substances Act



The manufacture, distribution, possession and processing in compliance with the Act are exempted from the provisions of the West Virginia Uniform Controlled Substances Act.

3

Lawful Forms of Medical Cannabis



- Pill
- Oil
- Topical forms, including gels, creams or ointments
- A form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form.
- Tincture
- Liquid
- Dermal patch

Unlawful forms

Unless otherwise provided in rules adopted by Bureau, the medical cannabis may not be dispensed to a patient or a caregiver in *dry leaf or plant form*.

4

Lawful Uses



- Establishes lawful uses and forms of medical cannabis.
- Requires the registration of physicians who will be permitted to issue certificates to patients allowing them to obtain medical cannabis.
- Patients and their caregivers who hold identification cards issued by the Bureau may purchase medical cannabis from licensed dispensers.
- Authorizes minors to obtain medical cannabis through caregivers.

5

Unlawful Uses



- Smoke medical cannabis.
- Incorporate medical cannabis into edible form or sell in edible form, except it is permissible for patient or a caregiver to make an edible in order to aid ingestion.

6

Medical Cannabis Organizations



- Growers
 - Processors
 - Dispensers
- ☐ Annual permits to grow, process and dispense medical cannabis.
 - ☐ Criminal background checks for caregivers, growers, processors and dispensers.
 - ☐ Process to suspend or revoke permits of medical cannabis growers, processors, and dispensers for violations of law.
 - ☐ Restrictions on who may hold permits as a medical cannabis organizations, including establishing restrictions on who may hold positions or be employed by growers, processors and dispensers.

7

Limits on Number of Permits



- Up to 10 growers, however, each grower may have up to two locations per permit.
- Up to 10 processors.
- Up to 30 dispensaries, with no more than five in any region, and not more than two individual dispensary permits to one person.
- Not more than one individual grower permit per person.
- Not more than one individual processor permit per person.

8

MCO Fees



Grower/Processor

- Initial application fee: \$5,000 (non-refundable)
- Permit Fee: \$50,000
- Renewal Fee: \$5,000

Dispensary

- Initial application fee: \$2,500 (non-refundable)
- Permit Fee: \$10,000 each for up to two locations.
- Renewal Fee: \$2,500

9

Limitations



- A dispensary may only obtain medical cannabis from a grower or processor holding a valid permit.
- A grower or processor may only provide medical cannabis to a dispensary holding a valid permit.
- A grower or a processor may not be a dispensary.

10

Tracking System and Rules



- Medical cannabis inventory tracking system and reporting by medical cannabis organizations.
- The Bureau is required to promulgate rules for storage and transportation of medical cannabis.
- Medical cannabis organizations are required to contract with permitted laboratories for testing of medical cannabis.

11

Monitoring Medical Cannabis Prices



- The Bureau and the West Virginia Department of Revenue must monitor the prices of medical cannabis.
- If the Bureau and the West Virginia Department of Revenue determine that the prices are unreasonable or excessive, the Bureau may implement a cap on the price of medical cannabis being sold for a period of six months.
- The cap may be amended during the six-month period.
- If continued to be unreasonable, additional caps may be imposed for periods not to exceed six months.

12

Taxes



- Imposition and collection of a tax.
- Medical cannabis program fund (taxes and fees).
- The tax:
 - ☐ On the gross receipts of a grower/processor received from the sale of medical cannabis by a grower/processor to a dispensary, is to be paid by the grower/processor, at the rate of 10% percent.
 - ☐ Is to be charged against and be paid by the grower/processor and may not be added as a separate charge or line item on any sales slip, invoice, receipt or other statement or memorandum of the price paid by a dispensary, patient or caregiver.

13

Local Government Control



- **Before a permit may be issued, the Bureau must obtain:**
 - ☐ The written approval from the local Board of Health for the county in which the permit is to be located and operate business.
 - ☐ A written statement from the county commission for the county in which the permit is to be located and conduct business that the county has not voted to disapprove a medical cannabis organization to be located or operate within the county.
- County commissions are authorized, by ordinance upon the vote of the county's residents, to prohibit medical cannabis organizations from being located within their jurisdiction.
- Medical cannabis organizations are subject to zoning restrictions.

14

Public Officials



- A public official, or an immediate family member of the public official, may not intentionally or knowingly hold a financial interest in a medical cannabis organization or in a holding company, affiliate, intermediary or subsidiary thereof, while the individual is a public official and for one year following termination of the individual's status as a public official.
- A public official or an immediate family member of the public official may not be employed by a medical cannabis organization or by any holding company, affiliate, intermediary or subsidiary thereof, while the individual is a public official and for one year following termination of the individual's status as a public official.

15

Patients



- Patients must obtain a physician's certification that they suffer from one of the 15 serious medical conditions.
- With this certification, patients may then apply for a medical cannabis ID card.
- After receiving an ID card, a patient can then obtain medical cannabis from a Bureau approved dispensary.
- Caregivers:
 - ☐ 21 years of age or older unless otherwise authorized by the Bureau.
 - ☐ Designated by a patient or, if the patient is under 18 years of age, an individual who is a parent or legal guardian of the patient, or an individual designated by a parent or legal guardian, or an appropriate individual approved by the Bureau.
 - ☐ Criminal history background check.
 - ☐ May be designated by up to five patients.

16

Patients who are Minors



Must have a caregiver who is:

- A parent or legal guardian of the patient.
- An individual designated by a parent or legal guardian.
- An appropriate individual approved by the bureau upon a sufficient showing that no parent or legal guardian is appropriate or available.

17

Reciprocity Agreements



The Bureau may enter into reciprocity agreements to purchase medical cannabis in another state.

- ☐ *Comparable requirements* for the use and lawful purchase of medical cannabis.
- ☐ Terminally ill cancer patients.

18

Identification Cards



- The Bureau is currently working to develop the process to obtain a medical cannabis ID card and will make it possible for patients to apply for a medical cannabis ID, including making applications available on its website.
- Patients under the age of 18 with a serious medical condition may obtain medical cannabis through a caregiver.
- The Bureau may not issue the patient and caregiver identification cards necessary to obtain medical cannabis until July 1, 2019.
- \$50 processing fee – may be waived or reduced

19

Health Insurance Coverage



Insurance companies are **not** required to provide medical cannabis coverage.

20

Medical Cannabis and Schools



The Department of Education is required to promulgate rules regarding possession and use of medical cannabis:

- In school.
- By a student on the grounds of a preschool, primary school and a secondary school.
- By an employee of a preschool, primary school and a secondary school on the grounds of the school.

21

Child-Care or Social Service Center



The DHHR is required to promulgate rules regarding possession and use of medical cannabis by:

- A child under the care of a child-care or social service center licensed or operated by the DHHR;
- An employee of a child-care or social service center licensed or operated by the DHHR; and
- Employees of a youth development center or other facility which houses children adjudicated delinquent.

22

Miscellaneous Provisions



- Criminal and civil penalties for violations of the Act.
- Research in medical cannabis is authorized.
- Academic research regarding medical cannabis and its uses is authorized.

23

Effective Dates



Internal effective date of passage* except for:

- Criminal penalties - 90 days from the bill's passage (July 5, 2017).
- Issuance of identification cards - may not be issued until July 1, 2019.

*Const., Art. VI, § 30 (And no act of the Legislature, except such as may be passed at the first session under this constitution, shall take effect until the expiration of ninety days after its passage, unless the Legislature shall by a vote of two thirds of the members elected to each house, taken by yeas and nays, otherwise direct).

24

Administration of Program



- Medical Cannabis Program to be administered by the Bureau which will be known as the Office of Medical Cannabis (OMC).
- Rule-making authority, including emergency rules.
- Early stages of the development of the program and is currently in the process of drafting the rules needed for implementation.
- Rules will explain the program's operation, including how applications are to be submitted by growers/processors, dispensaries, patients and caregivers, and physicians.
- Application for growers, processors and dispensaries are expected to be released during the first quarter of 2018, with full implementation expected by early 2019.

25

Certification of Patients



Only Physicians may certify patients:

- MD or DO; and
- Fully licensed in West Virginia.

Practitioner is a physician who is registered with the Bureau.

26

Office of Medical Cannabis



- Register practitioners and ensure their compliance with the Act.
- Develop a four-hour training course for physicians:
 - Latest scientific research on medical cannabis; and
 - Including the risks and benefits of medical cannabis.
- Successful completion of the course must be approved as continuing education credits.

27

Physician Registration



Eligibility

- Apply for registration in the form and manner required by the Bureau.
- Provide documentation of credentials, training or experience. The Bureau must determine that the physician is, by training or experience, qualified to treat a serious medical condition.
- Successfully complete the four-hour training course.

➤ **Annual review of license.**

➤ **Licensing Boards have duty to report lapses.**

28

On-going Responsibility to Report



- A patient who no longer has the serious medical condition for which the certification was issued.
- Medical cannabis would no longer be therapeutic or palliative.
- The patient has died.

29

Practitioner Restrictions



- May not accept, solicit or offer any form of remuneration from or to a prospective patient, patient, prospective caregiver, caregiver or medical cannabis organization, including an employee, financial backer or principal, to certify a patient, other than accepting a fee for service with respect to the examination of the prospective patient to determine if the prospective patient should be issued a certification to use medical cannabis.
- May not hold a direct or economic interest in a medical cannabis organization.
- May not advertise the practitioner's services as a practitioner who can certify a patient to receive medical cannabis.

Violation of the Act is deemed unprofessional conduct, in addition to other civil or criminal penalties

30

Issuance of Certification



A certification to use medical cannabis may be issued if all of the following are met:

- The practitioner is registered with Bureau;
- The practitioner has determined that the patient has a serious medical condition and has included the condition in the patient's health care record;
- The patient is under the practitioner's *continuing care* for the serious medical condition; and
- In the practitioner's professional opinion and review of past treatments, the practitioner determines the patient is likely to receive therapeutic or palliative benefit from the use of medical cannabis, and other treatments, including treatments involving opioids, have proven ineffective or otherwise are contraindicated.

31

Contents of Certification



- The patient's name, date of birth and address.
- The specific serious medical condition of the patient.
- A statement by the practitioner that the patient has a serious medical condition and the patient is under the practitioner's continuing care for the serious medical condition.
- The date of issuance.
- The name, address, telephone number and signature of the practitioner.
- Any requirement or limitation concerning the appropriate form of medical cannabis and limitation on the duration of use, if applicable, including whether the patient is terminally ill.

32

Duties of Practitioner



- Consult PDMP:
 - When issuing a certification.
 - When recommending a change of amount or form of medical cannabis.
 - Must consider and give due consideration to other controlled substances the patient may be taking prior to certifying medical cannabis.
- Provide the certification to the patient.
- Provide a copy of the certification to the Bureau.
- Place certification in the patient's health care record.
- **May not** issue a certification for the practitioner's own use or for the use of a family or household member.

33

Duration



- May not exceed a 30-day supply of individual doses.
- During the last seven days of any 30-day period during the term of the identification card, a patient may obtain and possess a 30-day supply for the subsequent 30-day period.
- Additional 30-day supplies may be provided for the duration of the authorized period of the identification card unless a shorter period is indicated on the certification.

34

Special Conditions



- Practitioner may specify a date certain on the identification card will expire on that date.
- Practitioner may include any requirement or limitation on use of medical cannabis for the patient.

35

Prohibitions



- May not operate or be in physical control of any of the following while under the influence with a blood content of more than 3 nanograms of active THC per milliliter of blood in serum:
 - Chemicals which require a government permit;
 - High-voltage electricity or any other public utility; and
 - Vehicle, aircraft, train, boat or heavy machinery.
- May not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical cannabis.
- Employer may prohibit from performing any:
 - Task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of medical cannabis; or
 - Duty which could result in a public health or safety risk while under the influence of medical cannabis.

36

Dispensaries



Permitted dispensaries may lawfully dispense medical cannabis to a patient or caregiver upon presentation to the dispensary of a valid identification card for the patient or caregiver.

37

Dispensing to Patients and Caregivers



The dispensary must provide to the patient or caregiver a receipt, that includes the following:

- The name, address and any identification number assigned to the dispensary by the Bureau.
- The name and address of the patient and caregiver.
- The date the medical cannabis was dispensed.
- Any requirement or limitation by the practitioner as to the form of medical cannabis for the patient.
- The form and the quantity of medical cannabis dispensed.

38

Physician or a Pharmacist Onsite



A dispensary must have a physician or a pharmacist onsite at all times during the hours the dispensary is open to receive patients and caregivers.

But, the physician may not issue a certification to authorize patients to receive medical cannabis or otherwise treat patients at the dispensary.

39

Restrictions on Dispensing



Dispensary may not dispense to a patient or caregiver:

- A quantity of medical cannabis greater than that which the patient or caregiver is permitted to possess under the certification;
- A form of medical cannabis prohibited by the Act; or
- An amount greater than a 30-day supply until the patient has exhausted all but a seven-day supply.

40

Safety Insert



- Lawful methods for administering medical cannabis in individual doses.
- Any potential dangers stemming from the use of medical cannabis.
- How to recognize what may be problematic usage of medical cannabis and how to obtain appropriate services or treatment for problematic usage.
- How to prevent or deter the misuse of medical cannabis by minors or others.

41

Sealed and Labeled Package



The information required to be included in the receipt provided to the patient or caregiver:

- The packaging date.
- Any applicable date by which the medical cannabis should be used.
- A warning stating:
 - "This product is for medicinal use only. Women should not consume during pregnancy or while breastfeeding except on the advice of the practitioner who issued the certification and, in the case of breastfeeding, the infant's pediatrician. This product might impair the ability to drive or operate heavy machinery. Keep out of reach of children."
- Amount of individual doses contained within the package and the species and percentage of tetrahydrocannabinol and cannabidiol.
- A warning that:
 - The medical cannabis must be kept in the original container in which it was dispensed.
 - Unauthorized use is unlawful and will subject the person to criminal penalties.

42

Criminal Diversion Of Medical Cannabis



In addition to any other penalty provided by law, a practitioner who:

- Intentionally and knowingly certifies a person as being able to lawfully receive medical cannabis; or
- Who otherwise provides medical cannabis to a person who is not lawfully permitted to receive medical cannabis.

Violation is a felony -- one to five years confinement

43

Other Restrictions



No civil or criminal protections for undertaking any task under the influence of medical cannabis when doing so would constitute negligence, professional malpractice or professional misconduct.

44

Employment Protections



- Employers **may not** discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical cannabis.
- But, no requirement to accommodate the use of medical cannabis on the property or premises of any place of employment or limit employer's ability to discipline an employee for being under the influence of medical cannabis.
- The Act does not require an employer to commit any act that would put the employer or any person acting on its behalf in violation of federal law.

45

Medical Cannabis Advisory Board



- Commissioner of the Bureau for Public Health;
- Superintendent of the West Virginia State Police or a designee;
- Four physicians licensed to practice in the state to be appointed by the State Medical Association with one from each of the following specialized fields of medicine:
 - ☐ Family Practice/Neurologist/General Practitioner;
 - ☐ Pain Management;
 - ☐ Oncologist/Palliative Care; and
 - ☐ Psychiatrist.
- A pharmacist licensed to practice in the state, to be designated by the Board of Pharmacy;
- A pharmacologist who has experience in the science of cannabis and a knowledge of the uses, effects, and modes of actions of drugs, to be appointed by the Governor;
- A horticulturalist, to be designated by the West Virginia Commissioner of Agriculture;
- A person designated by the West Virginia Association of Alcoholism and Drug Counselors;
- An attorney licensed in the state who is knowledgeable about medical cannabis laws.
- A prosecuting attorney appointed by the West Virginia Prosecuting Attorneys Institute;
- A person appointed by the Governor, who shall be a patient, a family or household member of a patient or a patient advocate.

46

Advisory Board Duties



- Examine and analyze the statutory and regulatory law relating to medical cannabis within this state.
- Examine and analyze the law and events in other states and the nation with respect to medical cannabis.
- Accept and review written comments from individuals and organizations about medical cannabis.
- Issue written report to the Governor, the Senate and the House of Delegates that includes recommendations on:
 - ☐ Whether there should be changes to the types of medical professionals who can issue certifications to patients.
 - ☐ Whether to change, add or reduce the types of medical conditions which qualify as serious medical conditions.
 - ☐ Whether to change the form of medical cannabis permitted.
 - ☐ Whether to change, add or reduce the number of growers, processors or dispensaries.
 - ☐ How to ensure affordable patient access to medical cannabis.
 - ☐ Whether to permit medical cannabis to be dispensed in dry leaf or plant form, for administration by vaporization.

47

Advisory Board Operation



- The initial members appointed by the Governor have terms of 4 years.
- Staggered terms for other appointees to be for periods of one, two, three or four years so that terms of all the members do not end at the same time.
- The Commissioner serves as Chair of the Board.
- A quorum, for purposes of organizing, conducting business and fulfilling Board duties, is constituted as a majority of the Board members in attendance.
- A member who fails to attend three consecutive meetings shall be deemed to have vacated their appointment unless excused by the Commissioner for good cause.
- Board meetings may be attended electronically.

48

Advisory Board Compensation



- Members will not receive compensation.
- Reasonable reimbursement for travel, hotel and other necessary expenses incurred in the performance of their duties.

49

Recommendations and Final Report



- Bureau may incorporate the recommendations into proposed legislative rules for consideration by the Legislature.
- The Commissioner is required to issue notice in the State Register within 12 months of the receiving Board's report.
- The notice will include recommendations of the Board and state the specific reasons for the Commissioner's decisions on each of the Board's recommendations.

50

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51

Chuck Johnson is a Member of the Corporate Department and the Regulated Practice Group and the Health Care Service Team at Frost Brown Todd. Chuck has extensive experience representing healthcare providers, including hospitals, behavioral health facilities, nursing homes, assisted living facilities, home health agencies and physicians in West Virginia and the surrounding region regarding all aspects of regulatory and corporate compliance. He has written and lectured frequently on topics related to the regulatory aspects of medical marijuana related businesses.



West Virginia Medical Marijuana Law
Financing and Investing in the Medical Marijuana Industry

Charles M. Johnson, Esq.
May 23, 2018

Financing and Investing in the Medical Marijuana Industry

- West Virginia Medical Cannabis Act Overview
- Outline Alternative for Financing and Investing for Medical Marijuana Related Businesses
- Risks and rewards from an owner's and lender's perspective
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- Solutions in the Post-Cole Environment



Proposed Medical Cannabis Regions

PROPOSED 12-11-17
West Virginia Medical Cannabis Regions







Region I - Eastern Panhandle
 Region II - Northwest
 Region III - Northern Panhandle and West Forest
 Region IV - Central
 Region V - Southwest
 Region VI - Southeast





West Virginia Medical Cannabis Act Overview

- Unless you strictly comply with the WVMCA and new regulations, possessing or selling marijuana remains illegal under WV law
- Marijuana remains illegal under federal law
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 - Pill
 - Topical
 - Tincture
 - Liquid
 - Dermal Patch
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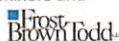
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- Physician Registration
 - Register with BPH
 - Demonstrate ability to treat one or more serious medical conditions
 - Successfully complete a 4 hour training course
 - Hold valid, unexpired medical license
- Physician Certification
 - Patient is under physician's care
 - Patient will receive therapeutic or palliative benefit from medical cannabis
 - Other treatments have proven ineffective
 - Certify that patient has a serious medical condition



West Virginia Medical Cannabis Act Overview

- Patient Authorization
 - Patient registers with BPH
 - Physician registered with BPH certified that patient has a serious medical condition
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 - Caregivers can obtain and administer for minors and adults that need assistance



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- State and local taxes
- Compliance with other laws




10

Financing and Investing in the Medical Marijuana Industry



- Current State Regulatory Environment
- 29 States & D.C. have adopted medical marijuana laws
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- 33 States have adopted industrial hemp laws
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- Regulated entities must strictly comply with WV Medical Cannabis Act and Regulations
- Interplay of federal and state law
- Balancing the risks




11

Financing and Investing in the Medical Marijuana Industry

- Risk/Reward Curve

12

Financing and Investing in the Medical Marijuana Industry


- Strategies utilized in other States
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Financing and Investing in the Medical Marijuana Industry

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 - Treasury could rescind guidance referencing Cole Memo
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Financing and Investing in the Medical Marijuana Industry

- The Problem with the Cash Economy
 - Medical marijuana will produce a mountain of cash
 - Cash economies are subject to tax abuse
 - Cash economies can foster crime
 - Cash is unwieldy
 - Cash is unsafe
 - Cash economies are difficult to maintain accurate records
 - Difficult to maintain proper oversight



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Financing and Investing in the Medical Marijuana Industry

- Traditional banking
 - limited number of traditional lenders are knowingly doing business with marijuana-related businesses
- Credit Unions
 - Credit unions are increasingly doing business with marijuana related business
- Increased scrutiny, due diligence and fees
- SAFE Banking Act
- DEA proposes undoing Rohrabacher-Farr Amendment




19

Financing and Investing in the Medical Marijuana Industry

- 390 banks and credit unions have accounts serving MM related businesses (1/5/18)
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- CO has a credit union approved to serve MM related businesses
- Fourth Corner Credit Union (CO)
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20

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- Credit Unions
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21

Financing and Investing in the Medical Marijuana Industry

- WV Pursues Alternative Strategies
- Treasurer raises concerns for WV banking vendors that refuse to accept deposits from fees and taxes from MM related businesses (3/1/18)
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- Treasurer proposes two alternative solution to banking the States fees and taxes
 - Loop system
 - State bank within the Treasurer's Office (North Dakota)







Financing and Investing in the Medical Marijuana Industry

WV Pursues Alternative Strategies

- Option 1: Closed-Loop system/Open-Loop System/Combination of Both
- Option 2: State-Owned Bank
- A West Virginia state-owned bank would be owned and operated by the State of West Virginia, specifically the West Virginia State Treasurer's Office.





Financing and Investing in the Medical Marijuana Industry

WV Pursues Alternative Strategies

Option 1: Closed-Loop system/Open-Loop System/Combination of Both

- A "closed-loop" system would provide an option in which payments may only be made within the network of individuals and entities that have accounts with the system.
- This system would be able to monitor and facilitate financial transactions between the State of West Virginia and authorize entities associated with medical cannabis (e.g., patients, caregivers, dispensaries, growers, and processors) and would meet requirements of the banking industry.





Financing and Investing in the Medical Marijuana Industry

WV Pursues Alternative Strategies

Option 1: Closed-Loop system/Open-Loop System/Combination of Both

- Closed Loop System
- establish accounts by the entities associated with medical cannabis
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- provide robust reporting, including online access and integration with the Bureau of Public Health and State of West Virginia systems



Financing and Investing in the Medical Marijuana Industry


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- Venture capital and "angel investors"
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 - Bitcoin ATMs
- FinCEN guidance related to digital currencies
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Financing and Investing in the Medical Marijuana Industry

- Form 8300
 - Must file a form 8300 for transactions equal to or in excess of \$10,000.00
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- Section 280E eliminates many expense deductions for normal business expenses for marijuana related businesses
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Financing and Investing in the Medical Marijuana Industry

- This is intended for education purposes and is not intended to serve as legal advice
- Anyone considering forming, investing or lending to a marijuana related business must carefully weigh the risks and the rewards and the changing legal landscape
- Consult with your own attorney as to specific situations
- Under federal law, possession or sale of marijuana is illegal so changes in enforcement priority or other scrutiny can result in federal prosecution

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29

Any questions?



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Frost Brown Todd, LLC
United Center, Suite 1100
500 Virginia Street East
Charleston, WV 25301
(304) 348-2420
(304)345-0115 (Fax)
cmjohnson@fbtlaw.com

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30

Medical Marijuana Articles:

<https://www.healthlawmattersblog.com/dramatic-shift-in-federal-enforcement-priorities-related-to-legalized-marijuana-use>

<https://www.healthlawmattersblog.com/west-virginia-continues-cultivation-of-medical-cannabis-rules>

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<http://en.calameo.com/read/004397803c7283f353665>

31

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West Virginia Medical Marijuana Law

Financing and Investing in the Medical Marijuana Industry

Charles M. Johnson, Esq.
May 23, 2018

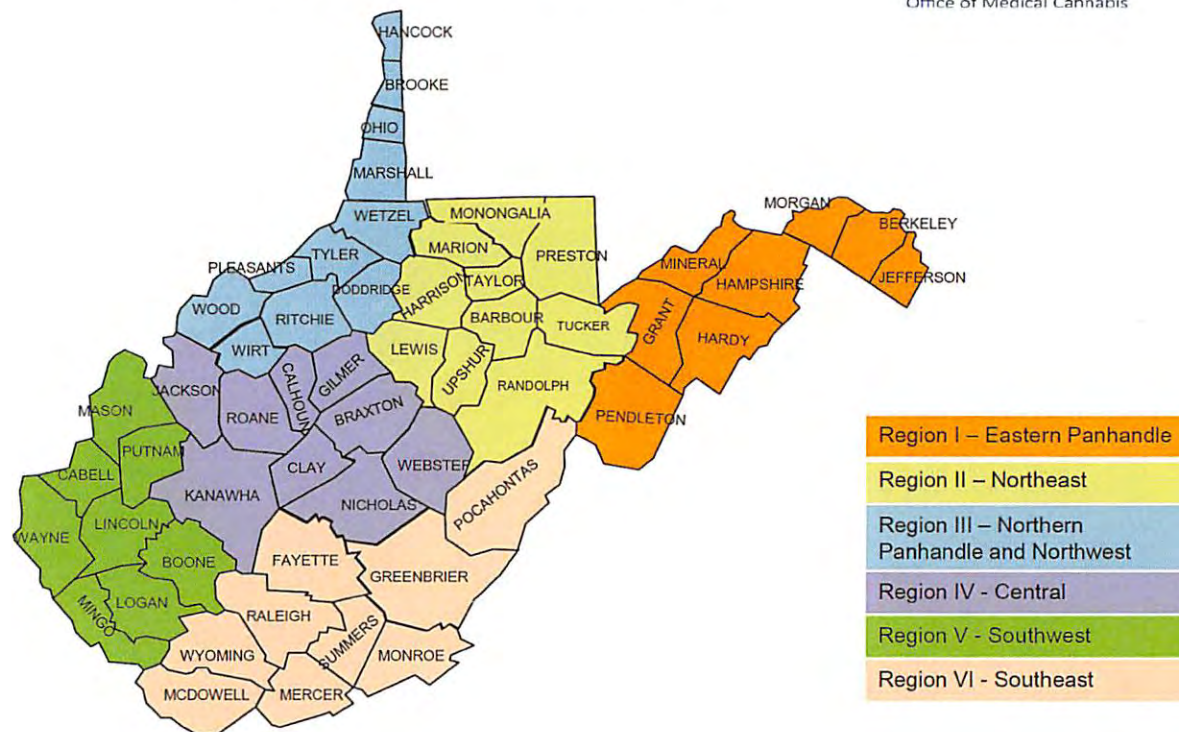
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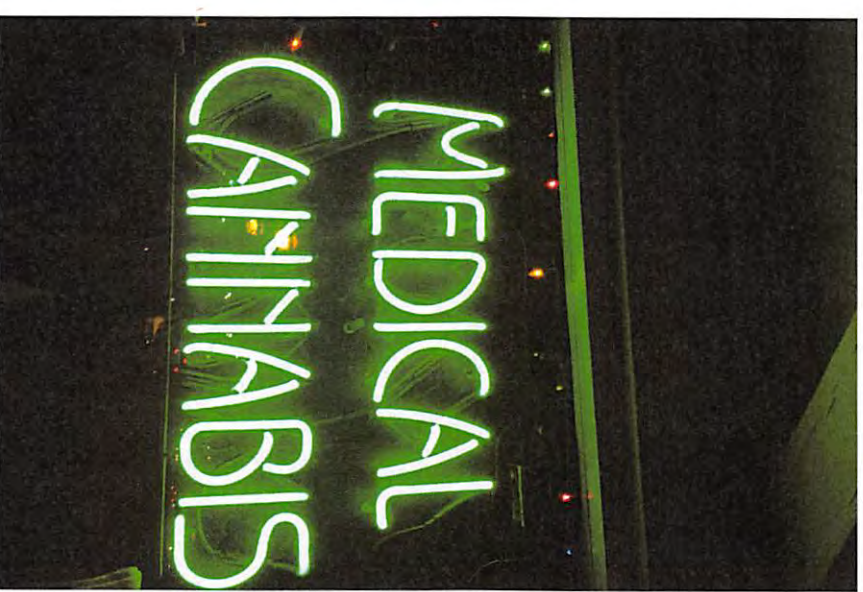
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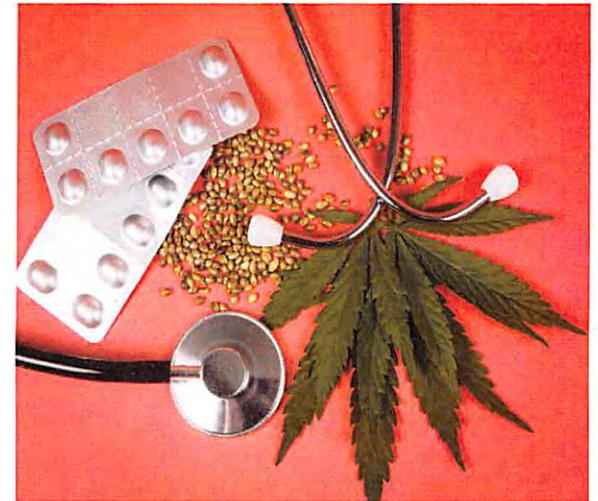
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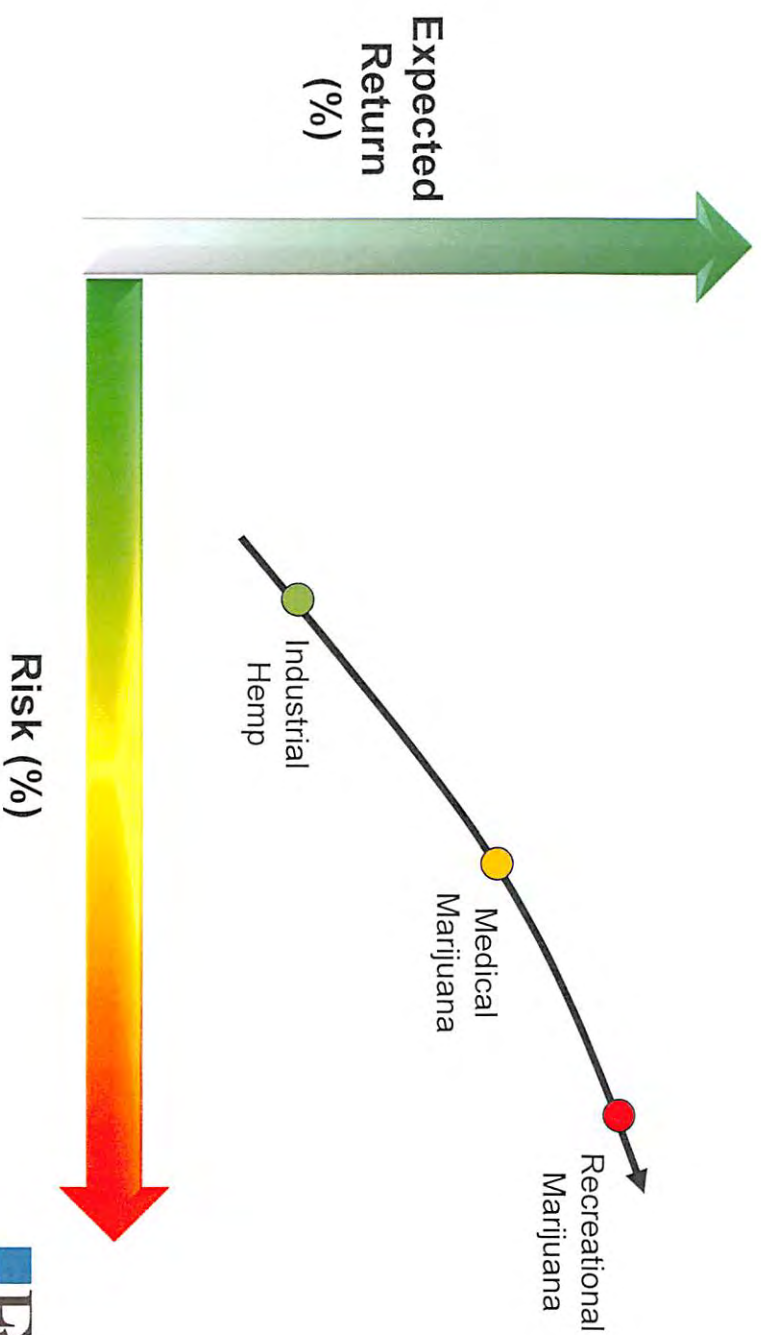
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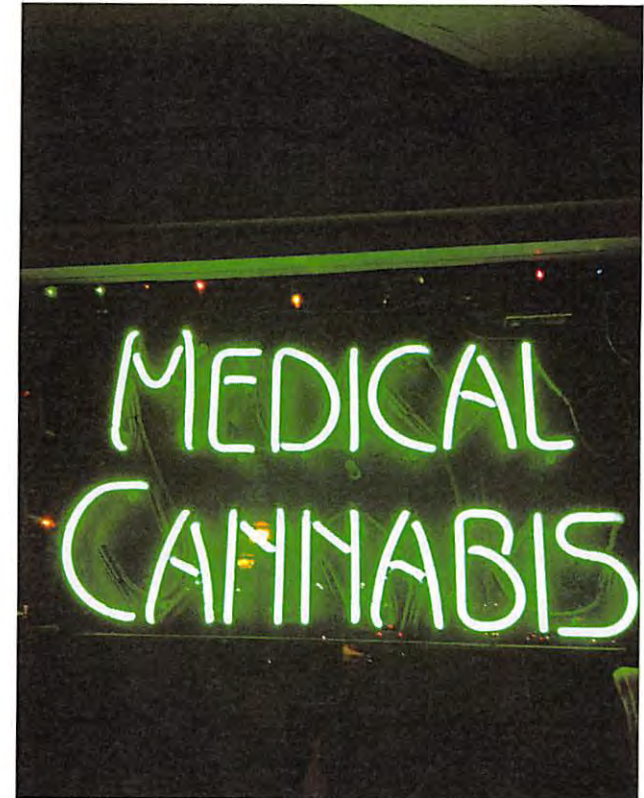
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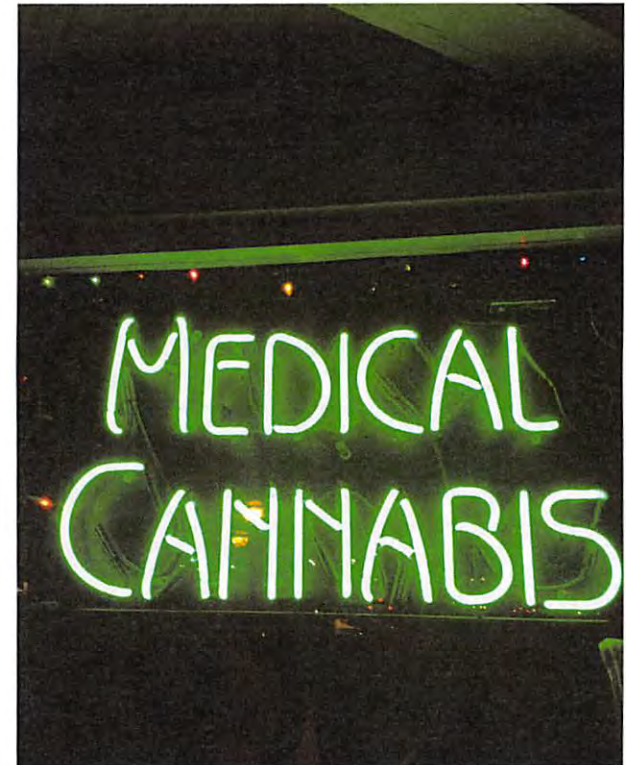
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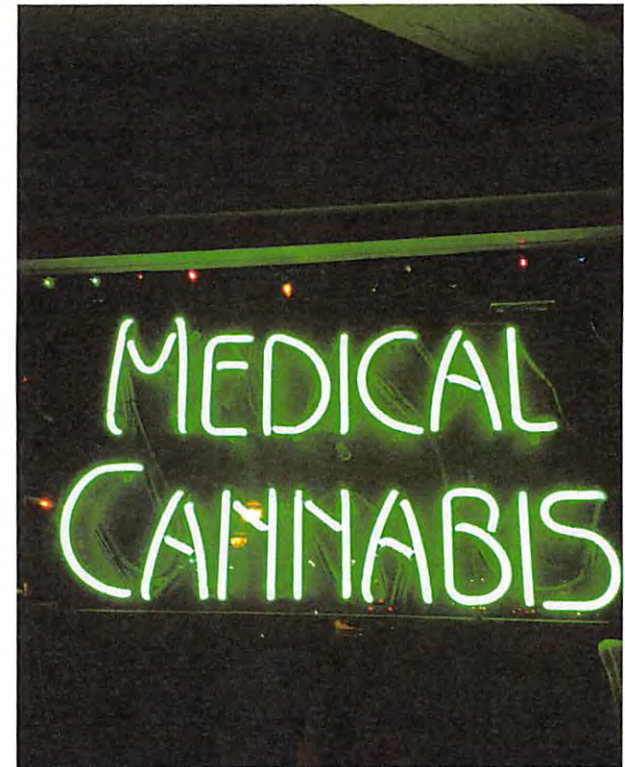
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Any questions?

**Charles M. Johnson, Member
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(304) 348-2420
(304)345-0115 (Fax)
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<http://en.calameo.com/read/004397803c7263f353665>

Rachael L. Fletcher Cipoletti is Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel. She has been with the ODC since 2002 and became Chief Disciplinary Counsel in 2008. Rachael was previously a Violence against Women Act Attorney for Legal Aid of West Virginia. She graduated Magna Cum Laude with a Bachelor of Arts Degree in Psychology from West Virginia University and also earned her Juris Doctrate from WVU. Rachael is admitted to practice before the Supreme Court of Appeals of West Virginia, United States Southern District of West Virginia, United States Northern District of West Virginia, United States Court of Appeals for the Fourth Circuit and the Supreme Court of the United States of America.

Outside of the office, she focuses a lot of her energy on spending time with her 4 young children, her loving husband and their very large, very rambunctious Labrador Retriever. In the past few years, she has become an avid runner, including starting in 2013, running half marathons. She is also the assistant coach for the Overbrook Elementary Running Club. She also runs the Accelerated Reader Lab one day a week at Overbrook Elementary. She is also a school volunteer for Overbrook Elementary's Read Aloud program. She is the Assistant Troop Leader for her older daughter's Daisy Scout Troop and the dance team mom for her daughters' dance classes at In the Spotlight School of Dance. She is also the founder of the Coat the City coat drive, which since 2011 has collected 1500 new and gently used coats to the less fortunate men, women and children of Charleston and its surrounding areas. She is also the current Registrar for South Hills Youth Soccer Association, a former Chair of Friends of the Clay Center, a lifetime member of the West Virginia University Alumni Association, a member of the American Bar Association, a member of the Center for Professional Responsibility, and a member of the National Organization of Bar Counsel.

Rachael L. Fletcher Cipoletti, Esquire

Office of Disciplinary Counsel
City Center East
4700 MacCorkle Avenue, Suite 1200C
Charleston, WV 25304
(304)558-7999
rfcipoletti@wvdc.org

Education

Juris Doctrate
West Virginia University College of Law
2001

Bachelor of Arts in Psychology
Minor in Communications
West Virginia University
1998
Graduated Magna Cum Laude

Employment

Chief Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
April 2008 -Present

Interim Chief Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
January 2008- April 2008

Assistant Disciplinary Counsel
Office of Disciplinary Counsel
August 2002- January 2008

Violence Against Women Act Attorney
Legal Aid of West Virginia
May 2001- August 2002

Honors and Memberships

Lifetime member of West Virginia University Alumni Association

West Virginia State Bar Member
American Inns of Court Member
National Organization of Bar Counsel
American Bar Association
Center for Professional Responsibility
Founder of “Coat our City” Coat Drive
Registrar of the South Hills Soccer Association
Past Chair of Friends of the Clay Center
Past Board Member of Friends of the Clay Center

Licensure and Admissions

Supreme Court of Appeals of West Virginia
United States Southern District of West Virginia
United States Northern District of West Virginia
United States Court of Appeals for the Fourth Circuit
Supreme Court of the United States of America

The West Virginia State Bar

RECENT CHANGES TO RULE 1.2 OF THE RULES OF PROFESSIONAL CONDUCT

May 23, 2018

Office of Disciplinary Counsel
Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel
City Center East, Suite 1200 C
4700 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304
(304) 558-7999
(304) 558-4015 FAX

I. Informal Ethics Advice

- a. Inquiries may be made by calling, writing, faxing, or emailing the ODC
- b. Rule 2.15 of the Rules of Lawyer Disciplinary Procedure

II. Helpful Information

- a. Website - www.wvodec.org - Rules of Professional Conduct, Rules of Lawyer Disciplinary Procedure, Legal Ethics Opinions, Supreme Court decisions, Staff contact information
- b. @wv_odc is the official Twitter account of the WV ODC

III. Medical Marijuana

- a. Controlled Substances Act (21 U.S.C. § 811, et seq.) provides that cannabis is a Schedule 1 drug. This means – from a federal standpoint – that it is unlawful to “manufacture, distribute, dispense, or possess a controlled substance.”
- b. West Virginia Medical Cannabis Act, S.B. 386 went into effect on or about July 7, 2017. West Virginia is now one of 29 states in addition to Washington, D.C., that has some form of legalized marijuana.

IV. Rule 1.2 of the Rules of Professional Conduct

- a. Rule 1.2 of the Rules of Professional Conduct prior to April 4, 2018. [Attachment A]
- b. Proposed Amendment to Rule 1.2 of the Rules of Professional Conduct [Attachment B]
- c. Rule 1.2 of the Rules of Professional Conduct effective April 4, 2018 [Attachment C]

Attachment A

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Attachment B

STATE OF WEST VIRGINIA

At a regular term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on January 10, 2018, the following order was made and entered:

RE: Request for Public Comment on Proposed Amendments to Rule 1.2 of the Rules of Professional Conduct (Addressing the West Virginia Medical Cannabis Act) 18-Rules-01

On motion by Charles M. Johnson, Esq., Frost Brown Todd, LLC, the Court is considering an amendment to Rule 1.2 of the Rules of Professional Conduct. The proposed amendment submitted by Charles M. Johnson, Esq. is hereby published for a thirty-day public comment period. Comments must be filed in writing with the Clerk of Court on or before **February 16, 2018**.

The proposed additions to the rule are indicated by underscoring to read as follows:

Rules of Professional Conduct

* * *

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) A lawyer may counsel or assist a client regarding conduct expressly permitted under Senate Bill 386, the West Virginia Medical Cannabis Act, authorizing the use of marijuana for medical purposes and any state rules, regulations, orders, policies and

procedures implementing the aforesaid act, as amended. In these circumstances, the lawyer shall advise the client regarding related federal law.

A copy of the proposal as submitted by Charles M. Johnson, Esq. is attached to this order

A True Copy

Attest: //s// Edyth Nash Gaiser
Clerk of Court



Attachment C

STATE OF WEST VIRGINIA

At a Regular Term the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on April 4, 2018, the following order was made and entered:

RE: Adoption of Proposed Amendment to Rule 1.2 of the Rules of Professional Conduct 18-Rules-01

On January 10, 2018, upon motion from Charles M. Johnson, Esq., Frost Brown Todd, LLC, the Court published for comment proposed amendment to Rule 1.2 of the Rules of Professional Conduct. The proposal as submitted was meant to address the West Virginia Medical Cannabis Act of 2017. Comments were received from Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, Elliot G. Hicks, Esq., Sherri Goodman Reveal, Esq., Carmela Cesare, Esq., Mark Matkovich, Esq., James R. Leach, Esq., Victoria J. Sopranik, Esq., J. Morgan Leach, Esq., Keith W. Hart, Esq., and Aileen Curfman, in support of the proposed amendment. One Comment in opposition to the proposed amendment was filed by Michael T. Chaney, Esq. The Court expresses its gratitude to those for the time taken to file the Comments.

Upon consideration and review of the proposed amendment, together with the comments filed, the Court is of the opinion to and does hereby adopt the following rule amendment, effective immediately. Insertions to the rule are indicated by underscoring, to read as follows:

RULES OF PROFESSIONAL CONDUCT

* * *

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) A lawyer may counsel a client regarding West Virginia law and assist the client to engage in conduct that the lawyer reasonably believes is authorized by those laws. If West Virginia law conflicts with federal law, the lawyer shall also advise the client regarding related federal law and its potential consequences.

* * *

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court

