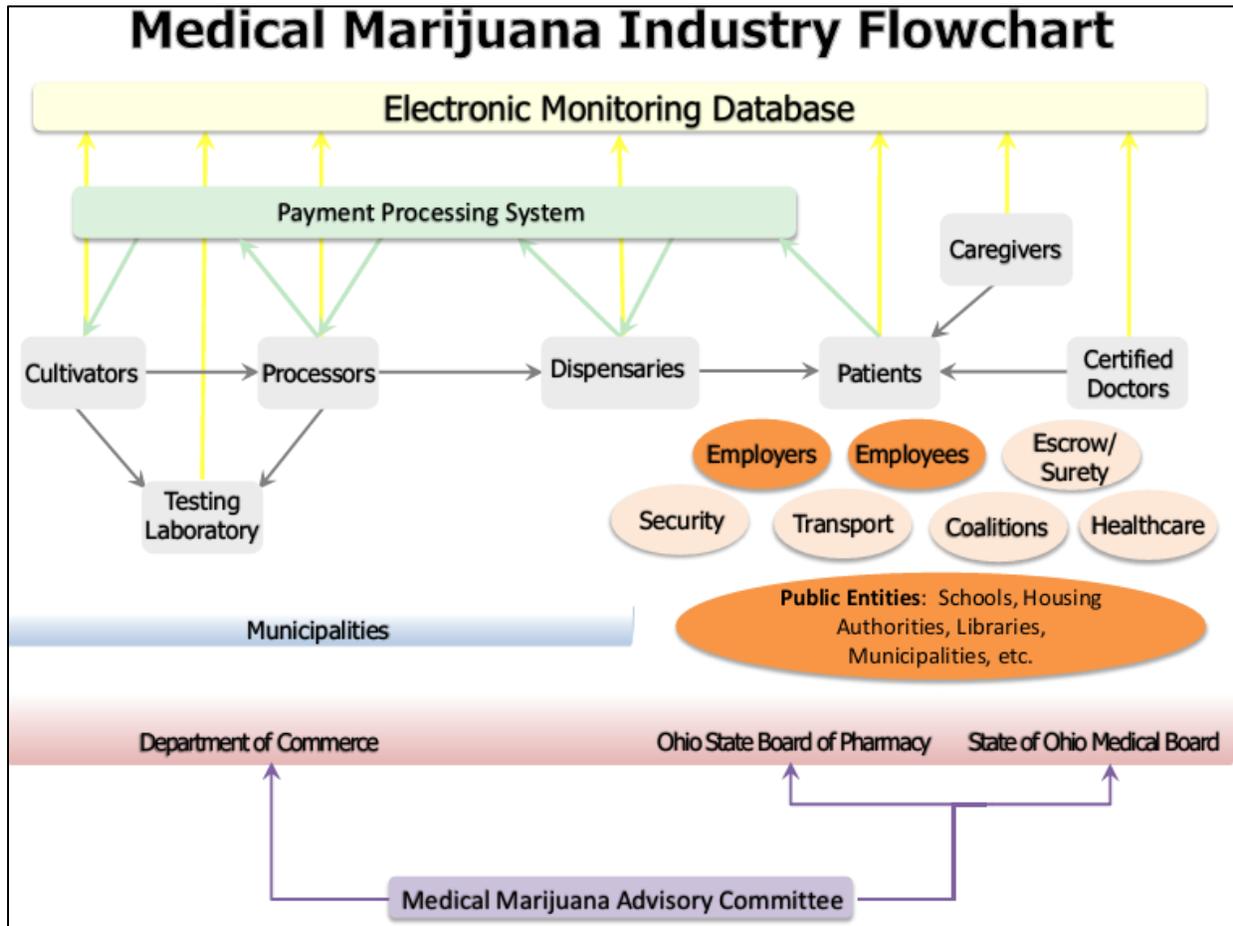


Medical Marijuana Use in Ohio Restaurants

By Cassandra Manna

Ohio’s new medical marijuana law became effective on September 6, 2016, making Ohio the 25th state to pass a medical marijuana bill. As of the beginning of 2018, 29 states, Puerto Rico, Guam, and Washington, D.C. have legalized the use of medical marijuana while 8 states have legalized the use of recreational marijuana. Ohio only allows the use of medical marijuana within the state.

The Ohio statute enabled the state to create the Medical Marijuana Control Program (MMCP) to regulate the cultivation, processing and dispensing of medical marijuana throughout the state. There are multiple regulatory agencies, businesses, and other “players” involved in the industry. The chart below gives an idea of the interactions of the various players involved within the State of Ohio.



Medical marijuana experts from other states estimate that Ohio could generate anywhere between \$200-\$400 million dollars in revenue over a two (2) year period through the sale of medical

marijuana. This is because of Ohio's wide list of medical conditions for which a medical marijuana prescription is available. These include the following conditions:

1. Acquired immune deficiency syndrome (AIDS)
2. Alzheimer's disease
3. Amyotrophic lateral sclerosis
4. Cancer
5. Chronic traumatic encephalopathy
6. Crohn's disease
7. Epilepsy or another seizure disorder
8. Fibromyalgia
9. Glaucoma
10. Hepatitis C
11. Inflammatory bowel disease
12. Multiple sclerosis
13. Pain that is either of the following:
 - a. Chronic and severe OR
 - b. Intractable
14. Parkinson's disease
15. Positive status for HIV
16. Post-traumatic stress disorder (PTSD)
17. Sickle cell anemia
18. Spinal cord disease or injury
19. Tourette's syndrome
20. Traumatic brain injury
21. Ulcerative colitis
22. Other

Chronic and severe or intractable pain is of particular note because of how broadly the condition could be interpreted. This broad condition will make a large number of patients eligible for a prescription who would otherwise not meet the statutory requirements.

The statute notes how the law will affect employers, including restaurants, as prescriptions become available. Specifically, the statute states that nothing in the law "[r]equires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana."

This means that an employer restauranteur can establish and enforce "a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy." The employer does not have to permit or accommodate an employee's use, possession, or distribution of medical marijuana; can refuse to hire, discharge, discipline, or otherwise take an adverse employment action against an employee because of the employee's use, possession, or distribution of medical marijuana; and has just cause to discharge an employee for medical marijuana use in violation of drug testing policy, drug-free workplace policy, or zero-tolerance policy. In summary, the employer restauranteur can continue prohibiting the use and being under the influence of marijuana at the workplace as if the new statute had not been passed.

Each restaurateur will want to make sure they have a written drug testing policy, drug-free workplace policy, or zero-tolerance drug policy in place as soon as possible to prevent any legal issues with employees moving forward. Additionally, providing current and new employees with a copy of the Bureau of Workers Compensation (BWC) policy on medical marijuana is advisable. BWC has stated that an employee, whose injury was the result of medical marijuana influence, is not eligible for workers' compensation through BWC.

Unfortunately, the law does not precisely address whether a restaurant must accommodate patrons seeking to use medical marijuana at their facility. Any business may refuse service to people intoxicated in public but medical marijuana use in Ohio will be difficult to detect. The law absolutely prohibits the smoking of medical marijuana. Therefore, medical marijuana can only be used in a form that is not so easy to identify. For example, oils, tinctures, edibles, patches, and vaporization are allowed. Oils come in various packages and there are many oils used for a wide variety of treatments, both medical and lifestyle (e.g., face serums or wart treatments) making it difficult to determine if an oil is a form of medical marijuana or used for another reason. Because the use of medical marijuana is illegal under federal law, it is most likely supported by law that restaurants can refuse to accommodate patrons' use of medical marijuana within their restaurants.

It is important to note that marijuana, whether used for medical or recreational purposes, is currently considered a Schedule I substance under federal law. This means that it is an illegal substance equivalent to cocaine or heroin because, according to federal law, it has no medical use. However, more than half of the states have decriminalized or legalized marijuana, and it has become one of the fastest growing industries in the country. In 2016 alone, Colorado's marijuana sales totaled \$1.3 billion and generated \$200 million in tax revenue.

During President Obama's terms in office, three memorandums were issued by the Department of Justice (DOJ) stating that the federal government would not stand in the way of states legalizing marijuana so long as the laws did not cross state boundaries and kept the drug out of the hands of cartels and children. Specifically, the "Cole Memo" noted that DOJ officials would not prosecute companies and individuals for the use, possession, or distribution of marijuana as long as those companies and individuals complied with state marijuana laws.

At the beginning of 2018, the Trump administration, through Attorney General Jeff Sessions, reversed the Cole Memo in a blow to marijuana advocates across the nation. The new policy will let U.S. DOJ attorneys across the country decide how aggressively to pursue and what federal resources to devote to fighting marijuana use in their districts based on internal, district-specific policies. Attorney General Sessions' new stance on state-level marijuana issues has sparked a federalism debate between members of Congress about states' rights. It is uncertain at this time about how the new federal policy will affect the marijuana industry in states like Ohio.

The law in the State of Ohio is still new and has a lot of room to grow, develop, and specify how certain issues shall be addressed. **Roetzel will continue to provide updates as the situation evolves and federal enforcement strategies clarify. Please do not hesitate to reach out to us with any questions regarding corporate services, real estate zoning and land use issues, employment services, or government affairs as it relates to the medical marijuana industry.**

