

## **Despite Another Step Forward, Charlotte's Web Implementation Could Still Be Months Away**

Last Monday, August 15, 2014, the Florida Department of Health's Office of Compassionate Use officially published its Notice of Proposed Rules regarding the implementation of the recently legalized strain of marijuana commonly known as "Charlotte's Web."

Broadly, the Proposed Rules establish the procedure and threshold requirements to apply for a license to cultivate and dispense Charlotte's Web, biennial licensure renewal requirements, reasons for denial and revocation of a license, inspection procedures for a dispensing organization's facilities, staffing requirements, inventory, product labeling and testing requirements, security requirements, and much more.

The Proposed Rules are the result of months of research, two draft rules, and two eight-hour long workshops where lobbyists, lawyers, and business-men gave their two-cents (and sometimes much more) on how to best implement the legalization of Charlotte's Web throughout the state of Florida.

Although the Notice of Proposed Rules is a significant step toward the final adoption of the Rules, the adoption could still be months away. The State Administrative Procedures Act states that "[a] rule may not be filed for adoption less than 28 days or more than 90 days after the notice." § 120.54 (3)(e)(2), Fla. Stat. (2014). Further, the Act requires 20 days to expire before filed rules can become effective. § 120.54 (3)(e)(6), Fla. Stat. (2014). Accordingly, the earliest that the Department can begin accepting applications for licenses is in October (the earliest the Department can file the Rules for adoption is in mid September and the Rules would not be effective for an additional 20 days).

Moreover, despite the Department's likely preference to implement the Rules as quickly as possible, doing so is subject to a couple of variables out of its direct control. First, the Joint Administrative Procedures Committee ("JAPC"), which is composed of six state representatives and six state senators, has to review the Proposed Rules to ensure that the Rules do not step outside the bounds of the Rules' implementing law - § 381.986, Fla. Stat. Second, certain interested parties may attempt to challenge the rulemaking. The process for rule challenging can get complex, but the bottom line is that a challenge could potentially cause a serious delay to the adoption of the Rules.

Given the ample opportunity for legislators to speak out against the Rules or the Department's rulemaking process thus far, one could assume a JAPC issue is unlikely. Conversely, a rule challenge based on the lottery requirement for qualified applicants appears imminent as evidenced by the numerous commentators that spoke out against the lottery at the two meetings on the Rules held to date.

However, any opinions on future JAPC action or on public challenges are just assumptions at this point. The only definite as of this moment is that the next and likely final public hearing on the Proposed Rules is scheduled for September 5, 2014 at 9:00 a.m. Interested citizens can issue comments to the Department up to and during that meeting. Public input on the Rules will cease with the close of the September 5th meeting (not including challenges).

In sum, stay tuned – the process has now truly just begun. We will be issuing our next update on this topic after the September 5 meeting with an overview of that meeting as well as a substantive review of the Rules.

**Clarification to last article:** In our last update on this topic, “*Charlotte’s Web Hearing - Round 2*,” we made the statement that once the Proposed Rules are released, the only avenue for affecting the rules would be to bring a challenge. As discussed above, that’s incorrect. Although at this point it is our inclination that a public-induced change would come as a result of a challenge, the public has up to the September 5 meeting to comment on the Rules, which could potentially influence the Department to amend the Rules.

*\*The above article assumes the reader has a basic understanding of the fundamental legal and regulatory landscape that currently exists related to medical marijuana in Florida. For helpful background information, please refer to our previous articles on this topic – “Medical Marijuana in Florida from 10,000 Feet” – which you can find at <http://www.ioppololawgroup.com/wp-content/uploads/2014/07/Medical-Marijuana-in-Florida-From-10000-Feet.pdf>, and – “Charlotte’s Web Hearing Round 2 – which you can find at <http://www.ioppololawgroup.com/wp-content/uploads/2014/08/charlottes-web-hearing-round-2.pdf>.*

***Adrian Lukis, Esq.***  
***Government Affairs Manager***

*The Ioppolo Law Group, PLLC (“ILG”) has been representing both Florida-based and national groups in their pursuance of medical marijuana licenses for the past year. ILG’s representation ranges from regulatory compliance, government affairs and business consulting to creating corporate and financial structures and building teams. Please do not hesitate to contact us at 407 936 3672 or [alukis@ioppololawgroup.com](mailto:alukis@ioppololawgroup.com) for a consultation. Also, please feel free to visit our website at [www.ioppololawgroup.com](http://www.ioppololawgroup.com) to explore our medical marijuana resource page and to sign up to receive our alerts.*

For additional information, please contact:  
Adrian Lukis, Esq.  
Manager, Government Affairs  
[alukis@ioppololawgroup.com](mailto:alukis@ioppololawgroup.com)  
P: 407-936-3672; F: 866-529-4717

Ioppolo Law Group, PLLC  
250 International Pkwy, Ste 250  
Lake Mary, FL 32746  
P: 407-444-1004; F: 866-529-4717  
[www.ioppololawgroup.com](http://www.ioppololawgroup.com)

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