Charlotte's Web Rule Changes Could Be on Horizon

In May, the Florida Legislature passed and the Governor signed into law § 381.986, Florida Statues or the "Compassionate Medial Cannabis Act of 2014," which legalized the particular low-THC strain of marijuana commonly known as "Charlotte's Web" for patients that suffer from cancer or seizure-inducing illnesses. Notably, among other requirements, the Act requires applicants for a license to cultivate and dispense low-THC cannabis to: "possess a valid certificate of registration issued by the Department of Agriculture and Consumer Services . . . that is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman . . . , and have been operated as a registered nursery in this state for at least 30 continuous years."

Earlier last month, the Florida Department of Health's Office of Compassionate Use published its Notice of Proposed Rules as directed by and in response to the passage of Act. The Proposed Rules were the result of months of research, two draft rules, two lengthy public workshops and much public input.

The Proposed Rules, like most proposed rules issued by executive agencies in Florida, were thought to be in or at least close to their final form, ready for adoption and then implementation. However, that no longer appears to be the case.

On August 29, 2014, the Joint Administrative Procedures Committee (JAPC), a committee comprised of six state senators and six state representatives who are tasked with ensuring that agencies do not promulgate rules that step outside the bounds of their implementing authority, sent a 19-page letter to the Department in which the JAPC requested the Department to explain its authority to promulgate many of the rules within the Proposed Rules. This is not abnormal—the JAPC often sends similar letters to the Department (and other agencies) in response to notices of proposed rules. However, given the popularity of these rules and the magnifying glass under which this rulemaking process has been developing, this particular letter by the JAPC seemed to have more of an impact than it otherwise would. This was apparent in last Friday's public meeting, which was the Department's first official public hearing since publishing its Notice of Proposed Rules.

In particular, of the many rules the JAPC requested an explanation for, two rules received the most attention by interested parties at the meeting: 1) the rule that defines an "applicant" for a license to cultivate and dispense low-THC cannabis pursuant to the Act; and 2) the rule that prevents a license-holder from operating a dispensary off the site of where it grows the low-THC cannabis.

Both issues had been commented on at length during the Department's previous two rule workshops, and the Proposed Rules were thought to be the final (or at least close to final) resolution to each. The first issue, regarding the definition of "applicant" started because many perceived the Act to be unclear on the issue. Did the applicant have to be a qualified nursery as defined in the Act, or did the applicant have to simply contain or include a qualified nursery as defined in the Act? Many commentators in past meetings urged the Department to interpret the Act as requiring the latter definition. The reasoning of which was essentially two-fold: qualified nurseries did not want to put their business on the line for such a risky venture, and qualified nurseries will require partners with the

capital and expertise to successfully produce and distribute low-THC cannabis so that qualified patients could timely receive the absolute best medicine. Accordingly, after hearing lengthy testimony in support of defining an applicant as including a qualified nursery, the Department defined "applicant" as "an entity with at least 25% ownership by a nursery that meets the requirements of" the Act.

The second issue, involving the location of potential dispensaries was seemingly an issue on which the Department wasn't going to budge. From the beginning of the rulemaking process, the Department has been steadfast in the approach that the cultivation and dispensing aspects of the low-THC business activities by a license holder, would take place at the same location. The reasoning behind this approach was again two-fold: the Department interpreted the vertical integration contemplated in the Act to require a single location for both cultivating and dispensing low-THC cannabis, and as mentioned by the mediator in Friday's meeting, the Department wanted to keep things simple to meet the Act's deadline to begin issuing licenses by January 1, 2015 and believed that if necessary, it could easily issue another rule or amend the current rules to allow for multiple off-cultivation-site dispensaries at any time in the future.

However, the JAPC letter, despite its routineness, seemed to pump new life into the two issues. Both received extensive public comment during the meeting. As expected, most commentators favored off-site dispensaries. Conversely, with respect to the definition of the applicant, many commentators (or at least the loud ones) aggressively argued that the Department remove the 25% language and require the applicant to be the qualified nursery, which they argued was the only proper interpretation of the Act.

It is unclear how the Department is going to proceed on these two issues, or any other. However, based on the one-two punch of the JAPC letter and the extensive public commenting during last Friday's Public Hearing, signs are pointing to the Department issuing a Notice of Rule Change. Practically, a Rule Change could push further rule development past the November elections, which will decide Amendment 2—where Florida voters will either vote for or against the legalization of medical marijuana in Florida (i.e., all strains of medical marijuana, not just Charlotte's Web). If Amendment 2 passes, we could see legislative action to merge the two laws. If that happens, expect further delay and more twists and turns.

Stay tuned: as always, we will keep an ear to the ground for you.

***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, which can be found at http://www.ioppololawgroup.com/insider-updates/.*

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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 for

a consultation. Also, please feel free to visit our website at www.ioppololawgroup.com to explore our medical marijuana resource page and to sign up to receive our alerts.

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