

# Delays in Launching Medical Marijuana Program Holding Delaware Back

Editor's note: This is the second in a two-part series., Delaware Law Weekly

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In 2011, Gov. Jack Markell signed the Delaware Medical Marijuana Act into law only to suspend the program less than a year later in response to pressure from the U.S. Department of Justice. In August 2013, Markell announced his intention to reboot the program with a goal of creating one pilot medical marijuana distribution center—known as a compassion center—sometime in 2015. By law, the compassion center will be limited to 150 plants. By comparison, the medical marijuana laws of Rhode Island and Michigan allow each patient to cultivate up to 12 plants in their home. Washington state allows 15 plants.

Recent litigation suggests further delays in getting Delaware's medical marijuana program truly off the ground. On April 16, 2014, a lawsuit was filed against Mark Lally, the president of First State Compassion Center, the nonprofit selected by Markell to operate Delaware's only medical marijuana dispensary. In the suit, plaintiff A. Judson Bennett alleges that Lally breached an agreement to help Bennett seek Delaware's lone medical marijuana license and instead began working for a rival group, Sigal Consulting LLC. Lally quickly moved to dismiss the action.

On Sept. 5, 2014, the Delaware Court of Chancery denied Lally's motion to dismiss, finding that Lally had failed to show the absence of a fiduciary duty to Bennett in light of their agreement and the work Lally had done for Bennett before he began working with Sigal. Thus, the litigation will continue and there has been no definitive statement from the Delaware Department of Health and Social Services on whether the lawsuit will delay the opening of First State Compassion Center. As of this writing, it is a best guess when medical marijuana will be available for the Delaware patients who pushed so hard for the passage of the act nearly five years ago.

## Inevitable Legalization

As unappealing as it might be for a shrinking minority, the legalization of marijuana in the United States is inevitable. A recent poll conducted by the University of Delaware revealed that a majority of Delaware voters (56 percent) support the full legalization of marijuana in the state. The only remaining question is how to best implement the reforms of our existing civil and criminal laws.

To date, four states—Colorado, Washington, Alaska and Oregon—have legalized the possession, use and retail sale of marijuana within their borders. Full legalization of marijuana in Delaware may be many years away, but the benefits can already be seen in Colorado and Washington where recreational marijuana has been legal since November 2012.

Since authorizing retail sales of marijuana on Jan. 1, 2014, Colorado has collected \$45.2 million in taxes and fees from the marijuana industry. At the same time, violent crime has fallen 5.6 percent, and property crime has fallen 11.4 percent. As of Dec. 3, 2014, Colorado licensed nearly 300 retail dispensaries throughout the state resulting in the creation of over 10,000 jobs. In Washington, retail sales of marijuana began July 8, 2014, and the first available economic data estimates a tax revenue of \$25 million by July.

These numbers are very enticing, particularly for a state that is seeing a dramatic decline in revenues from its once-robust gaming industry. Casino revenue is Delaware's fourth-largest revenue source for the state's general fund. In 2012, Delaware collected \$118.9 million from the gaming industry. Dover Downs, one of the state's largest taxpayers, contributed \$74.2 million alone to the state budget last year. Delaware's three casinos generate more state tax revenue than all of the income tax paid by corporations operating in Delaware. A recent report suggests Dover Downs could shut its doors due to its crushing tax burden and regional competition. Clearly, something must fill the void.

It is undeniable that public support for legalizing the use of marijuana for medical and recreational purposes has increased significantly over the past decade. Delaware's current marijuana policies are not befitting of the First State's reputation as a business and policy leader. To lead once again, Delaware must reinvigorate and expand its stalled medical marijuana program and advance sound decriminalization legislation this year. Failure to do so will be a missed opportunity that may set Delaware further back on issues dominating the national conversation.

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