MEDIATING IN UNCHARTED WATERS

The Beginning of Medical Cannabis Alternative Dispute Resolution
MARIJUANA

❖ Dried mixture of leaves, flowers, stems, and seeds from the hemp plant, Cannabis.
❖ Primary psychoactive ingredient is tetrahydrocannabinol (THC)
❖ Medicinally, cannabis can be used to treat pain, lack of appetite, nausea associated with disease, cancer, and medication, seizures and Epilepsy, and many other conditions.
MARIJUANA V. CANNABIS

- “Marijuana” is an anglicized term originating from “marihuana” in Mexican-Spanish
- In the U.S. the plant and drug were more commonly known as “cannabis” and “hemp”
- Use of the term Marijuana was popularized along with the term “reefer” to increase opposition for the drug and plant
- Preference for the scientific genus name “cannabis” over the pejorative marijuana
MEDICAL CANNABIS

- Refers to the use of cannabis and its constituent cannabinoids, such as tetrahydrocannabinol (THC) and cannabidiol (CBD), as medical therapy to treat disease or alleviate symptoms.
- Medical cannabis can be administered using a variety of methods, including vaporizing or smoking dried buds, eating extracts, taking capsules or using oral sprays.
IMPORTANT TERMS

- Caregiver & Patient
- Medicate & Treatment
- THC Therapy
- CBD - Whole Plant Therapy
- Dispensary
- Nursery
- Patient Registry
UNIFORM CONTROLLED SUBSTANCE ACT

- Federal System
- Mirrored by Florida
- Five Schedules of Regulation
  - Marijuana Schedule I
  - Cocaine Schedule II
- Litigation:
  - Taxation
  - Insurance
  - Banking
  - Loans
  - Research
  - DEA Raids and Intimidation
FEDERAL RESPONSE TO STATE LEGALIZATION

- “Ogden Memo”
- “Cole” Amendment
- Congress pulled funding for DOJ in states that passed medical cannabis or recreational marijuana legislation
The 2015 and 2014 legislative session introduced numerous bills regarding:

- Medical cannabis use
- Public record/medical cannabis patient
- Recreational marijuana use
FEDERAL CANNABIS BILLS — 2014
FL 3, US 1, BALLOT AMENDMENTS 3, MMJ 1


🌿 Comprehensive farm bill; medical access;

🌿 Purchase 250 grams & 6 seedlings; Possess: 8 plants & 8 immature plants

🌿 Homegrown: with Physician prescription plants, seedlings, oils, topical, adults and minors, real life access, paraphernalia

🌿 No arrest for probable cause or reasonable suspicion as sole basis

🌿 CONTRABAND FORFEITURE ACT DOES NOT APPLY
Representatives Jared Polis (D-CO) and Earl Blumenauer (D-OR) introduced two bills that together would legalize and tax marijuana at the federal level. Representative Polis’s legislation, H.R. 1013, the Regulate Marijuana Like Alcohol Act, removes marijuana from the schedule set by the Controlled Substances Act; transitions marijuana oversight from the jurisdiction of the Drug Enforcement Agency to the Bureau of Alcohol, Tobacco, Firearms and Explosives; and regulates marijuana like alcohol by inserting into the section of the U.S. Code governing “intoxicating liquors.”

Representative Blumenauer’s legislation, H.R. 1014, the Marijuana Tax Revenue Act of 2015, creates a federal excise tax on non-medical marijuana sales and moves this quickly growing industry out of the shadows.
FLORIDA CANNABIS BILLS (2015)

**SB 528 (Brandes (R) – St. Petersburg):** Medical Marijuana bill. Creates patient registry. All Agency oversight is vested in the Department of Health.

**HB 683 (Steube (R) – Sarasota; Wood (R) Winter Haven):** Medical Marijuana bill more restrictive than SB 528. Does not allow any form of smoking.

**SB 1176 (Bullard (D) – Cutler Bay):** Full recreational marijuana use bill for all persons age 21 and older; allows for homegrown and smoking.

**HB 1297 (Bracy (D) – Ocoee):** A Recreational marijuana use bill and companion to SB 1176
Hm 1179 (Gaetz (R) – Shalimar): Proposed memorial asking both chambers for a 60% vote to send a message to Washington asking the president, the attorney general and both chambers of commerce to move Cannabis from Schedule 1 down to Schedule 2 of the federal government’s Controlled Substances Act.

SPB 7066 (Brandes (R) – St. Petersburg): A glitch bill intended to improve the short comings of SB 1030 (approved by the 2014 legislature) now codified as ss. 986 and 381.987, Florida Statutes (2014).
RECREATIONAL MARIJUANA

- Substantially similar to FL Liquor License Law
- Creates the ABM&T – License per capita
- Excise Tax of $50/oz., Adjusted annually for inflation ($B annually, Cgrs Rsch Svc 2012)
- Includes food products and food vendors
- Age 21 and up
- No medicinal use
- City can ban cultivation facilities
- Possession up to 2.5 oz 7 6 plants
- Cannot endanger others (2nd Hand Smoke)
- Mega Land Lease Biz – 566.03(d)(2)(a). F.S.
Section 2. Section 381.986, Florida Statutes, is created to read:
381.986 Compassionate use of low-THC cannabis.—

(a) “Dispensing organization” means an organization approved by the department to cultivate, process, and dispense low-THC cannabis pursuant to this section.
(b) “Low-THC cannabis” means a plant of the genus Cannabis, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed only from a dispensing organization.
Dear FL legislators:

Thanks. But NO Thanks.
DEPARTMENT OF HEALTH RULE MAKING

- Publication of its “first final” set of rules promulgated for the implementation of the Florida’s Compassionate Use Act (SB 1030 (2014); sections 381.986-7, Florida Statutes
- Rules for Applying
- Six suits were filed – the petitioners and the agency could be ordered to mediation under section 120.573, Florida Statutes
The knowledge of the patient’s use of low-THC cannabis, the knowledge that the physician ordered the use of low-THC cannabis, and the knowledge of the patient’s medical condition could be used to embarrass, humiliate, harass, or discriminate against the patient and the physician. This information could be used as a discriminatory tool by an employer who disapproves of the patient’s use of low-THC cannabis or of the physician’s ordering such use.
However, despite the potential hazards of collecting such information, maintaining the compassionate use registry established under s. 381.986, Florida Statutes, is necessary to prevent the diversion and nonmedical use of any low-THC cannabis as well as to aid and improve research done on the efficacy of low-THC cannabis.
In November 2014, a similar measure received 58% of the vote, just shy of the 60% needed for voters to enact a constitutional amendment.

SB 528 - The Florida Medical Marijuana Act would have protected seriously ill patients from arrest and prosecution for using marijuana under a doctor’s recommendation. It also would have created a system of registered medical marijuana providers to ensure that patients have safe and reliable access to the medicine they need.
The new proposal specifies that parents would have to consent if their child is to receive medical marijuana.

It adds extra language to clarify that only people with “debilitating medical conditions” can receive the drug.

It makes sure to say that it can only be recommended by a licensed medical physician.

Department of Health would be empowered to deny felons the ability to be so-called “caregivers” who deliver marijuana for a qualified patient.

Does not immunize violations of federal law or any non-medical use, possession or production of marijuana.
MEDIATION: STARTING WITH THE SEEDLINGS

Potential New Disputes Ripe for Alternative Dispute Resolution:

- Drug screenings of a “qualified patient” added to Florida’s compassionate use registry by a physician
- Landlord who does not allow the tenant to use or possess cannabis despite the tenant’s lawful entitlement
- Commercial lessor that prohibits the sale of marijuana products despite permissibility under local ordinances
- The DOH issuance of a cultivation license is challenged by a competitor who was denied a license
- Conflicting local and state ordinances affecting the marketing and sale of medicinal products
- Termination of a patient’s enrollment on Florida’s compassionate use registry
AGRICULTURAL PERSPECTIVE - EXEMPT AS AG. PRODUCT?

STATUTE 212.01 F.S

Is it a plant if sold to end-user as a farm product?

If sold to distributor exempt to producer, taxable to consumer?
Exempt as Ag. Product up to at some point in conversion

Vertical integration – different facilities, different treatments
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