Medical Cannabis Programs in 2015
The Good, the Bad and the Ineffective

Patrick K. Nightingale, Esquire
PKN Law
Pittsburgh NORML
pknlaw@mac.com
• “I have personally preformed (sic) 17,000 autopsies and reviewed 36,000 other postmortem protocols signed out by pathologists throughout the United States. I have never attributed a death to marijuana overdose.”

Dr. Cyril Wecht
Brief Overview of Medicinal Cannabis in 2015

• 23 states with some form of medicinal cannabis program
• Programs vary from home grow to licensed farms and dispensaries
• Programs vary from tight regulation to non-regulation
• Programs vary in treatable conditions, reciprocity, protections for patients
Pennsylvania Law

• As I believe we all know, possession of cannabis is illegal for any and all purposes:
  – 35 Pa.C.S.A. 780-113(a)(31) – Possession of a “small amount” under 30 grams is an ungraded misdemeanor with max 30 days in jail and $500.00 fine. Includes “delivery” of a small amount not for compensation.
  – 35 Pa.C.S.A. 780-113(a)(16) – Possession of over 30 grams is an ungraded misdemeanor with max 18 – 36 months and $2,500.00 fine.
  – 35 Pa.C.S.A. 780-113(a)(30) – Possession with Intent, Delivery or Manufacturing – ungraded felony with max. 2.5 – 5 years incarceration.
Effects of PA prohibition

• Patients risk criminal conviction, loss of employment, loss of driver’s license
• “Medical necessity” not recognized as a defense (yet!)
• Growing one plant is a felony
• Making medicinal oil, edibles or concentrates is a felony
• For critically ill children, parents risk child protective services and prosecution
Brief history of Medicinal Cannabis

• First recorded use for medicinal purposes in 2737 B.C. by Chinese Emperor Shen Neng
• William O’Shaughnessy – introduced cannabis to west for spasms and pain
• Physician’s Desk Reference included cannabis tinctures
• AMA argued for continued access but overruled by Congress and the Marijuana Tax Stamp Act
• Medicinal cannabis pilot programs
• HIV/AIDS crises in CA leads to Prop 215
Schedule I?

- Federal pilot program to provide medicinal cannabis to limited number of qualified patients under Investigative New Drug Program
- FL Stockbroker Irv Rosenfeld began receiving 9 ounces/month in 1982 grown at U. Miss.
- Federal government has provided 300 marijuana cigarettes every month since 1980.
- Irv has smoked over 130,000 “joints” provided by United States. He continues to receive.
Mr. Rosenfeld and his medicine testifying before the PA Senate Judiciary Committee
United States Patent

- U.S. Dept. Of Health and Human Services holds patent # 6,630,507 re: cannabinoids as neuroprotectants and antioxidants
- Israeli researchers hold patent # 6,410,588 re: cannabinoids as anti-inflammatory agent
- Patent application filed for cannabidiol in diabetes prevention
- Dutch researchers hold patent #7,807,711 re: medical efficacy of CBD and other cannabinoids
California Prop 215

- Growing HIV/AIDS crisis in San Francisco – Brownie Mary and her Hash Brownies
- Ballot initiative with 56% voter support
- 8 ounces of cannabis, 6 mature plants
- Federal crackdowns under Bush and Obama
- Gonzales v. Raich – home cultivation can be regulated by Commerce Clause.
- County by County regulations vary
- Lax regulation – doctor shopping, etc.
Caregiver/Homegrow

- MI, OR, CA and other states have a “caregiver” model.
- Caregiver permitted to grow up to 6 plants per qualified patient.
- Medicinal cannabis sold at or processed via collectives.
- Valid physician recommendation required to enter collectives.
- Patient/caregiver registry
- Patient friendly – ease of access to products
Licensed grow/dispensary model

  - Regulatory board issues “licenses” based on a variety of criteria
  - Business plan
  - Industry experience
  - “Buy in” of local officials and community
  - In some states, limited number of licenses available
  - Merit based or lottery based
  - Transparency of selection criteria
Licensed grow/dispensary model

• Robust compliance and regulatory scheme
  – Real time seed to sale monitoring
  – Efforts to reduce illegal “diversion” from licensed
grows/dispensaries to the black market

• This model favors larger grows as opposed to
  small individual grows.

• Thought to provide consistent cannabis
  products
NY/NJ Limited Program

• New Jersey has a medicinal cannabis in name only
  – Broad language has permitted the Executive Branch to delay implementation
  – Only a handful of physicians participating
  – Three dispensaries have very limited products Most patients continue to buy and use illegally

• New York - 5 Medicinal Marijuana Organizations
  – A mere 5 grows for the entire state of NY
  – Strain and product diversity?
PA Senate Bill 3

• Passed PA Senate 40 – 7 in April, 2015
• Currently in House Rules Committee
  – Bi-partisan ad hoc committee of House members trying to craft language acceptable to skeptical House leadership
  – Gov. Wolf will sign
  – Concerns that House will further water down language and conditions
  – Expect some action when Legislature re-convenes
SB 3 – Current Language

• Permits medicinal cannabis products to treat limited number of conditions including epilepsy, PTSD, HIV/AIDS, chronic pain
• No smoking permitted
• No edibles permitted, but patient may make their own
• Oils, tinctures and plant material permitted as recommended by physician
• Vaporization permitted if specifically recommended
SB 3 – Marijuana Advisory Board

• Bill to create advisory board to craft license application regulations and operational regulations
• Appointees and representatives from State agencies
• Two year window to adopt regulations
• Appointees cannot have financial interest in MMJ businesses
• Can consider applications to expand qualifying conditions in 2017
How would SB 3 work?

- Establish criteria for license applications
  - 65 grows, 65 processors and 130 dispensaries
  - Merit based application criteria
  - Points system for applications used in MA
  - Applicants may apply for more than one license
  - No guidance on geographic preferences
  - Number of available licenses in flux at present
Seed to Sale

• Growers, processors and dispensaries required to have real time 24/7 tracking
  – Radio tags used on every plant in legal states
  – To prevent “diversion” or illegal sale of regulated cannabis

• Patient database
  – Prevent patient from using card to go from dispensary to dispensary
Patient Protections

• No “per se” DUI, but limits set to 10 ng/ml
• Protection from employment and legal discrimination
  – Employer can still set terms of employment
  – Does not permit patient to be stoned on job
  – Protection in family and civil litigation
  – Protection from criminal liability
Practical Issues

• Quality control
  – A patient must know they are getting what they think they are getting.
  – Mold/pesticides
  – Laboratory testing – common in medicinal and legal states
  – Snake oil salesmen – “CBD Only oils” commonly available
Practical Issues

• Overregulation
  – Too few participants will cripple industry

• Governmental “buy in” at executive and local level

• Some type of “cannabis credit union” pending loosening of banking regulations on federal level

• Robust civil and criminal protections for patients
Collateral consequences

• 25% reduction in prescription opioid deaths
• Reduction in suicide rates in CO
• No increase in teen cannabis use in medicinal states
• Reduction in violent crime in CO
• Increase in cannabis DUI in CO
  – BUT – only 6% cannabis only.
Litigation

- Petition to DEA in 1988 to reschedule cannabis to Schedule II
- DEA Administrative Law Judge Francis Young held hearing.
- “Marijuana, in its natural form, is one of the safest therapeutically active substances known to man. By any measure of rational analysis marijuana can be safely used within a supervised routine of medical care.”
- DEA, obviously, wasn’t interested.
Litigation

- ASA v. DEA – lawsuit filed in 2000 by Americans for Safe Access seeking to challenge Schedule I classification
  - Limited to evidentiary record as it existed in 2000
  - Mostly anecdotal.
  - Did not present current body of medical and scientific research
  - Evidence presented did not warrant relief
  - Today hundreds of clinical studies and thousands of published papers.
Litigation

• Gonzales v. Raich – US Supreme Court holds Commerce Clause permits regulation of cannabis even if purely “in state”
  – CA patient with home grow sued claiming federal law could not regulate state sanctioned home grow as no nexus to interstate commerce
  – 6-3 ruling in favor of Government
Litigation

- United States v. Pickard – 9th Circuit
  - Illegal grower on federal property
  - 5 day hearing on whether marijuana was properly placed in Schedule I.
  - Gov’t conceded some medical efficacy, but argued legislative, not judicial, action
  - Court denied motion opining that it was the “wrong case”
For More Information

• www.norml.org
• www.pittsburghnorml.org
• www.campaign4compassion.org
• www.leap.cc
• www.safeaccessnow.org
• www.drugpolicy.org
• Or just give me a call or an email! 412.225.7959, pknlaw@mac.com