

Medical Marijuana in Oklahoma: Agency Position & Response



Oklahoma Bureau of Narcotics and Dangerous Drugs Control

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Peer Review

This white paper was reviewed by the following organizations and individuals:

- The Association of Oklahoma Narcotic Enforcers
- John Coonce, Retired DEA – OBN Commission (Chair)
- Greg Mashburn, District 21 District Attorney – OBN Commission
- Todd Gibson, Chief of Police, Moore Police Department – OBN Commission
- Derek Manning, Sheriff, Beckham County – OBN Commission
- Senator Darrell Weaver, former OBN Director
- Malcom Atwood, former OBN Director
- Travis White, OBN General Counsel
- Susan Rogers, former OBN General Counsel
- Professor John Duncan, former OBN Chief of Diversion
- Matt Ballard, District 12 District Attorney – President of Oklahoma District Attorneys Association

Section I - Overview

Introduction and Purpose

Following a referendum related to State Question 788, the state of Oklahoma has created a legal paradigm for the cultivation and distribution of medical marijuana. This sea change in the law has resulted in extreme challenges for the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBN) along with our partners in public health, public safety, and the Oklahoma legislature. Furthermore, unscrupulous actors and criminal enterprises have sought to exploit these governmental challenges.

This white paper seeks to both outline the position of OBN and provide the reasoning supporting OBN's efforts to protect public safety under the *Uniform Controlled Dangerous Substance Act* (UCDSA). OBN has oversight from both the Governor and legislature, both of which have expressed support for OBN ensuring public safety and compliance with Oklahoma's medical marijuana laws.

Current Status

Statistics - OBN has seen an unprecedented effort to illegally divert marijuana for the purpose of interstate distribution. As of February 3, 2022, there were 382,069 marijuana cardholders in Oklahoma, along with 8,137 licensed cultivators.ⁱ A recent study from the University of Pennsylvania found that the average "joint" contained approximately .32 grams of marijuana.ⁱⁱ The licensed marijuana cultivators in Oklahoma typically produce thousands of pounds of marijuana each year with many of the cultivators having dozens of large greenhouses. Studies show that approximately 20% of marijuana users do so daily.ⁱⁱⁱ However, if one were to assume (1) every Oklahoma marijuana card holder was a daily user smoking an average sized marijuana joint, and (2) the average cultivator produced a mere 1,000 pounds for the entire year,

then the legal Oklahoma cardholder demand could be produced by 1.2% of the licensed marijuana cultivators.

Intelligence – Our law enforcement partners in other states have communicated with OBN that organized criminal enterprises have stated they are seeking to relocate to Oklahoma to take advantage of Oklahoma’s medical marijuana laws. Furthermore, law enforcement in other areas have stated that Oklahoma is now clearly a source state for black market marijuana across the nation.

Experience – The preceding statistics and intelligence is completely consistent with OBN’s enforcement experience and the information relayed to us from our law enforcement colleagues within Oklahoma. To date, OBN has seen evidence of not only domestic drug trafficking organizations moving into Oklahoma to exploit our medical marijuana laws, but also foreign national organized crime syndicates from at least 12 countries on three continents operating in Oklahoma to traffic in black market marijuana.

Section II – Areas of Concern

Marijuana Cultivation and the Illegality Thereof

Marijuana is a Schedule I controlled dangerous substance as defined under Oklahoma law in the UCDSA. ^{iv} Cannabis plants, from which marijuana is derived, have been declared “inimical to the health and welfare of the public” and OBN is charged with the “control” thereof and regarding illegal acts relating to marijuana, the “eradication of these species” throughout the state of Oklahoma. ^v The cultivation of marijuana is a felony by default - it is unlawful for any person to “cultivate or produce, or to knowingly permit the cultivation, production, or wild growing” of cannabis plants anywhere within the state of Oklahoma. ^{vi} If, and only if, an individual or group fully complies with Oklahoma law is this illegal conduct transformed into lawful activity. As such,

- (1) Any person or organization cultivating marijuana without a license from the Oklahoma Medical Marijuana Authority (OMMA) or a registration from OBN is engaged in the unlawful, felonious cultivation of marijuana, or**
- (2) Any licensed person or organization who cultivates, distributes, or traffics in marijuana outside the parameters of the medical marijuana laws is unlawfully and feloniously cultivating, distributing, or trafficking in marijuana.**

This is absolutely no different than the practice of medicine as it relates to controlled dangerous substances. For instance, it is illegal to possess or distribute opioid pain medication. If, and only if, a person possesses and uses opioid pain medication pursuant to a prescription from a physician can that person do so. Furthermore, OBN and the Drug Enforcement Administration license physicians to prescribe opioid pain medication **in the course of his or her practice**. As

such, if any physician prescribes outside the course of his or her practice, then the activity is a felonious distribution of a controlled dangerous substance.^{vii}

Residency: Individuals applying for licensure must be Oklahoma residents^{viii}, and entities applying for licensure must provide proof at least “seventy-five percent (75%) of all members, managers, executive officers, partners, board members or any other form of business ownership are Oklahoma residents.” Oklahoma residents are defined as applicants who “provide proof of Oklahoma residency for at least two (2) years immediately preceding the date of application or five (5) years of continuous Oklahoma residency during the preceding twenty-five (25) years immediately preceding the date of application.”^{ix}

OBN has seen an unprecedented and coordinated effort by actors outside of Oklahoma to bypass the residency requirement with the utilization of “straw” ownership with respect to licensed grows. It should be noted this effort has not materialized with dispensaries – further supporting the clear evidence of efforts to illegally produce marijuana for illegal, out-of-state distribution. Without question, it is the absolute intent of the law that Oklahoma’s medical marijuana business be conducted by Oklahoma residents. The above-referenced statutory requirements are simply not something that can be bypassed with fraudulent and fictitious structuring and OBN will be diligent and vigilant in investigating the ownership of these marijuana grows. Put simply, seventy-five percent (75%) ownership by Oklahoma residents means exactly that.

Section III – Efforts to Protect Public Safety

The UCDSA repeatedly directs OBN to prevent the abuse misuse, and trafficking of controlled dangerous substances. Based on the foregoing data, OBN will make every reasonable effort to protect the public safety of Oklahoma as it relates to medical marijuana. Those reasonable efforts will include, but not be limited to:

1. *Enforcement Actions:* OBN has established multiple marijuana enforcement teams who will specialize in and be tasked with investigating and arresting individuals engaged in the illegal cultivation and distribution of marijuana.
2. *Administrative Investigations:* Any person or entity seeking an Oklahoma registration to engage in the medical marijuana business will be subject to a thorough investigation by OBN. These administrative investigations (which could at any time transition into a criminal investigation) will include, but not be limited to:
 - a. *Submission of Paperwork:* “The Director may require an applicant to submit such documents or written statements of fact relevant to the application as he/she deems necessary to determine whether the application should be granted.”^x
 - b. *Pre-Issuance Inspection:* “The Director is authorized to inspect the establishment of a registrant or applicant for registration in accordance with rules promulgated by the Director.”^{xi}
 - c. *Imminent Danger Orders:* “If the Director finds there is imminent danger to the public health or safety, he/she may immediately suspend any registration simultaneously with the institution of show cause proceedings.”^{xii}

IV. Summary/Conclusion

Individuals seeking to lawfully register and conduct business under Oklahoma’s medical marijuana laws should be allowed to do so under Oklahoma law. However, based on the public safety threat as well as the pervasive fraud and illegality, OBN must make reasonable efforts to ensure the issuance of any registration is lawfully obtained under those laws and any subsequent activities will be in compliance with those laws.

The importance of this oversight can be further illustrated by lawsuits in which Oklahoma was a party. The state of Oklahoma sued the state of Colorado and alleged a gap in oversight and “Marijuana flows from this gap into neighboring states...draining their treasuries and placing stress on their criminal justice systems.”^{xiii} To ensure the safety of Oklahoma and to protect this great State from litigation from sister states, OBN will utilize the tools granted it by law and make every effort to prevent “gaps” in the lawful compliance with the medical marijuana laws.

ⁱ <https://oklahoma.gov/omma.html>

ⁱⁱ <https://penntoday.upenn.edu/news/new-penn-research-shows-average-joint-contains-much-less-marijuana-thought>.

ⁱⁱⁱ Alex Berenson, *Tell Your Children the Truth About Marijuana, Mental Illness, and Violence* (Free Press, February 2020) p. XiX.

^{iv} 63 O.S. § 2-204(C)(12).

^v 63 O.S. §2-509 et seq.

^{vi} 63 O.S. § 2-509(B).

^{vii} See *U.S. v. Moore*, 423 U.S. 122, 124 (1975) (“[R]egistered physicians can be prosecuted under § 841 when their activities fall outside the usual course of professional practice.”); *U.S. v. Nelson*, 383 F.3d 1227, 1231-32 (10th Cir. 2004) (“A practitioner has unlawfully distributed a controlled dangerous substance if she prescribes the substance either outside the usual course of medical practice or without a legitimate medical purpose.”).

^{viii} *Id.* at § 427.14(7)(b).

^{ix} 63 O.S. § 427.14(11).

^x OAC 475:10-1-14.

^{xi} 63 O.S. § 2-302(K).

^{xii} OAC 475:15-1-1 et seq.

^{xiii} See *Nebraska & Oklahoma v. Colorado*, Cert Denied.