

TO: Interested City Officials

FR: Tim Cromartie, Legislative Representative

RE: Medical Marijuana Regulation and Safety Act of 2015: Dispensaries v. Laboratories

DATE: February 26, 2016

Over the past two years I have worked as the League's legislative advocate to ensure local control was completely respected in the enactment of the Medical Marijuana Regulation and Safety Act of 2015 (the "Act"). Many issues have arisen since the signing of the Act, prompting the League to disseminate information to its Members, chief among them the March 1st cultivation deadline. With the signing of AB 21 on February 3rd, the March 1st deadline has been eliminated. Cities are now free of the threat of any state pre-emption concerning cultivation, freeing them free to craft local cultivation regulations at their leisure. No other deadlines or possible pre-emption of local authority were imposed by the Act.

As cities proceed with the development and adoption of local medical marijuana ordinances in this area, we have recently learned from some medical marijuana testing labs that there may be a need to clarify for cities the significant differences between medical marijuana **dispensaries**, and medical marijuana **testing laboratories**. Some cities may be operating under the assumption that testing labs are the same as dispensaries. In fairness, the law has changed significantly in the last four months, triggering understandable confusion in many quarters at the state and local level. This memo will hopefully clarify this aspect of the new law, and has been thoroughly reviewed and approved by the League's General Counsel.

The purpose of this memo is to clarify the following:

- 1) Testing laboratories have a unique function within the medical marijuana regulatory structure, and they are different from dispensaries or any other licensed activities. Labs are the enforcement mechanism for the health and safety standards regarding potency and purity that the Act requires the state to develop.
- 2) Testing labs cannot operate as retail outlets.
- 3) Since testing labs receive only the small amounts of marijuana needed for testing purposes, they have only a fraction of the product on their premises at any given time that dispensaries have.

The Firewall Around the Testing Function: Key Points

- Medical marijuana testing labs are prohibited by law from engaging in retail operations.
- Testing lab operators are prohibited from engaging in any other licensed activity under the Act.
- Testing lab operators are prohibited from holding a financial interest in any of the other licensed activities.
- Conversely, dispensaries are prohibited from operating as testing labs.

To better understand the two functions of testing and dispensing, it may be helpful to review their definitions as they appear in the Medical Marijuana Regulation and Safety Act.

Definition of Dispensary

The Act defines a dispensary as follows, at page 7 of AB 266 (Business and Professions Code Section 19300.5(n):

"Dispensary" means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either

individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

Definition of Testing Lab

The Act defines a testing laboratory as follows, at page 8 of AB 266 (Business and Professions Code Section 19300.5(z):

“Testing laboratory” means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.
- (2) Registered with the State Department of Public Health.

Again, a “firewall” of sorts is erected around testing laboratories in that Section 19343, at page 20 of AB 266, specifically prohibits testing or analyzing of medical marijuana or medical marijuana products unless that laboratory is “independent from all other persons and entities involved in the medical cannabis industry.” Dispensaries cannot conduct testing, and testing labs cannot engage in retail transactions.

Under the Act, retail sales cannot occur at testing labs, because they are not authorized to conduct retail activity of any kind. Testing labs receive only sufficient amounts of the product required to complete the required tests for purity and potency. In addition, testing procedures involve exposing these small amounts of marijuana to methanol, or wood alcohol, which is toxic to humans. Once so exposed, the marijuana is no longer commercially viable and is destroyed afterwards. For these reasons, testing labs often are non-descript establishments whose exterior gives no indication of the nature of their business, and they have no foot traffic involving retail customers. While testing labs may be accessible to the public, they often have more rigorous security measures in place than retail dispensaries, in part because they have a need to demonstrate strong chain of custody procedures.

In contrast, many retail dispensaries providing medical marijuana deliberately have an exterior façade that may be designed to invite foot traffic and walk-in customers or patients. The more reputable establishments often have significant security measures, but the entrance of the business may be far more obvious and open.

Dispensaries and testing labs are alike in one area: both receive deliveries of marijuana, which will require transport to a location within your jurisdiction if your local ordinances allow testing labs to operate within your borders. That may be a concern in terms of discerning between transport to a lab and transport to a dispensary. The key difference between them is that the amounts delivered to testing labs will be far smaller, as they are based on the requirements of random sample testing. For example, testing labs typically test only a few grams of marijuana at a time to ascertain product purity and potency. In contrast, deliveries to dispensaries can involve the transport of several pounds for processing and sale in retail transactions.

These two types of businesses therefore perform very different functions under the Act, underscored by the entities that will license and regulate them. The Department of Consumer Affairs will oversee the dispensaries, while the Department of Public Health will oversee the testing laboratories.

Much of this information can be confirmed by reviewing the text of AB 266, the legislation which provided a substantial part of this new regulatory structure, by using this link:

http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0251-0300/ab_266_bill_20151009_chaptered.pdf

We hope this information is helpful to you as you further refine your policies in this area. The League may issue periodic updates or other clarifications on this issue in the coming months, as the state makes progress with implementation and nears its goal of being ready to issue licenses for various activities

under the Act. For more information on the Act and its application to cities, go to:
<http://www.cacities.org/Policy-Advocacy/Hot-Issues/Medical-Marijuana>

Should you have any questions regarding this memo, please contact Tim Cromartie at
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