



# Nevada's New Medical Marijuana Law—Now What?

By Neal Tomlinson, Esq.

Despite the unsettled nature of federal enforcement of the federal criminal drug laws in the context of state medical marijuana laws, the Nevada Legislature enacted Senate Bill No. 374 during its recently completed 77<sup>th</sup> Regular Session, and the Governor signed it into law on June 12, 2013. Senate Bill No. 374 (“SB 374”) provides for the registration of medical marijuana establishments authorized to cultivate, dispense, and manufacture marijuana products for sale to persons authorized to engage in the medical use of marijuana. The full text of SB 374 can be found at <https://nellis.leg.state.nv.us/77th2013/App#/77th2013/Bill/Text/SB374>. The new law amends and expands upon existing state law, NRS 453A.010 *et seq.*, by now specifying the manner in which authorized patients are to obtain medical marijuana.

## Implementation of SB 374

The Nevada Division of Public and Behavioral Health (the “Division”), an arm of the Nevada Department of Health and Human Services, is the state agency charged with regulating Nevada’s medical marijuana program and implementing the new law. By April 1, 2014, the Division must write and adopt regulations it determines necessary to: 1) prescribe the form for applications to become a registered medical marijuana establishment and medical marijuana establishment agent (*i.e.* employee of a registered establishment); 2) set forth rules pertaining to the safe and healthful operation of establishments; 3) establish maximum fees; 4) determine the amount of usable marijuana that a dispensary may dispense to registered patients; 5) protect the identity and personal information of each person who receives, facilitates, or delivers medical marijuana services; 6) establish a system to register and track physicians who advise patients; 7) establish categories of agent registration cards and criteria for training and certification; and 8) provide for and main-

tain a log of each person authorized to cultivate, grow, or produce marijuana. Any regulations adopted by the Division must comply with the Nevada Administrative Procedure Act, NRS 233B.010 *et seq.*

The new law allows registration of the following types of medical marijuana establishments: 1) an independent testing laboratory; 2) a cultivation facility; 3) a facility for the production of edible marijuana products or marijuana-infused products; and 4) a dispensary. An “independent testing laboratory” is a business which tests marijuana and related products to accurately determine: 1) the concentration of THC and cannabidiol; 2) whether the product is organic or non-organic; 3) the presence and identification of molds and fungus; and 4) the presence and concentration of fertilizers and other nutrients. A “cultivation facility” is a business that acquires, cultivates, supplies or sells marijuana and related supplies to dispensaries, production facilities, or other cultivation facilities. A “facility for the production of edible marijuana products or marijuana-infused products” is a business that acquires, manufactures, supplies or sells edible marijuana products or marijuana-infused products to dispensaries. A “medical marijuana dispensary” is a business that sells or dispenses marijuana or related supplies and educational materials to registered patients holding a valid registry identification card. The Division issues a registry identification card to persons exempt from state prosecution for engaging in the medical use of marijuana under NRS 453A.140. Registered dispensaries are also authorized to sell products to nonresidents who are entitled to engage in the medical use of marijuana in their home state.

Prospective medical marijuana establishment operators must submit an application to the Division. Applications will be available following adoption of the regulations described above, but no later than April 1, 2014. Each application must include the following: 1) a one-time, non-refundable application fee of \$5,000 plus the actual costs incurred by the Division in processing the application; 2) the legal name of the proposed establishment; 3) the physical address of the proposed establishment; 4) evidence that the applicant controls not less than \$250,000 in liquid assets; 5) evidence that the applicant owns the proposed establishment property or has written permission of the property

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owner to operate the establishment on that property; 6) fingerprints for each proposed owner, officer or board member of the proposed establishment for a criminal history report from the Federal Bureau of Investigation; 7) the name, address and date of birth of each proposed owner, officer or board member; 8) the name, address and date of birth of each person who is proposed to be employed by the establishment; 9) operating procedures of the proposed establishment to ensure adequate security measures and the use of an electronic verification system and an inventory control system; 10) proposed operating procedures for handling of products; and 11) proof of licensure or a letter from the applicable local government authority certifying that the proposed establishment is in compliance with applicable zoning restrictions.

Persons who volunteer or work as employees at medical marijuana establishments as agents must also be registered with the Division. Such persons must submit fingerprints to the Division for a criminal history report from the Federal Bureau of Investigation and pay an annual fee of \$75. Persons who have been convicted of certain excluded felony offenses or are under 21 years of age cannot be registered as establishment owners, officers, board members or agents.

### Limitations on Number of Registration Certificates and Criteria of Merit

The Division may only issue registration certificates to a limited number of dispensaries: 40 dispensaries for a county whose population is 700,000 or more (currently only Clark County); 10 for a county whose population is 100,000 or more but less than 700,000; 2 for a county whose population is 55,000 or more but less than 100,000; and 1 for any other county. With respect to non-dispensary establishments (*i.e.* independent testing laboratories, cultivation facilities, and production facilities), the Division must determine the appropriate number of registration certificates necessary to serve and supply the registered dispensaries. Among other limitations, any one person, group of persons or entity may not receive more than 10 percent of the registration certificates otherwise allocable in a county whose population is 100,000 or more.

In addition to the general application requirements discussed above, the Division must consider the following criteria of merit before issuing a registration certificate: 1) the applicant's total financial resources; 2) the applicant's previous experience operating other businesses or nonprofit organizations; 3) the applicant's educational achievements; 4) the applicant's demonstrated knowledge or expertise with the compassionate use of marijuana to treat medical conditions, if any; 5) whether the proposed location of the proposed establishment would be convenient to serve the needs of registered patients; 6) the likely impact of the proposed

establishment on the community in which it is proposed to be located; 7) the adequacy of the size of the proposed establishment to serve the needs of registered patients; 8) whether the applicant has an integrated plan for the care, quality and safekeeping of medical marijuana from seed to sale; 9) the amount of taxes paid to, or other beneficial financial contributions made to, the State or its political subdivisions by the applicant; and 10) any other criteria of merit that the Division determines to be relevant.

Successful applicants must also pay a fee, in addition to the application fee, for the initial issuance of a registration certificate as follows: \$30,000 for a dispensary, \$3,000 for a cultivation facility, \$3,000 for a production facility, and \$5,000 for an independent testing laboratory. Annual renewal fees range from \$1,000 to \$5,000.

### Excise Taxes

An excise tax of two percent is imposed on each wholesale sale of marijuana products between establishments, and on each retail sale from a dispensary to an end user. The excise tax on retail sales is in addition to the state and local sales and use taxes that are otherwise imposed on the sale of tangible personal property. Seventy-five percent of the revenue collected from these excise taxes must be deposited to the credit of the State Distributive School Account in the State General Fund, and twenty-five percent to the Division to pay its regulatory costs.

Although Nevada is one of twenty states and the District of Columbia to legalize medical marijuana consumption, the issuance of a Nevada registry identification card or an establishment registration certificate does not exempt the holder from potential prosecution under federal law. However, the U.S. Department of Justice recently announced it would take a "trust but verify approach" to the state laws, while reserving its right to file a federal preemption lawsuit at a later date. There are also at least two bipartisan bills pending in Congress, and the U.S. Senate Judiciary Committee has scheduled a hearing in September to discuss the ongoing conflict between state and federal marijuana laws, which together could eliminate the conflict or at least further clarify federal enforcement policy. **G**

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