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## New Pa. Rule Clears Path for Medical Cannabis Practices

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*Of the Legal Staff*

A long-awaited rule change adopted last week by the Pennsylvania Supreme Court removed an ethical risk at the state level for lawyers who handle matters related to medical marijuana.

Pennsylvania lawyers may now work with their medical marijuana clients without fear of action by the state's Disciplinary Board.

"We can relax," said Andrew Sacks of Sacks Weston Diamond, who has been a leading force in attaining the rule change. "It's a happy day for Pennsylvania lawyers."

Still, some risk remains under federal law, as long as marijuana remains designated as a Schedule I controlled substance.

The new Rule 1.2(e) of the Rules of Professional Conduct, implemented by an Oct. 26 order, says that lawyers "may counsel or assist a client regarding conduct expressly permitted by Pennsylvania law, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct."

Those other applicable laws are namely federal laws. Previously, Rule 1.2 simply prohibited lawyers from counseling a client to engage in any activity known to be criminal or fraudulent.

For the most part, the Supreme Court's amendment follows the Pennsylvania Disciplinary Board's recommendation. However, where the board had suggested the rule allow counseling on conduct "expressly permitted by the law of the state where it takes place or has its predominant effect," the Supreme Court's

rule is limited to conduct permitted in Pennsylvania.

Even under older rules, no lawyer had faced disciplinary action for assisting a medical cannabis dispensary, Sacks said. But now lawyers can "feel safe in the bounds of the state," he said.

Sacks was one of the attorneys who sought an advisory opinion from the Philadelphia Bar Association last year regarding the ethics of representing the medical marijuana industry. The Philadelphia Bar Association along with the Pennsylvania Bar Association jointly recommended through their ethics committees that the rule needed to be changed for lawyers to comfortably be involved in the industry. The Disciplinary Board then made its recommendation.

Sacks said many of the firms that would be taking medical marijuana work were already practicing in the area. But now they can be more open about it.

"I think you'll see big firms' websites change," Sacks said.

William G. Roark of Hamburg, Rubin, Mullin, Maxwell & Lupin said the rule change lifts a "fog of uncertainty" that had surrounded firms with medical marijuana practices. "Now that the rule has been changed, the analysis is going to be easier for every firm," Roark said.

It's likely that more firms will establish those practices in Pennsylvania now that they do not have to fear disciplinary action, he said. But it's not an area that lawyers can enter on a whim, he noted.

"What I hope doesn't happen is that the amended rule is now going to be an invitation or incentive for people to get in over their head in this arena without being capable of doing everything this entails," Roark said, noting the

complexity of regulations and federal law related to medical marijuana.

Roark said medical cannabis work is best done by a firm with capabilities in a broad range of services. Working with medical marijuana dispensaries requires capabilities in zoning, corporate and tax work, as well as litigation, he noted.

Despite the relief in Pennsylvania, Sacks said federal law still represents some danger for lawyers. The Obama administration has put out a memo stating it does not intend to enforce federal marijuana laws in states that have legalized marijuana usage, but Sacks said some growers have still been prosecuted.

"Us lawyers are still violating federal law. We're aiding and abetting," he said.

However, Sacks noted, as more states adopt laws accepting of the medical cannabis industry, and pressure increases from lobbyists and pharmaceutical companies, marijuana's Schedule I designation will become "archaic."

Gov. Tom Wolf signed legislation in April legalizing medical marijuana in Pennsylvania.

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