

Medical Marijuana and Hemp Law PBA Committee Takes the Lead in New Area of Law

Pennsylvania's medical marijuana program is emerging as the national model, and the PBA Medical Marijuana and Hemp Law Committee is putting PBA first among state bar associations for education in that area of law. Committee co-chairs William G. Roark, Hamburg Rubin Mullin Maxwell and Lupin PC, Lansdale, and Andrew B. Sacks, Sacks Weston Diamond LLC, Philadelphia, said some lawyers are gaining expertise in the field and many others are learning how the law impacts their areas of practice.

"From my perspective, the past two years have been the best in my years as a lawyer. There was a long road leading

up to it, but it's exciting and rewarding. Some regulations have slowed things down, and there are dispensaries that aren't even open yet, but Pennsylvania is a leader in this industry," Sacks said. Department of Health (DOH) statistics from October 2018 show that more than 80,000 patients have registered for the program since it began in October 2017, and the state has approved 51,000 of those. Of the 1,300 doctors who registered, 830 have been approved. There are 35 operational dispensaries, and 21 medical conditions were approved as qualified.

Roark said, "This absolutely took off much greater than most of us could

have dreamed. We've encountered the expected hiccups, but because the PBA permitted us to form the Medical Marijuana and Hemp Law Committee, as issues have popped up, we have had the ability to work together and address problems collaboratively."

"When the medical marijuana law passed, Bill (Roark) and I called lawyers in Colorado and other states that already had the programs and asked them how to organize a committee like this, and they laughed because no other state bar association had a medical marijuana law committee. We are all coming with different practices but a shared interest in this area of law. Whatever stigma that was there is going away. We are providing a real and valuable service," Sacks said.

Sacks and Roark worked with the Philadelphia and Allegheny county bar associations to establish medical marijuana subcommittees that have monthly phone conferences to discuss what's new and what to do next. There are now nine subcommittees with leaders in all three bar associations. The areas of law that are impacted by medical marijuana include, but are not limited to: health, zoning and land use, workers' comp, legislative, family, criminal, edu-

cation, corporate, banking and hemp.

Sacks said, "We felt early on that uniting the state bar committees would help make advice uniform and issues that needed to be worked out with the

DOH or the courts. It is working better than we ever thought. We have 260 lawyers all caring about helping the program get moving. Our subcommittee members are now holding CLEs and presentations on their subjects without Bill or me."

"The best takeaway from the subcommittees is our ability to address various intersections of this industry and law practices," Roark said.

Pennsylvania's medical marijuana law continues to evolve. In July 2018, Gov. Wolf signed HB 2477 into law, allowing the state's research program to proceed. The law was necessary to circumvent a lawsuit challenging the constitutionality of Chapter 20 that allows

medical schools to work with marijuana companies that will generate data for pharmacological research. Medical schools can choose their own cannabis growing partners. Under language of the new law, regulations will bypass an independent review. The DOH will have final say on whether a company is

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qualified to partner with a school.

Sacks said he is skeptical about how Chapter 20 will play out. “I am concerned that the partnerships will go to billionaires. It’s the proverbial ‘who you know’ that might be a factor,” he said.

Roark is not as skeptical, and he said there is a lot more “on the conveyor belt that is creating work for lawyers” in this industry. He said when research yields good data and other changes continue, this has the potential to “put Pennsylvania at the tip of the spear” in the medical marijuana industry.

The DOH recently awarded 23 dispensary permits for phase two of the medical marijuana program, and the Wolf Administration approved a process in which serious medical conditions can be added, changed or reduced from the list of qualifying conditions recognized by the Medical Marijuana Act.

A sticking point in the expansion of the medical marijuana program remains paying for it. The federal government still won’t allow states to cover medical marijuana with Medicaid dollars because it’s a Schedule 1 drug.

“Both federal and state laws stipulate that no insurance, whether it’s public or private, is required to cover medical marijuana. Patients must pay out of pocket. The only possible wiggle room is with workers’ compensation. There is a test case where a comp carrier is being asked to reimburse the cost of medical marijuana as reasonable and necessary treatment. The argument, however, may rest on the ‘reasonable’ component because there is lack of data on the quantity, dosage, etc.” Roark said.

The Hemp Bill was passed a few weeks after the medical marijuana law, but it got little attention. That is about to change because of the 2018 Farm Bill, and Roark said the market is going to expand rapidly.

Following hemp’s removal from the controlled substances list in the 2018 Farm Bill, the Pennsylvania Department of Agriculture opened up the agricultural hemp program. Pennsylvania had run a pilot program for industrial hemp over

the past two years, but it was open only to entities growing the crop for research. Now, industrial hemp in Pennsylvania will be regulated as a controlled plant under the Controlled Plant and Noxious Weed Committee. Growers must get a permit and are subject to enforcement. Hemp crops will be tested for tetrahydrocannabinol, the main psychoactive compound in marijuana. If it has too much, the crop has to be destroyed.

The new law also removes growing caps of 100 acres for current and new applicants. Industrial hemp has many potential applications, from beauty products to building materials. The law also allows cannabidiol, the non-intoxicating chemical compound, to be extracted from hemp to be used to treat certain medical conditions such as insomnia and arthritis.

“This is a big story,” Sacks said. “There are so many uses for hemp. It will be robust in Pennsylvania. Abandoned farms will be back in business. It’s all good for the state.”

Roark agreed that the market will expand rapidly.

Talking about legalizing recreational marijuana may create some anxiety, but the proposal is generating debate, primarily as the financial impact is considered.

An article in a daily email newsletter, *MJBiz*, “If these Northeast states legalize adult-use marijuana, they could generate billions of dollars in sales,” said the race is on for new markets in the Northeast because state lawmakers and governors are spearheading the legislation effort, rather than voters.

Roark said, “The auditor general has issued reports indicating the economic benefit of expanding marijuana beyond medicinal to adult use. Additionally, in a twitter version of an ‘Ask Me Anything’ (the q and a session made famous by Reddit), Governor Wolf accepted a question about legalizing marijuana, and in no uncertain terms, the governor said it’s time Pennsylvania takes a serious look. So, at the least, there seems to be a willingness to have a discussion about it.”



He cited statistics from BDS Analytics that said the regulated marijuana market in the U.S. generated \$9 billion in 2018. That is equal to the annual revenue of the sale of Pampers. Medical marijuana in New York, legalized in 2014, generated \$40.9 million, and Gov. Andrew Cuomo funded a study in 2018 to see the statewide financial impact of recreational marijuana.

“It is the natural progression of this area of the law. Who knows what will happen in two years?” Roark said. He does know there is a lot of interest in medical marijuana and hemp law.

“Early in 2014, we had a one-hour webinar on medical marijuana law. There were so many questions being emailed in from participants that the server went down. So, the length of the CLEs started expanding. Last year in March, we had the first full-day symposium in partnership with PBI. We had Sen. Daylin Leach (who led the charge for medical marijuana with Sen. Mike Folmer) along with attorneys and doctors from across the country identifying new issues. What we learned was that even one full day was not enough time to cover all the developments,” Roark said.

Accordingly, the PBA Medical Marijuana and Hemp Law Committee and PBI will present the second annual day-long Medical Marijuana and Hemp Law Symposium in Philadelphia on

March 22, this time featuring numerous break-out sessions. The CLE offers five substantive and one ethics credit hours. Auditor General Eugene DePasquale will be keynote speaker.

The sessions include the following:

- Update on Medical Marijuana Litigation
- Employment and Health Law Issues
- The Business of Medical Marijuana — Tax and Banking, Investment Issues, Liability
- The Medical Community’s Perspective
- Regulations, Government Oversight and Transparency
- Hemp Law
- Ethical Considerations

In addition, the symposium will be simulcast at 18 locations, and a webcast will be available. For more information, go to the Pennsylvania Bar Institute website at www.pbi.org.

For more information about the Medical Marijuana and Hemp Law Committee and how to join, go to www.pabar.org/site/For-Lawyers/Committees-Commissions/Medical-Marijuana-and-Hemp-Law.