

Marijuana Series Part 3: The Murphy Administration Looks to Expand New Jersey's Medical Marijuana Program

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This is the third installment in Porzio's series, *Marijuana: Creating a Legal Framework in New Jersey a Drug Illegal Under Federal Law*.

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Near the end of his time in office, Governor Jon Corzine signed the Compassionate Use Medical Marijuana Act into law in January 2010. Over the next eight years, during Governor Chris Christie's Administration, the Department of Health ("DOH") implemented the law and outlined the contours and details of the medical marijuana program. Shortly after taking office, Governor Phil Murphy issued an Executive Order on January 23, 2018, directing the DOH and the Board of Medical Examiners ("Board") to review all aspects of the State's medical marijuana system, with a focus on how to expand access. The Order, which is Executive Order No. 6, requires that the review be completed within 60 days. Two days after signing the Executive Order, Governor Murphy visited one of the State's medical marijuana dispensaries and reiterated his intent to expand the program's access. In this article, we will examine some key aspects of the State's medical marijuana program, as well as Governor Murphy's plans to expand the program.

In order to obtain a prescriptions under the DOH's Medicinal Marijuana Program ("MMP"), a patient, who must be a New Jersey resident, must be diagnosed with one of the State-approved debilitating medical conditions by a physician who is registered with the MMP. Those approved conditions are: amyotrophic lateral sclerosis; multiple sclerosis; terminal cancer; muscular dystrophy; inflammatory bowel disease, including Crohn's disease; and terminal illness, if the physician has determined a prognosis of less than a year of life. A patient may also obtain a prescription for one of the following conditions if he or she is resistant to, or intolerant to, conventional therapy: seizure disorder, including epilepsy; intractable skeletal muscular spasticity; glaucoma; and post-traumatic stress disorder. Lastly, the following conditions can lead to a prescription if severe or chronic pain, severe nausea or vomiting, cachexia, or wasting syndrome results from the condition or its treatment: positive status for human immunodeficiency virus; acquired immune deficiency syndrome; and cancer.

In October 2017, the State's Medical Marijuana Review Panel recommended that the following conditions be added as an approved debilitating condition: chronic pain related to musculoskeletal disorders; migraine, anxiety, chronic pain of visceral

origin, and Tourette's Syndrome. However, that recommendation is subject to further rule-making procedures before those conditions can be added to the MMP's approved conditions list.

According to Executive Order No. 6, there are approximately 15,000 patients able to participate in the MMP, whereas Michigan has 218,000 patients and Arizona has 136,000 patients in their medical marijuana programs. As noted, New Jersey patients can only participate in the MMP if they are diagnosed by a physician that is registered with the program. Presently, there are over 500 physicians that are registered, but nearly 50 of them are no longer accepting new patients. Lastly, it is important to highlight that although a patient's physician determine the proper dosage, the maximum amount of medical marijuana that may be purchased by a patient under State law is 2 ounces in a thirty-day period. There are many more rules that govern both patient and physician participation in the MMP, as we are only addressing a few of the program's basic principles.

Currently, there are five dispensaries, referred to as Alternative Treatment Centers ("ATCs"), in New Jersey where patients can obtain medical marijuana. Those facilities are: 1) Compassionate Care Foundation, Inc., in Egg Harbor Township; 2) Greenleaf Compassion Center, in Montclair; 3) Garden State Dispensary, in Woodbridge; 4) Breakwater Alternative Treatment Center, in Cranbury; and 5) Compassionate Sciences, Inc., in Bellmawr. A sixth ATC, Harmony Foundation in Secaucus, was granted a permit to cultivate medical marijuana in July 2017 and its future operations are pending, subject to further DOH approval.

In his press release announcing Executive Order No. 6, Governor Murphy declared that "[w]e need to treat our residents with compassion[.] We cannot turn a deaf ear to our veterans, the families of children facing terminal illness, or to any of the other countless New Jerseyans who only wish to be treated like people, and not criminals. And, doctors deserve the ability to provide their patients with access to medical marijuana free of stigmatization." In addition, Governor Murphy explained that "[m]any aspects of New Jersey's medical marijuana program are written in statute[.] But our law is eight years old. Since it took effect, significant medical research has been conducted. Our goal is to modernize the program in New Jersey, bring it up to current standards, and put patients first." With respect to Governor Murphy's point that many aspects of the MMP are premised on statute, it should be noted that there are several bills pending in the New Jersey Legislature that would increase access to medical marijuana and, according to various press reports, more bills are expected to be introduced.

As to the substance of Executive Order No. 6, it directs the DOH and Board to "undertake a review of all aspects of New Jersey's medical marijuana program, with a focus on ways to expand access to marijuana for medical purposes." (emphasis added) The Order lists a number of subjects that should be reviewed, including:

- The current rules that regulate the operations and locations of dispensaries and cultivation facilities, "particularly focusing on whether the rules should be revised to remove unwarranted obstructions to expansion";
- The current licensing process for dispensaries, "including recommendations to expedite that process";
- The requirements regarding physician participation in the program "to ensure that any such requirements are not needlessly onerous";
- The list of qualifying conditions and whether physicians should have greater flexibility in this area;

- The methods by which patients are able to obtain medical marijuana, including a "recommendation of whether rules should be amended to approve additional methods that could facilitate patient access";
- The rules governing marijuana ingestion; and
- "Any other aspects of the program within the Department or the Board's discretion that hinders or fails to effectively achieve the statutory objects of ensuring safe access to medical marijuana for patients in need."

At both the signing statement of the Executive Order and his tour of the Breakwater Alternative Treatment Center, Governor Murphy emphasized that he was committed to expanding access to the program and even noted some specific ideas that he was amenable to considering. Those ideas, which are consistent with the areas of review he specified in his Executive Order, included allowing home delivery of medical marijuana; expanding the list of qualifying conditions; allowing patients to purchase more than the current limit of two ounces per thirty days; increasing the availability of edible products; and allowing the currently approved ATCs to open additional retail locations.

Clearly, the medical marijuana program will be the focus of significant review and potentially regulatory action in the coming months, and possibly in the Legislature as well. Of course, the focus on medical marijuana will not detract attention from debate over legalizing marijuana for recreational purposes, which will be the subject of our next update. On that point, it is worth emphasizing that the press release announcing Executive Order No. 6 reiterated that Governor Murphy "remains committed to working with the New Jersey Legislature to pass comprehensive marijuana reform."