



**PORZIO**  
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# Porzio Cannabis Digest

2018

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## Cannabis Team

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## Helping clients navigate the legal and regulatory landscape of a rapidly growing Cannabis industry.

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With more and more states enacting laws to legalize and expand medical and recreational use of cannabis, business owners, investors, employers, non-profit organizations and others are working to navigate a complex and ever-evolving web of regulation as they look to leverage opportunities in this emerging industry.

With the use of cannabis still prohibited by federal law, businesses and organizations looking to succeed in the cannabis industry face many unknowns and specific challenges as they work to establish legal, compliant companies in an industry where the intersection of business and legal concerns have not yet been put to the test.

Businesses in the cannabis industry that succeed in strategically navigating the business, legal, compliance, government, and regulatory issues will have an advantage over others in the trade. Porzio's Cannabis Task Force offers clients access to a cross-functional team that is unparalleled in the State of New Jersey. In addition to our legal and compliance team members who have spent the past decades building compliance databases and consulting with clients in some of the highest regulated industries, Porzio's Cannabis Task Force includes members from Porzio Governmental Affairs, a wholly-owned subsidiary of the law firm.

Porzio team members have years of relevant experience to best serve this industry. Through Porzio Governmental Affairs, members of our team have been at the forefront of the issue since legislation on medical marijuana began in New Jersey and we have experience advising clients and stakeholders in matters related to cannabis legalization.

For anyone who is looking to establish or invest in a cannabis-related business, or have their interests in this area effectively advocated for during the legislative and regulatory process, we offer a full spectrum of cross-functional services. These services include company formation, real estate, land use and environmental, zoning, employment, litigation, tax, insurance, intellectual property, and governmental affairs.

Despite any state laws to the contrary, possession, use, distribution, and/or sale of marijuana is illegal under federal law and may be enforced by the federal authorities. Accordingly, possession, use, distribution and/or sale of marijuana remains subject to related federal law and policy and compliance with a state law in this area does not prevent or preclude enforcement of its laws by the federal government. Legal advice provided by Porzio, Bromberg & Newman, P.C., is intended to counsel clients regarding the validity, scope, meaning, and application of existing and/or proposed cannabis laws regulations and policies. Porzio, Bromberg & Newman, P.C. does not provide assistance in circumventing or violating Federal or state cannabis laws.

## Medical Marijuana Program Quickly Expands In New Jersey While Legalization Legislation Remains On Hold

*Brian P. Sharkey*  
*5/14/2018*

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According to 2016 FBI crime data, New Jersey had the second highest marijuana arrest rate in the country, behind first-place Wyoming, and the third highest total number of arrests relating to marijuana. Only Texas and New York had more such arrests. These statistics about New Jersey's arrest rates are particularly relevant considering the fact that Governor Murphy has strongly and unequivocally supported legalization of cannabis, both during his gubernatorial campaign and since he took office in January 2018. For example, in an April 25 speech marking his first 100 days in office, Governor Murphy stated that "we are working toward legalization [of marijuana] to end mass incarceration, predominantly of young people of color, that costs us as a society." Most recently, on May 10, Governor Murphy tweeted the following message: "I support the legalization, regulation, and taxation of marijuana sales to adults. Legalization will allow us to reinvest directly in our communities. These investments will pay dividends far greater than the cost of mass incarceration."

Although State Senate President Stephen Sweeney is also a supporter, legalization legislation has not progressed as quickly as advocates had hoped. In that regard, an Assembly committee has been conducting hearings on the potential positive and negative consequences of legalization, but there have been no hearings held in the Senate on marijuana. In short, there has been a general sense of uncertainty about how and when legalization legislation will progress. In various press reports, Senator Nicholas Scutari, a main supporter of legalization and sponsor of such legislation, has indicated that he has made progress with his colleagues to gain their support. Moreover, Assembly Speaker Craig Coughlin recently traveled to Colorado with colleagues and toured marijuana dispensaries on a fact-finding mission.

While legislators work to build more support for legalization among their colleagues, there has been significant growth and expansion of the State's medical marijuana program. In his April 25 speech, Governor Murphy also declared that "[w]e are expanding access to medical marijuana to thousands of New Jerseyans who want nothing more than to restore their quality of life, and who have been failed by other treatments, or who wish to not fall into reliance upon opioids[.]" More specifically, Dr. Shereef Elnahal, the Commissioner of the Department of Health, issued a press release on May 1 titled, "Murphy Administration Announces NJ Medicinal Marijuana Program Now Serving 20,000 Patients." The press release pointed out that a total of 1,500 patients had joined the program in the preceding month, many of whom have one of the five new qualifying conditions that the Department of Health added for the program on March 27, and that 4,200 patients had joined the program since Governor Murphy took office on January 16. (The five conditions that had been added to the program are chronic pain related to musculoskeletal disorders, migraine, anxiety, chronic pain of visceral origin, and Tourette's Syndrome.) Dr. Elnahal stated that "[w]e're adding 100 new patients every day. This demonstrates that there was pent up demand. People with chronic pain now have the option of medical marijuana instead of opioids, and more than 100 strains are available." As further evidence of growth, Dr. Elnahal also cited the fact that 50 new physicians joined

the program in the preceding month, bringing the total number to approximately 600 who can prescribe medicinal marijuana for their patients.

## NJ's Potential Legalization of Marijuana Meets NJ's Strong Tradition of Home Rule

**Brian P. Sharkey**

**5/3/2018**

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In several of our recent updates we have discussed the possibility that New Jersey will enact a law that legalizes marijuana. Although such a law is by no means imminent, that has not prevented some New Jersey counties and municipalities from intervening in this area. Readers who do not reside in the Garden State may be surprised to learn that not only does New Jersey have a long, and strong, tradition of home rule, but it has 21 counties and 565 municipalities. Some of those countries and municipalities have made it clear that they do not support the idea of marijuana legalization by the State or such businesses within their borders.

For example, in January 2018, the Board of Chosen Freeholders of Monmouth County ("Monmouth County Board") adopted a resolution that stated in pertinent part that "this Board does hereby oppose the legalization of recreational marijuana use[.]" The resolution cited the illegality of marijuana under federal law and various data from Colorado in support of the Board's position. The resolution also outlined a variety of law enforcement considerations and declared that "many health care professionals consider marijuana a 'gateway' drug[.]" Similarly, in February 2018, the Board of Chosen Freeholders of Ocean County ("Ocean County Board") adopted a resolution that provided that it "opposes the enactment of legislation to legalize the recreational use and sale of marijuana; and further encourages Ocean County municipalities to join with Ocean County in opposing this issue." In support of that position, the Ocean County Board pointed out that marijuana remains illegal under federal law and that Attorney General Sessions rescinded the Obama-era Cole Memo. The resolution also cited law enforcement concerns and the dangers of recreational marijuana as a basis for why the State should not adopt a legalization law.

Although other counties have not taken similar action, several municipalities have considered, and in some instances passed, ordinances that would, depending on the specific ordinance, ban the growth, processing and/or sale of marijuana within the municipality's borders. According to press reports, Union City became the first municipality in Hudson County to adopt such an ordinance, while Hasbrouck Heights became the first municipality in Bergen County to do so. In its resolution, the Ocean County Board explained that Point Pleasant Beach and Berkeley Township had already passed such ordinances and that Toms River Township, Ocean Gate, and Lavallette were "strongly considering similar ordinances[.]" While the overwhelming majority of municipalities have not taken any action with respect to potential marijuana legalization, Asbury Park and Jersey City are two municipalities that have indicated that they would welcome marijuana businesses in their towns so long as they satisfy State requirements.

Relevant to the issue of home rule, the *Asbury Park Press* published an article titled, "To put it bluntly, many pot questions lack answers," that featured an exchange with Michael F. Cerra, assistant executive director of governmental affairs for the New Jersey League of Municipalities. In response to a question about whether the League of Municipalities had a specific position on legalization of marijuana, Mr. Cerra responded "[n]ot at the moment. The league has a diverse membership and has convened a task force to review the issue, the proposed legislation, and to develop a series of recommendations which may or may

not include a position on legalization." With respect to municipalities banning sales within their borders, Mr. Cerra commented that "[e]very [State legislative] proposal to date has included an opt-out provision for municipalities, meaning that they would be authorized to bar businesses which would manufacture, distribute or sell marijuana. A number of municipalities have already taken such action, or are in the process of doing so. Out of fairness, it is probably premature to describe it as widespread at this point, but it may become more significant." Mr. Cerra further discussed municipal prohibitions on marijuana sales by explaining that "[a] local ban is more than a meaningless gesture. Local residents and business owners might be concerned about the possible impact of legalization on public safety and the quality of life. A municipal ban could provide reassurance to concerned citizens. It could mitigate worries about local law enforcement issues that could arise at marijuana production facilities, warehouses and retail outlets. It could also address uncertainties related to the potential for legalized-marijuana-related street crimes, and disorderly persons offenses."

While it is important for those interested in the status of legalization to remain focused on legislative developments at the State level, they should also monitor whether more municipalities, and which ones, take action to prohibit cannabis businesses in their towns. Such strategic planning could prove beneficial in the long term as stakeholders evaluate where to invest and concentrate their resources if the State eventually adopts a legalization law.



## A Whirlwind of Activity Leading Up to April 20, 2018

*Brian P. Sharkey*

*4/23/2018*

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The ten days leading up to April 20, 2018, featured many significant cannabis-related developments. In this update, we will highlight ten of the most important items, many of which we will explore in future updates and analysis, especially with respect to some of the federal legislative issues.

1. On April 11, President Trump confirmed to Senator Cory Gardner, a Republican from Colorado, that he supported a federalism-based approach to the issue of state marijuana laws and that Attorney General Sessions's decision to rescind the Obama-era Cole memo would not affect Colorado's legal marijuana industry.
2. On April 13, Senator Gardner, who had previously placed a hold on Department of Justice nominees in response to Attorney General Sessions's rescission of the Cole memo, issued a press release titled, "Gardner Protects Colorado's Legal Marijuana Industry: Receives Commitment from President Trump to Support Legislation to Protect States' Rights." In that press release, Senator Gardner explained that "[s]ince the campaign, President Trump has consistently supported states' rights to decide for themselves how best to approach marijuana[.] Late Wednesday, I received a commitment from the President that the Department of Justice's rescission of the Cole memo will not impact Colorado's legal marijuana industry. Furthermore, President Trump has assured me that he will support a federalism-based legislative solution to fix this states' rights issue once and for all." Senator Gardner also commented that "[b]ecause of these commitments, I have informed the Administration that I will be lifting my remaining holds on Department of Justice nominees. My colleagues and I are continuing to work diligently on a bipartisan legislative solution that can pass Congress and head to the President's desk to deliver on his campaign position."
3. That same day during a press briefing, White House spokeswoman Sarah Huckabee Sanders confirmed the President's position on marijuana. Specifically, she stated that "I can confirm the President did speak with Senator Gardner yesterday and again today. We're always consulting Congress about issues, including states' rights, of which the President is a firm believer. And the statement that the Senator put out earlier today is accurate."
4. Congressional members supportive of marijuana reform generally reacted to President Trump's position with some skepticism or cautious optimism. For example, Representative Earl Blumenauer, a Democrat from Oregon and a co-founder of the Congressional Cannabis Caucus, stated that "[t]his is another head-spinning moment[.] We should hope for the best, but not take anything for granted. Trump changes his mind constantly, and Republican leadership is still in our way. Momentum is clearly building in the states and here in DC[.] The tide is changing. Now is the time to redouble our efforts." Meanwhile, Senator Cory Booker, a New Jersey Democrat who has introduced the Marijuana Justice Reform Act of 2017, which would lift the federal prohibition on marijuana, observed that "[c]ommitments mean little from this president, particularly verbal

commitments that go against every policy we've seen coming out of this administration[.] As long as Trump is in the White House and Jeff Sessions is leading the Department of Justice, the only way to truly protect states that have legalized marijuana is for Congress to act."

In contrast, Representative Dana Rohrabacher, a Republican from California who has long advocated for reform of marijuana laws, offered more full-throated support for President Trump's position. In an April 16, 2018, press release titled, "Rohrabacher Praises President's Decision to Respect State Pot Laws," Representative Rohrabacher announced that he is preparing stand-alone legislation, the Cannabis States' Rights Act, that would permanently change federal marijuana law. Specifically, he declared that "I am extremely happy that President Trump has made perfectly clear that he meant his campaign promise to respect state laws with regard to marijuana. Now there should be no question in Attorney General Sessions' mind about the president's intention. This is a fundamental issue of federalism and freedom, as state after state moves to take marijuana out of the hands of the cartels and place it in a competitive market where consumers can be assured of product safety. It also encourages more exploration of medical uses for cannabis, which has shown unquestionable promise in the treatment of multiple ailments and disorders. I look forward to working with President Trump and Senator Gardner to move my legislation through Congress. The authors of our great Constitution most assuredly would approve.

"Meanwhile, in an April 18 interview, Senator Gardner indicated that he is 80% done with a bill that he is preparing to ensure that states do not violate current federal law and that would permit cannabis businesses to access the financial system, which is a huge problem for cannabis businesses.

5. On April 11, former Republican House Speaker John Boehner, a long-time, ardent opponent of marijuana reform, announced that he was joining the Board of Acreage Holdings, a cannabis business, and tweeted the following message: "I'm joining the board of #AcreageHoldings because my thinking on cannabis has evolved. I'm convinced de-scheduling the drug is needed so we can do research, help our veterans, and reverse the opioid epidemic ravaging our communities." In subsequent interviews, Mr. Boehner expressed his disagreement with Attorney General Sessions's decision to rescind the Cole memo and cited public support of marijuana reform as one of the key reasons why he changed his position. In addition, Bill Weld, the Republican former Governor of Massachusetts, also joined the Board of Acreage Holdings and expressed his support for President Trump's position.
6. On April 12, Senator Orrin Hatch, a Republican from Utah, and Senator Kamala Harris, a Democrat from California, who are both on the Senate Judiciary Committee, wrote a letter to Attorney General Sessions asking that the Drug Enforcement Agency ("DEA") end its efforts to impede medical marijuana research efforts by delaying approvals for manufacturers growing research-grade medical marijuana. The Senators began their letter by stating: "We write to request that you enable the [DEA] to fulfill its charter of lawfully registering manufacturers of the controlled substance of marijuana for research without delay. Research on marijuana is necessary to resolve critical questions of public health and safety, such as learning the impacts of marijuana on

developing brains and formulating methods to test marijuana impairment in drivers." Then, on April 19, Senator Hatch tweeted the following message: "Tomorrow, purely coincidentally, we will be talking about marijuana. We'll get in the weeds to hash out some of the most potent arguments as to why it might be the budding answer doctors have long strained to find for countless chronic conditions."

7. On April 19, Senator Bernie Sanders, an Independent from Vermont, announced that he had become the third co-sponsor, joining Senator Ron Wyden, a Democrat from Oregon, and Senator Kirstin Gillibrand, a Democrat from New York, of Senator Booker's marijuana reform legislation, the Marijuana Justice Act. Senator Sanders offered the following rationale for his decision: "[h]ere is the simple truth: Blacks and whites have similar rates of marijuana use, but black people are far more likely to be arrested for it. Last year, about 600,000 people were arrested for possession of marijuana. Many of those people, disproportionately people of color, have seen their lives destroyed because they have criminal records as a result of marijuana use. That has got to change[.] As I talked about during my campaign, we must end the absurd situation of marijuana being listed as a Schedule 1 drug alongside heroin. It is time to decriminalize marijuana, as many states have already done, and end the failed war on drugs. We must invest in jobs and education, not more jails and incarceration."

Senator Booker welcomed Senator Sanders's support, as he stated that "[m]arijuana legalization is an issue whose time has come – it's no longer a matter of if, it's a matter of when[.] This bill is about justice and the reality that low-income communities and communities of color have been disproportionately targeted by the War on Drugs, which was not really a war on drugs as much as it was a war on people. This issue is about moving our country toward greater justice for communities of color and low-income communities and I'm excited that Senator Sanders is lending his voice and support to this movement."

8. April 19 was also a potentially monumental day because Senator Chuck Schumer, the Senate Democratic leader, announced that he was introducing legislation to decriminalize marijuana at the federal level. In an April 20 press release describing his decision, Senator Schumer stressed that "[t]he time has come to decriminalize marijuana[.] My thinking – as well as the general population's views – on the issue has evolved, and so I believe there's no better time than the present to get this done. It's simply the right thing to do. This legislation would let the states be the laboratories that they should be, ensure that woman and minority owned business have a fair shot in the marijuana industry, invests in critical research on THC, and ensures that advertisers can't target children – it's a balanced approach."
9. April 19 featured a potentially milestone moment concerning cannabis outside of politics, this time in the pharmaceutical space. GW Pharmaceuticals, Plc has developed a medicine, Epidiolex, to treat epilepsy, that was made from a compound in the marijuana plant called cannabidiol. On April 19, a panel of outside advisers to the Food and Drug Administration ("FDA") voted, unanimously, in favor of approval for the drug, finding that its benefits outweigh its risk in treating two rare forms

of childhood epilepsy. The FDA has a June 27 deadline to make a final ruling on whether to approve Epidiolex.

10. As to New Jersey, on April 19 Monmouth University released a poll that found that 59% of New Jersey residents supported legalizing possession of small amounts of marijuana for recreational purposes, while 37% were opposed. When Monmouth University last polled on this issue four years ago, 48% were in favor while 47% were opposed. The poll also found that 60% of New Jerseyans think that legalizing marijuana would help the State's economy while only 32% believe that legalization would lead to an increase in drug crimes.

## Senator Gillibrand Advocates for Marijuana Reform

*Brian P. Sharkey*

*4/18/2018*

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Over the past several months, Senator Kirsten Gillibrand, a Democrat from New York, has advocated for reform of federal marijuana policy. First, in early January, as soon as news reports began to circulate that Attorney General Jeff Sessions planned to rescind Obama-era guidance concerning how federal prosecutors should approach marijuana laws, Senator Gillibrand issued a press release announcing her opposition. In that press release, Senator Gillibrand declared that the Attorney General's plans were "a direct attack on patients. Parents should be able to give their sick kids the medicine they need without having to fear that they will be prosecuted. Veterans should be able to come home from combat and use the medicine they need without having to fear they will be prosecuted." Senator Gillibrand also explained that "[t]his is about public health, and it's about reforming our broken criminal justice system that throws too many minorities in prison for completely nonviolent offenses. I urge my colleagues to join me in fighting this shortsighted decision and supporting my broadly bipartisan bill, the CARERS Act, to keep the federal government out of the way when doctors and patients decide that medical marijuana is the best treatment for them."

A little over one month later, on February 14, Senator Gillibrand announced that she was co-sponsoring S.1689, the Marijuana Justice Act, a bill that would legalize marijuana. The legislation, which was introduced by Senator Cory Booker of New Jersey, would not only remove marijuana from the list of controlled substances, but would also expunge marijuana possession convictions. Commenting on her decision, Senator Gillibrand stated in a press release that "[m]illions of Americans' lives have been devastated because of our broken marijuana policies, especially in communities of color and low-income communities[.] ... Just one minor possession conviction could take away a lifetime of opportunities for jobs, education, and housing, tear families apart, and make people more vulnerable to serving time in jail or prison down the road." Moreover, Senator Gillibrand stressed that "[l]egalizing marijuana is a social justice issue and a moral issue that Congress needs to address, and I'm proud to work with Senator Booker on this legislation to help fix decades of injustice caused by our nation's failed drug policies."

In that same press release, Senator Booker expressed his appreciation for Senator Gillibrand's action, as he remarked that "I'm thrilled Senator Gillibrand has joined me in this movement to make our justice system more fair." He also declared that "[l]egalizing marijuana isn't a matter of if it's a matter of when[.] ... The War on Drugs has been a war on people, especially people of color and low-income individuals[.] The Marijuana Justice Act would reverse this trend by not only legalizing marijuana, but by also helping to address the damage the War on Drugs has inflicted on communities disproportionately impacted by marijuana enforcement."

Two weeks later, Senator Gillibrand criticized the pharmaceutical industry with respect to marijuana on Twitter. Specifically, she tweeted that "Big pharma keeps pushing back against legalizing medical marijuana because, in many cases, they want to continue to sell addictive drugs and dominate the market for drugs that address chronic pain. That's wrong. It is time to rework our cannabis laws."

On March 27, Senator Gillibrand issued a press release announcing the inclusion of a provision in the

Omnibus Appropriations package that prohibits the use of federal funds by the Department of Justice to interfere with the implementation of medical marijuana laws that have been adopted in 29 States and the District of Columbia. In the press release, Senator Gillibrand declared that "I am pleased that this provision is included in the Omnibus Appropriations package so that the Department of Justice cannot interfere with states' rights to implement their medical marijuana laws[.] ... Parents should be able to give their sick children the medicine they need without having to fear that they will be prosecuted. Veterans should be able to come home from combat and use the medicine they need without having to fear that they will be prosecuted. I will continue to urge my colleagues to pass my bipartisan legislation, the CARERS Act, so that the children and families who desperately need this medicine can finally access it without fear."

Lastly, on March 30 Senator Gillibrand tweeted the following message: "You cannot discuss criminal justice reform without talking about decriminalizing marijuana. It is a moral and a social justice issue."

While reform of marijuana laws remains a very hot topic at the State level, particularly in New Jersey, it is also a focus of attention at the federal level. While Attorney General Sessions has made it clear that marijuana is illegal and he will not pretend otherwise, many members of Congress, including Senators Booker and Gillibrand, are working to change that reality.

## Dear New Jersey Residents Interested in Marijuana Reform: Now Is Your Chance to Speak to Government Officials

**Brian P. Sharkey**  
**4/12/2018**

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Marijuana reform is a very hot topic in New Jersey. For example, at the end of March, Governor Murphy dramatically expanded the State's medicinal marijuana program, and there are bills pending in the Legislature that would legalize marijuana, decriminalize marijuana, and further alter the State's medicinal marijuana program, to name just a few. While elected officials evaluate whether, and how, to change the State's approach to marijuana, New Jersey residents have several upcoming opportunities to make their voices heard on these issues.

As we have recounted in previous updates, on March 5, the New Jersey Assembly Oversight, Reform and Federal Relations Committee ("Committee") conducted a lengthy hearing before an overflow crowd in order to "receive testimony from invited speakers on the impact of prospective marijuana legislation on the public health, criminal justice system, and economy in New Jersey." As explained by Assemblyman Joe Danielsen, the Committee Chairman, the purpose of the hearing was for the Committee to "listen, to be educated, and ask questions of clarification." The Committee has scheduled three additional hearings across the State as part of its Cannabis Listening Tour. The first one is scheduled for this coming Saturday, April 14, at 10:00 a.m. at Middlesex County College. Additional hearings will be held on April 21 at Rowan University and May 12 at Bergen Community College.

Participating in the Assembly Committee's Cannabis Listening Tour is not the only chance that New Jerseyans will have to influence government policy. In that regard, the State's Division of Consumer Affairs ("Division") is currently evaluating how marijuana is classified as a controlled substance under State law, and whether its status should be changed. On April 2, the Division announced that it will solicit public comments on this issue via four public events, or "informal conferences." Two conferences are scheduled for April 19 in Newark at the Division's office, and two are scheduled for The Richard J. Hughes Justice Complex in Trenton on April 24. The first session of each day will run from 9:30 am to 12:30 pm, and the second session from 1:30 pm to 4:30 pm. The conferences will focus on whether marijuana should remain as a Schedule I drug, a category reserved for substances that have a high potential for abuse and no accepted medical uses.

It is difficult to predict what participating New Jerseyans will say at any of these events. One could look to public polling to try to get a sense of the views of New Jerseyans, but a clear picture has yet to emerge. For example, on February 1, Fairleigh Dickinson University released the results of a poll of New Jerseyans that found that 42% of respondents favored legalization; 27% favored the current status whereby medicinal marijuana is legal and recreational use is not; and 26% favored decriminalization. On March 13, Quinnipiac University released a poll that found that New Jersey voters supported adults being able to possess small amounts of marijuana by a margin of 59%-37%. Most recently, Stockton University released a poll of New Jersey residents on April 4 that found that 49% support legalizing marijuana for recreational purposes and 44% oppose legalization, with 5% unsure and 1% volunteering that they favored decriminalization. It will be interesting to see if the lack of consensus evidenced in these poll results will be reflected in the upcoming hearings, and what impact that may have on governmental officials who are evaluating this issue.

## Banking Problems for the Cannabis Industry Remain A Significant Concern

*Brian P. Sharkey*

**04.06.2018**

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Earlier this week, we discussed the recent joint letter that the Treasurers of California, Illinois, Oregon, and Pennsylvania sent to Attorney General Sessions requesting a meeting to discuss cannabis and the conflicts between state and federal law. Specifically, the Treasurers sought a meeting in an effort to resolve the uncertainty plaguing financial institutions in states where cannabis is legal in terms of their ability to provide banking services to the cannabis industry. But that is not the only recent letter about that topic, as a bipartisan group of seven Senators wrote a letter to the Chairman, Senator Mike Crapo, and the Ranking Member, Senator Sherrod Brown, of the U.S. Senate Committee on Banking, Housing Affairs Chairman requesting that the Committee hold a hearing on S.1152, the Secure and Fair Enforcement ("SAFE") Banking Act.

The Safe Act, which was introduced in May 2017, would, among other things, create protections for depository institutions that provide financial services to cannabis-related businesses. In their letter, the seven Senators (Senators Cortez Mastro, Gardner, Murkowski, Merkley, Schatz, Murray, and Bennet) explained that a hearing would "allow for a better understanding of the current state of financial services for cannabis-related businesses, the need for legal certainty for financial institutions, and other important issues relating to financial services and the cannabis industry." After describing the uncertain legal environment in which cannabis businesses operate, the Senators cited specific concerns and problems, including that "landlords and security companies[] have had limited access to or are locked out of the banking system, including accessing a checking account, meeting payroll and paying tax revenue, among other financial services. In an industry conducting hundreds of millions of dollars in transactions, the lack of access to financial services has forced many to operate as cash only businesses, raising concerns regarding public safety, money laundering, and other potential crimes." The Senators also supported their request by pointing out that a bipartisan group of 19 Attorneys General had called on Congress to consider legislation that would resolve the conflicts between state and federal law concerning financial services for the cannabis industry.

Meanwhile, in West Virginia, where medicinal marijuana has been legalized, the State Treasurer is seeking similar solutions. On March 30, State Treasurer John Perdue issued a press release titled, "Treasurer searches for medical cannabis banking solutions." In his press release, Treasurer Perdue identified 3 specific actions his office was taking: 1) issuing a request for information ("RFI") "in search of banking solutions for sales, fees, licenses, taxes and other transactions related to state sanctioned medical cannabis in West Virginia"; 2) joining with other State Treasurers to urge Congressional leaders to adopt legislation to protect medicinal marijuana patients; and 3) writing to Treasury Secretary Steven Mnuchin to request clear banking guidance for medical marijuana financial transactions.

As to the RFI, Treasurer Perdue stated that,

"[o]ur hope is to find a banking alternative, similar to other states that have legalized medical marijuana, in an effort to move forward with offering this option to those who need it in West Virginia[.]"



With respect to the need for federal action in this area, Treasurer Perdue reasoned that,

"[t]he fact is that the fate of medical marijuana in West Virginia depends on how President Trump's administration approaches the enforcement of marijuana and banking laws[.] At the very least, I want West Virginia to be treated like all other states that have implemented or started implementation of a medical marijuana program."

Continuing on this issue, Treasurer Perdue pointed out that,

"[t]here are a lot of mixed messages on the federal level regarding this issue[.] Congress can fix this, and I am asking for federal changes on behalf of our citizens."

To be clear, the concerns articulated by Treasurer Perdue, the State Treasurers who wrote to Attorney General Sessions, and the Senators who are seeking a hearing on the SAFE Act are real and are causing problems for the cannabis industry on a daily basis. A recent example from Illinois demonstrates that, as the Bank of Springfield, the main bank for Illinois's medical marijuana businesses, will no longer be providing services for the industry. According to an April 2 article from the Chicago Tribune titled, "Main bank for Illinois' medical marijuana industry is pulling out, leaving some operators to deal in cash," the Bank of Springfield notified its cannabis client that their accounts would be closed May 21. The article, in addition to chronicling the consequences of that decision and the difficulties that cannabis businesses will now face, like relying more on cash transactions and the attendant security and tax problems that brings, included several statements from a bank spokesperson who stated that,

"[t]he bank's stance is that protecting their customers is paramount[.] The Bank of Springfield will not jeopardize any of their customers by working with businesses that operate in the legal gray zone."

The spokesperson also justified the Bank's decision by pointing out that the Obama-era Cole Memo, which Attorney General Sessions rescinded, had been the basis for the Bank's involvement in the cannabis industry and that "[t]he trend had been toward more clarity, and that clarity has gone away."

Whether the Bank of Springfield's decision is an isolated one or will be followed by other financial institutions will be important not just for those trying to do business in the cannabis industry, but also for all the government officials who are seeking ways to provide solutions to this industry.

## Sessions Comments on Enforcement While Representatives of States With Legal Marijuana Ask for Meetings

*Brian P. Sharkey*  
*4/5/2018*

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We have written extensively about the decision of Attorney General Sessions to rescind the Obama-era Cole Memo, which had provided guidance to federal prosecutors about marijuana enforcement priorities, along with some of the reactions to that decision by members of Congress, U.S. Attorneys, and Governors. We have also examined the statements on the topic of marijuana enforcement made by Attorney General Sessions following his decision.

Most recently, Attorney General Sessions commented that, despite his rescission of the Cole Memo, federal prosecutors would not be focusing on small-time, routine marijuana cases. Following a speech in March, Attorney General Sessions stated that "I am not going to tell Colorado or California or someone else that possession of marijuana is legal under United States law[.]" However, he added that federal prosecutors have not "been working small marijuana cases before, they are not going to be working them now." Attorney General Sessions also noted that federal prosecutors will continue to focus on drug gangs and larger conspiracies, and that the decisions about which cases to pursue will remain within the discretion of U.S. Attorneys.

While those comments may provide some small degree of comfort to those involved in cannabis businesses in the States where it is legal, significant concerns remain for those businesses. Thus, it was not surprising to see that on March 29, California State Treasurer John Chiang, and other members of a newly-established, multi-state consortium of States with some manner of legalized marijuana, wrote to Attorney General Sessions to request a meeting to try to resolve some of the inherent conflicts between State cannabis laws and federal law on this issue. The other government officials who signed the letter were the State Treasurers from Illinois, Oregon, and Pennsylvania.

In their letter, the authors stressed that the States where marijuana is legal in some fashion "represent a true cross-section of America. This is not just a blue state phenomenon, but includes purple and red states in every corner of our country. A majority of Americans now live in states where they have decided to legalize cannabis." The authors asserted that the Attorney General's decision to rescind the Cole Memo created uncertainty, particularly for financial institutions providing banking services to cannabis businesses, "at a time when financial institutions and cannabis businesses need greater clarity on how federal law enforcement and regulatory agencies will respond to the growing legalization of cannabis at the state level. Whether cannabis should be legal is not relevant to the simple fact that it now is in more than half of the states."

The authors stressed that financial institutions and other entities that do business with the cannabis industry need reassurance that they will not be prosecuted so long as they operate in compliance with governing State law. In that regard, the authors claimed that "[t]he absence of the Cole Memos now leaves the industry and financial institutions in the dark." Accordingly, the authors requested a meeting with the Attorney General, as they declared that "[i]n this incredibly divisive time, the issues surrounding the legalization of cannabis provide a unique opportunity for policymakers, regulators, and law enforcement officials from all sides to meet and reach a consensus. We believe that we can work together and achieve a

solution that recognizes more and more Americans are living in states where they have decided to legalize cannabis while balancing the important law enforcement issues the Cole Memos tried to account for."

Such a meeting seems unlikely, and the notion that such a meeting would lead to a consensus seems even more unlikely in view of the Attorney General's views on this issue, but we will nonetheless be watching to see if Attorney General Sessions agrees to meet with Treasurer Chiang and his colleagues.

## Legislation to Reform New Jersey's Medicinal Marijuana Program Advances / Gov. Murphy Reiterates Support

*Brian P. Sharkey and Lynn M. Nowack*  
*3/26/2018*

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We have previously examined the current status of New Jersey's medicinal marijuana program, as well as Governor Murphy's intent to expand access to the program. Specifically, shortly after taking office, Governor Murphy issued Executive Order No. 6 on January 23, 2018. The Order directed the Department of Health ("DOH") and the Board of Medical Examiners ("Board") to review all aspects of the State's medical marijuana system, and required that the review be completed within 60 days.

However, some legislators recently took action in this area, as a bill that would significantly revamp the State's medicinal marijuana program cleared the Assembly Health and Senior Services Committee ("Committee") on March 22 – days before the DOH and Board were scheduled to complete their review and release their findings under Executive Order No. 6.

The legislation approved by the Committee, A3740/3477 (ACS), sponsored by Assemblymen Herb Conaway, Reed Gusciora, and Tim Eustace, would greatly expand the State's medicinal marijuana program in a variety of ways. Some of the key changes include:

- Access would be expanded for patients with any diagnosed medical condition by a physician, as opposed to the current program's requirements that only certain conditions qualify;
- Physicians would not be required to enroll in a physician registry as a condition of authorizing qualifying patients to use medicinal marijuana;
- An increase in the maximum amount of medicinal marijuana that may be dispensed to a patient for a thirty-day period from the current limit of two ounces to four ounces;
- An increase in the number of medical marijuana cultivator-processors to a total of 12;
- An increase in the number of medical marijuana dispensaries to 40 (there are only five dispensaries currently in operation); and
- Reduction in the cost for patients to register with the program

The legislation was approved in the Committee by a vote of 6-2, with 2 abstentions, and now moves to the full Assembly. In a press release, Assemblyman Conaway, the Chair of the Committee and a practicing physician, stated:

"There is no benefit in denying a patient relief[.] Medicinal marijuana has the potential to treat many medical condition. If a doctor believes medical marijuana can be an effective treatment, then they should be able to prescribe it to their patients."

Assemblyman Gusciora, who has also introduced comprehensive legislation to legalize recreational marijuana, commented that,

"[h]owever well intentioned, the current program has failed to meet the needs of the residents it sought out to help[.] Too many bureaucratic hurdles have rendered the program ineffective and incapable of meeting the demand for this treatment. This bill would make several revisions to the

current law so patients who can benefit from medical marijuana can get it more efficiently and without having to jump through multiple hoops to get it."

Similarly, Assemblyman Eustace, who is a Vice-Chair of the Committee, declared that,

"[t]oo many restrictions have weakened this program and patients have suffered it. Either we believe medical marijuana to be an effective treatment for some medical condition or we don't[.] If the goal is to really help people who are dealing with medical conditions that can be treated with medical marijuana, then we have to make it more accessible."

Although not a permanent member of the Assembly Health Committee, Assemblyman Joe Danielsen sat in on the committee last Thursday, further establishing him as one of the leaders in the Assembly on the topic. At the beginning of the session, he was appointed chair of a newly established committee, Assembly Oversight, Reform and Federal Relations. This committee has been tasked with conducting hearings on recreational marijuana legalization.

Republican Assemblyman Brian Rumpf, who is a member of the Oversight, Reform and Federal Relations Committee, was the main voice of opposition to the legislation, citing concerns about whether the expansion was too broad and not properly supported by medical science.

It will be important to monitor not only the progress of this legislation in the Assembly, but also the anticipated report that the State issues following its review of the medical marijuana program. It is entirely possible that some of the changes included in the legislation will also be included in the State's report, which is expected to be released on Tuesday, March 27 and then the issue will become whether such changes will sought to be implemented via Executive action, legislation, or a combination of both.

Lastly, as to the status of recreational cannabis, the possibility of taking the question of legalization to the voters via referendum has again been raised. However, in a recent radio interview, Governor Murphy reiterated his preference to pursue a legislative approach, and he stressed his commitment to such a solution on social justice grounds. Senator Nick Scutari, the sponsor of the legalization bill in the upper house, has also been committed to legislation over referendum.

## The Latest Updates On The Efforts To Legalize Marijuana In New Jersey

**Brian P. Sharkey**

**3/22/2018**

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There were a number of significant developments during the week of March 12, 2018, in the world of New Jersey politics concerning marijuana. The biggest event was Governor Murphy's clear and unequivocal support for legalization in his Budget Address on March 13, but another significant development was Senate President Stephen Sweeney's statement that he was opposed to the bi-partisan legislation in the Senate that would decriminalize marijuana. Since then, there has continued to be additional reaction to Governor Murphy's Budget Address, as well as new developments.

For example, Senator Cory Booker, who has been a vocal advocate for legalization and who sponsored the Marijuana Justice Act of 2017 in Congress, which would legalize marijuana at the federal level, expressed his appreciation for Governor Murphy's position. The day after the Governor's Budget Address, Senator Booker tweeted the following message: "Thank you governor. Marijuana prohibition in NJ is bias against low income communities and communities of color. Prohibition has devastated lives and families. Economically harmed communities and wasted so many tax dollars. I applaud your leadership and support your efforts."

At the state level, Assemblyman Tim Eustace, a Democrat who has sponsored legalization legislation and bills to expand the state's medicinal marijuana program, authored an op-ed on [insidernj.com](http://insidernj.com) titled, "Curbing the Opioid Crisis with Legalized Cannabis." After recounting the effect that legalization of marijuana had on opioid addiction in other states, Assemblyman Eustace opined that "[w]hile there are many more positive[] impacts legalization would have on our state including more funding for our schools, property tax relief, reducing mass incarceration, alleviating the strain on our jails and court systems, I believe that saving our friends and neighbors should be one of the top considerations. I look forward to working with the Legislature and with Governor Murphy on passing a safe, comprehensive bill to correct this overdue issue and finally legalize cannabis."

As we recounted in one of our recent updates, such a comprehensive bill was introduced on March 12 in the Assembly by Assemblyman Reed Gusciora. Assemblymen Gusciora and Eustace also sponsored A.3437, which would revise various aspects of the state's medicinal marijuana program, including an expansion of the program's qualifying conditions. That bill is scheduled to be considered by the Assembly Health and Senior Services Committee ("Committee") on March 22. In addition, the Committee is also scheduled to consider A.3740, a bill sponsored by Assemblyman Herb Conaway. That bill would authorize medicinal marijuana for any diagnosed condition. Assemblyman Conaway is the Chair of the Committee, Assemblyman Eustace is the Vice-Chair, and Assemblyman Gusciora is a member of the Committee.

The last item to note is the release of a poll by Quinnipiac University of New Jersey voters on a host of issues, including legalization of marijuana. The poll, released on March 13, 2018, found that voters supported adults being able to possess small amounts of marijuana by a margin of 59%-37%. This result is noteworthy because on February 1, 2018, Fairleigh Dickinson University released the results of a poll of New Jerseyans that found that 42% of respondents favored legalization; 27% favored the current status of marijuana laws whereby medicinal marijuana is legal and recreational use is not; and 26% favored decriminalization.

This is not to suggest that support for legalization of marijuana has greatly increased in New Jersey over the past month, but the Quinnipiac results are certainly encouraging for advocates of legalization. It will be interesting to monitor similar polls in the future to ascertain whether the debate playing out in Trenton impacts voters' views on this issue and whether increases -- or decreases -- in support for legalization will be used by advocates to support their position and attempt to sway legislators.

## "Big Pharma's" Entry Into the Cannabis Market

*Brian P. Sharkey*

*3/20/2018*

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Tilray is a federally licensed producer of medical cannabis products in Canada. On March 19, Tilray made big news in Canada, and around the world, when it announced that it signed a binding letter of intent to form a strategic alliance with Sandoz Canada Inc. ("Sandoz Canada"), an affiliate of Sandoz International GmbH, a global leader in biosimilars and generic products and part of the Novartis Group. The purpose of the strategic alliance, whereby Tilray will be the exclusive collaborator with Sandoz Canada, is to accelerate innovation and increase the availability of medical cannabis products.

Tilray's press release announcing the alliance identified four specific items areas that the parties will focus on, subject to necessary regulatory approvals and final agreements: 1) Tilray will utilize Sandoz Canada's knowledge and sales force to educate Canadian physicians and pharmacists about Tilray's medical cannabis products; 2) Tilray will become the exclusive partner of Sandoz Canada for non-smokable/non-combustible cannabis products; 3) Tilray will partner with Sandoz Canada to develop new, innovative medical cannabis products that provide an alternative to smokable/combustible products; and 4) Sandoz Canada will wholesale distribute non-smokable/non-combustible Tilray products to hospitals and pharmacies in Canada.

In its press release, Tilray included the following statement from Brendan Kennedy, its Chief Executive Officer: "This agreement is a major milestone on the long road to legitimizing medical cannabis as a conventional medicine[.] ... Tilray is pleased to be, what we believe is, the first federally licensed producer of medical cannabis to form a strategic alliance with a local affiliate of a global pharmaceutical company to improve the availability and quality of medical cannabis products for Canadian patients in need." Although the financial terms of the agreement were not announced, according to press reports a spokesperson for Tilray confirmed that Sandoz Canada had not taken a financial stake in Tilray.

Mr. Kennedy expanded on the strategic alliance in an interview VICE Money, as he explained that "[a] lot of people were wondering when global pharma would enter the cannabis industry. Now officially it has[.] This is a huge milestone for us, our industry, and the medical community at large." Commenting on the path to get to the strategic alliance, Mr. Kennedy observed that Sandoz Canada had spent the past eighteen months studying the medical cannabis industry and how the pharmaceutical industry could play a role. In that regard, Mr. Kennedy pointed out that Sandoz Canada was "really focused on ethics, quality and compliance practices and were looking for a company the right way. We had our first meeting with them in the summer of 2017[.]" As to why Sandoz Canada ultimately decided to partner with Tilray, Mr. Kennedy reasoned that Tilray performs "research on cannabis products for research and development, products that we can't sell yet but can be used for clinical trials and exported for clinical trials. To Sandoz that gave them tremendous confidence because they saw us as kind of a pharmaceutical company as well[.]"

In terms of how Tilray could leverage Sandoz Canada's sales force, Mr. Kennedy stated that Tilray has "an existing sales force of about 10 people that spend a substantial amount of time meeting physicians on a daily basis and educating them about our products. Sandoz has a sales force 10 times that size, which will enable us to scale up that physician education process rapidly[.]" Lastly, Mr. Kennedy stressed that "[w]e've been saying that Canada has the potential to be a global leader in exporting medical cannabis as a biotech product[.] A global pharma company knocking on our industry's door is the first step in that process."



In commenting to the Financial Post, Mr. Kennedy expressed excitement about the idea that Tilray's collaboration with a pharmaceutical company would help to overcome skepticism from health professionals and patients about the value of medical cannabis products. Specifically, he emphasized that "was part of the opportunity we saw. To distribute Tilray products that have the Sandoz logo that pharmacists, physicians and patients are used to seeing in their pharmaceutical packages. I think that will give physicians confidence in our brand and our product[.]"

Sandoz Canada was also enthused about the strategic alliance, as its president declared in a statement that "[w]e are thrilled to form a strategic alliance with Tilray to strengthen our portfolio[.] We are committed to making every reasonable effort to respond to patients' medical needs by increasing the number of high-quality, adequately dosed non-smokable, non-combustible medical cannabis products at the disposal of doctors."

Those involved in the industry have been waiting for some time to see when "Big Pharma" would become involved in the cannabis market. Now that Sandoz Canada/Novartis has, it will be interesting to see if other pharmaceutical companies develop similar relationships with medical cannabis companies, or if they create other types of collaborations. It will also be interesting to monitor whether this development has any impact on the status of cannabis in the United States, as one of the primary reasons why Canada is an appealing prospect for these types of collaborative relationships is the fact, unlike in the United States, medical cannabis is legal on the federal level in Canada.

## **New Jersey Marijuana Politics Are Fluid, But Governor Murphy Remains Committed to Legalization**

***Brian P. Sharkey***

***3/14/2018***

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Although the status of marijuana legalization has been the focus of attention in New Jersey since Governor Murphy took office in January, the past several days have seen increased activity in this area. The biggest development that we will focus on is Governor Murphy's remarks supporting legalization in his Budget Address on March 13, but that is far from the only newsworthy development over the past few days.

The day before the Governor's Budget Address, Senate President Stephen Sweeney stated that he was opposed to a recent bill, S.1926, that was introduced by Senator Ron Rice, a Democrat, and Senator Robert Singer, a Republican, that would decriminalize possession of small amounts of marijuana. Senate President Sweeney told NJ Advance Media that "I really don't have an interest in it[.] I don't see it moving forward at this time. You're basically legalizing something that's not legal now. If you're gonna do it, do it right. Regulate it and manage it properly." (The title of the NJ Advance Media article covering this topic is "Decriminalizing weed instead of legalizing it won't happen, N.J. Senate president says".) In contrast, the Republican State Assembly Minority Leader Jon Bramnick indicated that he supports the decriminalization approach, as he explained that "[n]o one should be a convicted criminal and not be able to get a job because they had a small amount of marijuana[.]" Meanwhile, Senator Tom Kean, Jr., the State Senate Minority Leader, noted that the Republican caucus in the Legislature did not have an official stance with respect to this subject.

In the face of potential bipartisan opposition in the Legislature to both the legalization or decriminalization of marijuana, Senator Singer suggested a different approach: putting the question of whether to legalize marijuana to voters in a referendum. As to the possibility of a referendum, Senate President Sweeney told NJ Advance Media that he would consult with Senator Nicholas Scutari, who has been the leading proponent of legalization in the New Jersey Senate and who has sponsored legalization legislation, though Senate President Sweeney expressed concern about the referendum process and stressed his preference for legislation.

Another significant development from March 12 was the introduction of A.3581, a bill that would legalize possession of small amounts of marijuana. The legislation was sponsored by Assemblyman Reed Gusciora, who has been the Assembly's leading advocate for legalization. There are a number of differences between the legislation sponsored by Assemblyman Gusciora in the Assembly and the bill sponsored by Senator Scutari in the Senate, but according to press reports the legislators will be exploring whether it is possible to compromise and find common ground to advance the bills.

While all of that is significant, the biggest development over the past several days was Governor Murphy's first Budget Address. Governor Murphy devoted considerable attention to the issue of marijuana during his remarks, as he touched upon his support for the State's medicinal marijuana program and then focused on the question of legalization, as well as his opposition to decriminalization. Specifically, Governor Murphy stated that social justice is "the principal reason I advocate for legalizing adult-use marijuana. According to research, New Jersey spends upwards of \$140 million per year adjudicating low-level marijuana possession offenses. And, marijuana-related arrest rates are tilted three-to-one against African-Americans, even though rates of marijuana use are similar among races.

These resources must have a better use, whether to tackle the trafficking of illegal guns, provide stronger community policing, or to crack the back of our opioid epidemic, which was devastating our urban centers long before it made headlines.

I greatly respect those in this chamber who have proposed decriminalizing possession of small amounts of marijuana, and I thank them for recognizing the importance of doing what's right and just for those who carry criminal records for past possession arrests. But decriminalization alone will not put the corner dealer out of business, it will not help us protect our kids, and it will not end the racial disparities we see.

**If these are our goals – as they must be – then the only sensible option is the careful legalization, regulation, and taxation of marijuana sales to adults.**

Legalization will allow us to reinvest directly in our communities – especially the urban neighborhoods hardest hit by the misguided War on Drugs – in their economic development, in health care and housing, child care and after-school programs, and other critical areas. These investments will pay dividends far greater than the cost of mass incarceration.

I did not come to this overnight, myself. After all, we are the parents of four children under the age of 21. But from the standpoint of social justice, and from the standpoint of protecting our kids and lifting up our communities, I could not arrive at any other conclusion.

I commend Senator Scutari, and Assemblymen Gusciora, Eustace, and Kennedy for their efforts to change this conversation. I thank Senate President Sweeney, too, for his support. I am committed to working with you to get this passed this year." (emphasis added)

Governor Murphy's comments about marijuana were not confined to just his Budget Address. For example, he tweeted that "I advocate for legalization, regulation and taxation of marijuana sales to adults. This will allow us to reinvest directly in our communities, and these investments will pay dividends – in contrast to the cost of mass incarceration." Furthermore, the Governor's office's press release accompanying his Budget Address declared that "[t]he Administration plans to legalize adult-use marijuana by January 1, 2019 to help end the cycle of non-violent, low-level drug offenses holding individuals back. Legalizing marijuana will generate an estimated \$80 million in revenue for this year."

The two biggest takeaways from Governor Murphy's statements are his continued support for legalization and his commitment to "get this passed this year." This is important because the prospects for legalization remain murky, which is disappointing to those who thought that legalization would occur quickly because of Governor Murphy's support and the fact that the Legislature is controlled by his fellow Democrats. Those in the pro-legalization camp can hope that the Governor's continued advocacy will help to build support in the Legislature. But perhaps it will not. In that regard, Senator Kean issued a statement following the Governor's address in which reasoned that the Governor "shouldn't count on revenues from marijuana legalization. It's not clear that there is support among Republicans or Democrats to legalize it." The focus going forward will be on whether the Legislature will be able to achieve clarity in support of, or opposition to, legalization. If it turns out that the Governor's support is not enough to persuade the Legislature, it may be that the issue is put to voters in a referendum, especially in view of Senate President Sweeney's opposition to decriminalization.

## **Governor Murphy's Nominee for Health Commissioner Discusses Marijuana While the NJ State Association of Chiefs of Police Announces Its Opposition to Legalization**

**Brian P. Sharkey**  
**3/13/2018**

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On March 8, Dr. Shereef Elnahal, Governor Murphy's nominee to become the Commissioner of New Jersey's Health Department, testified before the Senate Judiciary Committee. During his testimony, Dr. Elnahal fielded several questions from Committee members about marijuana, both the State's medicinal program and the question of legalizing marijuana for recreational purposes. With respect to the State's medicinal marijuana program, Dr. Elnahal stressed that improving patient access would be one of his priorities as Commissioner. Dr. Elnahal did not elaborate on how access should be increased, but emphasized that the Department was reviewing all aspects of the program as directed by Governor Murphy's Executive Order No. 6. When presented with questions concerning legalization, Dr. Elnahal explained that he had not seen any analysis related to health issues. However, when asked if there was a connection between increased access to marijuana and opioid abuse, Dr. Elnahal referred to a recent study that showed a 6% decrease in opioid use when medicinal marijuana is readily available, and he also indicated that it will be one of the tools the Department uses in its efforts to combat opioid abuse in the State. The Committee approved Dr. Elnahal's nomination, which now moves to the full Senate.

The next day, March 9, the NJ State Association of Chiefs of Police ("NJSACOP") issued a press release announcing the organization's opposition to the legalization of marijuana in New Jersey. In doing so, the NJSACOP explained that it was taking that position because "[t]he negative consequences related to the adoption of such legislation far outweigh any perceived benefits. Coming at a time when our communities are struggling with the effects of the opioid and heroin epidemic, the members of the NJSACOP believe the legalization of recreational marijuana will further burden our public health care system, increase organized criminal activity, and affect the welfare of our most vulnerable – our youth and adolescent population." However, the NJSACOP expressed its belief that "common ground can be found on this issue." Specifically, the NJSACOP announced that it "formed a Working Group comprised of law enforcement professionals charged with gathering input from community leaders and healthcare professionals to review current research and engage in a comprehensive discussion. Our position is that the prudent approach, at this time, is to slow the pace and engage in these discussions. It is possible to peel back the layers and find consensus on the societal issues that were the original driving force for this issue. The NJSACOP acknowledges that alternatives to arrest and incarceration must be included in the discussion."

In addition, the NJSACOP reasoned that "more research is required to better understand the long-term effects legalizing recreational marijuana has had in those states where it has been recently legalized. Research should be publicly funded and independent from self-interest. Finally, it is imperative that this research be well rounded and inclusive of all issues, and not simply those hand-picked leading to a preconceived conclusion. Our view is that the legalization of recreational marijuana is not the answer. The NJSACOP and its membership look forward to working alongside our community stakeholders, public healthcare professionals and government leaders at all levels to find a solution, as well as to address those other issues which affect the health, welfare and quality of life of all our communities."

It will be interesting to see what impact the NJSACOP's opposition has on the status of the legalization bills that are pending in the Legislature, as well as the decriminalization legislation, S1926, that was introduced

on February 22 by Senator Rice, a Democrat, and Senator Singer, a Republican. Senators Codey, Cryan, Gill, and Van Drew, all Democrats, are co-sponsors of S1926.

## **New Jersey Assembly Oversight, Reform and Federal Relations Committee Holds First Hearing on the Impact of Potential Marijuana Legalization**

**Brian P. Sharkey**  
**3/12/2018**

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On Monday, March 5, the New Jersey Assembly Oversight, Reform and Federal Relations Committee conducted a lengthy hearing before an overflow crowd in order to "receive testimony from invited speakers on the impact of prospective marijuana legislation on the public health, criminal justice system, and economy in New Jersey." At the outset of the hearing, the Committee Chairman, Assemblyman Joe Danielson, acknowledged that the Committee was "starting with a blank slate" and that the intent of the hearing was for the Committee to "listen, to be educated, and ask questions of clarification." The Committee did not consider any specific legislation during the hearing but instead heard testimony from witnesses including New Jersey residents, as well as individuals from outside of New Jersey. The out-of-state witnesses included, among others, Colorado State Representative Dan Pabon, Massachusetts Cannabis Control Commissioner Shaleen Title, Las Vegas Metropolitan Police Department Captain Todd Raybuck, and Kevin Sabet, President and CEO of Smart Approaches to Marijuana.

Over a dozen witnesses testified in support of legalization, citing a host of benefits that the State and its citizens could reap from legalization. Some advocates cited economic growth and jobs, while others focused on social justice issues and the ability of cannabis to act as a meaningful alternative to opioids. Meanwhile, opponents, including former New Jersey State Police Superintendent Col. Rick Fuentes, described negative impacts in States that have already legalized marijuana and expressed concerns about similar consequences for New Jersey. Other witnesses focused on the impact that legalization could have on the State's medical marijuana program and advocated for an expansion of that program.

Following the conclusion of the hearing, Assemblyman Danielson issued a press release in which he stated that "I want to thank everyone who testified for their input. This was a great start to the Assembly's work on this issue, and I look forward to more debate in the weeks ahead. We heard several hours of productive and invaluable discussion that will prove helpful as we consider all arguments. We started as a blank slate, and the committee received a great education, but it's just the beginning. The committee will hold three additional hearings across the [State]. All the hearings will be on Saturday – starting with April 21 at Rowan University and then May 12 at Bergen Community College. A third location in central New Jersey will be determined. This is an important civil justice, health care and law enforcement issue. We will hear all viewpoints and continue to get an education."

For those hoping that New Jersey would quickly enact legislation to legalize marijuana, a hope spurred on by Governor Murphy's consistent support for legalization, the hearing, and Assemblyman Danielson's post-hearing statement, made it clear that the Assembly is only at the beginning, rather than the end, of its examination of this issue. Whether that examination will ultimately lead to legalization is very much an open question at this time.

## Virginia Legislature Approves Expanded Use Of Cannabis-Derived Oils

*Peter J. Gallagher*

*3/8/2018*

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Both houses of Virginia's legislature have unanimously approved bills that will expand the ability of Virginia doctors to recommend marijuana or cannabis extracts to their patients. The bills are not identical, but once the relatively minor differences between them are reconciled, a consolidated bill will be sent to Governor Terry McAuliffe for his signature.

Under Virginia law, as it now stands, a "practitioner" (defined as a "practitioner of medicine or osteopathy licensed by the Board of Medicine who is a neurologist or who specializes in the treatment of epilepsy") may issue a "written certification" for the use of "cannabidiol oil or THC-A oil" to a patient for "treatment or to alleviate the symptoms of a patient's intractable epilepsy." The practitioner who issues the certification is immune from prosecution under Virginia's laws against distributing controlled substances, and the patient who possesses a valid certification can use that certification as an affirmative defense to prosecution under Virginia's laws against possession of marijuana. Likely as a check against the over-prescription of these oils, Virginia law also allows the Board of Medicine to sanction a practitioner for "failing to properly evaluate or treat a patient's medical condition or otherwise violet[e] the applicable standard of care for evaluating or treating medical conditions."

The bills that just passed the Virginia legislature would expand the universe of doctors allowed to prescribe cannabis-derived oils beyond those who specialize in the treatment of epilepsy, and would expand the universe of patients who could receive such a prescription beyond those suffering from "intractable epilepsy." It keeps in place, however, the Board of Medicine's ability to sanction practitioners who fail to properly evaluate or treat a patient's condition.

Both proposed bills allow any "practitioner of medicine or osteopathy licensed by the Board of Medicine" to prescribe cannabis-derived oils. Both also remove the requirement that a patient be suffering from epilepsy to be eligible, albeit in slightly different ways. The Senate version of the bill allows a practitioner to prescribe cannabis-derived oils, "**for treatment or to alleviate the symptoms of a patient's diagnosed condition or disease.**" The House version allows a practitioner to prescribe cannabis-derived oils, "**for treatment or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use.**"

While the language used in this provision will need to be reconciled into a final bill, they are nearly identical in substance.

Both bills also allow a patient to receive a 90-day supply of cannabis-derived oils, up from the 30-day supply allowed under existing Virginia law.

Finally, even though cannabis remains illegal under federal law, Virginia continues to allow licensed "pharmaceutical processors" to both grow marijuana plants and compound the cannabis-derived oils that practitioners then prescribe to their patients. Only the Senate proposed any changes to this aspect of existing law. Currently, the Board of Medicine is empowered to adopt regulations that, among other things, establish "a maximum number of marijuana plants a pharmaceutical processor may possess at one time." The Senate proposed eliminating this provision, while the House did not address it.

## Federal Reserve Approves Colorado Credit Union To Serve Cannabis Industry (But There's A Catch)

*Peter J. Gallagher*

*3/6/2018*

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The Wall Street Journal recently reported that the Federal Reserve conditionally approved a Colorado credit union, Fourth Corner Credit Union, to serve cannabis-linked businesses. To obtain this approval, however, the credit union had to “step back from its original plan to serve state-licensed dispensaries.” Instead, it will focus on “individuals and companies that support legalized marijuana, including those who partner with vendors, such as accountants and landlords.” In other words, the credit union can service individuals and entities involved in the cannabis industry, but not those who “touch the plant.”

The conditional approval is important because of the banking difficulties faced by cannabis-linked businesses. A “significant chunk of the financial system” is regulated by the federal government, which still considers the distribution of cannabis a crime. Therefore, the doors to traditional banking and lending institutions, not to mention credit card companies and processors, are often closed to cannabis-linked business, forcing them to deal entirely in cash.

The credit union still has some hurdles to overcome, including obtaining deposit insurance (the National Credit Union Administration, which provides such insurance rejected its application, and this decision is being challenged in the courts). But the Federal Reserve’s decision, which resolved a lawsuit filed by the credit union three years ago, appears to be a promising development, albeit incrementally so, for cannabis-linked businesses.



## How Profitable is the Business of Cannabis? For Now, the IRS may Decide

*Travis Scales*

*3/5/2018*

A Colorado based marijuana business recently petitioned the Supreme Court to determine whether the IRS exceeded its authority through an independent investigation and subsequent determination that the company was trafficking in a controlled substance. As a reminder, cannabis is still placed in Schedule I of the Controlled Substances Act. That Federal classification holds firm even though states across the U.S. are increasingly permitting forms of medicinal and recreational marijuana use. An enduring national proscription creates a major hurdle for businesses operating lawfully at the state level. The reason, aside from the numerous risks inherent to operating any business that flouts the laws of the United States, comes down to profit.

During the course of an audit, the IRS found deductions for business expenses were disallowed, because the company was trafficking drugs. The IRS applied Section 280E of the Tax Code, which forbids a company trafficking in a controlled substance from taking tax deductions and credits. The practical effect is the prevention of state-legal marijuana companies from deducting otherwise ordinary business expenses from their total income. Needless to say, application of 280E raises federal tax bills. At best, this challenges profitability, and for some cannabis operations it may determine the viability of their continued operations after-tax.

In this particular instance, the cannabis company alleges the IRS has no authority under the law to determine whether they violated criminal drug laws. Notably, there is no genuine dispute operations are not prohibited by the Federal Government, because that would be plainly false. The business simply asserts the IRS lacks authority to determine its criminal culpability. This distinction is notable, but also emblematic of the type of form over substance positions and arguments state-legal cannabis business owners are forced to utilize.

Cannabis based businesses and entrepreneur are like any other taxpayers. That means reporting income and paying income tax, and it is certainly true the U.S. Treasury collected millions, in cash payments, from state-legal cannabis companies in 2017. Not surprisingly, those companies are seeking ways to minimize their tax burdens by challenging the IRS' authority to apply 280E.

The Supreme Court may decide to consider whether the IRS exceeded its authority to unilaterally determine who is trafficking in a controlled substance. However, the Court may also decline to weigh in on that issue. Certainly, the IRS has defended its authority, and said further review by the Supreme Court is not warranted. In another case, the Tenth Circuit found the IRS' investigation was not criminal and simply an appropriate determination of the company's entitlement to a deduction or credit under 280E.

In any event, the quest for profit by state-legal cannabis businesses remains challenging, and tax counsel is required to navigate disparate State and Federal laws. The case is *The Green Solution Retail Inc. et al. v. U.S. et al.*, docket no. 17-663, before the U.S. Supreme Court.

# Real Estate Opportunities Fueled by Legalization of Cannabis, The Landlord Perspective

*Carmen Andrade*

*3/5/2018*

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## THE TREND

Currently, 29 states and the District of Columbia have legalized the use of cannabis for medical purposes. The steady growth in sales of legal cannabis in North America has so far proven to be big business, not only for the growers and sellers, but also for owners of real estate holding inventory that may be well suited to serve the growing industry. In 2016 alone, sales of cannabis grew to 6.8 billion. This is an increase of 34% from 2015 sales. The current trend suggests that there will be legalization of both medical and recreational cannabis in additional states, including the State of New Jersey where medical use has been legalized and significant efforts are being made to make recreational use legal as well.

By way of example of the real estate ventures inspired by the legalization of cannabis, Innovative Industrial Properties is a real estate investment trust that buys buildings, renovates them and leases out space to medical marijuana growers. The company went public on the New York Stock Exchanges in 2016 and is said to be valued at about \$60 million. Among its holdings are properties in the State of New York, our neighbor, where medical marijuana is legal. Similarly, other real estate investors, even if at a much smaller scale, are likely to pursue the developing real estate opportunities surrounding the cannabis industry. Landlords can better prepare themselves for the cannabis boom by becoming knowledgeable of the potential issues that may present themselves in real estate leasing transactions with growers and sellers of cannabis.

## THE SPACE

Owners of factories, warehouses, self-storage facilities and other industrial-type facilities which may have sat idle for some time are now experiencing a renaissance in interest due, in large part, to the increased need for facilities able to be repurposed for the cultivation and processing of cannabis plants and related products. As cannabis, for both medical and recreational uses, becomes more widely accepted, spaces that can be converted for retail and growing use for the cannabis industry are also likely to see increased real estate transactional activity. In Denver, Colorado alone, there are in excess of 200 marijuana retail stores in spaces ranging from high end storefronts to former gas stations. In Brookline, Massachusetts, a retailer of marijuana products occupies a former bank building turned cannabis dispensary. The opportunities presented by the legalization of cannabis to repurpose dormant space seem endless.

For cultivation of cannabis products, large, relatively unobstructed spaces located in industrial-type areas able to accommodate the increased square footage needed to grow cannabis are ideal. Other critical elements include the ability to retrofit the space to allow for the climate-control systems necessary to create the high humidity growing environment, the flexibility to implement the health and safety standards targeted to minimize the possible negative effects of such a tenancy (e.g. fumes, mold) and the capacity to upgrade the electrical infrastructure of the space so that it can handle the high intensity electrical use necessary for such operations. The ability to provide sufficient electrical power to meet the demands of the tenant grower is a significant factor to consider in the retrofit process. It takes a lot of power to grow cannabis. Finally, spaces which are relatively private or located in more remote areas are advantageous since they can be more easily monitored and secured via both manned and unmanned methods. The need for increased security becomes a greater focus with this type of tenancy. While you may require the tenant

to pay for its own security, it may be prudent to add additional security to the common areas of the site at tenant's cost.

## THE TERMS

So, you have the space, how long do you lease it for? Because it can cost millions to retrofit the space, whether it is the landlord or the tenant who pays for the retrofit, initial term leases should typically exceed ten years in order to allow for the amortization of the retrofit costs. In addition, the tenant will likely want the option to renew the lease in increments of not less than 5 years each.

As for who pays for the retrofit, it depends on who has the available cash. Because marijuana is currently illegal at the federal level, many banks will not provide financing to buildings used by the industry. However, local banks may be more willing to take the risk, along with private investors, and, if you have cash stashed away sufficient to pay for the retrofit, that, too, is an option with the retrofit cost billed back to the tenant as part of the rent over the term of the lease. In addition to the issue of how to finance the retrofit, there is the issue of what impact these tenancies will have on existing financing. Landlords must be sure to review any financing documents encumbering their property for prohibition or limitation on certain uses and the steps to be followed in order to obtain approval for new tenancies.

It makes sense to structure the lease as a triple net lease with the tenant paying base rent to the landlord and all other costs and expenses incurred in connection with the space to be paid for by tenant (e.g. proportionate share of real estate taxes, insurance, utilities and security). While gross rent structures may work with tenants in other industries, the known and unknown costs associated with operating a cannabis cultivation facility should be a deterrent to any landlord considering anything other than a triple net lease. In fact, in performing the retrofit for the space, the landlord should be careful to include installations that will allow the landlord to monitor tenant's usage of electricity and other utilities. With monthly electricity consumption costs of \$10,000 relatively typical in the operation of these growing facilities, it makes sense to protect the landlord by ensuring that utilities do not eat up the rental stream. Additionally, so long as the legality of these operations remains in question; at least at the federal level, the lease should provide for tenant to pay the rent in cash or by money order upon landlord's demand.

What makes sense in terms of rental rates and how much of a security deposit to require will be based on what the market can bear, the amount of landlord's initial investment to prepare the space for the tenant's use and the level of risk that the landlord is taking by leasing space for an illegal use (at least at some level). Nevertheless, for the time being, market indicators all point to the fact that rent for facilities particularly suited for the cannabis industry have seen a dramatic increase in line with the number of states that have legalized cannabis production in one form or another. Because of the inherent risks, however, in leasing to such tenants, landlords should protect themselves by requiring a healthy upfront security deposit as well as the ability to draw down on the deposit if the lease is terminated due to compliance with laws issues.

Compliance with laws in connection with the retrofit process can be tricky given the lack of regulation at the local land -use level with respect to cannabis cultivation facilities. Depending on whether the tenant is purely a grower with no retail operations on site, parking and site traffic control may or may not be an issue. Local land use regulations will likely have to enact parking and other traffic control regulations to address the expanding industry.

Other possible areas of growth in terms of regulation may include laws enacted to protect the environment from noxious smells and fumes. Additional laws relating to the impact of the cannabis industry on energy

conservation may also appear. That being the case, the lease should generally impose the burden on the tenant to comply with any and all laws applicable to the build out, use and operation of the space by the tenant including obtaining all of the necessary local and state approvals in connection with the retrofit. , It will be important to stay apprised of such laws, including any new environmental laws, as they evolve. and, to the extent specific registration and/or licensing requirements are implemented, the tenant should have an ongoing obligation to provide proof to the landlord of compliance.

Particular attention should also be given to the condition in which the tenant is required to deliver the space to the landlord at the end of the lease term based upon the type of installations made by the tenant throughout the lease term. It is also important to be cognizant of any laws that require notice of cessation of operations. The tenant's installations may be so unique to the tenant's cannabis cultivation business that instead of creating value to the landlord, they create increased demobilization costs to the landlord if not properly imposed as a tenant responsibility.

Typically, leases will state specifically what use is permitted in the space. Given the variety of activities and products that can be produced by cannabis growers and the different safety risks that may be associated with producing one product versus another, it is important to be very specific in the lease as to what type of products may be produced in the subject space and what type of methods may be used. For example, hash oil is a popular cannabis product which can create an explosion when being produced; thus, special safety measures must be required of tenants to reduce the likelihood of a casualty.

Alternatively, landlords can simply choose to prohibit the manufacture of certain types of cannabis products. Given the tension between federal and state laws, it is prudent to include a disclaimer as to whether the use is legal and state, specifically, that no representations are being made as to the tenant's ability to operate in the space for tenant's intended purpose and, further, to include affirmative language permitting the landlord to terminate the lease upon reasonable notice in the event the continued use results in actual or threatened liability to the landlord or is determined to be illegal by a federal or local authority.

When negotiating such a provision, it can be expected that the tenant will want a similar right or, at a minimum, to set the parameters pursuant to which the landlord may terminate. Among other things, the tenant may ask for a black-out period to allow a particular growing cycle to be completed or to allow for the orderly transfer of product to a new facility or tenant may also wish to carve out high volume selling seasons such as the back to school or holiday seasons In allowing such a termination right, landlord should build in a sufficient cushion to allow landlord to market the space, secure a new tenant and retrofit the space for the new tenant.

Traditionally leases contain restrictions on noxious uses to which all tenants are subject. Landlords will have to revise existing leases to allow for the incoming tenancies fueled by the cannabis industry as well as to redefine what constitutes a noxious use. Landlords will also have to consider the impact of such use on existing or targeted tenants. and As growers expand and depending upon whether or not the industry is legalized at the federal level, suitable space may become scarce, which will trigger a greater need for exclusivity provisions on the part of the tenant.

Another consideration before entering into leases with tenants in this industry is whether such activities will be insurable. Will insurers make available liability, property, worker's compensation rent loss and/or rent interruption insurance for space leased to cannabis growers? Will the existence of such activities result

in the cancellation of other policies? This is clearly an area that is in flux. A possible solution, at least with respect to insurance for cannabis operations, might be to require the tenant to self-insure.

### **The Future**

The expansion of the cannabis industry seems inevitable although the manner in which it expands and the impact on the real estate industry and the economy as a whole is unknown. What is certain is the fluid nature of it all.

## Decriminalization Legislation in New Jersey

*Brian P. Sharkey*

*2/22/2018*

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In New Jersey, the debate over marijuana has focused on two main issues: 1) the State's current medical marijuana program, and 2) legislation to legalize marijuana. Shortly after taking office, Governor Murphy issued an Executive Order that directed the Department of Health and the Board of Medical Examiners to review all aspects of the State's medical marijuana system, with a focus on how to expand access, and several bills in the New Jersey Legislature would expand the program and make medical marijuana more available to patients. In addition, both before and after his election, Governor Murphy advocated for legalization of marijuana, and several legalization bills are pending in the Legislature, with more expected. Last week, however, two Senators – one Democrat and one Republican – introduced a new wrinkle into the marijuana debate as they announced that they would be sponsoring decriminalization legislation.

On February 15, Senator Ron Rice, a Democrat, and Senator Robert Singer, a Republican, held a press conference in Trenton to announce that they would be introducing legislation that would decriminalize possession of small amounts of marijuana. The Senators, who oppose the notion that the Legislature should legalize marijuana, explained that their bill would permit an individual found to have less than 10 grams of marijuana to face a fine of \$100 for a first offense, \$200 for a second offense, and \$500 for additional violations. The bill would also eliminate the possibility of imprisonment for such offenses. According to press accounts, at the press conference Senator Rice declared,

"[t]his whole legalization stuff needs to slow down. I think folk need to listen to Sen. (Robert) Singer and myself, and people in the community[.]" Senator Rice also supported his position by observing that "[t]here are more blacks in jail than any other ethnic group for the personal use of marijuana, and that's a social justice issue[.]"

Similarly, Senator Singer, in noting that the bill was an effort to compromise between those who support legalization and those that do not, stated,

"[w]e are not putting people in jail. We are helping them get treatment if they need it[.] What bothered all of us is we are going to try to solve the woes of the state by tax money coming in from marijuana. Shame on us." Senator Singer also referenced the criminal justice system, as he asserted that "[w]e can't just ignore the fairness issue ... and the marijuana arrests are clogging our jails and taking time from law enforcement."

Whether this push by Senators Rice and Singer for decriminalization will affect the efforts to legalize marijuana will be interesting to watch in Trenton. It could be that the Senators' hope that their bill will serve as a compromise will attract support from legislators who oppose legalization, or the legalization movement may continue to advance and not be slowed down or affected. It will be imperative to monitor legislative activity in Trenton and the inevitable twists and turns that will occur as the Governor and legislators continue to focus on marijuana.

## Senator Gardner Ends Absolute Hold on Department of Justice Nominees

Brian P. Sharkey

2/20/2018

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Last week, we wrote about the fact that Senator Cory Gardner, a Republican from Colorado, had put a hold on Department of Justice ("DOJ") nominees in response to Attorney General Sessions' decision to rescind the Cole Memo in an article titled, [Marijuana Series Part 2: Reaction of US Attorneys to Rescission of Cole Memo](#). Senator Gardner's action not only held up DOJ nominees from being confirmed by the Senate, it also provoked a critical response from the Attorney General in a speech last week.

Shortly after we published our article, Senator Gardner changed his position, as he issued a press release on February 15, 2018, titled, "Gardner Lifts Certain DOJ Holds as Positive Conversations Continue on Protecting Colorado's States' Rights[.]" In that press release, Senator Gardner explained that he had lifted holds on specific DOJ nominees as a "show of good faith" due to positive conversations he had with DOJ leadership, including Deputy Assistant Attorney General Rod Rosenstein.

Specifically, Senator Gardner commented that,

"[s]ince the Department of Justice rescinded the Cole memo, I have been working with the Department's leadership, including Deputy Assistant Attorney General Rod Rosenstein and the Acting United States Attorney for Colorado on a path forward that respects states' rights and clarifies the DOJ's priorities regarding marijuana enforcement[.] Because we have had positive conversations, I have decided to lift my holds on the Assistant Attorney General for National Security, United States Attorneys, and United States Marshals as an act of good faith. My holds on all other DOJ nominees will remain in place as discussions continue." Despite his change, Senator Gardner declared: "[l]et me be crystal clear: so long as the federal enforcement priorities detailed in the 2013 Cole Memorandum are adequately protected, the DOJ should respect the will of the states who have spoken overwhelmingly on this issue. I will view the DOJ's failure to do so as a direct contradiction of our positive conversations and will take action accordingly. While I have decided to lift my holds on these specific nominations, I will continue to lead a bipartisan group of colleagues to find a legislative solution. I remain optimistic that we will come to an agreement with the Department of Justice soon."

Senator Gardner's press release included supportive statements from several stakeholders, but his decision was also greeted with some skepticism. For example, a spokesperson for the Colorado Democratic party commented that "[t]he fact that Gardner surrendered his leverage to protect Colorado's legal marijuana industry in exchange for vague promises from a proven liar shows that he's not just a pushover, but a fool as well[.]" Meanwhile, according to press accounts, the DOJ expressed appreciation for the Senator's change in position and indicated it looked forward to continued discussions with him on this issue.

It will be interesting to see whether Senator Gardner's change affects his conversations with the DOJ, and whether those conversations will lead to any clarification from the DOJ about its marijuana enforcement priorities, a critical issue not only in States like Colorado where marijuana has been legalized but also in States like New Jersey that are considering whether to follow suit.

## Members of Congress Busy Writing Letters About Marijuana

**Brian P. Sharkey**

**2/16/2018**

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The January 4, 2018, decision of Attorney General Sessions to rescind the Obama-era Cole Memo, which had provided guidance to federal prosecutors about marijuana enforcement priorities, has led to various responses from elected officials at the federal and State level. In our last update, we discussed how the Attorney General and Senator Gardner, who represents Colorado, are in dispute over a hold that Senator Gardner has put on nominees for the Department of Justice ("DOJ"). Today, we will focus on several letters that Congressional members have authored about the Attorney General's decision, including a request that Congress include language protecting State marijuana laws in the federal spending bill, as well as what a Republican member of Congress recently said about his conversations with President Trump on this issue.

On February 12, 2018, eighteen Senators wrote a letter to Senator Cochran and Senator Leahy, the Chairman and Vice Chairman of the Senate Committee on Appropriations, respectively. Of the eighteen Senators, there were three Republicans, including Senator Gardner, and fifteen Democrats, including both of New Jersey's Senators, Senator Booker and Senator Menendez. The letter begins by stating that "[a]s you work to finalize fiscal year 2018 appropriations, we respectfully request that the Committee continue to respect states' laws regarding the regulation of marijuana."

After reviewing the development of marijuana laws at the State level, the authors noted that the DOJ had issued a series of guidance memoranda over several years that identified law enforcement priorities in this area while at the same time respecting State marijuana laws. The authors commented that "our citizens have relied on this agreed federal-state framework to establish legitimate businesses that bring needed medical relief and help shut down dangerous black market activity." The Senators then pivoted to Attorney General Sessions' decision to rescind the Cole Memo, as they asserted that he had, "without forewarning or an opportunity for legislative action, rescinded years of guidance, creating disruption, confusion, and uncertainty throughout the country. Citizens who have been acting in good faith based on federal and state assurances now feel exposed. This disruption may deny medications to the sick, push individuals back into illicit markets, and nullify the previously-effective regulations – all while threatening the democratically-expressed will of the states."

Due to their views about the negative consequences caused by the Attorney General's decision, the authors expressed their "hope that the fiscal year 2018 appropriations will alleviate the turbulence the Attorney General's abrupt decision has caused and that the appropriations will help preserve the strong regulatory frameworks the states have created. Doing so will provide the opportunity to pursue federal legislation that protects the legitimate federal interests at stake and respects the will of the states – both those that have liberalized their marijuana laws and those that have not. We ask that the Appropriations Committee work with us to craft the precise language that will preserve state laws regarding marijuana regulation until we can establish a longer-term framework."

While those Senators are endeavoring to protect State marijuana laws through the appropriations process, *VICE News* recently reported that eleven Democratic members of the House Judiciary Committee wrote a letter to Representative Bob Goodlatte, the Chair of the Committee, requesting that there be a hearing by the full Committee concerning the Attorney General's decision. (It should be noted that there are seventeen Democrats on the Committee.)



According to the letter that *VICE News* obtained, in requesting the Committee hearing and discussing Attorney General Sessions' decision, the eleven Democrats stated that "[w]e fear that the elimination of the Obama Administration's marijuana enforcement guidance will promote an inefficient use of limited taxpayer resources and subvert the will of voters who have clearly indicated a preference for legalized marijuana in their states." Moreover, the authors argued that Attorney General Sessions "fail[ed] to provide any evidence that prosecuting marijuana in states where it has been legalized will make Americans safer." The Democrats suggested that the DOJ "should instead pursue enforcement strategies that are sensible, effective, and enhance public safety, and the Judiciary Committee should be included in these discussions." In concluding their letter to Representative Goodlatte, the authors stressed that it was important that they be afforded "an opportunity to ask questions about this recent rescission in a formal setting and evaluate potential legislation related to marijuana."

In one of our previous updates, we described how fifty-four members of Congress jointly wrote to President Trump on January 25, 2018, and requested that he urge the Attorney General to reinstate the Cole Memo. One of the authors of that letter was Representative Matt Gaetz, a Republican from Florida. A recent article in the *Pensacola News Journal* detailed Representative Gaetz's efforts to relax the federal government's restrictions on medical marijuana research. In addition to outlining the key components of Representative Gaetz's plans, the article noted that the Representative had spoken with President Trump about medical marijuana. Specifically, Representative Gaetz stated that "I speak with President Trump regularly[.] Not every member of Congress does, and I've talked to the president about medical marijuana, and I think that being able to have a direct line of communication to the president of the United States only helps all of Northwest Florida amplify our position."

Lastly, in another marijuana legislation development, *Business Insider* recently reported about a letter that Senator Thom Tillis, a Republican from North Carolina who is on the Senate Judiciary Committee, wrote in a response to a constituent letter he received that advocated for federal legalization of marijuana. In his responding letter, Senator Tillis explained that the issue of marijuana legalization would likely be discussed in the current session of Congress. A spokesman for Senator Tillis clarified to *Business Insider* that the Senator was referring to a general discussion of the issue rather than a specific floor action. Nonetheless, in view of the fact that there are many bills pending in Congress concerning marijuana -- with names like, for example, Regulate Marijuana Like Alcohol Act (S.776), Respect State Marijuana Laws Act of 2017 (H.R. 975), and Marijuana Justice Act of 2017 (S.1689) -- as well as the fact that the Attorney General's decision has sparked a significant response from a bipartisan group of elected officials, it would not be surprising if there is further legislative activity concerning marijuana at the federal level.

## Attorney General Sessions and Senator Gardner Battle Over Marijuana

**Brian P. Sharkey**

**2/15/2018**

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In our previous articles, we explained that it would be important to not only monitor the response of U.S. Attorneys to the January 4, 2018, decision of Attorney General Sessions to rescind the Obama-era Cole Memo, which had provided guidance to federal prosecutors about marijuana enforcement priorities, but also to be aware of the response of elected officials. Today's update will focus on a developing disagreement between Attorney General Sessions and Senator Cory Gardner, a Republican from Colorado, over the Attorney General's rescission of the Cole Memo and the actions that the Senator has taken in response.

After Attorney General Sessions rescinded the Cole Memo, Senator Gardner, who represents a State where recreational marijuana has been legalized, tweeted the following: "This reported action directly contradicts what Attorney General Sessions told me prior to his confirmation. With no prior notice to Congress, the Justice Department has trampled on the will of the voters in CO and other states." Senator Gardner also issued a statement in which he declared: "Before I voted to confirm Attorney General Sessions, he assured me that marijuana would not be a priority for this Administration. Today's action directly contradicts what I was told, and I am prepared to take all steps necessary, including holding DOJ nominees, until the Attorney General lives up to the commitment he made to me prior to his confirmation. In 2016, President Trump said marijuana legalization should be left up to the states and I agree."

On February 6, 2018, Attorney General Sessions delivered remarks at the Reagan Alumni Association's Celebration of President Reagan's Birthday. During his speech, Attorney General Sessions stated that "[w]e are not going to pretend that there is not a law against marijuana, or that it's not bad for you. ... We don't think illegal drug use is 'recreation.' Lax enforcement, permissive rhetoric, and the media have undermined the essential need to say no to drug use – don't start. And we are identifying pill mill doctors and sending large members to the slammer." In addition, during a question and answer session following the speech, Attorney General Sessions discussed the problem of opioid over-prescription and heroin addiction, as he explained that "we think a lot of this is starting with marijuana and other drugs."

A February 7, 2018, *Denver Post* article, titled, "Cory Gardner's siege of the Justice Department over marijuana entered second month," recounts the effects of Senator Gardner's effort to block Department of Justice ("DOJ") nominees. According to the article, Senator Gardner has thus far prevented eleven DOJ nominees from receiving a Senate floor vote, with more to follow as additional nominees proceed through the confirmation process. The article pointed out that Senator Gardner had met with Attorney General Sessions about the issue of marijuana in January and that the Senator hoped that further negotiations with the Attorney General would prove successful. On that point, a spokesman for Senator Gardner stated that "[o]ur staff and DOJ staff continue to talk and meet to discuss a path forward which recognizes Colorado's state's rights and ensures law enforcement has the authority and tools needed to protect our communities[.] These discussions continue to be necessary and we appreciate their willingness to have them."

However, on February 12, 2018, Attorney General Sessions delivered remarks to the National Sheriffs' Association in which he again affirmed that he would not pretend that marijuana was legal and referenced Senator Gardner's hold on DOJ nominees, though he did not mention Senator Gardner by name.

Specifically, as to Senator Gardner's hold on DOJ nominees, Attorney General Sessions stated that "[t]he most important thing that any government does is keep its citizens safe. The first civil right is the right to be safe. Too often, politics gets in the way of that mission. Right now, we're trying to confirm a number of important component heads at the Department of Justice. That includes a new head of our Criminal Division, our Civil Rights Division, and our National Security Division. These are critically important components – and outstanding nominees. Our nominee to lead the National Security Division was approved unanimously in committee. ***But because of one senator's concern over unrelated political issues – like legalizing marijuana – we can't even get a vote.***" (emphasis added).

As to his position on marijuana, Attorney General Sessions declared that "I'm Attorney General of the United States. I don't have the authority to say that something is legal when it is illegal – even if I wanted to. I cannot and will not pretend that a duly enacted law of this country – like the federal ban on marijuana – does not exist. Marijuana is illegal in the United States – even in Colorado, California, and everywhere else in America."

It will be important to monitor the continued back-and-forth between Attorney General Sessions and Senator Gardner over this issue and whether the Senator's hold on DOJ nominees will remain in place. Of course, to end the impasse, Attorney General Sessions or Senator Gardner would seemingly have to change their position, a step that seems unlikely based on the public statements they have made.

## **Governor Murphy Addresses Marijuana In His First "Ask Governor Murphy" Episode**

***Brian P Sharkey***

***2/14/2018***

On February 13, 2018, Governor Phil Murphy participated in the first episode of his monthly call-in show on News 12 New Jersey, "Ask Governor Murphy." Governor Murphy was asked about a range of topics, including several about marijuana. That is not a surprising development, given that Governor Murphy campaigned on a pledge to legalize marijuana for recreational purposes and mentioned the issue in his Inaugural Address, declaring that "[a] stronger and fairer New Jersey embraces comprehensive criminal justice reform -- including a process to legalize marijuana[.]" Moreover, Governor Murphy issued an Executive Order on January 23, 2018, that directed the Department of Health and the Board of Medical Examiners to review all aspects of the State's medical marijuana system, with a focus on how to expand access.

In response to questions about marijuana during his call-in show, Governor Murphy discussed both medical marijuana and legalization of marijuana for recreational purposes. After referencing his Executive Order about medical marijuana, Governor Murphy explained that his Administration focused on that program first "because in our judgment that's much more life and death, or at least quality of life." Governor Murphy also stressed that he believed that it was important to make the medical marijuana program more robust because it could be a "major weapon" in combating the opioid addiction crisis, as expanded access could provide patients a less invasive and less addictive option than painkillers.

As to legalization of marijuana for recreational purposes, Governor Murphy acknowledged that legalization would lead to an increase in revenue and jobs, but that "the big issue for me is social justice." Governor Murphy also noted that he intended to learn from the experiences of other States who have already legalized marijuana, and he did not specify a timeline for when he hoped to sign a legalization bill into law. There are several bills relating to marijuana pending in the New Jersey Legislature, and there is expected to be significant legislative activity in this area in the coming months.

## The Murphy Administration Looks to Expand New Jersey's Medical Marijuana Program

**Brian P. Sharkey**

**2/13/2018**

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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*.

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."

## Reaction of US Attorneys to Rescission of Cole Memo

**Brian P. Sharkey**

**2/6/2018**

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

In the first part of our series, we outlined how the Department of Justice ("DOJ") during the Obama administration had provided specific guidance to United States Attorneys about marijuana-related prosecutions, guidance that Attorney General Sessions rescinded on January 4, 2018. That decision was largely greeted with outrage by advocates of marijuana legalization and concerns that there would be an increase in marijuana-related prosecutions. However, as we observed in our last update, it is far too soon to accurately ascertain the impact that Attorney General Sessions' decision will have. It may be that prosecutions increase, but it is also possible that there is no discernible effect on prosecutions. Ultimately, the true impact of Attorney General Sessions' decision will be shaped by the decisions of the United States Attorneys across the country; specifically, on whether to prosecute marijuana-related offenses, which offenses they focus on, who they target in such prosecutions, and how their offices prosecute such offenses.

Because the Attorney General's decision places even greater discretion in the United States Attorneys in the 93 districts across the country, we thought it would be helpful to evaluate how some of those United States Attorneys reacted to the rescission of the Cole Memo. Specifically, in the rest of this article we will recount the public statements of United States Attorneys in States that have legalized marijuana, as well as the response from the current United States Attorney for the District of New Jersey, where there is a push for legalization in the New Jersey Legislature.

Because of the importance of this issue, and because we feel it is imperative to place the statements from the United States Attorneys in the proper context, we have reproduced their statements in full from the official press releases they issued, except for the United States Attorney for the District of New Jersey, as explained below. While the statements are all unique, some common themes that emerge, including:

- Because marijuana remains prohibited by federal laws, the United States Attorneys will be guided by the same well-established principles that govern all prosecutorial decisions;
- The United States Attorneys will be exercising their discretion on a case-by-case basis and will not be offering specific guidance or assurances about the types of cases that they may prosecute;
- The United States Attorneys intend to focus on offenses that cause the greatest safety threats to the public; and
- The United States Attorneys will be working with their federal, State, and local law enforcement partners to address the greatest risks to the public in this area.

As to the statements offered by the United States Attorneys in States where recreational marijuana use has been legalized, the US Attorney for Oregon, Billy J. Williams, issued a statement on January 4 that provided: "As noted by Attorney General Sessions, today's memo on marijuana enforcement directs all U.S. Attorneys to use the reasoned exercise of discretion when pursuing prosecutions related to marijuana crimes. We will continue working with our federal, state, local and tribal law enforcement partners to pursue shared public



safety objectives, with an emphasis on stemming the overproduction of marijuana and the diversion of marijuana out of state, dismantling criminal organizations and thwarting violent crime in our communities."

Bob Troyer, the US Attorney for the District of Colorado, on January 4 issued the following statement: "Today the Attorney General rescinded the Cole Memo on marijuana prosecutions, and directed that federal marijuana prosecution decisions be governed by the same principles that have long governed all of our prosecution decisions. The United States Attorney's Office in Colorado has already been guided by these principles in marijuana prosecutions -- focusing in particular on identifying and prosecuting those who create the greatest safety threats to our communities around the state. We will, consistent with the Attorney General's latest guidance, continue to take this approach in all of our work with our law enforcement partners throughout Colorado."

That same day, Annette L. Hayes, the US Attorney for the Western District of Washington, issued the following statement: "Today the Attorney General reiterated his confidence in the basic principles that guide the discretion of all U.S. Attorneys around the country, and directed that those principles shepherd enforcement of federal law regarding marijuana. He also emphasized his belief that U.S. Attorneys are in the best position to address public safety in their districts, and address the crime control problems that are pressing in their communities. Those principles have always been at the core of what the United States Attorney's Office for Western Washington has done -- across all threats to public safety, including those relating to marijuana. As a result, we have investigated and prosecuted over many years cases involving organized crime, violent and gun threats, and financial crimes related to marijuana. We will continue to do so to ensure -- consistent with the most recent guidance from the Department -- that our enforcement efforts with our federal, state, local and tribal partners focus on those who pose the greatest safety risk to the people and communities we serve."

The next day, the US Attorney for the Eastern District of Washington, Joseph H. Harrington, issued a statement on the Attorney General's decision that provided: "The Attorney General reiterated his confidence in the long-established principles of federal prosecution that guide the discretion of each United States Attorney around the country (U.S. Attorney's Manual, chapter 9-27.000), and directed that those principles shepherd enforcement of federal law regarding marijuana. With those principles in mind, the Attorney General emphasized his belief that United States Attorneys are in the best position to weigh all relevant considerations -- to include the nature and seriousness of an offense, the potential deterrence effect of prosecution, a putative defendant's culpability in connection with an offense, a putative defendant's criminal history and other circumstances, and the limited federal resources -- when deciding which cases to prosecute in their respective communities. When weighing those considerations public safety is always at the fore.

Those principles have always been at the core of what the United States Attorney's Office for the Eastern District of Washington does -- across all threats to public safety, including those that may relate to marijuana. This United States Attorney's Office will continue to ensure, consistent with the most recent guidance from the Department of Justice, that its enforcement efforts with our federal, state, local, and tribal law enforcement partners focus on those who pose the greatest safety risk to the communities in Eastern Washington, by disrupting criminal organizations, tackling the growing drug crisis, thwarting violent crime, and corralling white-collar fraudsters in this District."

A few days later, on January 8, Andrew E. Lelling, the US Attorney for the District of Massachusetts, issued the following statement: "I understand that there are people and groups looking for additional guidance

from this office about its approach to enforcing federal laws criminalizing marijuana cultivation and trafficking. I cannot, however, provide assurances that certain categories of participants in the state-level marijuana trade will be immune from federal prosecution. This is a straightforward rule of law issue. Congress has unambiguously made it a federal crime to cultivate, distribute and/or possess marijuana. As a law enforcement officer in the Executive Branch, it is my sworn responsibility to enforce that law, guided by the Principles of Federal Prosecution. To do that, however, I must proceed on a case-by-case basis, assessing each matter according to those principles and deciding whether to use limited federal resources to pursue it. Deciding, in advance, to immunize a certain category of actors from federal prosecution would be to effectively amend the laws Congress has already passed, and that I will not do. The kind of categorical relief sought by those engaged in state-level marijuana legalization efforts can only come from the legislative process."

On January 9, 2018, the US Attorney for the District of Maine, Halsey B. Frank, issued the following statement on the issue of marijuana enforcement: "I have received numerous inquiries from members of the media, government officials, and others seeking guidance from this office about its approach to enforcing the federal marijuana laws. Those laws make the production, distribution and possession of marijuana illegal based on its classification by Congress as a Schedule I Controlled Substance because Congress determined that it has a high potential for abuse and dependence and has no acceptable medical use.

As the chief federal law enforcement officer in this district, my job is to enforce federal law, not countermand it. While I have some discretion in how my office does so in any particular case, that discretion is guided by the Principles of Federal Prosecution of the Department of Justice (DOJ). Those principles include the interests of society, the public's confidence in the criminal justice system, federal law enforcement priorities, the nature and seriousness of the offense, the deterrent effect of prosecution, the person's culpability in connection with the offense, their criminal history and willingness to cooperate in the investigation or prosecution of others, the interests of any victims, and the probable sentence or other consequences if the person is convicted, all in light of the DOJ's and my office's limited resources. I do not have the authority to categorically declare that my office will not prosecute a class of crime or persons. Rather, we must proceed on a case-by-case basis, individually assessing each matter according to DOJ's Principles and deciding whether to use our resources to pursue it. DOJ's national priorities include the rule of law, national security and terrorism, immigration, violent crime and international gangs such as MS-13, the opiate crisis, supporting law enforcement, and promoting public confidence. In addition, our local priorities include domestic violence and guns, human trafficking, and elder fraud. We will work with our federal, state, local and tribal partners to focus on those who pose the greatest threat to the people and communities that we serve.

With respect to the prosecution of drug offenses, this office has prioritized the prosecution of cases involving the trafficking of opiates, cocaine, crack and similar hard drugs. We have also prosecuted large-scale marijuana distribution organizations and did so even while operating under the recently rescinded DOJ guidance. Prosecution of drug possession cases has not been a priority."

Most importantly for the legalization movement in New Jersey, on January 3, 2018 – one day before he rescinded the Cole Memo – Attorney General Sessions appointed Craig Carpenito as Interim United States Attorney for the District of New Jersey. Mr. Carpenito's appointment took effect on January 5, 2018. In a statement to NJ Advance Media, Mr. Carpenito's office addressed the issue of marijuana enforcement in the following way: "As was the case before and after the Cole Memo, the cultivation, distribution, and possession of marijuana continues to be generally prohibited by the Controlled Substances Act. We will use

our prosecutorial discretion in evaluating all cases and making determinations as we do with all controlled substance cases." Whether that statement provides comfort to supporters of marijuana legislation in New Jersey, or causes them concern, will be determined in the coming months, as will any marijuana-related prosecutions that are initiated in New Jersey or any of the other districts across the country.

# Creating a Legal Framework in New Jersey for a Drug That is Illegal Under Federal Law

**Brian P. Sharkey**

**2/2/2018**

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

Over the past several years, States have begun to legalize recreational marijuana. The first States to do so were Colorado and Washington in 2012, with Alaska, California, the District of Columbia, Maine, Massachusetts, Nevada, and Oregon doing so in the ensuing years. Most recently, on January 22, 2018, the governor of Vermont signed a bill that legalizes marijuana for recreational use, and many other States are moving to legalization. Moreover, a majority of States throughout the country have enacted laws permitting medical marijuana. While both medical marijuana programs and the movement to legalize recreational marijuana are spreading to more and more States, they do so in the face of a seemingly sizeable legal obstacle: under federal law, marijuana is illegal.

In New Jersey, the Compassionate Use Medical Marijuana Act was signed into law in January 2010, and has been implemented by the New Jersey Department of Health via its Medicinal Marijuana Program, but recreational marijuana use remains illegal in New Jersey. Legislation to legalize marijuana was first introduced in 2014, but, until now, it has never progressed very far in the legislative process. However, the legalization movement in New Jersey has picked up significant momentum recently from a number of factors, including support from key legislators and Governor Phil Murphy, who took office on January 16, 2018. Throughout his gubernatorial campaign, Governor Murphy advocated for the legalizing of marijuana for recreational use. His position did not change upon his election, as he even mentioned the issue during his Inaugural address, in which he declared that "[a] stronger and fairer New Jersey embraces comprehensive criminal justice reform -- including a process to legalize marijuana[.]"

In this four-part initial series, we will focus on a number of issues concerning the status of marijuana in New Jersey. In the first two parts, we will outline the federal government's position on marijuana enforcement, including recent changes, and how it could impact New Jersey. In the third part of our series, we will provide an overview of New Jersey's Medical Marijuana Program, including Governor Murphy's January 23, 2018, Executive Order that directed the Department of Health and Board of Medical Examiners to review all aspects of the current program. In the fourth part of our series, we will examine the current status of the legalization movement in the Legislature and offer insight into how it may proceed in Trenton.

## **Part 1: The Cole Memo and the Decision to Rescind It**

During the Obama administration, the Department of Justice ("DOJ") issued guidance to federal prosecutors regarding marijuana enforcement in both 2009 and 2011. Then, in August 2013, the DOJ updated its guidance with its issuance of the "Cole Memo," which was authored by James M. Cole, Deputy Attorney General, and addressed to all United States Attorneys. The Cole Memo was issued to address the fact that States had begun to legalize possession of marijuana and regulate its production, processing, and sale. The Cole Memo reiterated the DOJ's commitment to the enforcement of the Controlled Substances Act and recognized the fact that Congress had determined that marijuana was a dangerous drug. Moreover, the Cole Memo acknowledged that the illegal distribution and sale of marijuana was a serious criminal offense that provided significant revenue to gangs, cartels, and other criminal enterprises.

However, the Cole Memo outlined that the DOJ was "also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way." Accordingly, the Cole Memo outlined eight enforcement priorities that were especially relevant and important to the federal government. Those priorities included, among other things, preventing the distribution of marijuana to minors, preventing the revenue of marijuana sales from going to gangs, cartels, and criminal enterprises, preventing the diversion of marijuana from States where it was legal under State law to other States where it was not, and preventing violence and the use of firearms with respect to marijuana's cultivation and distribution. The priorities enumerated in the Cole Memo were intended to guide the DOJ's enforcement of federal laws and was intended to "serve as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state laws."

On February 24, 2014, Mr. Cole authored another memorandum for all United States Attorneys that provided guidance regarding marijuana related financial crimes. Specifically, this memo offered guidance to US Attorneys as to how they could exercise their prosecutorial discretion with respect to financial crimes involving marijuana, recommending that they focus on the eight enforcement priorities that were included in the 2013 Cole Memo and whether the particular activity at issue implicated those priorities. The memo described scenarios and activities that would be more prone to prosecution, as it noted that "financial institutions and individuals choosing to service marijuana-related businesses that are not compliant with ... state regulatory and enforcement systems, or that operate in states lacking a clear and robust regulatory scheme, are more likely to risk entanglement with conduct that implicates the eight federal law enforcement priorities."

The Cole Memo remained in place until January 4, 2018. On that date, the DOJ announced that Attorney General Jeff Sessions had issued a memo that rescinded prior guidance, like the Cole Memo, concerning federal marijuana enforcement. In his memo, Attorney General Sessions explained: "In deciding which marijuana activities to prosecute under these laws with the Department's finite resources, prosecutors should follow the well-established principles that govern all federal prosecutions. ... These principles require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community." In view of the DOJ's well-established general principles, Attorney General Sessions concluded that the prior guidance specific to marijuana enforcement was "unnecessary" and, therefore, he rescinded it, effective immediately.

Attorney General Sessions's decision to rescind the guidance contained in the Cole Memo was greeted with outrage by some, including most prominently elected officials in States where recreational marijuana had been legalized. With respect to New Jersey, Senator Cory Booker issued the following statement about the Attorney General's decision: "Jeff Sessions' determination to revive the failed War on Drugs knows no bounds. History has shown that our deeply broken drug laws disproportionately harm low-income communities and communities of color and cost us billions annually in enforcement, incarceration, and wasted human potential, without making us any safer. This unjust, backwards decision is wrong for America, and will prove to be on the wrong side of history."

It should be noted that in August 2017, Senator Booker introduced the Marijuana Justice Act of 2017 in the Senate. This bill would end the federal prohibition on marijuana. A companion bill was introduced in the

House of Representatives on January 17, 2018, less than two weeks after Attorney General Sessions's decision to rescind the Cole Memo. Congresswoman Barbara Lee of California, one of the sponsors of the House bill, issued the following statement about it: "In the wake of Attorney General Session's decision to rescind the Cole memo, it's clear that the Trump Administration is doubling down on unjust marijuana criminalization policies[.] Now, it's up to Congress to end federal marijuana prohibition and help the victims of the failed War on Drugs rebuild their lives. The Marijuana Justice Act is a bold proposal to reverse decades of discriminatory drug enforcement and to bring federal marijuana policy in line with the wishes of the American people."

Senator Booker and Congresswoman Lee were two of the fifty-four members of Congress who jointly wrote to President Trump on January 25, 2018, about Attorney General Sessions's decision to rescind the Cole Memo. (Of the 54 members, there were 10 Senators – all Democrats – and 44 House Members, including 4 Republicans.) In their letter, the Congressional members argued that the Attorney General's decision "puts jobs, small businesses, state infrastructure, consumers, minorities, and patients at risk. This action has the potential to unravel efforts to build sensible drug policies that encourage economic development as we are finally moving away from antiquated practices that have hurt disadvantaged communities." As to the new guidance that Attorney General Sessions offered in his decision, the members claimed that it will have a chilling effect across the country in states that have worked tirelessly to implement voter-approved laws, creating legal and economic uncertainty." After reminding President Trump of the view he articulated during his campaign that marijuana legalization was an issue that should be left to the States, the Congressional members requested that the President "urge the Attorney General to reinstate the Cole Memorandum. This step would create a pathway to a more comprehensive marijuana policy that respects state interests and prerogatives. On behalf of the communities we represent, we hope you appreciate the critical nature of this issue and take immediate action."

In addition to angry reactions from elected officials, there were some predictions that the decision by Attorney General to rescind the Cole Memo would lead to more prosecutions, as well as a reduction in enthusiasm and support for the legalization movement across the country. As to the latter, that has not seemed to come to fruition following Attorney General Sessions's decision. For example, Governor Murphy has reiterated his support for legislation to legalize recreational marijuana, Vermont enacted a legalization law, and the New Hampshire House of Representatives passed legislation that would legalize marijuana.

As to the notion that Attorney General's Sessions's decision would lead to more prosecutions, it is very premature to make such predictions, or to make a truly informed assessment of the effect that his decision will have. As a threshold matter, the Attorney General's memo did not instruct US Attorneys to prosecute marijuana offenses or specifically prioritize the prosecutions of such offenses. Perhaps the most significant consequence of the Attorney General's decision is that each United States Attorney in each district will have greater discretion to prosecute – or not prosecute – marijuana-related offenses in their district.

The exercise of such prosecutorial discretion takes on greater importance in the States where marijuana has been legalized, as well as those States, like New Jersey, where there is a current legalization movement. (It should also be noted that federal Rohrabacher-Farr (also known as the Rohrabacher-Blumenauer) Amendment prohibits the use of federal funds to prevent States from implementing their own medical marijuana programs. The Amendment has remained in all of the funding extensions passed by Congress over the last several months.) Ultimately, only time will tell how federal prosecutors will choose to enforce marijuana laws in their districts, as well as if there is a consistent approach across the country or if US Attorneys make different determinations about whether, and what, offenses to prosecute.

In the next article in our series, we will focus on how US Attorneys reacted to the decision of Attorney General Sessions to rescind the Cole Memo.

## Recreational and Medical Marijuana in New Jersey What is an Employer to Do?

*David L. Disler*

*11/30/2017*

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The recreational use of marijuana is likely coming to New Jersey in 2018. While marijuana use and possession remains illegal under federal law, both during the campaign and after being elected, New Jersey's Governor-elect Phil Murphy made clear that he plans to support the legalization of recreational use of marijuana in New Jersey. Due to its impact on the State's budget -- it is estimated to bring in an additional \$300 million in sales tax<sup>[i]</sup> -- Murphy and the Democrat controlled Legislature will attempt to pass legislation legalizing the recreational use of marijuana within his first 100 days in office. In fact, in a recent interview, Murphy advised that he plans to legalize marijuana "soon" and that legalization was a "2018 priority."<sup>[ii]</sup> This sentiment was shared by New Jersey Senate President Stephen Sweeney who stated during an interview that he "feels confident that legalization will become law before April."<sup>[iii]</sup> Therefore, New Jersey employers must be prepared for the likely upcoming changes to the law governing the recreational and medical use of cannabis.

### Medical Use

While the recreational use of marijuana is presently illegal, New Jersey is one of 29 States already to have decriminalized medical marijuana through its passing of the Compassionate Use Medical Marijuana Act ("CUMMA") in 2014.<sup>[iv]</sup> CUMMA does not require employers to accommodate an employee's medical use of marijuana in the workplace. However, it remains unclear whether employers may take employment actions based on an employee's "off-duty" use of medical marijuana. Notably, the issue many employers face is whether they can terminate an employee who tests positive for marijuana on a drug test due to the employee's off-duty use of medical marijuana as part of the employee's treatment.

*Wild v. Carriage Services* is presently pending before the New Jersey Superior Court. In that matter, Justin Wild was employed as a funeral director in 2013. Two years later he was diagnosed with cancer and prescribed medical marijuana under CUMMA. Sometime thereafter, Wild was involved in an accident at work. Wild disclosed his marijuana usage to his employer during a discussion on his work-related injuries suffered in the accident. He further claimed that he was not under the influence during the accident, that he only used cannabis at night, and that he was never under the influence while at work. As a result of his disclosure, Wild was required to take a drug test, which he failed, and was terminated for violating the employer's drug and alcohol policy. Following his termination, several other employees (including a supervisor) allegedly notified members of the local Funeral Directors Association and other potential employers that Wild was fired for being a "drug addict" and that he was under the influence at the time of the accident. The Court has not determined whether Wild may bring a claim for his original termination - leaving unanswered whether an employer may terminate for the off-duty medical use of marijuana. However, the Court found that Wild provided sufficient facts to establish a defamation claim and a tortious interference with prospective employment claim, based on the employer's conduct following the termination.

Notwithstanding the Court's decision in *Wild*, the State's Legislature may also answer this question. Notably, the Assembly and Senate have pending bills that would prohibit employers from taking any adverse employment action against authorized medical marijuana patients (except if the use of marijuana



impairs the employee's job responsibilities).[v] This would include employees' medical marijuana use while off-duty.

## **Recreational Use**

The most prominent piece of cannabis legislation is Senate Bill No. 3195 ("S3195"), which was introduced by Democratic Senator Nicholas Scutari with the backing of Senate President Sweeney.[vi] If enacted, S3195 would legalize the recreational use of cannabis throughout the State. Notably, the bill will allow for the possession of up to one ounce of dried marijuana, sixteen ounces of edible cannabis products, and seventy-two ounces of cannabis in liquid form. Like CUMMA, the bill does not require employers to permit or accommodate marijuana in the workplace, nor does it affect the ability of employers to prohibit employees from enacting or maintaining drug-free workplace policies that prohibit the use of, or being under the influence of marijuana during work hours. However, unlike CUMMA, S3195 makes it unlawful for an employer to take any adverse employment action against an employee due to the employee's use of marijuana, unless the employer has a rational basis to do so (such as safety-sensitive positions). In addition, employers do not have to take any action that would prohibit them from receiving a federal grant or violate federal law.

## **Take Away**

New Jersey employers must prepare for the legalization of recreational marijuana in New Jersey and understand its responsibilities under CUMMA. This includes review of their employer handbooks and policies. Importantly, these documents should establish how the employer will respond to employees' medical use of marijuana. Some employers may wish to have a "zero tolerance" policy, while other may choose to provide reasonable accommodation. Regardless of the option selected, employers should have a written policy that is consistently applied. In addition, employer handbooks and policies should be revised following material changes in the law.

Employers should further ensure that their job descriptions are updated and accurate. As set forth above, CUMMA and the proposed legislation both allow employers to take adverse employment actions against employees in safety-sensitive positions or positions where an employee's use impacts his/her job responsibilities. Therefore, accurate job descriptions will be essential to determining whether a position falls within this exception.

Finally, as the Wild case illustrates, training is crucial. Regardless of whether its initial decision to terminate was lawful, the employer in Wild must still defend against the defamation and tortious interference claims due to its employees' decision to discuss an employee's medical information and employment history with outside organizations. Naturally, if the employer had a policy in place and its employees were properly trained, these alleged claims could have been prevented.

[i] Legalizing marijuana would reap \$300M a year in taxes for N.J., advocates say, [www.nj.com](http://www.nj.com) (Nov. 2, 2016). available at [www.nj.com/politics/index.ssf/2016/05/legalizing\\_marijuana\\_would\\_net\\_300m\\_in\\_sales\\_taxes.html](http://www.nj.com/politics/index.ssf/2016/05/legalizing_marijuana_would_net_300m_in_sales_taxes.html) [ii] Power and Politics, News12 New Jersey(November 16, 2017). [iii] Legal pot in 100 days? New Jersey's next governor aims for national first, Washington Examiner (Nov. 9, 2017). [iv] N.J.S.A. 24:6I-1, et seq. [v] Assembly Bill No. 242 & Senate Bill No. 2161. [vi] Legal pot in 100 days? New Jersey's next governor aims for national first, Washington Examiner (Nov. 9, 2017).

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Kevin Bell is a principal of Porzio, Bromberg & Newman and a member of the firm's Intellectual Property and Litigation Departments. His practice focuses primarily on litigating complex disputes involving patents, trademarks, trade secrets, trade dress and unfair competition on behalf of a broad range of clients before federal courts and agencies, the International Trade Commission and various alternative dispute resolution forums. Kevin has extensive experience in licensing intellectual property and regularly provides strategic counseling to clients regarding development and enforcement of intellectual property portfolios. He is a member of the firm's Management Committee and the regional managing principal of the Washington, D.C. office. Prior to joining the firm, Kevin was a partner in the intellectual property department of Patton Boggs LLP.

Kevin represents companies across a broad range of technologies that include biotech, pharmaceutical, medical device, dietary supplement, software, semi-conductor and computer science related matters. He has developed a substantial practice representing U.S. and international companies and inventors in various industries, enforcing intellectual property rights in groundbreaking technologies and products. These representations often involve large intellectual property portfolios litigated simultaneously in the U.S. and across multiple foreign jurisdictions. As part of his practice, Kevin has successfully developed and implemented novel economic theories to obtain substantial monetary damages awards. He represents clients on matters before the Federal Trade Commission (FTC) and works closely with members of Porzio's regulatory and compliance practices on specific issues related to the Food and Drug Administration (FDA).

Mr. Bell is frequently retained to counsel U.S. and international clients on managing and monetizing their intellectual property assets. He advises on intellectual property matters that arise in corporate mergers, acquisitions and other due diligence transactions. He works with companies and universities to develop strategies that generate revenue from their intellectual property assets, while also advising on how to decrease costs in maintaining and exploiting existing portfolios. Mr. Bell has extensive experience in assisting clients in creatively and successfully licensing, selling and acquiring intellectual property in several industry sectors.

### Representative Matters/Clients

- *Becton Dickinson & Co. v. Tyco Healthcare LP* – Represented Becton Dickinson in patent litigation regarding safety needles in the U.S. District Court for the District of Delaware.
- *MBO Laboratories, Inc., v. Becton Dickinson & Co.* – Represented Becton Dickinson in patent litigation regarding safety needles in the U.S. District Court for the District of Massachusetts.
- *Pressure Products Medical Supplies, Inc. v. Greatbatch Medical, Inc.* – Represented Greatbatch in patent litigation regarding valved, peelable/splittable introducers in the U.S. District Court for the Eastern District of Texas.
- *Biacore AB v. Thermo BioAnalysis, Inc.* – Represented Biacore in patent litigation involving biosensors in the U.S. District Court for the District of Delaware.
- *Applera Corp. v. Bio-Rad Labs., MJ Research and Stratagene Corp.* – Represented Stratagene in patent litigation involving Real Time qPCR machines in the U.S. District Court for the District of Connecticut.
- *Digene Corporation v. Ventana Medical System, Inc. and Beckman Coulter, Inc.* – Represented Digene in patent litigation involving antibody detection kits and systems directed to human

### Practice

- Corporate, Commercial and Business Law
- Intellectual Property
- Intellectual Property Litigation
- Litigation

### Industries

- Biotechnology
- Chemical
- Dietary Supplement
- Life Sciences
- Medical Device
- Pharmaceutical

### Related Media

- Dietary Supplement Legal Update - June 2017
- Principal Kevin Bell to Present at The Big Natural
- Principal Kevin Bell to present at NIA-West Spring Conference 2017

### Bar Admissions

Admitted to practice in Maryland Practice Limited to Federal Courts and Agencies

- United States Supreme Court
- U.S. Court of Appeals, Federal Circuit
- U.S. Court of Appeals, 4th Circuit
- U.S. District Court, District of Maryland
- U.S. District Court, Eastern District of Texas
- U.S. District Court, District of Colorado
- U.S. District Court, Eastern District of Wisconsin

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papillomavirus (HPV) in the U.S. District Court for the District of Delaware.

- *Enzo Biochem v. Digene Corporation* – Represented Digene in patent litigation involving systems and methods for antibody detection of viruses in the U.S. District Court of Delaware.
- *Benitec Australia, Inc. v. Nucleonics Inc.* - Represented Benitec in patent litigation involving RNAi technology in the U.S. District Court for the District of Delaware.
- *Stratagene Corp. v. Biometra GMBH and Biometra U.S., Inc.* – Represented Stratagene in patent litigation involving T Gradient thermocyclers in the U.S. District Court for the Southern District of California.
- *Ajinomoto Co., Inc. v. Archer-Daniels Midland* – Represented Ajinomoto in patent litigation involving methods using recombinant biotechnology to produce amino specific amino acids – threonine and lysine in the U.S. District Court for the District of Delaware.
- *Oxford Gene Technology, Ltd. v. Mergen Ltd., Clontech Laboratories, Inc. d/b/a BD Biosciences Clontech, PerkinElmer Life Sciences, Inc.* – Represented Clontech in patent litigation involving nucleic acid array products in the U.S. District Court for the District of Delaware.
- *Clontech Laboratories, Inc. v. Life Technologies, Inc. (formerly Invitrogen Corp.)* – Represented Clontech in a patent false marking case in the U.S. District Court for the District of Delaware.
- *Life Technologies, Inc. (formerly Invitrogen Corp.) v. Clontech Laboratories, Inc.* – Represented Clontech in patent litigation involving RNase H- Reverse Transcriptase products in the U.S. District Court for the District of Maryland.
- *Life Technologies, Inc. (formerly Invitrogen Corp.) v. Stratagene Corp.* – Represented Clontech in patent litigation involving RNase H- Reverse Transcriptase products in the U.S. District Court for the District of Maryland.
- *Flamel Technologies, S.A. v. Lupin Limited, et al.* – Represented Flamel in ANDA patent litigation involving drug delivery systems in the U.S. District Court for the District of Maryland.
- *Flamel Technologies, S.A. v. Anchen Pharmaceuticals, Inc.* - Represented Flamel in ANDA patent litigation involving drug delivery systems in the U.S. District Court for the District of Maryland.
- *OxyBand Technologies, Inc. v. Day & Zimmerman and O2S, LLC* – Represented OxyBand in arbitration in Delaware involving oxygenated wound dressings before the American Arbitration Association.

## Organizations/Memberships

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- International Trade Commission Trial Lawyers Association (ITCTLA)
- Maryland Bar Association
- International Society of Sports Nutrition
- The Langley School, Board of Trustees

## Publications

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- "[Dietary Supplement Update](#)," *Porzio Dietary Supplement Legal Update*, June 14, 2017.
- "[Dietary Supplement Legal Update](#)," *Porzio Dietary Supplement Legal Update*, April 26, 2017.
- "[Dietary Supplement Legal Update](#)," *Porzio Dietary Supplement Legal Update*, September 22, 2016.
- "[Dietary Supplement Legal Update](#)," *Porzio Dietary Supplement Legal Update*, August 12, 2016.
- "[Supreme Court Eases Test For Awarding Enhanced Damages For Willful Patent Infringement](#)," *Porzio DC Client Alert*, June 14, 2016.
- "[Dietary Supplement Legal Update](#)," *Porzio Dietary Supplement Legal Update*, April 2016.
- "[Dietary Supplement Legal Update](#)," *Porzio Dietary Supplement Legal Update*, December 2015.
- "[Claims Substantiation and the Bayer Case](#)," *NPA NOW*, September 2015.
- "[Patent Assertion Entity MPHJ Loses its Suit to Stop FTC Investigation](#)," *Porzio DC Client Alert*, October 2, 2014
- "[What You Need to Know Now About R&D](#)," *Natural Products Insider*, November 2, 2014.
- "Passing Through the Patent 'Troll' Booth," *Transport Topics*, April 18, 2011.

## Speaking Engagements

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- "IP Crash Course for the Natural Products Industry," The Big Natural, Las Vegas, NV, June 8, 2017.
- "Positioning for Success in a World of Commodities - Science Backed, Patent-Protected, Branded Ingredients," NIA-West Spring Conference, Montage Laguna Beach, CA, May 24, 2017.
- "Revised New Dietary Ingredient Guidance," Natural Products Association webinar, August 17, 2016.
- "What to Expect From FDA's Draft Guidance on NDIs," Natural Products Association webinar, January 20, 2016.

- "Learn the Regulatory Playbook on Cosmetic Claims," Natural Products Association Expo East, Baltimore, MD, September 17, 2015.
  - "Patent Disputes 2012: Patent Reform and New Models for a New Market," West LegalEdcenter Patent Disputes Conference, Washington, DC, August 19, 2012.
  - "The Effect of U.S. Patent Reform on Patent Disputes," U.S. Patent Reform: Consequences for European Practitioners Seminar, Munich, Germany, April 3, 2012.
  - "U.S. Patent Reform: The New Standard," Webinar, October 3, 2011.
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## Richard J. Oparil



### Principal

Washington, DC

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✉ rjoparil@pbnlaw.com

Richard Oparil is a principal of Porzio, Bromberg & Newman and a member of the firm's Intellectual Property and Litigation Departments. He has 30 years of experience representing clients before federal courts, agencies and Congress. Prior to joining Porzio in 2014, he was a partner in the Washington office of Patton Boggs LLP.

Richard has represented biotechnology, life sciences, dietary supplement, medical device, pharmaceutical, defense, financial services, software and other companies in patent, trademark, unfair competition, trade secrets, trade regulation and other complex litigation at the trial and appellate levels and before the International Trade Commission. He has litigated patent, trademark, unfair competition, trade secrets and copyright cases in District Courts and the Court of Appeals for the Federal Circuit. He has extensive experience in technology licensing, counseling and due diligence matters. Richard is also actively engaged in investigations and regulatory issues at the Federal Trade Commission and Food and Drug Administration. His clients have ranged in size from the Fortune 500 to startups.

His practice includes representing individuals and companies in white collar crime cases, including grand jury, Congressional and internal investigations. He has represented a variety of targets or subjects of investigations by the Department of Justice, including the then-Chairman of Enron Corporation. Richard represented a member of the International Olympic Committee at Congressional oversight hearings involving the selection of bid cities. He also represented clients in campaign finance investigations conducted by the Department of Justice and Congressional Committees. He has represented defendants in Foreign Corrupt Practices Act, RICO and False Claims Act cases.

Richard has served as a sole or panel arbitrator in dozens of cases. He is a former member of the DC Attorney/Client Arbitration Board and has previously served as co-chair of the DC Bar's Litigation Section. He currently serves as a mediator for the U.S. District Court for the District of Columbia. A Martindale-Hubbell AV-rated attorney, he was recognized in ALM's 2013 "Legal Leaders: Washington DC and Baltimore Top Rated Lawyers."

### Representative Matters

- Represented beta-alanine dietary supplement patent owner in infringement case in which the defendant agreed to settle and exit the business.
- Represented plaintiff in patent litigation involving antibody detection kits and systems directed to human papillomavirus (HPV).
- Representing dietary supplement company in patent, trademark and copyright infringement and breach of license cases.
- Represented the Welsh Government and media companies in copyright infringement case.
- Defended an electronic cigarette seller in multiple patent infringement cases.
- Represented Fortune 500 company in multiple patent cases regarding safety needles.
- Represented French company in ANDA patent litigation involving drug delivery systems.
- Defended Australian company in U.S. patent litigation involving RNAi technology.
- Represented biotech companies in patent litigation involving nucleic acid array and RNase H-reverse transcriptase products.
- Represented biotech company in International Trade Commission section 337 investigation of amino acid patent infringement.

### Practice

- Corporate, Commercial and Business Law
- Intellectual Property
- Intellectual Property Litigation
- Litigation

### Industries

- Biotechnology
- Dietary Supplement
- Life Sciences
- Medical Device
- Pharmaceutical

### Related Media

- Dietary Supplement Legal Update - June 2017
- Porzio Congratulates Scott Chambers and Richard Oparil for their Inclusion in 2017 Washington DC Super Lawyers Rankings
- Porzio's Washington DC Intellectual Property Practice is Featured in The National Law Journal

### Bar Admissions

- District of Columbia
- New York
- U.S. Court of Appeals, Federal Circuit
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. Court of Appeals, 4th Circuit
- U.S. Court of Appeals, 9th Circuit
- U.S. District Court, District of Colorado
- U.S. District Court, District of Maryland
- U.S. District Court, Eastern District of Wisconsin
- U.S. District Courts, Eastern, Northern, and Southern Districts of New York
- U.S. District Courts, Eastern, Northern, Western, and Southern Districts of Texas
- Court of Federal Claims
- U.S. Supreme Court

### Education

**Case Western Reserve University School of Law**, Cleveland, Ohio, J.D., *magna cum laude*, 1985

- Order of the Coif
- Winner, Ault Moot Court Competition

- Successfully settled infringement claims against energy optimization system provider.
- Drafted a successful U.S. Supreme Court brief on patent standing and damages issues for a Japanese biotechnology company.
- Authored amicus briefs for biotechnology and natural products associations.
- Obtained judgments and consent judgments for United Kingdom defense contractor on patent and trade claims.
- Represented oxygenated wound dressing company in arbitration with its joint venture partner.
- Represented dietary supplement consultant in arbitration of contract dispute.
- Represented software company in breach of licensing agreement dispute.
- Tried one of the first successful false patent marking cases, Clontech Labs. v. Invitrogen Corp.
- Represented a chemical company in the damages phase of a patent infringement suit.
- Represented a senior officer and director of Enron Corporation in congressional investigations.
- Represented a witness at Congressional oversight hearings involving the selection of bid cities by the International Olympics Committee.
- Represented a client in a campaign finance investigation by the Department of Justice and congressional Committees.
- Conducted an internal investigation of alleged wrongdoing by members of the board of a trade association.
- Represented a not-for-profit student lending company in a \$70 million breach of contract case against its former loan processor and servicer in the U.S. District Court for the District of Minnesota.
- Represented an Internet publisher in a deception and unfair business practices action brought by the Federal Trade Commission and the New York Attorney General.
- Represented electronic alert system company in government contract bid protest hearing.
- Represented company in Federal Trade Commission investigation of patent assertion entities.

#### Government Service

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- Legislative Assistant, New York State Assembly, 1981 - 1982

#### Publications

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- "[Dietary Supplement Legal Update](#)," Porzio Dietary Supplement Legal Update, April 26, 2017.
- "[Dietary Supplement Legal Update](#)," Porzio Dietary Supplement Legal Update, September 22, 2016.
- "[Dietary Supplement Legal Update](#)," Porzio Dietary Supplement Legal Update, August 2016.
- "[Supreme Court Eases Test For Awarding Enhanced Damages For Willful Patent Infringement](#)," Porzio DC Client Alert, June 14, 2016.
- "[Washington Redskins Ask Supreme Court to Reconsider 'Disparaging' Trademark Rule](#)," Porzio DC Client Alert, April 27, 2016.
- "[Dietary Supplement Legal Update](#)," Porzio Dietary Supplement Legal Update, April 2016.
- "[Dietary Supplement Legal Update](#)," Porzio Dietary Supplement Legal Update, December 2015.
- "[Claims Substantiation and the Bayer Case](#)," NPA NOW, September 2015.
- "[FDA Issues Warning Letter for Kardashian Social Media Posts Promoting Drug](#)," Porzio DC Client Alert, August 19, 2015.
- "[Federal Circuit Okays ITC's Power To Hear Induced Infringement Cases](#)," Porzio DC Client Alert, August 12, 2015.
- "[Federal Trade Secrets Legislation Introduced](#)," Porzio DC Client Alert, August 5, 2015.
- "[Supreme Court Changes The Standard Of Review For Claim Construction Decisions](#)," Porzio DC Client Alert, February 3, 2015.
- "[Government Investigations Alert](#)," Porzio DC Client Alert, January 8, 2015.
- "[Supreme Court Will Review The Federal Circuit's Decision That A Good Faith Belief That A Patent Is Invalid Is A Defense To Induced Patent Infringement](#)," Porzio DC Client Alert, December 9, 2014.
- "[Patent Assertion Entity MPHJ Loses its Suit to Stop FTC Investigation](#)," Porzio DC Client Alert, October 2, 2014.
- "[Assistant Attorney General Announces Stepped Up Use of False Claims Act in Criminal Health Care Fraud Investigations](#)," Porzio DC Client Alert, September 25, 2014.
- "Oral Contracts in "Complex" Business Transactions Are Not Enforceable In The Fourth Circuit," ABA Commercial and Banking Litigation Committee Newsletter, 1995.

- Editor, Case Western Reserve Law Review

**Syracuse University**, Syracuse, New York, B.A., 1981

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- "Obtaining Federal Court Trial Testimony From Nonresident Corporate Officials: The Rules Need Revision," 25 Akron L. Rev. 571, 1992.
- "If At First You Don't Succeed: Impediments To A Second Removal To Federal Court Of A Previously Remanded Case," 37 S. D. L. Rev. 523, 1992.
- "Preemption and the Federal Arbitration Act," 13 Geo. Mason U. L. Rev. 325, 1991.
- "Immunity of International Organizations in United States Courts: Absolute or Restrictive?," 24 Vanderbilt J. Transnational L. 689, 1991.
- "The Coming Impact of the False Claims Act," 22 Akron L. Rev. 525, 1989.
- "Making the Defendant's Case: How Much Assistance Must the Prosecutor Provide?," 23 Am. Crim. L. Rev. 447, 1986.
- "Waiver of Sovereign Immunity in the United States and Great Britain by an Arbitration Agreement," 3 J. Int'l Arb. 61, 1986.

#### **Honors and Awards**

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- Recognized on Washington, DC Super Lawyers list, Intellectual Property, 2017

#### **Honors and Awards**

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## Carmen Andrade



### Counsel

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Carmen Andrade concentrates her practice in the areas of real estate and corporate law. She provides nationwide, transactional services to her clients in all aspects of commercial real estate as well as corporate and general business matters.

Ms. Andrade leverages her prior general counsel positions with real estate developers, private lenders and retail companies and works with individuals and companies in all aspects of the sale, acquisition, leasing, financing, and development of a variety of real estate including undeveloped, industrial, office and retail properties.

She also handles a variety of corporate and commercial transactions including the purchase, sale, formation, and restructuring of businesses and corporate entities; asset-based lending; and stock transfers. Additionally, Ms. Andrade drafts and negotiates general corporate and business agreements including joint ventures, operating, confidentiality, vendor/vendee, professional services, construction, employment and consulting agreements. She also has substantial experience representing clients in connection with general business counseling and the resolution of business disputes.

### Prior Relevant Experience

- YM LLC USA successor-in-interest to Big M. Inc., Totowa, New Jersey, *General Counsel*, Feb. 2012-May 2014; Real Estate Counsel, 2012
- Russo Development, LLC, Carlstadt, NJ, *Associate General Counsel*, Jan. 2011-Jan. 2012
- KSI Capital Corp., Paramus, NJ, *General Counsel*, Sept. 2007-June 2009
- Morrison Cohen LLP, New York, NY, *Real Estate Attorney*, July 2005-Sept. 2007
- Cole Schotz Meisel Forman & Leonard, P.A., Hackensack, NJ, *Real Estate Attorney*, Jan. 2001-June 2005
- Waters, McPherson, McNeill, P.C., Secaucus, NJ, *Attorney*, Aug. 1999-Jan. 2001
- McLaughlin & Stern, L.L.P., New York, NY, *Attorney*, Sept. 1998-Aug. 1999; *Summer Associate/Law Clerk*, 1997-1998

### Speaking Engagements

- "Substantive Scramble: Impact of Legalization of Cannabis on Commercial Leasing: The Landlord Perspective and Ethical Considerations," Ethics & Eggs, Porzio, Bromberg & Newman, P.C., Morristown, NJ, December 1, 2017.
- "Environmental Issues Related to Real Estate Purchase and Lease Transactions," CB Title Group, Paramus, NJ, November 29, 2016.
- "Environmental Issues Related to Real Estate Purchase and Lease Transactions," CB Title Group, Paramus, NJ, November 18, 2016.

### Practice

- Real Estate
- Corporate, Commercial and Business Law
- Cannabis

### Industries

- Real Estate and Construction
- Cannabis

### Related Media

- Porzio Attorneys Present on Environmental Issues Related to Real Estate Purchase and Lease Transactions

### Bar Admissions

- New Jersey, 1998
- New York, 1999

### Education

- New York Law School, New York, NY, J.D., 1998
- Montclair State University, Montclair, NJ, B.A., French/Political Science, 1995

### Languages

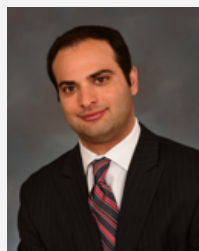
French  
Spanish

### Contact Address

100 Southgate Parkway  
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## David L. Disler



### Associate

Morristown, NJ

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David L. Disler is a litigator who partners with private and public entity clients to advise on a variety of employment and education law subjects, including compliance with state and federal statutes and regulations, employment-related matters, tenure issues, grievances, construction concerns, healthcare and benefits, and, labor relations.

Mr. Disler investigates and counsels on allegations of discrimination, harassment, retaliation, and breaches of the collective negotiations agreement. In addition, he is able to simplify matters for his clients by preparing a wide array of agreements, such as settlement agreements, shared service agreements, leases, collective negotiations agreements, and vendor contracts.

Mr. Disler is a member of the firm's Litigation Practice Group and has authored numerous articles for a variety of publications, including the New Jersey Law Journal, the American Bar Association's TIPS Employment and Labor Law Committee Newsletter, and the New Jersey Police Chief Magazine.

He presently serves on the Board of Directors for the Lehigh Lawyers Association, on the Board of Trustees for the Roseland Glenn Condominium Association, and as the Morris County co-coordinator for the Vincent J. Apruzzese High School Mock Trial Competition.

Mr. Disler earned his J.D. degree, cum laude, from Brooklyn Law School, and his B.A. degree, magna cum laude, from Lehigh University.

### Prior Relevant Experience

- Fogarty & Hara, Esqs., Fair Lawn, NJ, *Associate*, September 2014 – June 2016.
- Hon. Frances A. McGrogan, Superior Court of New Jersey, Hackensack, NJ, *Judicial Law Clerk*, 2013 – 2014.
- Bursor & Fisher, New York, NY, *Legal Intern*, Spring 2013.
- The Goodman Law Firm, Brooklyn, NY, *Legal Intern*, Fall 2012.
- Hon. Devin P. Cohen, New York City Civil Court, Brooklyn, NY, *Judicial Intern*, Summer 2012.
- Employment Law Clinic, Brooklyn Law School, Brooklyn, NY, *Clinic Intern*, Spring 2012.
- Children's Law Center Clinic, Brooklyn, NY, *Clinic Intern*, Fall 2011.
- City of Newark Law Department, Newark, NJ, *Legal Intern, Labor and Employment Section*, Summer 2011.

### Organizations/Memberships

- Lehigh Lawyers Association, Membership & Communication Committee
- New Jersey Association of School Attorneys

### Publications

- "[Equal Pay and Gender Equality Prioritized By Governor Murphy](#)," Porzio Employment Law Monthly, January 2018.
- "[Negotiating Indemnification Provisions and Agreements](#)," National Business Institute, December 2017.
- "[PERC Upholds Mandatory Contributions Under Chapter 78](#)," New Jersey School Boards Association's *School Board Notes*, December 5, 2017.
- "[Recreational and Medical Marijuana In New Jersey - What Is An Employer To Do](#)," Porzio Employment Law Monthly, December 2017.

### Practice

- Employment and Labor
- Education
- Litigation
- Cannabis

### Industries

- Cannabis

### Related Media

- [Equal Pay and Gender Inequality Prioritized By Governor Murphy](#)
- [David Disler and Eliyahu Scheiman to Present at NBI Seminar](#)
- [Porzio Associate David Disler Presenting at the New Jersey School Boards Association's School Law Forum](#)

### Bar Admissions

- New Jersey
- New York
- U.S. District Court, District of New Jersey

### Education

**Brooklyn Law School**, Brooklyn, NY, J.D., cum laude, 2013

- Academic Achievement Scholarship
- Brooklyn Law School Pro Bono Award
- Carswell Scholarship
- Centennial Grant
- Dean's Merit Scholarship
- Professor Nancy H. Fink Award

**Lehigh University**, Bethlehem, PA, B.A., magna cum laude, Political Science and Science, Technology & Society, 2010

- Dean's List
- Francis Shoemaker Award for Excellence
- University Honors Convocation

### Contact Address

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Morristown, NJ 07962-1997

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- ["Is It Really Work If You're Having Fun? Shedding Light on the Employment Protections Afforded to College Students,"](#) ABA TIPS Employment and Labor Law Committee Newsletter, Winter 2017.
- ["New Jersey Municipalities Catch Paid Sick Leave Fever,"](#) New Jersey Law Journal, April 17, 2017.
- ["Appellate Division Does Not 'Waiver' - Recent Decision Provides Guidance on the Enforceability of Jury-Waiver Agreements in New Jersey,"](#) Porzio Employment Law Monthly, March 2017.
- ["New Jersey Appellate Division Increases Requirements Under the Open Public Meetings Act,"](#) The NJ Police Chief Magazine, March 2017.
- ["Court Gives Immunization Policy Shot in the Arm,"](#) Porzio Employment Law Monthly, October 2016.
- ["Morristown Ordinance Alert,"](#) Porzio Client Alert, October 2016.

### **Speaking Engagements**

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- "Negotiating Indemnification Provisions and Agreements," National Business Institute, Newark, NJ, December 21, 2017.
  - "Battle of the Sexes: Waging War Over Pay Equity," Porzio Employment Law Forum, Morristown, NJ, November 15, 2017.
  - "Negotiating Healthcare Benefits and the Sunset of Chapter 78," New Jersey School Boards Association School Law Forum, Atlantic City, NJ, October 26, 2017.
  - "National Labor Relations Board Decisions Affecting Unionized and Non-Unionized Workplaces," National Business Institute, Newark, NJ, December 7, 2016.
  - "Cyber Security For Employers: Not A Question Of If, But When," Porzio Employment Law Forum, Morristown, NJ, November 15, 2016.
-

## Frank Fazio



### Principal

Morristown, NJ

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✉ ffazio@pbnlaw.com

Frank Fazio is a principal of Porzio, Bromberg & Newman and a registered pharmacist in the State of New Jersey. As a member of the firm's Life Sciences Compliance and Regulatory Counseling Department, his legal practice includes conducting third-party vendor PDMA compliance audits, counseling pharmaceutical manufacturers and wholesale distributors on licensing, record-keeping and pedigree issues, and providing guidance on OIG compliance, off-label promotion and other regulatory issues involving sales and marketing practices. A seasoned litigator, Frank also defends manufacturers in pharmaceutical and medical device product liability litigation. Frank is a frequent speaker on topics involving state, federal and international regulation of pharmaceutical sales and marketing practices.

Frank is also Vice President of Distribution and Licensing Services of Porzio Life Sciences, LLC, a wholly owned subsidiary of the law firm. In this role, Frank works with both emerging and established pharmaceutical companies in obtaining the necessary state distribution licensure for legend and controlled drugs, medical devices, and over-the-counter products. He also works with companies as an outsource solution for the management of renewal licensure and audits the licensure status of pharmaceutical companies and their vendors. Frank also collaborates with Porzio Life Sciences regulatory analysts to manage the content of the company's products.

### Prior Relevant Experience

- Medical Center Pharmacy, *Pharmacist*, 1986–1989
- Registered Pharmacist, State of New Jersey, 1986–present

### Opinions, Decisions and Cases

- *Michelman v. Ehrlich*, 311 N.J. Super. 57, 709 A.2d 281 (App. Div.); certif. denied, 156 N.J. 405, 719 A.2d 637 (1998)

### Organizations/Memberships

- Union Center National Bank, Advisory Board
- New Jersey State Bar Association, Young Lawyers Division, Treasurer, 1996–1997; Executive Committee, At-Large Representative, 1991–1996; Morris County Representative, 1996–1997; Seminars Committee, 1995–1997; Membership Committee, Co-Chair, 1996–1997; Race Judicata Committee, Chair, 1991–1994; New Jersey Lawyer, The Magazine, Editorial Board, 1996–2001
- American Pharmacists Association
- Congress of the Fellows of the Center for International Legal Studies, Charter Fellow
- International Business Law Consortium
- American Chemical Society
- HDMA (Healthcare Distribution Management Association), Allied Member: Pozio Life Sciences
- New York State Bar Association

### Publications

- "Getting the Deal Through - Life Sciences 2014," United States Chapter, published by *Getting the Deal Through*, 2014.
- "Shoot First...Michigan Imposes New Requirement On The Pharmaceutical Supply Chain," *Pharmaspective*, September 24, 2014.
- "Massachusetts Life Science Companies: Stuck Between a Rock and a Hard Place," *Pharmaspective*, September 5, 2014.

### Practice

- Compliance and Regulatory Counseling
- Life Sciences
- Life Sciences Litigation
- Litigation
- Product Liability

### Industries

- Biotechnology
- Life Sciences
- Manufacturing
- Medical Device
- Pharmaceutical

### Related Media

- Porzio Principal, Frank Fazio, Quoted in PM360 Article
- Porzio Life Sciences Profiled by International Federation of Pharmaceutical Wholesalers
- Porzio Attorneys to Present at CBI's 14th Annual Pharmaceutical Compliance Congress

### Bar Admissions

- New Jersey, 1989
- New York, 1990
- United States District Court, District of New Jersey, 1989
- United States District Court, Southern District of New York, 1995
- United States District Court, Eastern District of New York, 1995
- United States Court of Appeals, Third Circuit, 1995

### Education

**Seton Hall University School of Law**, Newark, New Jersey, J.D., *cum laude*, June 1989

- Appellate Moot Court Board
- Peter W. Rodino, Jr. Law Society
- High School MENTOR program

**University of New Mexico College of Pharmacy**, Albuquerque, New Mexico, B.S., Pharmacy, May 1986

### Contact Address

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Phone: 973.538.4006

- "Getting the Deal Through - Life Sciences 2013," United States Chapter, published by *Getting the Deal Through*, 2013.
- Quoted in "Licensed to Sell?," *IMDA Update*, September 2012.
- "Getting the Deal Through - Life Sciences 2012," United States Chapter, published by *Getting the Deal Through*, February 2012.
- "Strategizing Publication: Ghostwriting on the Heels of AstraZeneca's 2010 Corporate Integrity Agreement," *Bloomberg Law Reports - Pharmaceuticals, Medical Devices & Biologics*, June 22, 2010.
- "Prescription Drugs: Consumer Fraud in Sales and Marketing," *LJN's Product Liability Law & Strategy*, Volume 26, Number 5, November 2007.
- "Abusus non tollit usum, Part Two: China," *Drug Discovery & Development Magazine*, October 2007.
- "Abusus non tollit usum: Part One," *Drug Discovery & Development Magazine*, September 2007.
- "The Shifting Sands of Wholesale Distribution," *Thought Leadership Sales and Marketing Compliance*, Volume 2, Issue 5, Winter 2007.
- "Will the Real Drug Manufacturer Please Stand Up?," *LJN's Product Liability Law & Strategy*, Volume 25, Number 1, July 2006.
- "FDA Lifts Stay on PDMA Pedigree Provisions: Is Your Company Prepared?," *Porzio Pharmaceutical Alert*, Volume II, No. 6, June 26, 2006.
- "Protecting Manufacturers from Qui Tam Actions Under the False Claims Act," *IADC Medical Defense Newsletter*, November 2005.
- Manuscript, "Product Line Successor Liability: A Blast from the Past," Product Liability From A to Z, New Jersey Institute for Continuing Legal Education, April 27, 2002.
- "Playing the Forum Selection Trump Card: A Practical Guide to Removal," 156 *New Jersey Law Journal* 231, April 19, 1999.
- "Product Line Successor Liability: Back Through the Looking Glass?," *New Jersey Lawyer—The Magazine*, No. 191, May/June 1998.
- "Products Liability Exposure for Trade Associations and Their Members," Presented at ABA Section of Litigation Annual Meeting, April 17, 1997.
- "Protecting Choice of Forum Through Anti-Suit Injunctions," *Environmental Compliance & Litigation Strategy*, Vol. 12, No. 2, July 1996.
- "Calculating Future Losses in P.I. Actions," 5 *New Jersey Lawyer* 416, February 26, 1996.
- "What You Can't Know, Shouldn't Hurt You: State-Of-The-Art in the Strict Liability Action," American Bar Association, Order Code No. 5310-2011.
- "An Analysis of Comparative Fault in Design Defect-Based Product Liability Cases," *New Jersey Lawyer—The Magazine*, No. 150, January 1993.
- "A Blast From The Past: An Overview of American Successor Liability," *Product—Liability International*, Lloyd's of London Press, January 1993.
- "Sharing Damages in Multiparty Toxic Tort Cases," *New Jersey Law Journal*, October 19, 1992.
- "Emerging Product Liability and Toxic Tort Risks—Electromagnetic Energy, Byproducts, Lead and Corporate Criminal Liability," Presented at ABA Annual Meeting, Aug. 10, 1992, *ABA Tort and Insurance Practice Publications*, 1992.
- "Corporate Caveat Emptor—Now More Than Ever—A Guide To Successor Liability For Defective Products In A Changing World," 3 *Products Liability Law Journal* 1, November 1991.
- "Just When You Thought It Was Safe To Go To The Jury—A Product Liability Update," *New Jersey Lawyer—The Magazine*, No. 143, November/December 1991.

### Speaking Engagements

- Moderator, "Compliance Champion Exchange," CBI's 7th Annual West Coast Compliance Congress, San Francisco, CA, November 9, 2016.
- "State Licensing and Other Compliance Considerations in Planning a U.S. Launch," BioWales, Cardiff, Wales, March 2, 2016.
- "Crisis Management/Recalls-Effects of Counterfeit Drugs and Healthcare Risks to Consumers," National Society of Hispanic MBAs New Jersey 2nd Annual Regional Healthcare Summit, Montclair, NJ, June 13, 2014.
- "State Licensing and Hospital Policies: An Overview," CBI's 4th Annual West Coast Compliance Congress, San Francisco, CA, November 13, 2013.
- "State Licensing and Medical Devices: An Overview." IMDA's Annual Conference & Manufacturers Forum, Orlando, FL, June 10, 2013.

- "Disaster Recovery of a Law Practice: Lessons Learned from Superstorm 'Sandy,'" International Business Law Consortium, Paris, France, March 15, 2013.
  - "Diffusing the Dangers of Distribution," The Life Sciences Industry Under Attack— Mitigating the Risks, Seventh Annual Porzio Compliance Forum, Newark, NJ, October 14, 2011.
  - "Authorship Standards for Scientific and Medical Research," ACI's 8th National Conference on Managing Legal Risks and Avoiding Conflicts of Interest in Medical Affairs," Philadelphia, PA, December 7, 2009.
  - Moderator, "Compliance in the New Era of Governmental Activism — Distribution Licensing Panel," Fifth Annual Porzio Compliance Forum, Porzio Pharmaceutical Services, LLC, Basking Ridge, NJ, October 7, 2009.
  - "State Licensing Requirements for Manufacturers", CBI 's Drug Tracking Summit, Princeton, NJ, May 15-16, 2008.
  - "Aggregate Expense Tracking in the States," Third Annual Porzio Compliance Forum, Porzio Pharmaceutical Services, LLC, Basking Ridge, New Jersey, September 26, 2007.
  - "Off-Label Promotion — State and Federal Prosecutions," CBI's 8th Annual Guidelines for Disseminating Off-Label Information, Arlington, Virginia, October 26-27, 2006.
  - "International Codes of Ethics: Creating a Global Compliance Program Across Borders and Cultures," Second Annual Porzio Compliance Forum, Porzio Pharmaceutical Services, LLC, Basking Ridge, New Jersey, September 13, 2006.
  - "Legal Risks Associated with Poor Complaint Trending," Center for Business Intelligence, Fourth Annual Pharmaceutical Product Complaints Conference, June 15, 2006.
  - "Complying with New State Initiatives Related to Marketing and Promotional Practices by Device Manufacturers," American Conference Institute, Fourth National Conference on Reducing Legal Risks in the Sales and Marketing of Medical Devices, May 24, 2006.
  - "State Laws Governing Pedigree and Authorized Distributors of Record," Pharmaceutical Compliance Forum, Livingston, New Jersey, September 27–28, 2005.
  - "Privilege & Professional Secrecy," Business Law Consortium Business Development Meeting, Dresden, Germany, September 22, 2005.
  - "Controlled Substance Diversion: Enforcement actions against industry professionals in violation of federal law," 2005 PDMA Sharing Conference, Orlando, Florida, September 20, 2005.
  - "'May We Have Your Fingerprints Please?' State Laws Governing Pedigree and Authorized Distributors of Record," First Annual Porzio Compliance Forum, Bedminster, New Jersey, September 14, 2005.
  - "American Successor Liability and its Potential Impact on Acquiring Companies," Presented at the Third Annual Convocation of the Congress of the Fellows of the Center for International Legal Studies, Vienna, Austria, July 15–17, 2005.
  - "Stand Up to Increased FDA and Public Scrutiny Through Early Evaluation of Legal Risk and Product Liability," Center for Business Intelligence's 3rd Annual Pharmaceutical Product Complaints Conference, Philadelphia, Pennsylvania, June 16, 2005.
  - "The Use of Mandatory Binding Arbitration Clauses in Consumer and Professional Services Contracts," Presented at the Second Convocation of the Fellows of the Center for International Legal Studies, Rome, Italy, May 7–9, 2004.
  - "Product Line Successor Liability: A Blast from the Past," Product Liability A to Z, New Jersey Institute for Continuing Legal Education, April 27, 2002.
  - "Protecting Choice of Forum Through Anti-Suit Injunctions," Free Movement of Civil Justice Conference in Salzburg, Austria, Presented By The Center For International Legal Studies in Cooperation With Franklin Pierce Law Center and The American Bar Association—Section on International Law and Practice, November 3, 2001–November 6, 2001.
  - "Proving Economic Damages," New Jersey Institute for Continuing Legal Education, December 6, 1995, January 6, 1996 and January 20, 1996.
  - "Proving Damages—Economic Damages, Aggravation of Preexisting Conditions and Calculation of Future Losses," New Jersey Institute For Continuing Legal Education, June 24, 1995.
  - "Insurance Issues In Toxic And Environmental Contamination—Pulling The Trigger And Activating Coverage," New Jersey Institute For Continuing Legal Education, November 16, 1991.
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## Peter J. Gallagher



### Counsel

Morristown, NJ

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Peter Gallagher is an accomplished litigator with experience representing clients in commercial disputes, and counseling clients on various issues in an effort to mitigate potential problems before they become the subject of litigation. Over the course of his career, Pete has represented clients at the trial and appellate levels in state and federal courts in both New York and New Jersey. As a generalist, he has enjoyed a wide-ranging practice requiring flexibility to respond to the ever-changing needs of clients faced with business disputes in divergent fields including real estate, telecommunications, financial services, pharmaceuticals, and healthcare. At Porzio, Pete has continued to focus his practice on general commercial litigation, while also representing the firm's real estate clients in matters involving commercial lease litigation, real estate contract disputes, prerogative writs, and zoning appeals. Regardless of the engagement, his approach is detail-oriented and focused on understanding the clients' business objectives and working with clients to achieve their goals cost-effectively and efficiently.

An avid writer, Pete has authored articles for publications ranging from the New Jersey Law Journal to journals at the Georgetown University Law Center and the Seton Hall University Law School. He is also the editor and blogger of Pete's Take.

In addition, since 2005, Pete has helped teach the next generation of legal writers as an adjunct professor of Legal Research and Writing at the Seton Hall University School of Law. In recognition of his work at the law school, he was nominated for Adjunct Professor of the Year 2011.

### Prior Relevant Experience

- Greenberg Traurig, LLP, Florham Park, New Jersey, *Associate*, 2006-2010
- Boies, Schiller & Flexner, LLP, Short Hills, New Jersey, *Associate*, 2005
- Drinker Biddle & Reath LLP, Florham Park, New Jersey, *Associate*, 2001-2005

### Opinions, Decisions and Cases

- *In re N.J.A.C. 7:1B-1.1 et seq.*, \_\_\_ N. J. Super. \_\_\_, 2013 WL 1150506 (App. Div. March 21, 2013)
- *State v. Minitee*, 210 N.J. 307 (2012)
- *State v. Kaltner*, 210 N.J. 114 (2012)
- *Holt v. Laube*, 2011 WL 6141466 (App. Div. December 12, 2011)
- *North American Steel Products, Inc. v. Watson Metal Products, Corp.*, et al., 2010 WL 3724518 (D.N.J. Sept. 14, 2010), *aff'd* 2013 WL 1095445 (3d Cir. March 18, 2013)
- *State v. Broom-Smith*, 201 N.J. 229 (2010)
- *State v. Webster*, 190 N.J. 305 (2007)
- *Lance v. McGreevey*, 180 N.J. 590 (2004)
- *J.O. ex rel. C.O. v. Orange Tp. Bd. Of Educ.*, 287 F.3d 267 (3rd Cir. 2002)

### Honors and Awards

- Top 50 Verdicts in New Jersey, TopVerdict.com, *Danish Crown Amba v. Rupari Food Services*, 2016
- New Jersey State Bar Association, Amicus Curiae Award, 2016
- Recognized by New Jersey Law Journal on their annual "New Leaders of The Bar" list of attorneys, 2013
- Recognized on the New Jersey Super Lawyers "Rising Stars" List, 2007-2014
- Selected by Benchmark Litigation as a "Future Star," 2008

### Practice

- Corporate, Commercial and Business Law
- Business Disputes and Counseling
- Business Divorce
- Litigation
- Real Estate
- Land Use and Redevelopment
- Real Estate
- Real Estate Litigation
- Cannabis

### Industries

- Financial Services
- Real Estate and Construction
- Telecommunications
- Cannabis

### Related Media

- Marijuana Series: Virginia Legislature Approves Expanded Use Of Cannabis-Derived Oils
- Porzio Counsel Peter Gallagher Quoted in Article on New Jersey Consumer Law
- Porzio Recognized in 2016 Top 50 Verdicts in New Jersey

### Bar Admissions

- New Jersey, 2001
- New York, 2003
- United States District Court for the District of New Jersey, 2001
- United States Court of Appeals for the Third Circuit, 2009
- United States Supreme Court, 2010

### Education

**Georgetown University Law Center**, Washington, D.C., J.D., 2001

- Georgetown University Criminal Justice Clinic
- *Georgetown Journal on Poverty Law and Policy*, Executive Editor

**The College of New Jersey**, Ewing, New Jersey, B.A., 1996

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## Honors and Awards

### Organizations/Memberships

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- New Jersey Supreme Court Appointment to the District V-C Ethics Committee, 2008 - present
- American Bar Association
- New Jersey State Bar Association - Amicus Committee
- Association of Criminal Defense Lawyers, New Jersey

### Publications

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- "[Virginia Legislature Approves Expanded Use Of Cannabis-Derived Oils](#)," *Porzio Marijuana Series*, March 8, 2018.
- "[Federal Reserve Approves Colorado Credit Union To Serve Cannabis Industry \(But There's A Catch\)](#)," *Porzio Marijuana Series*, March 6, 2018.<
- "[When is an LLP not an LLP](#)," *New Jersey Lawyer*, June 2016.
- "[Commercial Tenancies, Complexity, and the Limits of the Summary Eviction Process](#)," Society of Industrial and Office Realtors, New Jersey Chapter, August 2015.
- "[The Case of the Missing Double Eagle Coins](#)," *New Jersey Law Journal*, June 22, 2015.
- "[New Jersey Law Journal titled Justices Make Procedural Requirements for Removal Under CAFA Entertaining](#)," *New Jersey Law Journal*, February 19, 2015.
- "[A Closer Look At Supreme Court's Jesinoski Opinion](#)," *Law360.com*, January 13, 2015.
- "[Why Can't We Be \(Facebook\) Friends? You Be The Judge](#)," *Law360.com*, November 18, 2014.
- "[Attorney-Client Privilege May Not Shield Documents Requested by Shareholders Under Delaware Law](#)," Association of Corporate Counsel Focus on the New Jersey Chapter, October 1, 2014.
- "[Delaware Court Compels Production Of Attorney-Client Communications As Part Of Shareholders Investigation Into Corporate Misconduct](#)," *Porzio Commercial Litigation Briefs*, September 2014.
- "[The Problem With 'Plain Meaning'](#)," *Law360.com*, August 12, 2014.
- "[Who Can Assert the Attorney-Client Privilege After A Corporation Is Sold - The Seller or The Buyer?](#)," Association of Corporate Counsel New Jersey Chapter, March 4, 2014.
- "[Supreme Court Clarifies Rules for Enforcing Forum-Selection Clause](#)," *New Jersey Law Journal*, January 27, 2014.
- "[Courts Can Make Better Use Of 'The Boss'](#)," *Law360.com*, January 2, 2014
- "[The Waiver Rule](#)," *Porzio Update*, March 22, 2013.
- "[Privacy of Privileged Communications on Personal, Password-Protected E-mail Accounts](#)," Association of Corporate Counsel Focus on the New Jersey Chapter, May 2012.
- "[Supreme Court Decision on GPS Monitoring Provides Little Direction to Future Litigants](#)," *New Jersey Law Journal*, March 26, 2012.
- "[When It Comes to Removal, Timing is Everything](#)," *New Jersey Law Journal*, December 26, 2011.
- "[No Exceptions to Good Faith](#)," *New Jersey Law Journal*, August 22, 2011.
- "[What To Make of 'Make'](#)," *New Jersey Law Journal*, July 11, 2011.
- "[Lessons From Another Stinging Scalia Dissent](#)," *Law360.com*, June 6, 2011.
- "Going Through the (Rule 56 and Rule 50) Motions," *New Jersey Law Journal*, March 28, 2011.
- [Porzio Real Property Blog](#), 2011
- "Reader Beware: The Evolving Ethics of Reviewing E-mails Between Employees and Counsel," *New Jersey Law Journal*, March 7, 2011.
- "Don't Know Much About (Legislative) History," *Law360.com*, November 2, 2010.
- "[The Work-Product Doctrine Might Not Protect Your Attorney's Work Product](#)," *New Jersey Law Journal*, August 2, 2010.
- "[Federal-Court Door Is Now Open](#)," *New Jersey Law Journal*, May 31, 2010.
- "[Grading the Rating Agencies](#)," *New Jersey Law Journal*, April 26, 2010, reprinted in the *Philadelphia Intelligencer*, April 30, 2010.
- "A Lesson From Justice Scalia On Legislative History," *Law360.com*, April 20, 2010.
- "A Court Divided Even on Unanimous Decisions," *Law360.com*, July 13, 2009.
- "In Search of a Dispositive Answer on Whether Remand is Dispositive," *5 Seton Hall Circuit Review* 303, Spring 2009.
- "Supreme Court Charts New Path," *New Jersey Law Journal*, March 10, 2008.
- "Pleading Requirements for Security Fraud Defined," *New Jersey Law Journal*, July 30, 2007.

- "The Kids Aren't Alright: Imposing a Duty on Schools to Protect Students," Georgetown Journal on Poverty Law and Policy, Spring 2001.

### Speaking Engagements

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- "Navigating the Ethical Minefield of Promoting Attorney Awards," Legal Marketing Association Seminar, Morristown, NJ, August 16, 2016.
  - "Top 5 in Business Torts," New Jersey Association of Justice Boardwalk Seminar 2016, Atlantic City, NJ, April 7, 2016.
  - "The Effects of the Waiver Rule on NJ Developers and Other Businesses," Porzio Real Estate and Environmental Law Roundtable, Morristown, NJ, May 10, 2013.
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An experienced lobbyist, Lynn Nowak represents the interests of a wide variety of clients before the legislature and executive branch. She targets client needs, analyzes political trends and then devises and executes a legislative strategy that gets the job done.

Ms. Nowak served as president of the lobbying firm of Nancy H. Becker Associates (NBA) for several years before she merged that practice into PGA. Prior to becoming the president of NBA, she served as the firm's executive vice president and vice president of public relations.

Ms. Nowak also worked in the public sector, serving as the legislative liaison for the New Jersey Department of Commerce and Economic Development. She was responsible for the department's legislative and regulatory activities, and also acted as an adviser to the commissioner on political and public affairs matters.

In the area of political campaigns, Ms. Nowak worked as elections coordinator for the New Jersey Environmental Federation. Additionally, she was involved in fund-raising and political organizing work for the League of Conservation Voters, a national environmental political action committee. She has participated in a variety of campaigns and committees in support of Democratic officials, candidates and issues.

Ms. Nowak is a former member of the Democratic State Committee's Finance Committee and was a member of the board of directors of the Hall of Fame of New Jersey, formerly the Sports Hall of Fame.

An advocate for food safety and children's issues, Ms. Nowak has appeared on CNN and WNBC, and in Glamour magazine and the Philadelphia Inquirer, discussing the dangers of food-borne illness during pregnancy. She served on the board of the Central New Jersey Maternal and Child Health Consortium and as Vice Chair of the Board of Directors for the Statewide Parent Advocacy Network (SPAN), an organization that advocates for children with special needs and from disadvantaged families.

Ms. Nowak has served in her hometown borough of Metuchen in a variety of capacities, including as a Democratic committeewoman and as member of the Economic Development Committee. Most recently, Ms. Nowak has been appointed to the Planning Board of Metuchen.

She holds a Bachelor of Arts in Political Science from the State University of New York at Oswego and has done graduate work in Urban Planning at Rutgers University.

## Travis Scales



### Associate

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Travis Scales is an associate of Porzio, Bromberg & Newman. He concentrates his practice on Tax and Trusts & Estates Law. This allows Travis to advise his clients on tax efficient wealth preservation strategies. Business owners present particular challenges for many estate planning attorneys, because creating a proper estate plan often requires more than a simple Will. Travis will consider the unique asset mix of high-net-worth individuals to provide lifetime asset protection techniques and estate plans tailored to the specific needs and goals of each client.

In addition to estate planning, administration, and litigation services, Travis counsels individual and business taxpayers in a range of compliance and controversy matters to resolve federal, state and local tax disputes.

### Prior Relevant Experience

- Einhorn, Harris, Ascher, Barbarito & Frost, P.C., *Associate*, Denville, NJ, September 2014 - February 2017
- Honorable Joseph M. Andresini, Tax Court of New Jersey, *Judicial Law Clerk*, Hackensack, NJ, August 2013 – September 2014
- Honorable Joseph M. Andresini, Tax Court of New Jersey, Hackensack, NJ, *Judicial Intern*, May 2012 – December 2012
- Center for Social Justice Equal Justice Clinic, *Student Attorney*, Newark, NJ, January 2013 – May 2013

### Organizations/Memberships

- Morris County Bar Association, Member
- Morris County Chamber of Commerce, Member
- Estate Planning Council of Northern New Jersey, Member
- New Jersey State Bar Association, Taxation Section, Member

### Practice

- ▣ Wealth Preservation
- ▣ Elder Law
- ▣ Estate Planning
- ▣ Privately-owned Business Planning
- ▣ Trusts and Estates
- ▣ Trusts and Estates Litigation
- ▣ Cannabis

### Industries

- ▣ Financial Services
- ▣ Professional Services
- ▣ Cannabis

### Related Media

- ▣ Porzio Wealth Preservation Seminars: Fiduciary Bootcamp - Executor

### Bar Admissions

- New Jersey
- New York

### Education

**New York University School of Law**, New York, NY, LL.M. in Taxation, Anticipated May 2018

**Seton Hall University School of Law**, Newark, NJ, J.D., May 2013

- Presidential Law Scholar
- Treasurer, Tax Law Society
- Pro Bono Director, VITA Program

**New York University**, New York, NY, B.A. in Psychology, May 2009

- Dean's List

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## Brian P. Sharkey



### Principal

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Brian Sharkey is a Principal of Porzio, Bromberg & Newman. He is a member of the firm's Life Sciences Practice Group and is a Vice President of Porzio Life Sciences, a subsidiary of the firm. He counsels life sciences companies on a variety of compliance-related issues, most significantly those relating to ex-US marketing disclosure and gift limitation laws and industry codes. In particular, Brian focuses on helping companies understand and comply with global reporting requirements for transfers of value to healthcare professionals, healthcare organizations, and patient organizations. Brian has written and spoken extensively on the evolving global transparency landscape for disclosure requirements, including with respect to data privacy obligations. Brian also has experience performing internal company investigations. Brian also serves as co-chair of the firm's Cannabis Task Force that explores services that are beneficial to the emerging industry in New Jersey.

### Prior Relevant Experience

- Justice Peter G. Verniero, New Jersey Supreme Court, *Clerk*, 2000–2001
- Porzio, Bromberg & Newman, P.C., *Summer Associate*, 1999
- Office of the Attorney General, Division of Law, Newark, NJ, *Law Clerk*, 1998
- Durek & Harth, Attorneys at Law, Iselin, NJ, *Law Clerk*, 1998
- Governor's Office of Constituent Relations, Trenton, NJ, *Aide to the Governor*, 1996–1997

### Honors and Awards

- Recognized on the New Jersey Super Lawyers "Rising Stars" List, 2007, 2009-2015

### Honors and Awards

### Organizations/Memberships

- New Jersey State Bar Association
- New York State Bar Association

### Publications

- "Legislation to Reform New Jersey's Medicinal Marijuana Program Advances / Gov. Murphy Reiterates Support," *Porzio Marijuana Series*, March 26, 2018.
- "The Latest Updates On The Efforts To Legalize Marijuana In New Jersey," *Porzio Marijuana Series*, March 22, 2018.
- "Big Pharma's" Entry Into the Cannabis Market," *Porzio Marijuana Series*, March 20, 2018.
- "New Jersey Marijuana Politics Are Fluid, But Governor Murphy Remains Committed to Legalization," *Porzio Marijuana Series*, March 14, 2018.
- "Governor Murphy's Nominee for Health Commissioner Discusses Marijuana While the NJ State Association of Chiefs of Police Announces Its Opposition to Legalization," *Porzio Marijuana Series*, March 13, 2018.
- "New Jersey Assembly Oversight, Reform and Federal Relations Committee Holds First Hearing on the Impact of Potential Marijuana Legalization," *Porzio Marijuana Series*, March 12, 2018.
- "Senator Gardner Ends Absolute Hold on Department of Justice Nominees," *Porzio Marijuana Series*, February 20, 2018.
- "Members of Congress Busy Writing Letters About Marijuana," *Porzio Marijuana Series*, February 16, 2018.

### Practice

- Corporate, Commercial and Business Law
- Data Privacy and Cybersecurity
- Governmental Affairs
- Life Sciences
- Compliance and Regulatory Counseling
- Global Compliance and Counseling
- Litigation
- Product Liability
- Toxic and Environmental Tort
- Cannabis

### Industries

- Biotechnology
- Chemical
- Financial Services
- Life Sciences
- Manufacturing
- Medical Device
- Pharmaceutical
- Cannabis

### Related Media

- Sessions Comments on Enforcement of Marijuana Laws, While Representatives of States With Legalized Marijuana Ask to Meet With Him
- Marijuana Series: The Latest Updates On The Efforts To Legalize Marijuana In New Jersey
- Countdown to May 25th GDPR deadline – getting ready and thinking beyond

### Bar Admissions

- New Jersey, 2000
- New York, 2001

### Education

**Seton Hall University School of Law**, Newark, New Jersey, J.D., *magna cum laude*, 2000

- Seton Hall Law Review, Notes Editor, 1999–2000; Member, 1998–1999
- Best Oralist, Appellate Advocacy, Fall 1999
- Cybercrimes National Moot Court Competition: Champion, Best Brief, Best Oralist, 2000

- "Attorney General Sessions and Senator Gardner Battle Over Marijuana," *Porzio Marijuana Series*, February 15, 2018.
- "Governor Murphy Addresses Marijuana In His First 'Ask Governor Murphy' Episode," *Porzio Marijuana Series*, February 14, 2018.
- "The Murphy Administration Looks to Expand New Jersey's Medical Marijuana Program," *Porzio Marijuana Series: Part 3*, February 13, 2018.
- "Reaction of US Attorneys to Rescission of Cole Memo," *Porzio Marijuana Series: Part 2*, February 6, 2018.
- "Creating a Legal Framework in New Jersey for a Drug That is Illegal Under Federal Law," *Porzio Marijuana Series: Part 1*, February 2, 2018.
- "Like Beauty and Art, Transparency is in the Eye of the Beholder," *Porzio Life Sciences, LLC*, by D. Jeffrey Campbell and Brian P. Sharkey, August 2017.
- "A Milestone Moment (or a Dead Jellyfish) for the Global Transparency Movement," *Porzio Life Sciences, LLC*, by D. Jeffrey Campbell and Brian P. Sharkey, August 2016.
- "The Sun Never Sets on Transparency," Medical Writing by the European Medical Writers Association, March 2016.
- "Ready Or Not, Full Speed Ahead For The Global Transparency Movement," *Porzio Life Sciences, LLC*, by D. Jeffrey Campbell and Brian P. Sharkey, August 2015.
- "C-O-N-S-E-N-T: Find Out What it Means to You," prepared for distribution at CBI's 12th Annual Pharmaceutical Compliance Congress, January 2015.
- "[Do Start Believin!: The Life Sciences Industry's Journey to Global Transparency](#)," prepared for distribution at CBI's 8th Annual Forum on Transparency & Aggregate Spend, August 2014.
- "[Getting the Deal Through - Life Sciences 2014](#)," United States Chapter, published by Getting the Deal Through, 2014.
- "Sunshine Spreading Across the Atlantic and Over Europe," European Medical Writers Association, Vol. 22, Iss. 4, December 2013.
- "Holland. The Original Cool.," *Sunshine Abroad: International Transparency*, October 2013.
- "EFPIA Leads the Self-Regulation Charge to Try to Avoid Government-Imposed Transparency," *Sunshine Abroad: International Transparency*, July 2013.
- "The Ongoing Global Transformation in Life Sciences Transparency," by D. Jeffrey Campbell, Esq. and Brian P. Sharkey, Esq. Prepared for distribution at CBI's 7th Annual Forum on Sunshine and Aggregate Spend, August 2013.
- "Watch The Hot Spots For Pharma Self-Regulation," *Law360.com*, July 12, 2013.
- "Here Comes the Sunshine Act - This Time, In Europe," *Law360.com*, June 26, 2013.
- "Australia Takes Center Stage in the Global Debate Over Life Sciences Transparency: Legislation vs. Self Regulation," *Bloomberg BNA Pharmaceutical Law & Industry Report*, March 2013.
- "[Getting the Deal Through - Life Sciences 2013](#)," United States Chapter, published by Getting the Deal Through, 2013.
- "The Trend Towards Global Transparency: A Challenging New Work for the LifeSciences Industry," D. Jeffrey Campbell, Brian P. Sharkey (August 14, 2012) –prepared for distribution at the CBI's 6th Annual Forum on Sunshine and Aggregate Spend, August 14-16, 2012, Washington, DC.
- "New Jersey Supreme Court Provides a Mixed Result in a Medical Device Preemption Decision," *IADC Committee Newsletter, Drug, Device and Biotechnology*, October 2012.
- Attribution in article, "Win Some Lose Some," in *Science of Risk*, July 19, 2012
- Co-Author, "Getting the Deal Through - Life Sciences 2012," United States Chapter, published by Getting the Deal Through, February 2012.
- "The Federal Courts Jurisdiction and Venue Clarification Act of 2011: What it Means for Your Federal Practice," *International Association of Defense Counsel's Drug, Device, and Biotech Committee Newsletter*, January 13, 2012.
- Editor, "The New Reality of Sales Force Behavior and Management," *FDLI Monograph Series*, Vol. 2, Num 6, June 2011.
- Founder and Author, *Porzio Appellate Law Blog*, <http://porzioappeallaw.pbnlaw.com/>, 2010.
- "10 Questions, and Answers, to Get You Tweeting," *ABA Young Lawyers Division - the Young Lawyer Newsletter*, Vol. 15, No. 1, October 2010.
- "Governor Christie's Executive Orders Before the New Jersey Appellate Division: One Win, One Loss, and One "Draw" For the Governor," *ABA Business Law Section:Government Affairs Practice Newsletter*, Vol. 1, Iss. 3, Summer 2010.

- Lexis Publishing Company Commercial Law Book Award
- Chicago Title Insurance Company Award

**The College of New Jersey**, Ewing Township, New Jersey, B.A., 1997

- Brian Stack Internship Program
- Pi Sigma Alpha, National Political Science Honor Society

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- "A Controversial Campaign Finance Decision Should Not Impact Pay-to-Play Laws," New Jersey Law Journal, May 3, 2010.
- "Courts and Congress Respond to Citizens United v. Federal Election Commission," ABA Young Lawyers Division - the Young Lawyer Newsletter, Vol.14, No. 7, May 2010.
- "An Examination of New Jersey's Pay-to-Play Laws," ABA Business Law: Governmental Affairs Practice Newsletter, Winter 2010.
- "The Appellate Division Rebuffs the Attempts of Litigants to Create Appellate Jurisdiction," New Jersey Law Journal, December 14, 2009.
- "The Uncertainty Surrounding "Design" in Design Defect Cases," IADC Defense Counsel Journal, October 2009.
- "Recent Corruption Arrests Could Lead To More, And Tougher, Pay-To-Play Laws," Association of Corporate Counsel, Focus on the New Jersey Chapter, August 2009.
- "State Treasurer Defines 'State Redevelopment Entities,' Pursuant to Executive Order 118," Porzio Update, June 2009.
- Third Circuit Editor, Products Year-In-Review, DRI Product Liability Conference, April 2009.
- "The Importance of the 'Design' In a Product Liability Design Defect Case," IADC Product Liability Committee Seminar, February 2009.
- "Attorney-Client Privilege in the United States Versus Abroad and Its Effects on Multi-National Companies," IADC Product Liability Committee Webinar, January 2009.
- "The New Jersey Supreme Court Upholds the Constitutionality of the State's Pay to Play Law and Requires Strict Adherence to Its Provisions," Porzio Update, January 2009.
- "Two Recent New Jersey Cases Suggest Limited Liability for Defendants in Automotive Cases," ABA TIPS Products, General Liability and Consumer Law Committee Newsletter, Fall 2008.
- "Business Beware: Political Contributions Can Cost You Government Contracts," Porzio Update, August 2008.
- "Buyer Beware: You May Be Liable for the Defective Products of Your Predecessor" Defense Counsel Journal, Vol. 75, No. 2, April 2008.
- "New Jersey Supreme Court's Decision on Admissibility of Expert Testimony Could Affect Whether New Jersey Remains a Hotbed of Product Liability Litigation," IADC Product Liability Newsletter, December 2007.
- "Asbestos Victories Buck National Trend," New Jersey Law Journal, November 5, 2007.
- "The Product Liability Law Maze and the Consequences for Companies That Become Trapped in It," Strategies for Limiting Product Liability: Leading Lawyers on Preventing Claims, Developing Company Policies, and Mitigating Risk, Inside the Minds, October 2007.
- "Bucking the Tort Reform Trend? Manufacturer of Non-Asbestos Product Has Duty to Warn About Asbestos Dangers," LJM's Product Liability: Law and Strategy, Vol. 26, No. 3, September 2007.
- "Buyer (of the Assets of a Company) Beware," LJM's Product Liability: Law and Strategy, Vol. 25, No. 7, January 2007.
- "How the Pharmaceutical Industry is Coming Under Attack — Part II," Metropolitan Corporate Counsel, January 2007.
- "How the Pharmaceutical Industry is Coming Under Attack — Part I," Metropolitan Corporate Counsel, December 2006.
- "Talking To Your Client Could Get You In Trouble," New Jersey Law Journal, October 2, 2006.
- "Are You a Governmental Affairs Agent? New Law Broadens Definition of Lobbyist, Bestows Nebulous Title," New Jersey Law Journal, May 29, 2006.
- "Recent Developments in Products, General Liability, and Consumer Law," Tort Trial & Insurance Practice Law Journal, Winter 2006.
- "Will Congress Follow the Lead of State Legislatures and Force the Pharmaceutical Industry to Counteract the Methamphetamine Epidemic?," American Bar Association (ABA) Trial Tort and Insurance Practice Section Products, General Liability and Consumer Law Newsletter, Winter 2006.
- "New Jersey Supreme Court Holds That a Forklift Manufacturer's Compliance with OSHA Regulations Preempts State Product Liability Law," Porzio Update, January 27, 2006.
- "Will Congress Follow the Lead of State Legislatures and Force the Pharmaceutical Industry to Counteract the Methamphetamine Epidemic?," The Metropolitan Corporate Counsel, November 2005.
- "Asbestos Premises Liability Trends," IADC Defense Counsel Journal, July 2005.

- "The Class Action Fairness Act of 2005: Overview, Historical Perspective, and Settlement Requirements," Tort Trial & Insurance Practice Law Journal, Summer 2005.
- "Federal Class Action Reform Legislation Enacted After Years of Failure," American Bar Association (ABA) Products, General Liability and Consumer Law Newsletter, Spring 2005.
- "The District Court of New Jersey Predicts That the New Jersey Supreme Court Would Permit a Plaintiff to Recover Pure Economic Loss Under a Strict Product Liability Theory Despite the Economic Loss Rule," IADC Product Liability Newsletter, July 2004.
- "Defending Against Post-Sale Warning Claims," LJN's Product Liability Law and Strategy, June 2004.
- "The New Jersey Supreme Court Requires the Insured in a Long-Tail Environmental Exposure Case to Satisfy the Deductible of Each Triggered Policy," IADC Toxic and Hazardous Substances Litigation Newsletter, April 2004.
- "Will Tort Reform be the Legacy of the September 11th Victim Compensation Fund?," New Jersey Law Journal, September 8, 2003.
- "Now Is Congress' Window of Opportunity to Resolve the Asbestos Litigation Crisis," New Jersey Law Journal, February 3, 2003.
- "Asbestos Litigation Is a Crisis Spiraling Out of Control," New Jersey Law Journal, January 27, 2003.
- "Removal of a Safety Guard Could Satisfy the Intentional-Wrong Exception," New Jersey Law Journal, November 4, 2002.
- "Crawford-El v. Britton: The Supreme Court Re-Examines the Qualified Immunity Defense Within the Confines of the Federal Rules of Civil Procedure," 29 Seton Hall L. Rev. 1122 (1999).
- "Third Circuit Predicts that the Pennsylvania Supreme Court Would Not Apply the Doctrine of Apparent Authority to Enforce an Attorney's Unauthorized Settlement of a Client's Claim," 30 Seton Hall L. Rev. 409 (1999).

Marijuana Series: Senator Gardner Ends Absolute Hold on Department of Justice Nominees	2/20/2018
Marijuana Series: Members of Congress Busy Writing Letters About Marijuana	2/16/2018
Marijuana Series: Attorney General Sessions and Senator Gardner Battle Over Marijuana	2/15/2018
Marijuana Series: Governor Murphy Addresses Marijuana In His First "Ask Governor Murphy" Episode	2/14/2018
Marijuana Series Part 3: The Murphy Administration Looks to Expand New Jersey's Medical Marijuana Program	2/13/2018
Marijuana Series Part 2: Reaction of US Attorneys to Rescission of Cole Memo	2/6/2018
Marijuana Series Part 1: Creating a Legal Framework in New Jersey for a Drug That is Illegal Under Federal Law	2/2/2018

## Speaking Engagements

- "U.S. Enforcement Landscape," Medical Device Regulation and MedTech Europe Code of Ethics Business Practices Summit, London, UK, April 10, 2018.
- "Countdown to May 25th GDPR Deadline - Getting Ready and Thinking Beyond," qordata Webinar, March 21, 2018.
- "Incident and Breach Response, Gap Analysis and Risk Management within the GDPR," CBI's Life Sciences GDPR Prep Forum, Philadelphia, PA, March 12, 2018.
- "Updates and Projections for Transparency, Disclosures and Pharma Integrity Initiatives," CBI's Global Compliance Congress, London, England, November 16, 2017.
- "Gain the Edge on the EU General Data Protection Regulation (GDPR) - Are You Prepared for May 2018?," CBI's Global Compliance Congress, London, England, November 16, 2017.
- "Mini Summit XVII: Advanced Issues in Global Compliance," 18th Annual Pharmaceutical and Medical Device Compliance Congress, Washington, DC, November 7, 2017.
- "National and International Perspectives on the Threat Environment," Porzio Life Sciences Privacy & CyberSecurity Forum, Morristown, NJ, October 25, 2017.
- "Transparency and Disclosure Reporting," Seton Hall Law School's Latin America Healthcare Compliance Certification Program, Buenos Aires, Argentina, September 28, 2017.
- "EFPIA Reporting and Consent Management," qordata Webinar, August 24, 2017.

- "Progress Report of the Implementation of EFPIA Disclosure Code," CBI's 11th Annual East Coast Forum on Transparency & Aggregate Spend, Washington, DC, August 15, 2017.
- "New HCP Regulations: What AP and Compliance Teams Should Know," Concur Webinar, June 20, 2017.
- "Global Transparency Trends & Challenges," Seton Hall's European Healthcare Compliance Certificate Program, Paris, France, June 9, 2017.
- "EFPIA Reporting and Consent Management," CBI's 8th Annual West Coast Forum on Transparency and Aggregate Spend, San Diego, CA, May 24, 2017.
- "Aggregate Spend – 20 Things to Know About Transparency," 13th Annual Medical Device Compliance Congress, San Diego, CA, May 22, 2017.
- Moderator, "Impact of Self-Regulation Schemes on Industry Relationships with HCPs, HCOs and Patient Organizations," PCF International Pharmaceutical Compliance Congress, Lisbon, Portugal, May 16, 2017.
- "World Showcase - Adhere to Global Laws and Codes in Emerging Markets," CBI's 14th Annual Pharmaceutical Compliance Congress, Washington, DC, April 27, 2017.
- Moderator, "Cross-Borders Transparency Reporting," CBI's 7th Annual Global Transparency Reporting Congress, London, UK, April 5, 2017.
- Moderator, "The Evolution of Company Compliance Programs With An Eye Towards Monitoring," Porzio Compliance Forum, Newark, NJ, February 10, 2017.
- "[EFPIA Disclosure and Consent Management – Experiences from the First Round of Disclosure in 2016](#)," qordata Webinar, February 2, 2017.
- "The Intersection of Global Meetings and Global Transparency," CBI's 5th Annual Global Pharmaceutical and Medical Meetings Summit, Philadelphia, PA, February 1, 2017.
- Moderator, "EFPIA Disclosure Panel," CBI's 3rd Annual Global Compliance Congress, London, UK, November 17, 2016.
- "Optimize Global Transparency Reporting and HCP Relationship Management Strategies," CBI's 7th Annual West Coast Compliance Congress, San Francisco, CA, November 10, 2016.
- "EFPIA Data Demonstrates the Challenges Confronting Companies," 17th Annual Pharmaceutical and Medical Device Compliance Congress, Washington, DC, October 19, 2016.
- "The Challenges of EFPIA Reporting are Disclosed by the Data," Pharma Compliance Europe, London, UK, October 6, 2016.
- "First Round of EFPIA Reporting: The Data Reveals the Challenges," AHM's Life Sciences European Compliant HCP Interactions & Risk Mitigation Seminar, Windsor, UK, October 4, 2016.
- "Transparency Disclosure Guidelines Around the World," CBI's 10th Annual Forum on Transparency and Aggregate Spend, Washington, DC, August 16, 2016.
- "Global Transparency Trends & Challenges," Seton Hall's 2016 European Healthcare Industry Training: Compliance Certification Program, Paris, France, June 9, 2016.
- "Tips for Moving From Domestic to International Reporting and EFPIA-U.S. Reporting Requirements," CBI's 7th Annual West Coast Forum on Transparency and Aggregate Spend, San Diego, CA, May 18, 2016.
- "Lessons Learned from EU Sunshine Reporting Statistics and Best Practices," ACI's 10th Advanced Forum on FCPA & Anti-Corruption for the Life Sciences Industry, New York, NY, April 28, 2016.
- "Data Aggregation - Challenges with Managing Cross-Border Spend," CBI's 13th Annual Pharmaceutical Compliance Congress, Washington, DC, April 26, 2016.
- Moderator, "EFPIA/Sunshine Act," The 12th Annual Meeting of ISMPP, National Harbor, MD, April 12, 2016.
- "Data Transparency - Domestic and Abroad," The 12th Annual Meeting of ISMPP, National Harbor, MD, April 12, 2016.
- "The Latest Transparency Disclosure Guidelines Around the World," CBI's 6th Global Transparency Reporting Congress, Frankfurt, Germany, April 8, 2016.
- "[HCP Payments Transparency Outside of the US: An Evolving Complex Environment with Implications for Medical Device Companies](#)," Porzio Life Sciences, LLC Webinar, March 23, 2016.
- "[Transpa Going Global: How Reporting in the US Matches Up to the O-US Reporting Regime](#)," Porzio Life Sciences, LLC Webinar, March 3, 2016.
- "European Transparency: Lessons Learned from the American Experience," Porzio Compliance Forum, Newark, NJ, December 3, 2015.
- "Global Transparency of HCP Data - The Current Environment and Future Direction of Disclosure Code," CBI 2nd Global Compliance Congress for Life Sciences, Munich, Germany, November 19, 2015.

- Moderator, "HCP Relationship Management Post-Reporting - Lessons Learned from U.S. Sunshine Act," CBI 2nd Global Compliance Congress for Life Sciences, Munich, Germany, November 18, 2015.
- "Current Environment and Future of HCP Spend Reporting Codes Globally," CBI West Coast Compliance Congress, San Francisco, CA, November 6, 2015.
- "Implementation of EFPIA's Code on Disclosure of Transfers of Value - The Impact on Publication Strategy and Planning" at the CBI Publication and Clinical Trial Disclosure Congress, Brussels, BE, June 24, 2015.
- "Anti-Corruption and Disclosure - How the Two Work Together to Boost Compliance Using Disclosure Obligations to Fight Corruption," ACI Inaugural Summit on International Transparency, Chicago, IL, June 11, 2015.
- "Global Transparency Trends & Challenges," Seton Hall European Healthcare Compliance Certification Program, Paris, France, June 2, 2015.
- Moderator, "Mini Summit IV: Advanced Issues in Global Transparency, Disclosure and Aggregate Spend Compliance," The International Pharmaceutical Compliance Congress and Best Practices Forum, Brussels, BE, May 12, 2015.
- "The Sunshine Act and the Impact on Global Enforcement: How to Satisfy Reporting Obligations and Assess the Risks Posed by the Disclosed Data," ACI's 9th Advanced Forum on FCPA & Anti-Corruption for the Life Sciences Industry, New York, NY, April 28, 2015.
- "The Sunshine Act, One Year Later," Workshop, 11th Annual Meeting of ISMPP, Optimizing Scientific Value: Smart and Systematic Approaches to Medical Publications, Arlington, VA, April 27, 2015.
- "Around the World in 80 Days - A Tour of Various National Reporting Mandates," CBI's 5th Annual Global Transparency Reporting Congress, London, UK, April 15, 2015.
- "Global Transparency of HCP Data - Current Environment and Future of HCP Spend Reporting Code," CBI's 12th Annual Pharmaceutical Compliance Congress, Washington District of Columbia, March 3, 2015.
- "Scientific Publications and Transfer of Value Reporting," Q1 Productions, January 27, 2015.
- "Global Transparency Trends & Challenges," European Healthcare Compliance Certification, Paris, France, November 18, 2014.
- Moderator, "Uncharted Compliance Waters - Ex-U.S. Transparency Challenges," Porzio Compliance Forum, Seton Hall Law, Center for Health and Pharmaceutical Law and Policy, Newark, NJ, October 30, 2014.
- "Post Conference Master Class on Setting up an International Transparency Program: Risk Mitigation Strategies for Global Spend," 6th Annual Forum on Sunshine Act, Open Payments and Aggregate Spend Compliance, American Conference Institute, New York, New York, October 22, 2014.
- "Sunshine Abroad: Do Start Believin' - The Global Transparency Journey for the Life Sciences Industry," Porzio Life Sciences, LLC Webinar, October 2, 2014.
- "Data Privacy in the Global Transparency Era," CBI's 8th Annual Forum on Transparency & Aggregate Spend, Washington District of Columbia, August 18, 2014.
- "Disclosure of Financial Support – The Impact on Medical Publications," CBI Publication and Clinical Trial Disclosure Forum, Dublin, Ireland, June 10, 2014.
- "Global Transparency Trends and Challenges," Seton Hall University School of Law European Healthcare Compliance Certification Program, Prague, Czech Republic, June 3, 2014.
- Co-Moderator, "Mini Summit V: Advanced Issues In Global Transparency, Disclosure and Aggregate Spend Compliance," The International Pharmaceutical Compliance Congress and Best Practices Forum, May 6, 2014, Dubai, United Arab Emirates.
- "The Sunshine Act," 10th Annual Meeting of International Society for Medical Publication Professionals, Arlington, VA, April 9, 2014.
- "The Sunshine Act Abroad: A Global Perspective on Transparency Rules and Regulations," 10th Annual Meeting of International Society for Medical Publication Professionals, Arlington, VA, April 8, 2014.
- "The Status of Implementation of EFPIA's Code by Member Associations and, to the Extent Countries Have Done So, Where are There Consistencies/Inconsistencies Among Codes," The National Disclosure Summit, Washington, District of Columbia, February 7, 2014.
- Moderator on Panel, "Engaging Healthcare Professionals in the US and Overseas: Issues and Challenges," Small and Mid-Sized Life Sciences Companies Still Face Big Issues - Minimizing the Risks, Porzio Compliance Forum, Newark, NJ, October 18, 2013.



- "Global Applications of the Sunshine Act's Reporting Requirements," Lawline Video CLE, September 2013.
  - "Sunshine Abroad: Evaluating Regulations and Transparency Trends," Porzio Life Sciences, LLC Webinar, September 2013.
  - "Sunshine Abroad: Evaluating Regulations and Transparency Trends," Porzio Life Sciences, LLC Webinar, August 2013.
  - CBI's 4th Annual West Coast Forum on Sunshine and Aggregate Spend (San Diego 4/24/2013, Speaker - "Intro Class - A Crash Course in State, Federal and Global Transparency Requirements and Aggregate Spend Solution"/"Evaluate International Regulations and Global Transparency Trends""
  - "Update on International Transparency Laws and Industry-Adopted Codes," CBI's 10th Annual Pharmaceutical Compliance Congress PCC 2013, Washington, DC., January 29- 30, 2013.
  - "The Trend Towards Global Transparency - A Challenging New World for the Life Sciences Industry," 3rd Annual West Coast Compliance Congress for Pharmaceutical, Biotech and Medical Device/Diagnostics Companies, San Francisco, CA, November 28-29, 2012.
  - "Global Transparency – Lessons Learned from U.S. Reporting," Porzio Pharmaceutical Services, LLC Webinar, May 30, 2012.
  - "Understanding the International Transparency Landscape," Q1: Pharmaceutical and Medical Device Global Transparency Initiatives Conference, Boston, MA, May 21, 2012.
  - "NJICLE Presents Recent Developments in New Jersey Law," New Jersey Law Center, New Brunswick, New Jersey, August 11, 2010.
  - New Jersey Legislature Testimony re: Citizens United v. Federal Election Commission and Its Impact on New Jersey's Pay-to-Play Laws, Assembly Judiciary Committee, Trenton, New Jersey, February 18, 2010.
  - "Electronic Documents: Avoiding the Ethical Pitfalls of Metadata," Audio Conference, Center for Competitive Management, February 24, 2009.
  - Workshop on Judicial Clerkships, Seton Hall Law School, April 1, 2008.
  - "Be on Your Best Behavior: An Ethics Update for Municipal Lawyers, Lawyer-Lobbyists, Public Officials and Those who Contribute to Them," New Jersey State Bar Association Mid-Year Meeting, Santa Barbara, California, November 7, 2007.
  - "Building a Successful Legal Career: Gathering the Right Tools for the Job," Seton Hall University School of Law, Newark, New Jersey, November 2, 2002.
  - "Product Liability from A to Z," ICLE Seminar, June 29, 2002.
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