ABCA

Alcoholic Beverage and Cannabis Administration

March 14, 2024

J.P. Szymkowicz
Commissioner, ANC 3D07
Advisory Neighborhood Commission 3D
[redacted]

RE: Federal Law Does Not Interfere with the Implementation of the District's Medical Cannabis Program

Dear Commissioner Szymkowicz:

The Alcoholic Beverage and Cannabis Administration (ABCA) is in receipt of your inquiry regarding the legality of the District's medical cannabis program under federal law.

ABCA agrees with the Office of the Attorney General that the authority to issue medical cannabis licenses stems from the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code § 7-1671.01 *et seq*. Codified in Title 7 of the D.C. Official Code, it is important to note that the medical cannabis program provides various exemptions to District-specific controlled substance laws. D.C. Code §§ 7-1671.02(a)-(b), 7-1671.06(a).

It should be further noted that Title 7 of the D.C. Official Code, which governs the medical cannabis program, like other legislation enacted by the District of Columbia, has been subject to congressional review, and has not been disapproved or repealed. D.C. Code § 1-206.02(c)(1). The agency further notes that, to date, the agency is not aware of any federal entity objecting to any aspect of the District's medical cannabis program.

It is well established that cannabis is federally illegal, and that persons and entities may be subject to federal controlled substance laws. Nevertheless, Congress has also decided to repeatedly enact a budget rider protecting the District's and other state's medical cannabis programs that are currently in effect. *Consolidated Appropriates Act*, 2023 P.L. 117-328; *Consolidated and Further Continuing Appropriations Act*, 2015, PL 113-235, December 16, 2014, 128 Stat 2130 (saying that the Department of Justice (DOJ) cannot ". . . prevent . . . States

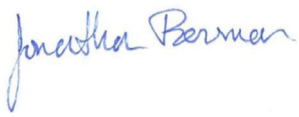
[or the District] from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana").

In practice, while this congressional rider is in effect, this means that there is a prohibition on prosecuting persons and entities acting in compliance with the District's or another state's medical cannabis program. *United States v. Bilodeau*, 24 F.4th 705, 713 (1st Cir. 2022), *cert. denied,* 142 S. Ct. 2875, 213 L. Ed. 2d 1094 (2022) ("the DOJ may not spend funds to bring prosecutions if doing so prevents a state from giving practical effect to its medical marijuana laws"); *United States v. McIntosh,* 833 F.3d 1163, 1179 (9th Cir. 2016) (saying "DOJ is currently prohibited from spending funds from specific appropriations acts for prosecutions of those who complied with state law"). As a result, at this time, the congressional rider appears to block prosecutions against District medical cannabis licensees who are compliant with the program's business location requirements found at 22-C DCMR § 5200, even if such a location violates federal distance requirements, such as the Federal Drug Free School Law, found at 21 U.S.C. § 860.

In light of the above, members of the medical cannabis industry should be aware that changes in existing federal law or policy by Congress, including not continuing the current congressional rider, may subject licensees to business closure or prosecution at any time. Indeed, the agency generally warns licensees of this possibility in 22-C DCMR § 200.4(b). Nevertheless, like thousands of others participating in medical cannabis programs, they retain the right to decide for themselves whether to take such a risk.

As a result, ABCA is not aware of any federal or District law that prohibits the issuance of medical cannabis business licenses in violation of any federal controlled substance law, including 21 U.S.C. § 860.

Regards,



Jonathan Berman
Assistant General Counsel
Alcoholic Beverage and Cannabis Administration

CC: Attorney General Brian Schwalb
Advisory Neighborhood Commission 3D