

# Law firm's new practice group digs into medical marijuana rules

By Thomas A. Barstow, June 22, 2018 at 3:00 AM



(Photo / Thinkstock)

On May 22, the law office of Hawke McKeon & Sniscak LLP learned it had won a preliminary injunction in a case challenging state rules allowing research into medical marijuana.

The lawyers had argued that the rules, issued by the state Department of Health, set up an unfair system in which dispensers of the research-related drugs wouldn't need to go through the same permitting process that other companies went through, thereby creating an unfair advantage for those dispensers.

The **Hawke McKeon** lawyers acknowledge that research is important, but contend that the regulations should allow existing dispensers and growers to distribute the medicine. The Commonwealth Court agreed, ruling that the health department needs to put its regulations regarding research facilities on hold and address the concerns of unfair competition. The rules are known as Chapter 20.

**The win** was especially meaningful for the Harrisburg-based law firm because it was one of several Hawke McKeon had won since creating a new practice group, Pennsylvania Appellate Advocate, at the start of the year.

"Not only did this team just win the preliminary injunction on the Chapter 20 regulations for the medical marijuana case ... but it has had several other wins, including the April

20, 2018 win in the Keystone ReLeaf LLC v. Pennsylvania Department of Health et al., where we represented a group of intervenors,” said Judith Cassel, one of the Hawke McKeon attorneys who is part of the firm’s Cannabis Law PA practice group.

**In that case**, Keystone ReLeaf LLC of Bethlehem had filed a complaint challenging the permitting process after it had been denied a permit. The Commonwealth Court ruled against the company – and in favor of companies represented by Hawke McKeon and others – saying Keystone ReLeaf had not exhausted its administrative remedies before the state health department.

Other cases handled so far by the new appellate practice group don’t involve the medical marijuana industry. In one, for example, the practice group sought and received a preliminary and permanent injunction in federal district court so that a nonprofit client didn’t have to turn over money to the state, Cassel said.

The state had threatened to dissolve the **Pennsylvania Professional Liability Joint Underwriting Association** if it didn’t relinquish \$200 million of its funds. State officials wanted the money to go into state coffers. The nonprofit group was established by the state in the 1970s to give physicians and hospitals access to affordable professional liability insurance.

“The court granted the requested preliminary injunction in November 2017 and granted JUA’s motion for summary judgment and entered a permanent injunction on May 17,” Cassel said in an email.

Hawke McKeon was formed in 1982. One of its founders was William T. Hawke, who had worked for the **Public Utility Commission**. The firm focused on regulated industries, primarily utilities. Today, the firm has 11 lawyers who focus on regulatory issues involving energy, insurance, telecommunications, environmental, municipal, gaming and other areas of government law, according to the firm’s website.

The Pennsylvania Appellate Advocate group includes Kevin McKeon, who has served as chairman of the Pennsylvania Supreme Court Committee on Appellate Rules. McKeon also is author of West’s Pennsylvania Appellate Practice – a rule book all practitioners use when appearing in any case before Pennsylvania appellate courts, Cassel said.

Another member of the group, Dennis Whitaker, is the only lawyer to have been appointed chief counsel to both the **Pennsylvania Department of Environmental Protection** and the **Department of Conservation and Natural Resources**, where he regularly litigated in the appeals courts of Pennsylvania, she added. They are joined by attorneys Whitney Snyder, Micah Bucy, and Melissa Chapaska, Cassel said. The Chapter 20 case was appealed by the state **Department of Health** and is now working its way through the courts, McKeon said. Earlier this month, his office outlined to the state Supreme Court arguments on why state research facilities should be able to continue research but with the marijuana dispensed by existing permit holders, rather than what would be up to eight new distributors that the health agency could allow through its regulations.

Cassel has been a part of the marijuana practice group since before the new medical marijuana law went into effect in May 2016. While the idea of creating Cannabis Law PA was discussed in-depth in the office, Cassel said, she had a particular passion for seeing it through. And the new practice group fit nicely with Hawke McKeon's core structure.

"We do a lot in the regulatory space," she said.

Cassel and her firm, of course, weren't the only proactive lawyers in Pennsylvania when it came to the 2016 law. The **Pennsylvania Bar Association** recognized that the new medical marijuana industry would create whole new areas of expertise, as businesses and the courts navigated the new regulations, said Andrew B. Sacks, managing partner and chairman of the medical marijuana and hemp department of **Sacks Weston Diamond**, a law firm in Philadelphia.

Sacks is co-chairman of the bar's committee on medical marijuana. Over time, it became increasingly clear that nearly every corner of law would be touched by the new regulations, leading the committee to set up nine subcommittees to monitor how cases evolved through the system. Those nine subcommittees are zoning/municipal regulations; workers' compensation; legislative issues; employment; health care; family law; education; banking; and criminal law.

For example, employers have long been concerned that legalization of medical marijuana might make them vulnerable to lawsuits. Most manufacturers have zero-tolerance policies for drug use and forbid the operation of heavy machinery by anyone under the influence. However, medicine sanctioned by the state but still considered illegal by the federal government **puts businesses in a bind**, observers have noted. Eventually, those issues will wind up in court.

Sacks noted that cases are cropping up with police departments where what was once clearer is now muddied. A person who is suspected of driving under the influence might be charged – after a blood test – but marijuana stays in a person's system for up to a month, perhaps long before the driver got behind the wheel, he noted.

Of the hundreds of lawyers statewide, Sacks added, about "three or four dozen" have taken deep dives into the medical marijuana arena, he said. Because the rules are new to Pennsylvania, the expertise is not built in, unless an attorney had worked in a state where the industry was established earlier, he said.

Over time, he expects the new industry will be a boon for law practices, partly because they will have no choice but to get up to speed. An attorney might have specialized his or her whole career dealing with workers' compensation cases, only to find a whole new set of issues to learn about.

"There are a lot of lawyers who are going to stumble into this," he said.

<http://www.cpbj.com/article/20180622/CPBJ01/180629976/law-firms-new-practice-group-digs-into-medical-marijuana-rules>