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## Legalized Pot Might Create Work Lawyers Fear Going After

Gina Passarella, The Legal Intelligencer

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As Pennsylvania continues to debate how and whether to legalize medical marijuana usage, ethics concerns and client pushback are forcing many lawyers to sit back on what could be the biggest industry to come to the state

since the legalization of gaming.

Lawyers and lobbyists in support of medical marijuana legalization in Pennsylvania say its passage is closer than ever, with the Senate on board and the House needing to work out some competing methods for structuring the industry. But some are more subdued in their optimism, noting the passage of a budget is probably higher on the General Assembly's priority list.

The question still seems to be when, not if, and that has caused the attorneys with marijuana companies to seek guidance and protection.

Last week, the American Trade Association of Cannabis and Hemp called for a Pennsylvania to include protections for attorneys in the space.

"Lawyers representing cannabis businesses must be able to do so without fear of losing their license by representing members of the industry," said attorney Andrew B. Sacks, managing partner of Philadelphia-based Sacks Weston Millstein Diamond and a member of ATACH's Pennsylvania state-level coalition.

Sacks is the first to acknowledge the request is purely symbolic given the Pennsylvania Supreme Court has sole power to outline attorney ethics rules.

"That whole area has been so hairy all across the country that ... to me, in my 31-year career, this is the biggest ethical issue that I have ever seen," Sacks said. "You have a federal law that says this is a crime and you have a state law that says we need you."

A lawyer hauled before the state Disciplinary Board with only a symbolic legislative protection would have a major uphill battle, Sacks said. That is why he went to the Philadelphia Bar Association for an advisory opinion on the issue. As it turned out, the Pennsylvania Bar Association also had several similar inquiries. The two associations have been working together to issue an opinion.

According to former PBA President Thomas G. Wilkinson Jr., a joint formal ethics opinion concerning marijuana-related issues not limited to medical marijuana is under review by the PBA legal ethics and professional responsibility committee and the Philadelphia bar's professional guidance committee.

"It is far along but we cannot provide a specific date when it will be finalized and issue[d]," Wilkinson said in a statement. "The PBA committee is next scheduled to meet on Sept. 30 in Pittsburgh."

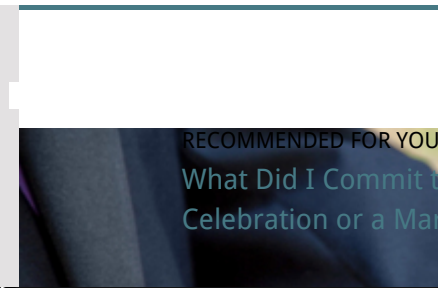
Sacks said the advisory opinion will be "crucial."

He said he knows of a number of law firms that aren't going near the industry while the federal government still considers marijuana in the same class as heroin and cocaine.

Earlier this year, for example, Ballard Spahr reportedly withdrew from representing a marijuana dispensary in New Jersey over fears the attorneys' licenses could be put in jeopardy. And other firms with large clients in the medical and life sciences fields have been told those clients might not think too highly of marijuana-related companies on the firms' client rosters.

Eckert Seamans Cherin & Mellott partner Daniel Clearfield is part of his firm's regulated substances practice group. His was one of the first firms in the area to get out ahead of the issue, forming the practice last year in order to capitalize on a \$2 billion industry nationally. While the team awaits legalization in Pennsylvania, it is using its regulatory experience to help the cannabis industry in other states.

The group was started, in part, by former Eckert Seamans partner John Hanger, who at the time said the passage really hinged on whether Democrat Tom Wolf was elected governor. Now, Hanger is serving as the director of planning and policy for Wolf, who was voted into office in November.



Clearfield said that from what his group is hearing, the passage of a bill is expected, but probably won't happen until after the budget is passed.

Even though some parties are gearing up, there is only so much that can be done until the legislation is set.

"It would be malpractice for me to tell you how to get into this business right now because we don't know what the rules will be," Clearfield said, adding later, "If I'm advising someone on how to get into the marijuana business in Pennsylvania, then I am doing something I shouldn't be doing."

In the 23 other states that have some form of legalized marijuana usage, many of the states have amended attorney ethics rules to protect lawyers entering the industry. Clearfield said he would expect something similar would be needed in Pennsylvania and said there was some concern about how long that process could take and what lawyers would do in the interim.

A spokesman for the Administrative Office of Pennsylvania Courts said there were no prior or pending rule proposals before any of the court's rule committees. He said the Disciplinary Board may be addressing the issue but could not confirm one way or the other by press time.

Clearfield said there are definitely firms concerned about the ethics of representing the cannabis industry, but he said Eckert Seamans felt the rules would allow it to represent clients in the industry by advising on how to operate within the various state rules, not how to go around the federal rules.

Many lawyers have said the Pennsylvania framework appears to be headed away from those adopted by New York or New Jersey where only a small number of dispensaries would be granted licenses, in some cases just five.

Sacks, who said he will represent individuals pro bono who are attempting to get their illnesses covered by the law, said the latest proposals seem to have upped the number of illnesses from around 10 to around 20. He said he anticipates his firm being very involved in the industry once legislation passes in Pennsylvania.

"I think any time a new industry starts up there is a lot of work for lawyers and this is definitely going to be a new industry and state-specific," Clearfield said.

Clearfield said likening the advent of the marijuana industry in the state to that of the gaming industry was an apt analogy. He said the cannabis industry will have state-specific rules and the regulatory process that will play out over years will require local lawyers with local ties. Other areas may not require locally based attorneys, such as financing and other business issues, Clearfield said.

For Sacks, he envisions legal work stemming from applications to get a medical marijuana license to zoning fights between counties regarding where the dispensaries will be located.

"It will be a very large industry," Sacks said.

The question is whether lawyers will feel comfortable taking a piece of that pie.

**Gina Passarella** can be contacted at 215-557-2494 or at [gpassarella@alm.com](mailto:gpassarella@alm.com). Follow her on Twitter [@GPassarellaTLI](https://twitter.com/GPassarellaTLI).

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