ATTORNEY GENERAL NOMINEE, WILLIAM BARR, AND FIXING FLORIDA'S MEDICAL MARIJUANA INDUSTRY

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Once again, the country is poised to welcome another Attorney General – William Barr. While many questions abound and speculations swirl around his views and stance on many issues, none may be more impactful in Florida than his views on medical marijuana. There had always been an air of apprehension with former Attorney General Jeff Sessions, because he appeared to favor a more aggressive approach to states in which marijuana is legalized, both medicinally and recreationally, by essentially rolling back the Cole Memorandum. That memorandum had become the practical standard and guidance on which states relied when legalizing the various uses of marijuana. The Cole Memorandum initially caused significant confusion because marijuana is still a Schedule 1 drug that is illegal under the Controlled Substances Act.

Now, the medical marijuana community in Florida is eying Attorney General nominee, William Barr. There was some initial apprehension because Barr, who served briefly under President George H. W. Bush, in the same role was relentless in his strict enforcement policies of controlled substances. In his confirmation hearing, however, Barr referenced the Cole Memorandum era and expressed his intent to not go after parties that complied with their applicable state marijuana laws. This was definitely a repudiation of Sessions' actions on the Cole Memorandum. Barr stated, "I have not closely considered or determined whether further administrative guidance would be appropriate following the Cole Memorandum…or what such guidance might look like. If confirmed, I will give the matter careful consideration." But what does this mean…and of greater relevance here, what does it mean for Florida?

In response to Sessions' "roll back" of the Cole Memorandum, the Financial Crimes Enforcement Network (FinCEN) issued a statement that its own guidance memorandum (issued on February 14, 2014) for financial institutions would remain in effect. That memorandum was issued to "to clarify customer due diligence expectations and BSA [Bank Secrecy Act] reporting requirements for financial institutions providing services to marijuana businesses in light of state laws legalizing certain marijuana-related activity and DOJ marijuana-related enforcement priorities." Quite possibly the single greatest and most complex issue surrounding the statewide legalization of marijuana has been the effect on financial institutions. Banks are hesitant to take deposits from these high-risk customers who are dealing in a business that the federal government deems illegal. The issue for entities operating in this arena, then becomes one of what do with the money generated in this cash intensive industry.

Thus, despite Barr's statements, financial institutions and other businesses are left to operate with ambiguity because there is no definite law or policy that would allow banks and others to operate and not be in violation of federal law. There is an ever-widening gap between state laws and federal laws concerning marijuana, and unless addressed comprehensively and sooner rather than later, the matter may be taken temporarily out of the hands of Congress and put into the hands of the court system, where no one benefits. Florida is a good example of this where the people passed a Constitutional Amendment only to have the matter delayed by the legislature and which now resides in the court system. But the silver lining here is that Florida may be poised, under the leadership of Governor DeSantis and Agricultural Commissioner Nikki Fried, both of whom have advocated for effective management of medical marijuana, to be the leader in how the industry should be

managed. It is hoped that the State takes a holistic approach to addressing medical marijuana by involving the state financial regulators, the financial institutions, the taxing institutions and the business and healthcare communities to address and resolve many of the issues that have been ignored or were deemed too volatile. These are “real life” issues that medical marijuana producers, businesses, agencies and ancillary support organizations face daily with uncertainty, ambiguity and trepidation of what comes next. But what comes next should be the hard work and will to fix an industry that was created in Florida to benefit those with true medical needs.

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