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THE WEEK IN MARIJUANA (NOVEMBER 13-17, 2017)

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It's that time again. With the start of the 2018 state legislative session in Florida just a few weeks away, the annual ritual of committees, subcommittees, and administrative agencies holding hearings to review proposed legislation has begun. In this blog, I summarize the current activity at the Department of Health ("DOH") as it meanders its way through the medical marijuana jungle.

On November 15, the DOH's Office of Medical Marijuana Use Director, Christian Bax, was called before the House Health Quality Subcommittee. Director Bax provided a much needed update and summary of the status of the implementation of "Amendment 2" and "Senate Bill 8," both of which call for the legalization of medicinal marijuana and its production and distribution throughout the state.

The DOH developed a four phase implementation process and is currently in Phase Three which consists of the following (the first two phases involved preliminary matters that have already been achieved) –

- The DOH had to license existing licensees from the 2015 application process for medicinal marijuana.
- By August 1, 2017 – the DOH had to license applicants who were denied a license in 2015, but who met additional criteria in Senate Bill 8. This process led to six additional licenses. These six are currently undergoing cultivation inspections for growing.
- By October 3, 2017 – the DOH was supposed to license additional applicants one of which must belong to the Black Farmers and Agriculturalists Association – Florida Chapter ("Black Farmers' Provision") and be a member of a class named in the Pigford litigation that involved approval of remedies to black farmers for decades of discrimination against black farmers in the United States; and two of which will be given preference for being former or current entities operating in the citrus industry ("Citrus Industry Preference"). This deadline has not been met by the DOH, which has led to heightened scrutiny of the agency by the legislature.
- In addition, the DOH must ensure that four additional medical marijuana treatment center ("MMTC") licenses are added within six months of an increase of 100,000 patients entered into the state registry by their physician. There are currently just over 50,000 such registered patients.

At the end of September 2017, the DOH promulgated new rules for the MMTC's that will be licensed under Senate Bill 8, along with a new application form. Coinciding with the new rules and application form the DOH was named in two lawsuits filed in the circuit court of Leon County, Florida. The first, Smith v. Florida Department of Health, seeks a temporary injunction enjoining the DOH from issuing a license under the Black Farmers' Provision as it is allegedly unconstitutional as an "impermissible special law;" and the second, Tropiflora, LLC v. Florida Department of Health, also seeks a temporary injunction alleging that the "Citrus Industry Preference" is unconstitutional because it too is an impermissible special law. Both alleged that the provisions impermissibly favor certain entities and thus do not apply equitably across all residents of the state. Due in part to these challenges, the DOH is reluctant to accept new applications and indeed will not open the application period pending the outcome of the injunction hearings, for fear that the result of the hearings could result in large portions of the statute (Senate Bill 8) being deemed unconstitutional.

More to follow…

For more information on this topic, please contact the author, Colin Roopnarine, on the firm's Government and Regulatory team.

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