

UPDATE: Ohio's Medical Marijuana Control Program

June 7, 2018

Ohio's Medical Marijuana Control Program was established by the Ohio General Assembly in 2016 through House Bill 523 and charged three agencies with implementing the program.

- The Ohio Department of Commerce ("Commerce") is responsible for overseeing medical marijuana cultivators, processors and testing laboratories.
- The State of Ohio Board of Pharmacy ("Pharmacy Board") is responsible for overseeing medical marijuana retail dispensaries, the registration of medical marijuana patients and caregivers, the approval of new forms of medical marijuana and coordinating the Medical Marijuana Advisory Committee.
- The State Medical Board of Ohio ("Medical Board") is responsible for certifying physicians to recommend medical marijuana and may add to the list of qualifying conditions for which medical marijuana can be recommended.

Validating the Scoring Process

Earlier this year, counsel for Commerce engaged Ernst & Young (EY) to provide an objective, third-party analysis of its scoring of cultivator applications. EY has completed its analysis of Level I scoring. EY is also finishing an analysis of Level II cultivator scoring. Following that, an analysis of the scoring of processor and testing lab applications will occur before they are awarded. In addition, the Pharmacy Board hired Gartner Consulting to confirm the integrity of various elements of the dispensary application process.

The EY review validated a clerical error that was identified by the state earlier this year in which the financial scores were duplicated in place of the business plan scores for a batch of 10 applications. Another scoring difference consisted of four instances where the number of criteria indicated on the score sheets differed from the number of points awarded. In all four instances, EY determined that the number of points awarded was correct. Therefore, no additional scores were changed.

As a result of the clerical error identified by the state earlier this year – and validated by EY – PharmaCann Ohio should have received the eighth highest Level I cultivator score (as opposed to its original 12th ranking) and therefore was awarded a provisional license in May.

Insofar as scoring integrity of dispensary applications is concerned, Gartner Consulting discovered no anomalies to suggest that scores were modified after being submitted by evaluators. Further, more than 97% of scores are within two standard deviations of mean. Notably, a process is generally considered statistically sound when approximately 95% of all values (in this case scores) fall within two standard deviations. The security assessment concluded that the process by which scoring reports are generated is transparent and supported up by the source data. Likewise, the process to aggregate each application's final score is

transparent and backed up by the intermediate average scores. The process is sound and repeatable.

Licensing Medical Marijuana Businesses

Ohio's Medical Marijuana Control Program (MMCP) has continued to move toward licensure in the various areas required to operate the medical marijuana industry in Ohio.

- On June 4, 2018, the Pharmacy Board awarded 56 provisional licenses for dispensaries to operate in Ohio.
- As of its May 9, 2018 meeting, the Medical Board has approved 89 Certificates to Recommend (CTRs) for physicians. Approximately 50 more CTRs are expected to be approved at the June 13, 2018 meeting. CTR applications are accepted on a rolling basis and approved each month during board meetings.
- Commerce has conducted an inspection of one Level I cultivator and is scheduled to inspect another two Level II cultivators in June who have expressed potential readiness for their certificates of operation. Five additional Level I inspections, and two Level II inspections, are scheduled in July.
- Commerce is completing its scoring of testing laboratories and processors, and once the scores are reviewed by EY will award those licenses. It is anticipated that they will be awarded in June.

Moving Toward Implementation

Ohio is expected to have its required regulatory medical marijuana control program in place before the statutory deadline of September 8, 2018. Although cultivator provisional licenses were awarded in November 2017, no cultivators have secured their certificates of operation at this time so there will likely be a delay for the industry to provide a dependable and safe supply of medical marijuana across the state to Ohioans who qualify for the program. A sustainable supply of product will be available as soon as licensees build out their operations. A number of factors – including construction delays, local zoning and regulatory requirements – have prevented cultivators from being ready to pursue a state inspection. However, the MMCP stands ready to assist licensees in every way appropriate in their efforts to meet patient demand.

Resolving Legal Challenges

Since cultivator licenses were awarded in November 2017, the scoring process has been the subject of multiple lawsuits and 67 administrative appeals. In recent weeks, two lawsuits have been dismissed, and the parties were directed to use the administrative hearing process to litigate their claims. With the EY validation of cultivator scoring, Commerce has moved to resume the administrative hearing process, allowing parties to pursue their due process rights under Ohio law.