



AOC
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Oregon Counties



LEAGUE
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CITIES

Medical Marijuana

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O R E G O N
Public Risk
Management Association

Friday, October 3, 2014, Sunriver, Oregon

Medical Marijuana 101

- What I will cover in Part 1:
 - A brief history of marijuana regulation in Oregon
 - The basics of the Oregon Medical Marijuana Act
 - Medical Marijuana Dispensaries (HB 3460)

Medical Marijuana 101

- What Sean will cover in Part 2:
 - Role of Federal and Local Government
 - Federal stance
 - Local government
 - Regulatory body (including SB 1531)
 - Employer
 - Law enforcement

Medical Marijuana 101

- What we don't plan to discuss:
 - Whether MJ is good or bad
 - Whether MJ should be legalized

A brief history of marijuana regulation in Oregon

1923

- Cannabis indica prohibited, except:
 - Medical preparations with 4 grains or more per ounce, with a prescription
 - Medical preparations with under 4 grains per ounce, no prescription
 - (1 grain = 64.79891 mg, or 1/7000 of pound)
- Other distribution or possession of cannabis indica was made a crime

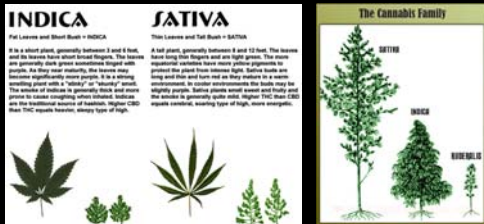


MR. BROWN THIS MORNING.
From the *Willamette Sun*, March 6.
A well-dressed young man, who gave the name of Brown, came to the City Hospital. He had printed in a strange dialect a case of headache, a sleep that produced extreme nausea. He said the doctor that he had agreed to pay for the quantity of his drug, which he had received at least five days before, was a very rare. Brown, on his return, was told that the doctor had given a prescription for the drug, and was now waiting for the doctor to give him the drug. He said that the doctor had given him the drug, and was now waiting for the doctor to give him the drug. He said that the doctor had given him the drug, and was now waiting for the doctor to give him the drug.

Reference: 1923 Oregon Laws, Chapter 27 (Enrolled House Bill 42)

1931

- Cannabis sativa added to prohibition, with same exceptions



Reference: 1931 Oregon Laws, Chapter 203 (Enrolled Senate Bill 173)

1935

- Oregon adopted the Uniform Narcotic Drug Act
 - All cannabis illegal
 - Except medicinal preparations that contained no more than half of a grain of extract per ounce



Reference: 1935 Oregon Laws, Chapter 121 (Enrolled House Bill 107)

1941

- Exception for medicinal preparations was removed
 - All cannabis illegal



Reference: 1941 Oregon Laws, Chapter 190 (Enrolled Senate Bill 243)

1973

- Oregon became the first state to decriminalize possession of user amounts of marijuana
 - Less than one ounce



Reference: 1973 Oregon Laws, Chapter 680 (Enrolled House Bill 2936)

1986

- 1986 Ballot Measure 5 (initiative):
“Legalizes Private Possession and Growing of Marijuana for Personal Use.”
- Results:
 - Yes: 279,479 (26%)
 - No: 781,922 (74%)

1997

- Legislature attempts to recriminalize possession of user amounts (less than one ounce)
 - from a Violation to a C Misdemeanor
- Opponents of the bill got twice the number of signatures they needed to stop the bill from going into effect, and refer the matter to the voters

Reference: 1997 Oregon Laws, Chapter 474 (Enrolled House Bill 3643)

1998

- Ballot Measure 57 (referendum):
“Makes Possession of Limited Amount of Marijuana Class C Misdemeanor.”
- Results:
 - Yes: 371,967 (33%)
 - No: 736,968 (67%)

1998

- Ballot Measure 67 (initiative):
“Allows Medical Use of Marijuana Within Limits; Establishes Permit System.”
- Results:
 - Yes: 611,190 (55%)
 - No: 508,263 (45%)

2004

- Ballot Measure 33 (initiative):
“Amends Oregon Medical Marijuana Act: Increases marijuana amount patients may possess; allows sales; creates dispensaries.”
- Results:
 - Yes: 764,015 (42%)
 - No: 1,021,814 (57%)

2005

- Legislature increased amounts of permissible medical marijuana:
 - Before
 - 3 ounces
 - 3 mature plants
 - 4 seedlings
 - After
 - 24 ounces
 - 6 mature plants
 - 18 seedlings

Reference: 2005 Oregon Laws, Chapter 822 (Enrolled Senate Bill 1085)

2009

- Legislature directs Board of Pharmacy to down-schedule marijuana:
 - Board of Pharmacy moves marijuana to Schedule II in Oregon

Reference: 2009 Oregon Laws, Chapter 898 (Enrolled Senate Bill 728); OAR 855-080-0022(1)

2010

- Ballot Measure 74 (initiative):
 - “Establishes medical marijuana supply system and assistance and research programs; allows limited selling of marijuana.”
- Results:
 - Yes: 626,749 (44%)
 - No: 790,979 (56%)

2012

- **2012 Ballot Measure 80 (initiative):**
 “Allows personal marijuana, hemp cultivation/use without license; commission to regulate commercial marijuana cultivation/sale.”
- **Results:**
 - Yes: 810,538 (47%)
 - No: 923,071 (53%)

2013

- **SB 40: Reduced crime levels for possession and manufacture**
- **HB 3194: Reduced sentencing levels for commercial and substantial quantity marijuana crimes**

Reference: 2013 Oregon Laws, Chapter 591 (Enrolled Senate Bill 40), and Chapter 649 (Enrolled House Bill 3194)

2013

- **Current possession offense levels:**
 - Marijuana (leaves, stems, and flowers)
 - Under 1 ounce = Violation
 - 1 to under 4 ounces = Class B misdemeanor
 - 4 ounces or more = Class C felony
 - Marijuana product (hash, hash oil, etc)
 - Under ¼ ounce = Class B misdemeanor
 - ¼ ounce or more = Class C felony

Reference: ORS 475.864

2013

- HB 3460: Medical marijuana dispensaries
 - More on this in a moment

2014

- SB 1531: Dispensaries – local options
 - Sean will talk about that bill

Oregon Medical Marijuana Act (OMMA)

A Brief Summary of the OMMA

Patients

- A patient with a qualifying condition and a recommendation from their attending physician can get a OMMP card from OHA (a "cardholder")



Cardholder

- A cardholder can possess:
 - 6 mature plants;
 - 18 seedlings; and
 - 24 ounces (1½ pounds) of usable marijuana
- A cardholder is exempted from state marijuana offenses, so long as they are in compliance with the OMMA



Designated Caregiver

- A cardholder can also have a designated caregiver
 - The caregiver gets a card too
 - The caregiver can possess the marijuana for the patient, and assist in its use



Growers

- A cardholder may grow for themselves, or register a grower
 - Only one grow site per patient
 - Up to 4 patients per grow site
 - No sale – only reimbursement of expenses
 - Up to 6 mature plants, 18 seedlings, and 24 ounces of usable marijuana per patient
 - Thus up to 24 mature plants, 72 seedlings, and 96 ounces (6 pounds) of usable marijuana per grow site for 4 patients

Mature plants can be big



The large plant diameters are nearly the size of the cargo utility trailer parked in the driveway at the upper left side of the picture, and as tall as the fence.

Combinations

Example:

- Person "A" is a:
 - Patient;
 - Grower for self and 3 others; and
 - Caregiver for 26 patients
- Person "A" can possess:
 - **45 pounds**
 (6 as a grower, 39 as a caregiver)

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Non-Cardholder Patients

- Affirmative defense to state marijuana offenses for a person that isn't a cardholder but:
 - Diagnosed with qualifying condition within 12 months prior to offense;
 - Advised by attending physician that marijuana may help; and
 - Otherwise complies with OMMA limits

Other Limits

- No use in public view
- No growing in public view
- DUII law still applies

Oregon Medical Marijuana Program (OMMP)

Statistics

(as of 7/1/2014)

Total number of patients (cardholders)

64,838

Source: Oregon Health Authority (2014)

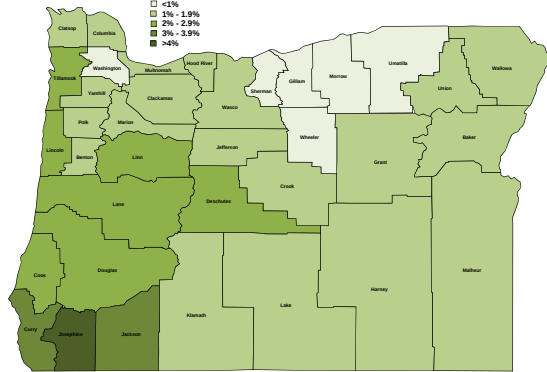
Number of Cardholders by County (most are between 1% and 3% of total population)

• Baker	247	1.5%	• Lane	7,010	2.0%
• Benton	941	1.1%	• Lincoln	1,050	2.3%
• Clackamas	4,692	1.2%	• Linn	1,843	1.6%
• Clatsop	590	1.6%	• Malheur	440	1.4%
• Columbia	900	1.8%	• Marion	3,609	1.1%
• Coos	1,638	2.6%	• Morrow	70	.6%
• Crook	370	1.8%	• Multnomah	11,231	1.5%
• Curry	734	3.3%	• Polk	973	1.3%
• Deschutes	3,341	2.1%	• Tillamook	534	2.1%
• Douglas	2,400	2.2%	• Umatilla	595	.8%
• Grant	104	1.4%	• Union	390	1.5%
• Harney	101	1.4%	• Wallowa	130	1.9%
• Hood River	306	1.3%	• Wasco	413	1.6%
• Jackson	7,771	3.8%	• Washington	4,585	.8%
• Jefferson	339	1.5%	• Yamhill	1,106	1.1%
• Josephine	5,075	6.1%	• Gilliam / Sherman / Wheeler	83*	
• Klamath	1,106	1.7%			
• Lake	120	1.5%			

Source: Oregon Health Authority (2014); 2012 US Census.

*Note: To protect the confidentiality of patients, the responses for these counties have been combined. This practice is consistent with OHA policy and HIPAA requirements.

Per Capita Percentage of Cardholders Per County (as of July 1, 2014)

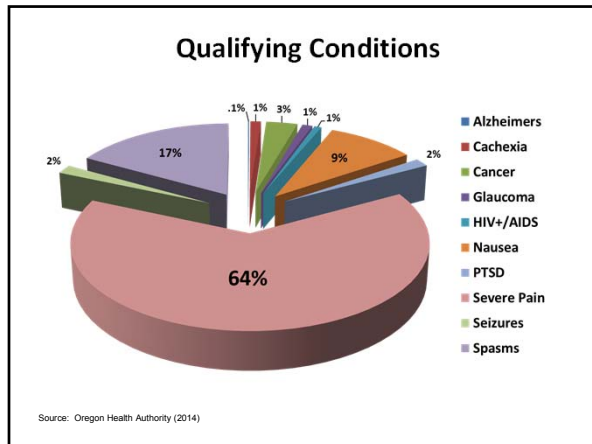


Qualifying Conditions*

• Agitation related to Alzheimer's disease	85
• Cachexia	1,062
• Cancer	3,167
• Glaucoma	1,022
• HIV+/AIDS	725
• Nausea	8,985
• PTSD	1,517
• Severe Pain	62,095
• Seizures, including but not limited to epilepsy	1,640
• Persistent muscle spasms, including but not limited to those caused by Multiple Sclerosis	16,295

* A person can have more than one qualifying condition.

Source: Oregon Health Authority (2014).





2013 HB 3460

- Provides for medical marijuana dispensaries

HB 3460 RAC

- Rules Advisory Committee
- 13 members
- Met in the Fall of 2013



HB 3460 RAC



HB 3460 RAC

- Many deficiencies came to light

Draft 2015 Legislation

- LC 218
 - OHA to regulate untruthful or misleading marketing



Draft 2015 Legislation

- LC 219
 - Broader OHA authority to regulate labeling



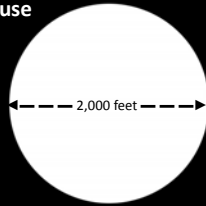
Draft 2015 Legislation

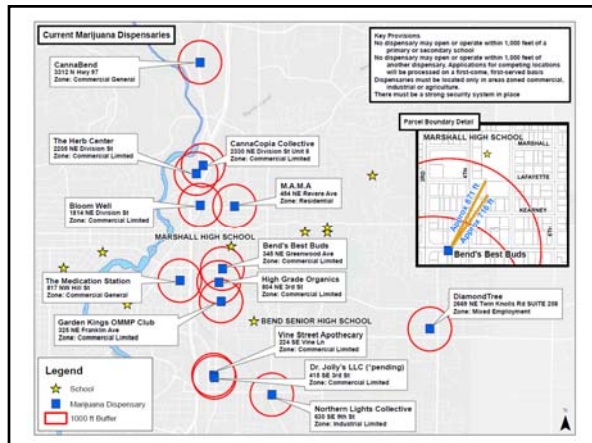
- LC 220
 - Clarifies that normal land use, zoning, and building code rules apply



HB 3460

- Limited zoning
 - Commercial
 - Industrial or mixed use
 - Agricultural
- 1,000 foot rule
 - From schools
 - From each other





Draft 2015 Legislation

- LC 221
 - Adding marijuana to the Indoor Clean Air Act



[illegible]

[illegible]

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Draft 2015 Legislation

- LC 393
 - Licensing and regulation of:
 - Medible manufacturers



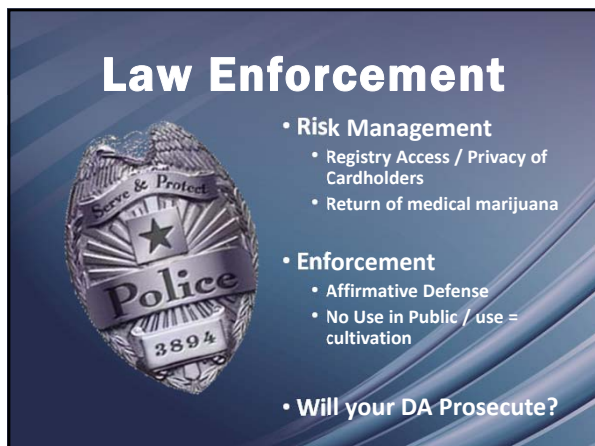
Draft 2015 Legislation

- LC ____
 - Licensing and regulation of growers









Employer

- Drug Free Workplace Act 1988
- Pre-Employment Drug Testing
- Random Drug Testing
- Reasonable Accommodation

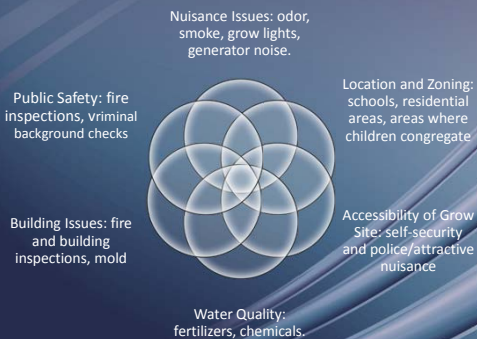
Emerald Steel Fabricators v.
Bureau of Labor and Industries



Civil Regulator

- Why Regulate?
 - Local Impacts
 - Current State Regulatory Scheme
- Current Status of Local Control
 - Home Rule Authority / Preemption
- Options and Risks Associated with Regulation

Local Impact



HB 3460 (2013)

- Directs Oregon Health Authority to establish rules for a medical marijuana facility registration system
- Criminal background checks for dispensary owners
- Security for registered dispensaries
- Testing of marijuana

HB 3460 (2013)

- Location: Commercial, Industrial, Mixed Use, or agricultural land
- Cannot locate:
 - At the same address as a grow site
 - Within 1,000 feet of a school (elementary, secondary or career) attended primarily by minors
 - Within 1,000 feet of another dispensary



A Regulatory Gap

- Testers unlicensed and unregulated
- Growers unlicensed and unregulated
- Product types unregulated: BHO, RSO, hash, "gummi bears," etc
- Labeling largely unregulated
- Indoor Clean Air Act issues
- Locations at other places where children congregate
- No background checks for Employees

Home Rule & Preemption

- **Home Rule Authority v.s. Dillon's Rule**
- **Local Criminal Enactments:**
 - Can't criminalize what state law allows, can't allow what state law criminalizes
- **Local Civil Enactments:**
 - **Express**
 - State law and local law cannot operate concurrently: No room for local choice

Special Session

- **GMO Bill: SB 863 (2013 Special Session)**
- **Preempts Local Regulation of "Nursery Seed" "Agricultural Seed" and "Products" of Nursery or Agricultural Seed**



2014 Session

- **Two Conflicting Legislative Counsel Opinions**
- **SB 1531**
 - **"Notwithstanding" SB 863: Cities can impose "reasonable" time place and manner restrictions**
 - **"Notwithstanding" HB 3480: Cities can adopt a moratorium until May 1, 20**



Preemption Analysis

- Is HB 3460 (2013) Preemptive?
- Does SB 863 (2013) Include Medical Marijuana?
- Does SB 1531 Demonstrate preemptive intent?
- What's the effect of federal law & Emerald Steel Fabricators?

Options / Risks

- Do nothing
- SB 1531 Moratorium
- Reasonable Time Place and Manner Restrictions
- Other Moratorium
- Business License
- Land Use
- Nuisance
