

# Oklahoma's Wild, Wild West

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On June 26, 2018, Oklahoma voters passed State Question 788 ("SQ 788") and legalized medical marijuana. Less than two months later, on Saturday, August 25, 2018, the Oklahoma Medical Marijuana Authority ("OMMA") launched its online application process for patients and businesses, and created something unique — the country's only free market medical marijuana program — and it remains so, today. Oklahoma's medical marijuana ("MMJ") program has become a stunning example of just how profitable and successful MMJ can be, living in the Wild, Wild West!



OMMA's commercial business licenses, which require a minimum of 75% ownership by Oklahoma residents, include grower, processor, and dispensary licenses, transporter, transport agent, testing laboratory, waste disposal facility, research facility, and education facility licenses. All license application fees are \$2,500 (renewable annually), with the exception of transport agent (\$100), waste disposal facility (\$5,000), and research facility and education facility licenses (\$500, nonprofits only).

Sales made by growers are wholesale sales, and dispensary sales are subject to a 7% tax collected at the point of sale, as are processors' direct sales to MMJ patients who provide their own product for processing.

There are no qualifying conditions for MMJ patients here, and patient licenses include adult, minor, caregiver, short-term, and temporary patient licenses. Fees range from \$100 to \$20 for 100% disabled veterans.

OMMA has only 14 days to accept or reject any patient license application, and 90 days to grant, deny, or reject a commercial business license application ("denials" differ from "rejections", the latter of which can be rectified through resubmissions).

The first major piece of MMJ legislation, the Oklahoma Medical Marijuana and Patient Protection Act, nicknamed the Unity Bill ("UNITY"), became effective on August 29, 2019, and modified the landscape rather significantly. UNITY adopted seed-to-sale requirements, restricted the scope of municipal ordinances, enumerated "safety-sensitive jobs" as to which employers may prohibit the use of MMJ at the place of employment or during hours of employment, and recognized employers' rights to establish written policies about drug testing and impairment. UNITY also ended patient drives with doctors writing MMJ recommendations at dispensaries and the days of residential property extraction.

Perhaps most significantly, UNITY changed the residency requirements to a strict, two-year residency requirement

(or five years of continuous Oklahoma residency during the preceding 25 years immediately prior to the application date). Courts across the country are invalidating these residency requirements that exclude non-residents from fully participating in a state's cannabis market, and Oklahoma's likely will be adjudged unconstitutional as well. The dormant Commerce Clause of the U.S. Constitution clearly prohibits such protectionism.

OMMA's current rules evidence its strategic move to a well-recognized administrative law structure, including administrative hearings, the likely appointment of administrative law judges or

hearing examiners, and application of the Oklahoma Administrative Procedures Act.

The Oklahoma Bureau of Narcotics and Dangerous Drugs has enacted its own set of rules to govern MMJ businesses and other state agencies, such as the Oklahoma Departments of Agriculture and Environmental Quality, have followed suit.

Oklahoma cannabis organizations include Oklahoma Women Cann and the Oklahoma Cannabis Industry Association, an affiliate of the National Cannabis Industry Association. Oklahoma City has hosted CannaCon I and II, with CannaCon III scheduled this fall. The Oklahoma Bar Association sponsored its first ever MMJ continuing legal education to kick off its annual convention in November 2019, "Cannabis POTpourri", a sold-out event I organized and moderated.

During Oklahoma's 2020 legislative session, numerous bills relating to MMJ were introduced, but Governor Stitt vetoed the one that would have implemented significant changes. However, his declaration that Oklahoma's MMJ businesses were "essential" during the COVID quarantine proved to be an industry lifesaver. Tax revenues exploded.

As of September 1, 2020, OMMA had received a total of 354,552 license applications and had 354,239 active licenses. Of these active licenses, 342,263 were patient licenses; 2,516 caregiver; 5,971 Grower; 1,328 Processor; 2,087 Dispensary; 39 Transportation; 10 Waste Disposal; and 24 Laboratory.

Oklahoma's MMJ program is booming, and this makes life exceptionally exciting for those of us fortunate enough to live and work here in the Wild, Wild West!

*Information contained herein provides general information related to the law and does not provide legal advice. It is recommended that readers consult their personal lawyer if they want legal advice. No attorney-client or confidential relationship exists or is formed between you and Ms. Parrish as a result of this article.*



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