



21st Century Gold Rush: Cannabis
Volume II - Farming and Pharmacies:
Background Information for the Medical Marijuana Investor

By Jennifer E. Adams and Barbara B. Ormsby of Deutsch Kerrigan, LLP

This article is the second in a series published on a monthly basis through 2020. You can find the articles every month at www.deutschkerrigan.com. Volume I: What You Need to Know Now about Louisiana's Therapeutic Marijuana Act; Volume III: CBD Retail Operations; Volume IV: Hemp Farming vs. Cannabis Farming; Volume V: 2020 Election Effect. For questions, please contact jadams@deutschkerrigan.com or bormsby@deutschkerrigan.com.

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Background Information for the Medical Marijuana Investor

By Jennifer E. Adams and Barbara B. Ormsby of Deutsch Kerrigan, LLP¹

With the recent expansion of Louisiana’s medical marijuana laws,¹ which went into effect on August 1, 2020, many individuals are now looking for ways to break into this emerging industry. The short answer is that opportunities for individuals looking to open farms or dispensaries are very limited under Louisiana’s current medical marijuana statutes.

Therapeutic marijuana production in Louisiana is regulated by the Department of Agriculture and Forestry (LDAF).² The state’s therapeutic marijuana law states that Louisiana State University (LSU) and Southern University (Southern) have a right of first refusal to be licensed as the state’s production facilities.³ Under the Louisiana’s Therapeutic Marijuana Act, all production of marijuana (including the growth stage) must take place in facilities licensed by the LDAF and be managed by the licensed growers (LSU and Southern). LSU and Southern’s grow operations take place in industrial warehouse spaces. Indoor grow operations allow for increased security measures, the implementation of strict research and health protocols, and climate and light controls.⁴

Under current laws, it is illegal for landowners to lease land to LSU or Southern without approval by LDAF. LDAF must inspect and approve all production facilities before they go into use, and so any use of private property would have to be licensed by LDAF and overseen directly by licensed growers (LSU and Southern).⁵ However, LDAF seems to anticipate a possible change of law: “*It is not legal at this time* for anyone within the State of Louisiana to grow marijuana for any purpose.”⁶ If and when the law does expand, commercial property owners may be at an advantage compared to rural property owners, as Louisiana’s current grow operations are situated in secured, temperature-controlled, carefully-lit indoor facilities.⁷ This degree of regulation—as required

Medical Marijuana Site Harvesting 570 Plants a Month; Here’s How It Works; THE ADVOCATE (Feb. 20, 2019), available at https://theadvocate.com/baton_rouge/news/business/article_7f9ba78e-331c-11ea-b1ab-33b8f102ab2a.html.

⁵ Medical Marijuana: Frequently Asked Questions, DEPT. OF AGRIC. & FORESTRY, STATE OF LA. (2019), ldaf.state.la.us/medical-marijuana/ (“Only licensed production facilities will be allowed to grow medical marijuana under Louisiana law. . . . [U]nlike some other states, LRS 40:1046-1047 does not permit home-grow of medical marijuana. Only a registered licensee will be allowed to grow medical marijuana.”); see also Timothy Boone, *LSU-Contracted Company OK’d to Grow Medical Marijuana in Permanent Facility*, THE ADVOCATE (Mar. 22, 2019), available at https://www.theadvocate.com/baton_rouge/business/article_dd9774-4cbc-11e9-bbfe-2b594b24d0bd.html (explaining the process by which LDAF approves and licenses production facilities).

⁶ DEPT. OF AGRIC. & FORESTRY, *supra* note 6.

⁷ The highly-regulated Wellcana facility has a designated “cultivation room” that employs a “tight security system” and “clean room protocols . . . that are common in health care, food service and biotechnology.” Workers wear medical scrub uniforms and none of the clothing they wear inside the indoor greenhouse ever leave the building. Also, “[e]very stray leaf and stem of the medical marijuana plants at the Wellcana facility must be accounted for and destroyed once the oils from the plants are extracted in a manufacturing process.” Kristen Mosbrucker, *Look Inside the Louisiana Medical Marijuana Site Harvesting 570 Plants a Month; Here’s How It Works*; THE ADVOCATE (Feb. 20, 2019), available at

¹ 2020 La. Acts 286, amending and re-enacting La. R.S. § 40:1046(A)(1).

² *Overview of the Louisiana Therapeutic Marijuana Act, MARIJUANA POLICY PROJECT*, available at <https://www.mpp.org/assets/pdf/states/louisiana/overview-of-louisianas-medical-cannabis-law.pdf>.

³ La. R.S. § 40:1046(A)(2)(a) (“The Louisiana State University Agricultural Center and the Southern University Agricultural Center shall have the right of first refusal to be licensed as the production facility, either separately or jointly.”)

⁴ The highly-regulated Wellcana facility has a designated “cultivation room” that employs a “tight security system” and “clean room protocols . . . that are common in health care, food service and biotechnology.” Workers wear medical scrub uniforms and none of the clothing they wear inside the indoor greenhouse ever leave the building. Also, “[e]very stray leaf and stem of the medical marijuana plants at the Wellcana facility must be accounted for and destroyed once the oils from the plants are extracted in a manufacturing process.” Kristen Mosbrucker, *Look Inside the Louisiana*

both for security purposes and to create optimal growing conditions for the plants—is near impossible outdoors. Currently, however, no private individual can obtain an LDAF license to grow marijuana in Louisiana, and any property used to produce marijuana (including for the growth stage of production) must be licensed by LDAF.⁸

Both LSU and Southern have agreed to grow marijuana and have sub-contracted out the cultivation of the plant.⁹ LSU initially sub-contracted cultivation out to GB Sciences, Inc., which has since been bought out by Wellcana, a group of Lafayette-based investors led by attorney Charles Rush and cajungrocer.com founder Charlie Hohorts, III.¹⁰ Southern, meanwhile, has engaged Ilera Holistic Healthcare.¹¹ The agricultural centers at LSU and Southern are the only authorized medical marijuana producers in the state.¹² LSU’s grower began selling products in August 2020.¹³ Southern released its new line of THC products on July 1, 2020, expected to appear on pharmacy shelves soon thereafter.¹⁴

https://theadvocate.com/baton_rouge/news/business/article_7f9ba78e-331c-11ea-b1ab-33b8f102ab2a.html.

⁸ DEPT. OF AGRIC. & FORESTRY, *supra* note 6.

⁹ *Id.*; Warren Bobrow, *Southern University: First Historically Black University to Launch THC Line of Products*, FORBES (July 2, 2020), available at

<https://www.forbes.com/sites/warrenbobrow/2020/07/02/southern-university-first-historically-black-university-to-launch-thc-line-of-products/#5a4452e62393>.

¹⁰ Sam Karlin, *Former NFL Players, Including Saints, Among Investors in LSU’s Marijuana-Growing Company*, THE ADVOCATE (Feb. 20, 2019), available at https://www.nola.com/article_dd096b57-5b73-5fbf-82d6-e735deb0df72.html.

¹¹ Warren Bobrow, *Southern University: First Historically Black University to Launch THC Line of Products*, FORBES (July 2, 2020), available at <https://www.forbes.com/sites/warrenbobrow/2020/07/02/southern-university-first-historically-black-university-to-launch-thc-line-of-products/#5a4452e62393>.

¹² Melinda DeSlatte, *Louisiana Widening Access to Medical Marijuana Under New Law*, ABC News (June 16, 2020), available at <https://abcnews.go.com/Health/wireStory/louisiana-widening-access-medical-marijuana-law-71281903>.

¹³ *Id.* Currently, LSU’s grower GB Sciences offers therapeutic marijuana in oils, pills, liquids, topical applications, and an inhaler. *Id.* GB Sciences intends to soon expand its offerings to include dissolving oral strips. *Id.*

¹⁴ Bobrow, *supra* note 14 (noting that Southern University made history on July 1, 2020 as the first historically Black university (HBCU) to release its own line of medical cannabis products); Kristen Mosbrucker, *Southern University’s Medical Marijuana*

Louisiana’s requirements for dispensing pharmacies are similarly restricted in terms of numbers authorized by the state. Only one medical marijuana pharmacy is authorized to operate in each of the nine regions of the state established by the Louisiana Department of Health.¹⁵ These pharmacies are regulated by the seventeen-member Louisiana Board of Pharmacy, which can award a tenth permit for an additional pharmacy “as needed.”¹⁶ Unlike many states, in which “dispensaries” can provide marijuana, Louisiana requires its dispensing pharmacies to comply with state pharmacy rules and regulations. Dispensing pharmacies have an obligation to review patients’ information in the prescription monitoring program database before dispensing therapeutic marijuana to that patient.¹⁷ Pharmacies must also comply with the prescription monitoring program’s reporting requirements.¹⁸ Further, pharmacies can only sell licensed products, which excludes smokables.¹⁹

Partner Sells First Tinctures, Topicals to Pharmacies, THE ADVOCATE (June 29, 2020),

https://www.theadvocate.com/baton_rouge/news/business/article_3db056cc-ba2a-11ea-8b0a-d7334b934c6a.html.

¹⁵ See *Overview of the Louisiana Therapeutic Marijuana Act*, MARIJUANA POLICY PROJECT, available at <https://www.mpp.org/assets/pdf/states/louisiana/overview-of-louisianas-medical-cannabis-law.pdf>. The Region 1 (Metropolitan) pharmacy is the H & W Drug Store in New Orleans; the Region 2 (Capitol) pharmacy is Capitol Wellness Solutions in Baton Rouge; the Region 3 (Teche) pharmacy is Green Leaf Dispensary in Houma; the Region 4 (Acadian) pharmacy is The Apothecary in Lafayette; the Region 5 (Southwest) pharmacy is Medicis in Lake Charles; the Region 6 (Central) pharmacy is The Medicine Cabinet Pharmacy in Alexandria; the Region 7 (Northwest) pharmacy is Hope Pharmacy in Shreveport; Region 8 (Northeast) pharmacy is Delta Medmar in West Monroe; and the Region 9 pharmacy is Willow Pharmacy in Madisonville. Tom Arcuragi, *The State of Louisiana Pharmacy Board has Selected Nine Initial Pharmacies to Dispense Medical Cannabis Formulations Through the GB Sciences and LSU Agriculture Center Partnership*, GB Sciences (Aug. 23, 2018), available at <https://gbsciences.com/2018/08/23/louisiana-pharmacies/>.

¹⁶ MARIJUANA POLICY PROJECT, *supra* note 3.

¹⁷ 2020 La. Acts 286, amending and re-enacting La. R.S. § 40:1046(F)(1).

¹⁸ 2020 La. Acts 286, amending and re-enacting La. R.S. § 40:1046(F)(2).

¹⁹ Lee Chilcote, *Pharmacy Background Pays Off for Louisiana Dispensary*, CANNABIS BUSINESS TIMES (Feb. 18, 2020), <https://www.cannabisbusinesstimes.com/article/louisiana-medical-cannabis-capitol-wellness/> (“Approved products include oils, extracts, sprays, capsules, pills, solutions, gelatin-based chewables, lotions, transdermal patches, suppositories, and metered-dose inhalers.”).

Another issue facing pharmacy owners is that health insurance typically does not cover medical marijuana,²⁰ making it relatively inaccessible to lower-income patients, as a monthly supply of medical marijuana tends to range in price from \$100 to \$250. Other limitations on dispensing pharmacies have restricted profits. For example, it is illegal for dispensing pharmacies in Louisiana to advertise or publish their prices.²¹ Also, many facilities were open for months before product was available, and yet are unable to legally deduct the business expenses they incurred on their taxes.²²

Another problem impacting the profitability of pharmacies in Louisiana is the high prices of medical marijuana products.²³ Wellcana, for example, has been unable to lower prices due to its agreement with LSU, which bases prices on the cost of goods sold.²⁴ This means that prices are inflated in an immature market.²⁵ However, as the new legislative amendments prepare to expand patient access, Wellcana has cut its wholesale prices.²⁶ Industry investors are hopeful that the amended statute will expand the medical marijuana industry; while projected sales in Louisiana in 2020 are \$15-20 million, the market sales in 2019 totaled only \$1-1.5 million.²⁷

While the current version of Louisiana's medical marijuana statute makes it virtually impossible for most private individuals to participate in the state's medical marijuana industries (except as patients), it is possible for farmers and entrepreneurs to participate in the state's industrial hemp and CBD

industries. Hemp farming and CBD retail may provide a gateway into Louisiana's marijuana industry. We will explore this topic and more in our next article in the series.

If you are not an expert in this field, it is crucial to consult with local counsel in each state, because the laws can vary widely.

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Jennifer E. Adams is a Partner at Deutsch Kerrigan and is the head of the Toxic Torts Department for the firm. She is a frequent speaker at national conferences, including the Defense Research Institute and American Conference Institute's National Advanced Forum, on asbestos claims & litigation. She leads discussions and panels covering the latest in trends products liability, work place exposures, and talcum powder issues.



Barbara B. Ormsby has significant litigation experience handling asbestos, silica and many other chemical exposure cases. She defends manufacturing companies and premises owners in a variety of chemical exposure cases, asbestos exposure cases and other types of personal injury claims. Ms. Ormsby also has experience in handling asbestos property damage and building abatement claims, as well as protecting the interests of manufacturers, premise-owner and employer defendants.

²⁰ Kristen Mosbrucker, *Medical Marijuana Grower at LSU Drops Prices to "Razor Thin" Profit Margin; Looks to Bigger Market*, THE ADVOCATE (June 22, 2020)

https://www.theadvocate.com/baton_rouge/news/business/article_b847dfd4-b4af-11ea-a339-0bb8ca0ca6fa.html.

²¹ Maria Clark, *High Cost of Medical Marijuana Limits Access for Louisiana Patients*, Daily Advertiser (Nov. 4, 2019), <https://theadvertiser.com/story/news/2019/11/04/medical-marijuana-louisiana-cost-monthly/4077967002/>.

²² *Id.*

²³ Solomon Israel, *Louisiana Medical Marijuana Market Expected to Grow After Program Changes, But Headwinds Remain*, MARIJUANA BUSINESS DAILY (June 24, 2020), <https://mjbizdaily.com/louisiana-medical-marijuana-market-expected-to-grow-after-program-updates/>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*