



# THE RxProfessor

## California's Marijuana Humpty Dumpty

[Edit article](#)

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28



As you may know, California's Proposition 64 to legalize recreational marijuana won approval from state voters last November 8 by a margin of 55.8% to 44.2%. This ballot initiative made it legal for individuals to grow and use marijuana the following day (November 9) and then sales starting on January 1, 2018. They join Colorado (2012), Washington (2012), Oregon (2014), Alaska (2014) and District of Columbia (2014) where recreational use was already legal. But that's not all ... other states joined last November as well - Maine, Massachusetts, and Nevada. The lone dissenter was Arizona, losing 52.1% to 47.9%.

Colorado just reported sales of \$1.3B in 2016 (recreational and medicinal). That's up from \$996M in 2015 and \$699M in 2014. Of that total, approximately \$200M was tax and fee revenue to the state. So there's lots of money involved.

But this blogpost isn't about momentum in the legalization of recreational marijuana. It's about medicinal use. *And how it's being regulated. Or not.*

Which leads to my provocative title ... "**California's Marijuana Humpty Dumpty.**"

If you weren't paying attention in 1996 (don't worry, I wasn't either), California was one of the first states to legalize medical use of marijuana via the California Compassionate Use Act (voted in via Proposition 215). Section 11362.5 of the Health and Safety Code clearly states the intent



*the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.*

However, if you've ever been to California and seen storefront dispensaries where the "doctor is in" you will notice that the list of qualifying conditions is more of a suggestion. Because, if you didn't notice in the above, there's this large loophole at the end ...

*... or any other illness ...*

*... provides relief ...*

Those seemingly innocuous phrases opened it up for, shall we call, dubious uses. By dubious "patients". Overseen by dubious "physicians" (people in white coats with green marijuana symbols). To the point that if you walk in certain areas of town someone might offer to help you "get legal" (i.e. know what to say in order to get your weed).

However, on the other side are legitimate dispensaries that are trying to map blends and delivery methods to conditions and relief. They understand the difference between CBD and THC. There is less "buyer beware" in these circumstances because there is tight control over the manufacturing process. There is more of a focus on clinical application, best options (which may include some scientific studies), and user experience. Whether you think marijuana can be medicinal or not, in these locations there is a legitimate attempt at helping people feel better. As an aside, almost every analgesic drug, including prescription painkillers and marijuana, is palliative (feel good / don't care) and not curative (resolves the source of the pain).

So, what Proposition 215 created in 1996 was an unintentional unregulated mess since the 389 words contained in Health and Safety Code Section 11362.5 is the extent of oversight. It was left up to the market to decide on how to implement legalization. And, predictably, it was a mixed bag.



MMRSA) in September 2015. This time, instead of a public vote, the legislature got involved to determine how best to "put Humpty Dumpty back together again" (my words, not theirs). As would be expected, California NORML has an excellent summary of the law. For more details on the three bills that comprise MMRSA (AB 266, AB 244, SB 643), this "Above the Law" blogpost is very helpful. Bottom line - MMRSA was a direct response to how access to medical marijuana had evolved.

The most important component of the new directive is the creation of the Bureau of Medical Cannabis Regulation (BMCR), an agency within the Department of Consumer Affairs (DCA) to oversee the creation of a regulated environment. I've had the privilege of meeting with DCA Director Awet Kidane, Lori Ajax, (Bureau Chief), Alex Traverso (Chief of Communications) and Tamara Colson (Assistant Chief Counsel) at various times in 2016 and it gave me great insight into the process. **It's complicated, to say the least**, because the market has created itself without a lot of governmental guidance or oversight. They will not be tasked with overseeing recreational regulations (at least not yet), but you can imagine there will be overlap and the lessons learned with medical cannabis will be helpful for recreational marijuana.

And that marketplace was on full exhibit when I attended the BMCR Pre-Regulatory Stakeholder meeting in San Diego on October 5. They came with a detailed agenda, very helpful handouts, and a method by which to listen to every single constituent (literally ... anyone could attend) because they wanted to understand how the industry currently works. This came after they had already consulted other states. They had a project plan to create the regulations and they were (are) executing it flawlessly. This was one of eight total meetings of their "listening tour" across the state. There were as many Mercedes' and Cadillacs in the parking lot as there were Corollas and Prius'. There were as many people in suits as there were in shorts and sandals. There were as many ties as there were tattoos. While there may have been some users in the crowd, none looked or acted like Jeff Spicoli. There were detailed business questions, with a full understanding of the supply chain and profitability and competition. And local regulations, which is key because not every community endorses marijuana, furthering the tension between Federal (illegal), California (legal) and local community (may or may not be allowed). While there was an undercurrent of distrust in the intrusion of government into their marketplace, the way in which BMCR approached the "listening tour" helped allay fears (to some degree).

If you didn't know it was about marijuana, this meeting could have easily been confused with any other marketplace about to undergo more rigorous (or, in this case, any) regulation.

There were five different breakout groups where someone from BMCR facilitated a conversation, answered questions and (most importantly) took notes. Based on my rough headcount, the most popular groups were (in descending order):



2. Manufacturers
3. Transporters
4. Distributors
5. Testing Laboratories

I sampled some of each breakout group. The room was stashed full with engaged people trying to understand what is about to happen. And to have their questions answered and voices heard.

States that have more recently legalized medical cannabis, most notably Minnesota in 2014 (one that I've been following closely), started with tight regulations (two registered manufacturers, eight distribution facilities, required testing for quality and consistency). They saw how California evolved (or, in some opinions, devolved) and wanted to start from the very beginning with treating cannabis as medicine and not a quasi-recreational drug. In my first meeting with Director Kidane, he provided this very interesting analogy (rough paraphrase) that has stuck with me since ...

*Creating these regulations is like installing the  
cockpit in an airplane that is already flying at  
35,000 feet*

Indeed.

The first draft of the regulatory rules are due at any time. That will be followed by an extensive public comment period. The target date for implementation is January 1, 2018. My guess is they will need the entirety of 2017 to create the regulatory structure to have a system that will work for an already mature marketplace. Will it be better than what it is now? Quite frankly, "better" might be in the eye of the beholder. For those that already operate by best practices, the introduction of regulatory oversight will not likely be too difficult. It will be more difficult for those that operate in the shadows. But I can attest to the fact that whatever the BMCR creates will at the very least be an informed decision.

I plan on staying engaged throughout the process because it's a very unique and transparent view into how to "put Humpty Dumpty back together again." Whatever they do is going to have implications in healthcare, insurance, and society - not just in California but likely across the U.S. So stay tuned - BMCR is on the clock.

