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Prosperity in Prohibition

How federal restrictions created Colorado's medical marijuana industry
by David Accomazzo

Running a successful, growing business makes Boulder's Jill Leigh a busy woman. While talking to a reporter in her ashen-blue office one recent afternoon, an employee came in and handed her a thick stack of mail, saying there were two more boxes where that came from. Leigh opened a few envelopes as the interview continued. Later, two other employees entered her office seeking her expert opinion.

"Jill, what do you think this is?" asked one employee, holding a fragrant fist-sized nugget of marijuana. The grower had named it as one strain, but the employees suspected otherwise.

"I think [the grower] got a Haze clone that was mislabeled," one of the men said. Leigh inspected it for a moment and then agreed.

"I think it's probably Haze," she said. "Let's bottle it as that and sell the product for \$400." The employees exited and Leigh turned.

"I hate calling it product. I never know what to call it. I don't like calling it medicine because it's not Western medicine," she said. She put her elbow on her desk and rested her chin in her hand. "It's an herb. A very, very effective herb."

Leigh has two kids and an M.B.A. from Denver University. She also sells high quality marijuana for a living.

Leigh and her husband own and operate Boulder County Caregivers, a medical marijuana dispensary on Valmont Road and 29th Street in Boulder. The dispensary is one of more than 40 such operations that have sprung up in Colorado during the past year, and more open each week, said Allen St. Pierre, executive director of the National Organization for the Reform of Marijuana Laws.

Medical marijuana has been legal in Colorado since 2000, when Amendment 20 passed with 53 percent of the vote, but for various reasons, only in the past year have dispensaries emerged from underground and started publicly advertising their wares.

Any use of marijuana is a federal offense. Though the state says medical use of marijuana is legal, in this battle, federal law wins.

The friction between federal and state law has created a booming industry in Colorado, with enterprising men and women stepping in to provide services physicians can't. Doctors can't prescribe marijuana, and pharmacies can't stock it, so patients must either grow their own or purchase it elsewhere. Doctors can't administer marijuana, so patients often depend on their primary caregiver for advice on how to use the herb. Many Colorado doctors fear federal reprisal for recommending marijuana, so specialized clinics dedicated to helping people become legal cardholders have opened their doors. Thanks to the Obama administration's medically friendly statements, as well as a recent major victory in a critical rule-making hearing, dozens of businesses have sprung up in the past year alone to fill these needs. The rest of the state may be in a recession, but Colorado's medical marijuana industry is thriving.

No regulation from the state means that dispensaries can operate in pretty much any way they please. At first glance, the brightly lit waiting room in Boulder County Caregivers doesn't stand out from any other medical waiting room. A friendly employee greets you as you enter. An aquarium bubbles quietly in the corner. Cushy chairs surround a coffee table filled with reading material. There are differences, too. The sweet, skunky smell of marijuana hits your nostrils as soon as you enter. The magazines feature glossy photos of different marijuana strands on the cover, and a tray of spice jars on the table offers samples of medical-grade with names like Bubbleberry, AK-47 and The Cough. Just past the aquarium next to Leigh's office, a separate room houses a display case showcasing vaporizers, grinders and glass pipes presented in a fashion that, if not for the flavored marijuana fudge selling for \$4 a square, wouldn't look out of place at an average head shop. Behind the counter sit more than a dozen jars filled with different strands of marijuana, priced from \$275 to \$420 for an ounce.

"If people don't come here as a connoisseur," Leigh said, "they leave here as one."

The cozy, cluttered spaces of The Apothecary in Longmont stand in contrast to the spacious, sterile rooms of Boulder County Caregivers. Larry Hill, the dispensary's owner, is currently remodeling a small house off Mountain View Avenue and Main Street into a waiting room and an office. For now, he sees patients in the unit's pint-sized kitchen and stores his medicine in plastic bags in a cupboard.

"The main thing my patients like about this place is that it's comfortable," said Hill, an Ellijay, Ga., native who speaks with a slight southern accent. "My patients have never seen me in a suit and tie, and they never will,



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unless they go to my funeral."

Hill spent many years in the Air Force, attaining the rank of Master Sergeant before retiring and joining the Army National Guard of Alaska. He smoked marijuana three times during the Vietnam War, he said, once each while on leave in Hawaii, Thailand and Australia. He didn't smoke it again until he was 55 and diagnosed with shingles.

"A friend introduced me to marijuana," he said. "It relieved the pain and itching of the shingles, and that's when I started smoking."

Last November, doctors diagnosed him with glaucoma. Marijuana helped tremendously, but as a veteran, he gets his medical care through the Department of Veterans Affairs.

"They can't even talk about marijuana at the VA, of course," Hill said. So he began growing his own. He harvested more marijuana than he could legally possess, so he got rid of it by becoming a caregiver and selling his excess to other patients. One thing led to another, he said, and eventually the next logical step was to open his own dispensary. Since he incorporated in February, he now administers marijuana to more than 40 patients, and the medicine flies off his shelves as fast as he can stock them.

As of June 30, 8,918 Colorado patients held valid licenses, recommended by more than 800 doctors, with thousands more applying each month. The actual number of patients might be double or triple that thanks to an "affirmative defense" built into the amendment that allows unlicensed patients to use medical use as a defense in court, said Warren Edson, one of the lawyers that helped write the amendment back in 2000. The majority of patients reside in Denver, Boulder, Jefferson, El Paso and Larimer Counties. Boulder County's residents, 5.6 percent of Colorado's population, hold 10 percent of the state's marijuana licenses.

Amendment 20 allows patients registered with the state to possess up to two ounces of usable marijuana and to grow up to six plants. Patients can also choose to designate someone as a "primary caregiver" who can grow or obtain marijuana for patients, which is how dispensaries operate. Leigh and her husband, for example, are caregivers for more than 300 patients.

Amendment 20 doesn't specify any alternatives for patients unwilling to grow their own. As NORML's St. Pierre put it, "It's like a magical ounce appears."

Failing magic, a patient will designate a dispensary owner as their primary caregiver, allowing the caregiver to possess two ounces and grow six plants. If a caregiver has 10 patients, the number rises to 20 ounces and 60 plants. Amendment 20 makes possession, cultivation and use legal, but it doesn't say whether a patient can buy marijuana from someone else. Nothing in the law prevents caregivers from selling marijuana to their patients, Edson said, and that's what allows caregivers to operate for-profit dispensaries. "Everyone keeps thinking it backwards," Edson said. "There's nothing that says it's illegal."

The amendment mandated that the governor choose a state registry to maintain a medical marijuana database, and that responsibility fell to the Colorado Department of Public Health and Environment. For years, the CDPHE enforced an informal five-patient limit on caregivers, denying caregivers from adding additional patients. That changed in July 2007, when Sensible Colorado successfully sued the state and convinced Denver District Judge Larry Naves to grant an injunction temporarily removing the patient limit from caregivers. At a board meeting last July, after hours of testimony in front of a crowd that news reports said at times numbered more than 500, the board made those changes permanent. Without a limit on the number of patients they can serve, dispensaries have infinite room to grow. Without regulation, St. Pierre said, dispensaries will go the way of every other legal industry and fall victim to the basic economic laws of supply and demand, which will weed out the poorly run businesses.

"At some point Colorado will reach a carrying capacity," St. Pierre said. "Wherever there's a Wal-Mart, there's probably going to be a cannabis dispensary."

Some municipalities are starting to regulate dispensaries and are setting their own rules on how they should be run. In Boulder, no such rules exist yet, though most dispensaries have registered with the city and possess valid business and sales tax licenses.

Edson, who provides counsel to the majority of dispensaries in the state, advises his clients to pay sales taxes.

"They're just like a GNC," Edson said. "They're selling an herbal supplement that's not tax-exempt."

Leigh says she pays more than \$6,000 a month in sales taxes, plus another \$4,000 in other taxes. A sign in the display room above the register in Boulder County Caregivers states in block letters the city of Boulder sales tax rate, which is just above 8 percent.

"It's taxed just like echinacea," Leigh said.

Boulder County Caregivers is members-only, and included in the cost of membership are two free massages, cultivation advice for the green thumbs and mental-health counseling.

"Dispensaries allow for patients to have a safe, comfortable environment with an individual who sees them every day," Leigh said. "An individual caregiver can't provide all those services."

She offers a delivery service as well, but surprisingly, she said, that side of the business has been slow.

"I think it's because this is the highlight of so many of these patients' weeks," she said. Many of her patients with chronic illness don't have the energy to leave their homes often, she said, and some of them suffer from mental illness as a result of their conditions.

"I train [my employees] to take patients aside and talk to them for a moment and show them someone cares," she said.

Her M.B.A. training, though, has taught her to fear and minimize risk. She has security cameras, motion detectors and panic buttons spread throughout her business. She's never had any trouble, but in the aftermath of the June 16 robbery of another Boulder dispensary, she's not taking any chances.

"I keep a low profile," she said.

Boulder County law enforcement has for the most part stayed away from medical marijuana dispensaries, in part because the amendment is so unclear, says Commander Tommy Sloan of the Boulder County Drug Task Force.

"I wish the law had been a little better written and had a little more guidance in there," he said. "This one is so



vague.”

Amendment 20’s narrow wording raises a number of questions. Can a patient or caregiver buy marijuana from the black market legally? Can a caregiver purchase medicine from another caregiver? Can a caregiver sell to another caregiver’s patient or to a patient without a primary caregiver? When asked what the drug task force’s strategy was for dealing with dispensaries, Sloan said they viewed medical dispensaries as legitimate businesses.

“If we find out there is a dispensary in Boulder, we are not going to get involved in the monitoring of them to make sure they are operating within their bounds unless we get information otherwise,” Sloan said. “We are not self-initiating investigations on them.”

After apprehending the suspects in the June 16 robbery, police returned two stolen 20-gallon barrels of marijuana to the dispensary.

Sloan said another concern he has is a liability issue dealing with growing marijuana plants. Should officers seize growing marijuana plants if the owner says they are for medical use?

“One of the things in the statute is that we have to maintain the care and custody of the plants,” Sloan said. “What can happen is that if we destroy their plants, and they end up winning the case [by proving the plants were legally intended for medical use] and sue us, we could owe them money.”

United States Attorney General Eric Holder said in March that the federal government would stop raiding medical marijuana dispensaries operating within the bounds of state law. In Colorado, there has never been a federal raid of a medical marijuana dispensary, but that doesn’t stop owners from worrying. Doctors, too, worry about losing their Drug Enforcement Administration-granted prescriptive privileges if they were to recommend marijuana to a patient.

Mike Turner, a public information officer for the Denver Field Division of the DEA, declined to give a statement on the DEA’s stance on medical marijuana.

“That’s really a state issue right now,” Turner said.

Another type of business created by federal prohibition of medical marijuana is the specialty clinic, a clinic devoted to helping patients get medical marijuana cards. Several of these exist in Colorado with names like CannaMed and The Hemp and Cannabis Foundation. Darren Flagg co-owns South Boulder’s Grassroots Medical Clinic at 5330 Manhattan Circle. A personal trainer and competitive weight lifter who once held a world record in powerlifting, Flagg said he first started using marijuana medically 16 years ago. A conversation with a client of his spawned the idea for the clinic, and the pair opened for business in May.

“My partner in the business had gone through [another clinic] and had a pretty cold experience,” Flagg said. “And so as we talked about it at the training company I work at, we were talking about that whole model. We decided to try and change things up a bit.”

For \$300, a patient gets three appointments at the clinic. By the end of the third visit, the patient will have met separately with two doctors who will decide whether to sign off on the state’s medical marijuana paperwork.

“Clinics have to be leery. I don’t want my doctors rubber-stamping people, and they’re not gonna. They’re not going to put their [medical] license on the line and risk having the medical board scrutinize them and maybe take them out of good standing. We’re trying to make sure every patient who comes through is legit,” Flagg said.

Some think the Board of Health’s actions warrant that sort of caution.

“My view is that the state is trying to demonize doctors currently,” said Brian Vicente, executive director of Sensible Colorado. “They have a history of being disingenuous and using underhanded tactics to undermine this law.”

Vicente pointed to a CDPHE press release dated July 30, which the department released in order to update the marijuana registry statistics. The release put forth statistics showing a sudden increase in the number of males younger than 30 applying for medical marijuana cards. The press release also corrected the average age of a cardholder, which the department had reported as 24. The actual average age of a cardholder was 41.

“We are concerned about the number of young men diagnosed with chronic severe debilitating pain, particularly the increasing numbers we are seeing in 2009,” Chief Medical Officer Ned Calonge said in the release. “We are evaluating strategies that might allow us to assure that physicians documenting a diagnosis of chronic or severe pain are doing so within the standards of medical care.”

Mark Salley, a CDPHE spokesman, said the state was not trying to discourage doctors from writing medical marijuana recommendations and said that the state does not have the resources to provide that sort of oversight.

“The state is not at all interested in demonizing doctors. Marijuana has been shown to be effective for patients with certain medical conditions,” Salley said. “We haven’t really developed strategies to [provide oversight on medical marijuana recommendations], and we don’t really have the resources to do so at this time.”

In the future, the past year or two might become known as the wild gold rush days of medical marijuana in Colorado, when a lack of regulation spawned an explosive gray market with few rules and many players. The business owners interviewed for this article agreed that regulation of some sort, whether on the city or state level, was inevitable. Leigh even welcomed it, saying DEA rules hinder her efforts to ensure she gets the highest quality product.

“I’ve called every independent lab in the state to test for mold, mildew, but they won’t because of DEA regulation,” she said.

Despite the specter of increased regulation, businesses are planning expansions.

Boulder County Caregivers will move into a much larger office in October, and Leigh plans to make it an alternative wellness center as well as a dispensary. Flagg sees Grassroots Medical Center opening one or two more locations in the next year. Hill and a partner will soon open a dispensary in Craig, Colo.

But prospective expansion isn’t what keeps Hill in the business.

“Contrary to popular belief,” he said sarcastically, “I’m not just the local pot dealer. This is a little more than a place to go get your drugs... My budget is so close.”

He struggled to find the right words, his face flushing with emotion.

"A lot of my patients need personal contact with other people. Especially my patients in wheelchairs. They don't have the kind of personal contact that we take for granted," he finally said. "So I try to take the time to give them some of that."

"That's Larry in a nutshell," an employee said from another room. "That's all you need to know."

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