



**Regulation Matters:
a CLEAR conversation**

Episode 29: Medical Marijuana and Licensure Issues

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Line Dempsey: Welcome to our podcast, Regulation Matters: a CLEAR conversation. I'm your host, Line Dempsey. I'm the chief compliance officer with Riccobene Associates Family Dentistry here in North Carolina. I'm also on the CLEAR board of directors, as well as the current chair of the National Certified Investigator Training committee with CLEAR.

And welcome back to our frequent listeners. For our new listeners, the Council on Licensure, Enforcement and Regulation, or CLEAR, is an association of individuals, agencies and organizations that comprise the international community of professional and occupational regulation. Our podcast is a chance for you to hear the latest and greatest in our community. And today I'm very happy to be joined by several people and that I've met over the years at CLEAR. First, I'm joined by Lori Dodson with the Maryland Medical Cannabis Commission and Kevin Huff and Sean Pascal with the Colorado Division of Professions and Occupations, Office of Investigations and Inspections. We're glad to have all three of you with us today. Thank you so much for being here.

Guest speakers: Hi, Line! Great to be here. Thank you for having us.

Line: And again I do appreciate you guys being here. Today we're gonna talk about medical marijuana and licensure issues. So I'm gonna start the questions off with Lori in Maryland first and go through several questions with you and then I'll kinda follow up and transition to our Colorado folks. So Lori, what obstacles have you been facing or do you face regulating an industry with no real guidance from the federal government?

Lori Dodson: It's a great question. Medical cannabis regulation, is still fairly new, especially out on the East Coast, I feel like we're still in our infancy and because of that, regulators face a lack of standardization across the country, I think, two very recent issues that we faced, within the last year, one being the vape crisis and the other regulation of hemp and CBD. Every time a policy issue like that arises, states are faced to really come up with their own solutions. And what happens is there's a very disjointed effort across the country. And so within the last couple of years, we've been able to put together a group of cannabis regulators to cut down on that lack of standardization, but I think as a whole, across the country that is probably one of the biggest growth opportunities for this industry.

Line: Well obviously as a board of director for CLEAR and being involved a lot in their educational conferences, I guess, how can CLEAR as an organization offer to help increase your competency in the field?

Lori: Well, I'm really excited about CLEAR and I'm glad actually one of our investigators was a regulatory person, I think, from one of the boards and commissions in Maryland prior to coming to the commission, and she introduced CLEAR to us. And I think it levels the playing field for investigators. Our enforcement compliance team is one of the biggest units at the Commission and the staff are very diverse. They bring a lot of background and a lot of various strengths. We have retired law enforcement, we have retired clinical lab folks, we have retired healthcare and public health officials - and so all of these different strengths are coming together in one place and asked to do one job. So I think it's really important to incorporate the CLEAR training to allow the compliance staff to really go back to the basics and apply them to a foundation that we're still really building in our program.

Line: That's great, I'm glad that we're helpful in that area. Obviously, I've been an instructor through the CLEAR training as well and it's something dear to my heart, and I think it's very useful, so that's great. I guess for you, Lori, what have I guess the biggest growing pains or pain points that building a regulatory agency from the ground up has made you face?

Lori: It's actually probably one of the biggest pain points but it's also what attracted me to this industry. It is a... We're government employees, we're government staff, but we operate at the pace of private industry. I have never seen, and I'd be interested in what my colleagues on the call have to say as well, but I have never seen an industry that is so dynamic and that is so innovative and how that kinda translate on our edge as the regulators is it oftentimes makes us feel like we are sprinting to keep up with change. That's been probably the hardest thing is just keeping up with the pace of industry.

Line: Well, right, this is brand new ground versus something like a medical board where people have been practicing medicine for a long time, I guess it kind of brings me to this question, How is regulating medical cannabis similar to other medical regulatory bodies?

Lori: Other than all of the jokes that we probably get for working at a medical cannabis agency. I probably got jokes for two years straight. But at the end of the day, we have an industry that we're responsible for ensuring maintains compliance, and we have patients that are depending on us to do our job so that they have access to the safe product. And so I already know that the regulations are gonna continue to change and develop as the program matures, but primarily our focus is always gonna be public health and public safety, and I think that's very similar to many medical regulatory bodies across the board.

Line: How long has the commission been in effect? Is it about three years or something like that?

Lori: Yeah, we became operational December 1, 2017, that's when product was available to patients, but the very first day, December 1st, 2017, prior to that. . .

Line: [laughter] when it was a legally available...

Lori: Yeah, let's say that... Let's say, legally available to patients. Prior to that, I think it was written into statute in 2015 and we had some hiccups getting everybody licensed and things. There's a lot of politics that go behind this industry and so we were up and running in December 1, 2017, and we have had just a very, very successful program launch. It doesn't seem like it's been three years. I just realized that I've been with the Commission for about three years and time has flown.

Line: So since you've been there that time, looking back now, obviously the hindsight is always that perfect 20/20, but what are some of your notable successes or failures that you guys have experienced over those three years?

Lori: There's many... I think probably a notable success though has definitely been our program growth. Like I said, we began in 2017, we had 17 staff when I started, and it was a primarily law enforcement focused program, and we wanted to do this a little bit different in Maryland, we really wanted to turn it into a regulatory body with a medical focus and so now we're a team of 50 and growing.

You know, our team, like I said earlier, encompasses law enforcement, encompasses public health, encompasses lab folks, chemists. We wanna make sure that our team is equipped with the regulatory side, as well as auditors and finance folks for the licensing side. It's a huge job; it's a heavy lift to run an agency like this. And unlike other states, we're doing it inside one agency. So that's a little bit unique to what you might hear from some other states.

Stigma-wise, we've been able to slowly cut down stigma in the medical cannabis industry, just with the general population, whereas in the beginning, most folks were kinda like, 'Oh, I don't really wanna talk about it' or 'It's bad'. Now, people are starting to ask questions. We've done a lot of work to educate folks on what this program is and what it isn't.

We registered to-date almost 100,000 patients. We're still receiving about 150 applications per day. In our sales, I think Q1 2020 exceeded \$91 million. So it's a successful program. I have a very, very hard-working staff that makes it happen. And it's fun to come to work. Probably another success that we're still kind of in the middle of right now is program diversity. It has been a program focus for our program within the last year especially. We've been putting a lot of time and effort into educating folks, grants, training for individuals interested in the cannabis market so it's not just big business coming in and swallowing up the little guys.

Failures - there's thousands. I always like to tell folks to call me, ask me what my successes are, but

also ask me what my failures are, so you're not repeating my failures. But probably the biggest one, the most detrimental failure, is underestimating patient volume. We've more than once experienced system crashes, just because we've had overload issues on our technical registry and our seed-to-sell tracking system to sell. If we can't track plants, we can't sell plants. And so I think the summer of 2018 was a nightmare from May to August because we kept having issues and we had to close doors for a while to get that right. But that was something that we faced very early on, just because of the interest.

Also staff development - we've had a lot of transition I'll say. And we've also grown very quickly. And so to maintain that culture and to really develop a staff earlier on probably would have been a benefit for us. But we have time now and we're doing it now and so I'm excited about what the future holds and where we're going.

Line: Well that's awesome, that's great to know. Well, let me move over to our Colorado folks, Kevin and Sean, I appreciate you guys also joining me from Colorado. How long I guess let me ask Kevin this. Kevin and I go way back. We've worked together on NCIT committee work as well as I think we've done a couple of these podcasts together. But, Kevin, how long has marijuana been legal in Colorado?

Kevin: Okay, so we've had marijuana in the state since 2000, legally in the state since 2000.

Line: Right; so you guys have had some experience obviously doing this for some time compared to what Lori's been doing with it for only three years. I guess I'm gonna ask some different questions maybe first of all, since you guys have been doing this for as long as you have, how do you partner with other agencies for enforcement?

Kevin: Well, in Colorado, we regulate, the division that we work in regulates the licensees. So we partner with other agencies, like law enforcement agencies. Sean and I both have toured around the state facilitating training opportunities to educate the law enforcement communities on what we do, how we can help them and how they can help us. And we also have developed very good contacts by doing that. The way the industry has, and just as Lori mentioned, just kinda just came about, and we just had to figure it out as we've gone along. And so, law enforcement, I believe, was kinda left behind. Wouldn't you agree with that, Sean?

Sean: Yes, the fluidity of it just continues to grow. And now we have different areas out there with the legalization totally in Colorado. That has also presented some other areas of interest for the medical marijuana community and the marijuana community as a whole. So we're trying to catch up, both on the regulatory side and on the law enforcement side as well.

Line: Right. So, I guess, obviously medical marijuana is legal in Colorado. How does your regulatory body, and I'll throw this back to Kevin, how does your regulatory body handle licensees who have a recommendation for medical marijuana?

Kevin: Well, that's a good question. So our division, we get involved with situations when we're notified of a licensee if they're impaired at work, something along on those lines. Otherwise we don't know if a licensee would have been recommended medical marijuana. That's a privacy issue; we're just restricted from knowing that information.

Line: I liken it very similar to, although they wouldn't necessarily be a recommendation from your doctor to drink alcohol, but again another substance that is regulated in the states but we still have to deal with practitioners who are impaired. And I guess it would only be in those kind of scenarios where you guys would, I guess, be notified of this. So would this be, I guess, how would you get notified on an impairment issue of some sort? Was it just be a whistleblower if you would, or have you ever actually had any medical professionals that have let you know that a licensee maybe is impaired?

Kevin: So yeah, we are complaint-driven agency, so all of our information is based upon complaints. It could be a from another licensee themselves, like a co-worker. It could be from the... Let's say it's a physician or a nurse or somebody who's impaired, so the hospital that they work at might have noticed that they were impaired while on the job. So then they would possibly ask them for a test and everything along those lines to see if they are impaired, then they would then report into our division, where we would take our action if we need to do take action based on the information that we got, we would have to investigate.

Line: What would you guys do then?

Kevin: So if we were notified of an action, yeah, we would look into it. All our licensees have the opportunity to respond to a complaint, so we would send them notification of the complaint. We would also at the time, we would, based on the information again, we might have them sign an interim cessation of practice agreement. Because our mission at our division is consumer protection, so we wanna protect the citizens of Colorado; and in doing so, if we can get them to sign an interim cessation of practice agreement, they're ceasing practice. It's not a disciplinary issue at this point; we're just having them cease practice so we can investigate and look into the situation. Once we have determined, we being the governing board has determined, if the individual has violated the practice standards, then that person would possibly be disciplined at that time. Again, that depends upon what the board decides.

Sean: And also those cases are also expedited. We do have three levels of statuses for cases, and those cases, when they come in, they're expedited. So they're taken care of typically pretty quickly so that we don't have any sort of haste in the consumer protection portion and we're making sure that we are doing what we need in order to make sure that patients are taken care of correctly by their practitioners and no one is harmed because of inaction or action that shouldn't have been taken due to impairment.

Kevin: And part of our investigation too, is with the impairment, not only with marijuana but with any type of impairment, whether it was alcohol as you mentioned earlier, or let's just say, they have

another type of substance abuse impairment, we would have them, the boards would then ask them to go for an evaluation to again ensure that they are safe to practice.

Line: Right, that makes good sense. So Kevin, with this, you mentioned earlier this interim cessation to practice agreement. Is that like a public document, or is that something that you guys can offer up to the licensee as, 'Hey look, we just want you to agree to stop practicing right now, so that we can do our investigation' and it's not public at the moment?

Kevin: Well, they actually, they are public, but they are listed as non-disciplinary. So they are actually put upon our website, so the public can see them, but they again are non-disciplinary, so that's the incentive for an individual to sign it. It's not disciplinary, so therefore it's not gonna necessarily be reported to the specific other regulatory boards that go throughout the United States that then report to other states. So if, once they complete their evaluations and let's say they are, for example, found to be not safe to practice, then the board would request a disciplinary action, which would also be public and show up on our website. But then that could be reported to other states, if they were licensed in other states.

Line: Gotcha, so a clearinghouse, like a National Practitioner Data Bank or something like that. That's great. Well, let me ask Sean a question here. So, Sean, who has prescriptive authority for medical marijuana in your state?

Sean: In Colorado, we only have physicians, licensed physicians that are able to recommend for medical marijuana. Although physician assistants and nurse practitioners in Colorado can prescribe other medicines, in Colorado they cannot prescribe medical marijuana or make recommendations for medical marijuana. Only a licensed physician can do that.

And I think part of the reason for that is a lot of physicians don't prescribe medical marijuana. So if you go to your primary care physician and you've been going to that physician for say, 10 years or whatever, all your medical records are housed there with that medical provider, and then you come up with you have an injury that you go to another physician for that will give you the recommendation for medical marijuana. So not every physician in Colorado, even though they're all licensed as licensed physicians, not all physicians will write recommendations for medical marijuana, if that makes sense.

Line: Yeah, so I'm just making sure... So, all licensed physicians can make a recommendation for it, but many choose not to. Is that kind of what you mean?

Sean: So if they have the training. They also have to go through a specific training to recommend medical marijuana, and a lot of them just, they don't do it. And that the medical marijuana recommendations are almost a specialty in and of itself here in Colorado.

Line: Okay, that makes good sense to me then. Okay, thank you. Well, let me back to Kevin here on this. Are there evaluations that need to be completed by a physician in order to determine that

they've established a patient/doctor relationship? What are the requirements there?

Kevin: Yeah, so the physician and the patient, they must have a treatment or a counseling relationship. So it can't be just you call somebody up and they just write you a recommendation. You actually have to have had a relationship with them. So that requires that they must complete a full medical assessment of the patient's history. They must also review for previous diagnosis or debilitating or disabling medical condition. Because otherwise they're not doing the full assessment, on that aspect, and so it's almost like if you were to prescribe another type of medication that would counteract with something. They need to know what all the medications that the patient is on. They don't wanna have some person have some irreversible reactions or anything to the marijuana. And also... go ahead, Sean.

Sean: I was just gonna point out the physicians, they must meet with the patient face-to-face and do a physical examination. In the past, we've had issues with physicians not doing the proper investigation on their part or the proper examination to ensure that the patient is eligible for a recommendation for medical marijuana. So this is one of those caveats that have been placed in to make sure that everyone's being treated the same way, everyone's getting the same sort of treatment and examination, and there's no gray area, so that we limit the amount of patients that might be fraudulently obtaining recommendations, if that makes sense.

Line: Oh yeah, definitely. And it'll be interesting as we continue to navigate COVID-19 to see if any of these things change as we enter into a new area of telemedicine and things like that down the road, because this isn't going away tomorrow. So, it'll be interesting to follow up with that at some point to see what changes actually occur on that. But I can understand why you'd wanna do a physical assessment so that you can gain a lot more information from just having someone call you and asking for this.

Sean: Right, and when you're relying on the patient records and if a physician sends patient records, patient record A, to the physician and who's gonna recommend medical marijuana, that physician should still look and see to make sure, yes, this person did have surgery or they are constantly throwing up, just make sure that they really do meet the physical requirements that would enable them to receive the recommendation. So it's basically two sets of doctor's eyes, in essence, on these patients.

Line: Gotcha, well I guess do they then have to get a registration card or anything like that? How does it all work with that?

Sean: Yeah, so after that, the situation with the registry cards has changed somewhat here in Colorado. It's actually a much faster process and it used to be. After the physician has done all the consultations with the patient, and they've met with them and they're able to develop the process to say 'Yes, I'm available for follow-up'. The physician has to be available for follow-ups for the patient and stuff like that. Then once that patient has met all the requirements, then the doctor usually fills

out all the paperwork to send in for the medical registry identification card or the client could actually do that as well, but it's quicker if the patient does it. So once they have all of their paperwork in order and it's stamped off by the actual physician who was recommending the medical marijuana then that patient is eligible for the medical registry card. But they actually have to receive the card before they can start using the medication.

Line: Interesting, cool. Well, thanks guys, and thanks Lori. I really think it's been a great discussion. So, I guess let me formally thank Lori, Kevin and Sean specifically for your time and being a part of this CLEAR podcast. I've always said that I think it's a great opportunity to talk about these issues and learn from each other. And I thought it was particularly interesting today, just seeing an organization that has been doing this for a long time versus a new commission that's only been in effect for three years. So I think it's some good information, and I'm so thankful that you guys could be able to speak with me today.

Kevin: Thanks for having us.

Lori: No problem, thanks. It was a lot of fun.

Sean: Thank you.

Line: And I also wanna take a moment to thank our listeners. I appreciate you checking in with our podcast on a regular basis. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. And again, if you're new to the CLEAR podcast, please subscribe. It's on a bunch of different areas or different podcast avenues; it's on Podbean, iTunes, Apple Podcast, Google Podcasts and Google Play, Stitcher, Spotify, and TuneIn. If you've enjoyed this podcast, please leave a rating or comment in the app. Those reviews really do help us improve our ranking and make it easier for new listeners to find us. Feel free to also visit our website at www.clearhq.org for additional resources as well as a calendar of upcoming training programs and events, including some training moving into the online format.

Finally, thanks to our CLEAR staff, specifically Stephanie Thompson; she's our content coordinator and editor for this program. Again I'm Line Dempsey. Thanks again for joining us.

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