



Act Now for Chance at an Ohio Medical Marijuana Dispensary License

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Ohio medical marijuana patients and prospective dispensary owners rejoice! On September 20, 2021, the Ohio Board of Pharmacy (“BOP”) announced the release of its long-awaited Request for Applications II (“RFA II”), which may license up to 73 new medical marijuana dispensaries in the Buckeye State. I wrote about the potential for this announcement back in [April of 2020](#), so this news is welcome for those who have been waiting for it. This increase in dispensary licenses is driven by the hope of improving patients’ access to medical marijuana products. Currently, there are 58 provisional dispensary licenses that have been awarded pursuant to RFA I in 2018. After concluding that patient demand was high, the BOP decided to move forward with the process to license even more dispensaries. With each application being evaluated for compliance with Ohio’s medical marijuana law, and the legal concerns that need to be addressed during business formation, it is important to have an attorney familiar with marijuana law and corporate structuring to be successful at the outset.

General Application Information

The [“RFA II and Dispensary Application Instructions” document](#) provides an overview of the application process, fees, and instructions for preparing and submitting an application. A preview of the application itself can be found [here](#). Those interested in applying for a medical marijuana dispensary license need to act fast because applications will only be accepted during a two-week window beginning in less than six weeks. Specifically, the application window will open on November 4, 2021, at 8:00 a.m. and close on November 18, 2021, at 2:00 p.m. Becoming familiar with the application and its requirements is strongly recommended given that the BOP will field questions during the following two “Q&A” periods:

First Q&A Period: September 20 – October 6, 2021

Second Q&A Period: October 17 – October 21, 2021

Applicants from 2018 know submitting questions during this time period can be extremely helpful (and sometimes maddening) in trying to remove ambiguity from the application questions — potential applicants **should not overlook this opportunity**. Each person may submit a maximum of three questions during each Q&A period. Applicants will need to act fast, as initiating contact after the second Q&A can result in disqualification.

Application and Licensure Costs

Perhaps the most important detail about the application process is the cost. There is a \$5,000 dispensary application fee. Further, an applicant must demonstrate it has adequate liquid assets for all licenses the applicant is willing to accept. The total amount of liquid assets must be at least \$250,000 per dispensary license and cover all expenses and costs associated with constructing and operating a proposed dispensary location. For example, if an applicant is awarded and will accept three licenses, the applicant must have at least \$750,000 in liquid assets. Further, if the applicant's costs identified in the application will be \$1 million per location, the applicant must have at least \$3 million in liquid assets. Additionally, each applicant must establish and maintain an escrow account or surety bond in the amount of \$50,000 as a condition precedent to receiving a medical marijuana certificate of operation license. Finally, if awarded a license to operate, the applicant will have to pay a \$70,000 licensure fee per license.

The Application Itself

The application itself is daunting and requires a significant amount of information, including several narratives, images and supporting documentation. To have the best shot at a license award, applicants will need to become extremely familiar with the application, [Ohio Revised Code Chapter 3796 et. seq.](#) (the Ohio medical marijuana statute), and [Ohio Administrative Code Chapter 3796:6](#) (the Ohio medical marijuana dispensary rules). Applications must clearly and

effectively demonstrate compliance or face being deemed ineligible. In addition to background information, demographics and other essential company information, the following documentation must be included:

- Business plan, including supporting documentation of:
 - legal right to a specific proposed dispensary location,
 - site-specific architect plan with a scaled drawing of the proposed dispensary layout with certain mandated features,
 - compliance with zoning and other local requirements, including a survey showing the requisite buffers will be met,
 - formal budget for construction/build-out and operations/soft costs,
 - organizational chart of dispensary's management and employee duties and roles, including 3rd party consultants, and
 - financial information and proof of requisite liquid assets to fund the dispensary from issuance of a provisional dispensary license to up to four months after receipt of a certificate to operate.
- Operations plan, including supporting documentation of:
 - appointment of a designated dispensary representative responsible for dispensary oversight,
 - security and surveillance plan to continuously maintain effective security, surveillance and accounting control measures,
 - ability to safely and securely receive medical marijuana products,
 - storage plan of maintaining separate locked limited access areas for the product storage,
 - ability to comply with the dispensation, labeling, and reporting requirements, and
 - maintenance of inventory controls.

Review and Selection Process

The biggest change from the 2018 RFA I is the new selection process for awarding dispensary licenses. During RFA I, the BOP relied only on a scoring process that granted certain points to each applicant based upon the contents of their application. This created a headache for the BOP and applicants alike and resulted in a substantial amount of litigation. This time, in an effort to be more equitable and increase transparency, the BOP will rely upon a drawing (lottery) to award licenses.

The 73 licenses available across the state will be allocated to certain districts within Ohio. There are 31 total districts in the state, and those with higher patient populations were allocated more licenses (the map of existing districts and the current number of dispensaries per district can be viewed on page 2 of 3 [here](#)). The number of licenses available per district for RFA II is listed on page 4 of 8 [here](#). Applicants should focus their applications on areas of most need and be mindful of the evaluations of previous applications, making it important to seek the advice of an attorney who has experience with the process. Note there are caps on the number of licenses that will be awarded to a single licensee generally (5), and per district (66%).

Applications that are on time, are fully responsive, meet the minimum statutory requirements, are fully signed and have appropriate fees paid will move forward to a BOP provisional dispensary license review. The provisional license review is based on financial liquidity, license caps (noted above) and single common ownership per parcel limitations. Applications passing muster at that level will be eligible to be entered into the lottery for a provisional license.

Unless there are not enough applications in a particular district to garner competition, which is unlikely given the competition in RFA I, a drawing will be held to produce a randomly ranked order list of all applications submitted for that district. Those submitting multiple applications for the same or adjoining parcels in an attempt to beat the odds will be automatically disqualified. The ranked order lists shall be used to award provisional dispensary licenses, subject to

each application's evaluation for compliance with the Ohio medical marijuana laws and rules, RFA II requirements and any stated limitations, until all available provisional dispensary licenses for that district are awarded. What does not seem to be entirely clear is how effective an application must be to survive compliance evaluation in a given district to be awarded a license.

Conclusion

If you have not been preparing for the opening of the new RFA II process over the last several months, you are already behind. The application process is very detailed, and preparing a great application is difficult but not impossible. There are a number of legal matters — from real estate documentation to corporate formation and regulatory compliance — that need to be dealt with efficiently during the application process. Having successfully navigated RFA I in 2018, Frost Brown Todd is intimately familiar with the application process and can provide advice on how to prepare a great application during the RFA II process. Please feel free to contact one of the authors of this article with any questions about your application.

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