



BRIAN VICENTE, ESQ. (CO)
CHRISTIAN SEDERBERG, ESQ. (CO)
JOSHUA KAPPEL, ESQ. (CO)
ADAM FINE, ESQ. (MA, NJ, PA)
ALICIA ASHCRAFT, ESQ. (NV)
JEFFREY BARR, ESQ. (NV)
JORDAN WELLINGTON, ESQ. (CO)
SHAWN HAUSER, ESQ. (CO)
CHARLES ALOVISETTI, ESQ. (CO, NY)
CASSIA FURMAN, ESQ. (CA, CO)
PHILIP SILVERMAN, ESQ. (MA)
FRANK ROBISON, ESQ. (CO)
KELLY ROSENBERG, ESQ. (CO, WY)
SALLY KENT PEEBLES, ESQ. (CO, FL, OR)

OFFICES IN
DENVER, BOSTON,
LAS VEGAS, LOS ANGELES,
AND WASHINGTON, D.C.

455 SHERMAN ST., STE. 390
DENVER, CO 80203
(T) 303-860-4501 | (F) 303-860-4505

JESSICA SCARDINA, ESQ. (CO)
COLIN FLETCHER, ESQ. (CO)
JERRICO PEREZ, ESQ. (CO)
BRANDON KURTZMAN, ESQ. (MA)
DAVID ULLIAN, ESQ. (D.C., MA, SC)
TYLER NIXON, ESQ. (CA)
COREY COX, ESQ. (CO)
CARL WERNER, ESQ. (CO)
JEREMY SHAW, ESQ. (MA)

SPECIAL COUNSEL
STEVE FOX, ESQ. (MA)
M. ALLEN HOPPER, ESQ. (CA)
PHILIP A. CHERNER, ESQ. (CO)

Testing, Distribution, and Transportation - Summary and Issues for Consideration

MCRSA and AUMA

A summary table of testing laboratory, distributor and transporter licensee privileges and restrictions under the Medical Cannabis Regulation and Safety Act (MCRSA) and Adult Use of Marijuana Act (AUMA) is provided on the final page of this memo.

MCRSA establishes 18 different “types” of licenses in six different “categories” (cultivation, manufacturing, testing, dispensary, distribution and transporter). Testing laboratories are entities registered with the Department of Health and accredited by an independent testing body to sample and test medical cannabis and medical cannabis products for potency and contaminants in accordance with forthcoming state testing requirements.¹ Though nothing prohibits other licensees from performing in-house testing for quality assurance purposes, medical cannabis and medical cannabis products may not be released for distribution to a dispensary until a licensed, independent testing laboratory issues a certificate of accreditation demonstrating that the product has passed all mandatory testing.

Licensed transporters will have the exclusive ability to transport medical cannabis and medical cannabis products between licensees, but will not be authorized to conduct deliveries (i.e., commercial transfer from a licensed dispensary to a qualified patient, primary caregiver or testing laboratory).^{2,3}

Licensed distributors will obtain finished medical cannabis and medical cannabis products from licensed cultivators and manufacturers, conduct mandatory quality assurance inspection and review, ensure sampling and testing by a licensed testing laboratory and ultimately distribute the

¹ California Business and Professions Code (Cal. Bus. & Prof.) § 19342.

² Cal. Bus. & Prof. § 19326.

³ Cal. Bus. & Prof. § 19300.5(m).

product to dispensaries.⁴ A licensed distributor must also hold a transporter license to carry out these activities, but a distributor may store product at individually licensed locations during distribution whereas an entity holding only a transporter license is not explicitly authorized to store product at present.⁵ As such, a licensed transporter in California must only obtain an individual license for each place of business used other than for transport and for each location in which equipment (e.g., transport vehicles, shipping containers) is stored when not in use during transport.⁶

Licensed distributors may purchase products from licensed cultivators and manufacturers and resell them to dispensaries or may simply execute contracts between licensees and collect a fee for doing so.⁷ Licensed cultivators and manufacturers (including those holding a producing dispensary license) are required to use a licensed distributor for quality assurance, testing and distribution of products, except when medical cannabis produced by a cultivator will be used in manufacturing or otherwise sold to a manufacturer.

Except as expressly authorized in MCRSA pursuant to enumerated exceptions, a person or entity that holds a state license in one category is prohibited from holding an ownership interest or license in another category. The enumerated exceptions include the aforementioned requirement that distributors (Type 11) must also hold a transporter (Type 12) license and the allowance for cultivators and manufacturers to hold a transporter license provided the cannabis is going from cultivator to manufacturer for further manufacturing. Otherwise, testing laboratories, distributors and transporters are prohibited from having an ownership interest in other license types for distributors, transporters and testing laboratories as these license types are contemplated as serving a quality control and support use role.

AUMA largely replicates the license categories and types set forth in MCRSA, but excludes a transporter license. This is significant given that MCRSA mandates the use of a licensed transporter for inter-licensee product movement. However, the Department of Consumer Affairs has the authority to create licenses for the transportation of marijuana, so a transporter license could potentially be added in rulemaking.⁸ Under AUMA, only distributors are explicitly authorized to transport marijuana and marijuana products, but the use of a licensed distributor is optional, so the authority to transport under AUMA will likely be clarified in rulemaking.

There is a distributor license type under both programs but the distribution model differs. With few exceptions, MCRSA requires cultivators and manufacturers to send all products to distributors/transporters prior to distribution to a retailer. In contrast, AUMA gives cultivators and manufacturers the *option* of using a licensed distributor's services if so desired. Quality assurance, inspection and testing will be required prior to distribution in the same manner as required by MCRSA, but these activities may or may not be conducted by an independent licensed distributor.⁹

As stated above, under MCRSA, distributors, transporters, and testing labs are viewed as serving quality control and compliance needs and are generally not permitted to have ownership in other

⁴ Cal. Bus. & Prof. § 19326.

⁵ See Cal. Bus. & Prof. § 19334(a)(2) & § 19320(c).

⁶ Cal. Bus. & Prof. § 19320(c).

⁷ *Ibid.*

⁸ AUMA, Division 10, Chapter 2, § 26012(a).

⁹ AUMA, Division 10, Chapter 11, § 26110.

categories. However, AUMA places fewer restrictions on the ability to hold a distributor license in addition to other license types. Apart from entities holding the large cultivation licenses (Type 5, 5A and 5B), there is nothing in the initiative language that prohibits a licensed cultivator, manufacturer or retailer from holding a distributor license as well. It remains to be seen whether this will be addressed in regulation or in clean-up legislation.

AUMA and MCRSA both prohibit a state testing laboratory licensee from becoming licensed for other commercial cannabis activities, which is the predominant policy position in legal cannabis states, and neither AUMA nor MCRSA prohibits an entity from obtaining multiple testing laboratory licenses. However, there is uncertainty surrounding which agency will ultimately have the authority to regulate testing laboratories; the California Department of Consumer Affairs (DCA) is responsible under MCRSA but AUMA grants this authority to the California Department of Public Health (DPH). This inconsistency may be addressed legislatively as well. AUMA as written does not address in-house testing by licensed cultivators and manufacturers, but this may be addressed in rulemaking.

Policy Considerations from Other States-Colorado

Colorado's experience in the regulation of distribution, transportation and testing of marijuana are informative in assessing what regulations have been effective and issues that will likely arise. We have summarized some relevant findings concerning state and local regulation of these license types in Colorado to help guide Cathedral City's local policy decisions in the meantime. Note that California's medical and adult-use cannabis statutes contain broad directives concerning state regulation of laboratory testing, distribution and transportation, so the specific requirements for these license types will remain uncertain until a later phase in the state rulemaking process.

Colorado issues state licenses for testing laboratories and transporters, but there is no distinct distributor license type. Instead, infused product manufacturers may effectively act as distributors by purchasing and selling cannabis and cannabis products at wholesale. Licensed cultivators and manufacturers are responsible for making sure their products undergo quality assurance and mandatory testing prior to wholesale or transfer to. Because product quality and safety are matters of statewide (and in most industries, federal) concern, the standards products must meet prior to distribution are comprehensively addressed in state regulation and are rarely exceeded by local government.

Colorado's current transporter scheme differs from MCRSA's in that licensed cultivators and manufacturers may transport their own products without obtaining a transporter license, but may voluntarily use a licensed transporter's services if desired. Prior to the establishment of retail transporter license in mid-2016, cannabis businesses transported their own products or contracted with unlicensed vendors offering courier services. In large part, this new license type was developed so that transporters could temporarily store products at their licensed premises and transportation and distribution could be further regulated; couriers were previously required to return to the originating licensee's facility when a delivery could not be completed in the allotted timeframe and were not authorized to store products overnight. This became incredibly burdensome for businesses, particularly for those on the outer areas of the state. Distributors and transporters in California will have a similar need for temporary storage due to the geographic area of the state. As transporters are not currently authorized to store product under MCRSA, legislation and rulemaking should be monitored for expansion of transporter storage privileges.

Localities that choose to license and regulate medical cannabis distributors (and transporters, if authorized to maintain storage sites) must consider appropriate zoning/land use for such facilities. We anticipate a greater need for such facilities in California as the use of a licensed transporter will be mandatory in most cases (under MCRSA).

Colorado requires testing laboratories to be state-licensed, third-party certified, and independent of other license types, as will be the case in California. Statewide testing regulations address license privileges and restrictions; certification requirements; personnel qualifications; operational standards; tracking, recordkeeping, reporting requirements and testing standards. It is extremely rare for localities to adopt more stringent regulations for testing laboratories for several reasons. First, even state agencies with sufficient resources and experience regulating laboratories struggle to craft appropriate testing regulations because there are so many unknowns in cannabis science and guidance from federal agencies is absent in the cannabis industry. Where generally, in the case of regulating an agricultural product and derivative consumer products, guidance and standards would be provided by the United States Department of Agriculture and Food and Drug Administration, state agencies regulating cannabis do not have the benefit of such guidance and are tasked with implementing their own standards. Furthermore, most cannabis states, including Oregon and Colorado, have experienced delays and deficiencies in testing program roll out because the market is poorly understood and imperfectly regulated. In addition, traditional experienced laboratories are often unwilling to enter the cannabis space, creating opportunity for unsophisticated operators to enter the market who can be difficult to regulate effectively. State regulators have struggled with ensuring consistency between facilities, implementing standards in the absence of federal regulation, and enforcing state laws. State mandated standards and ethics are seen as the best way to ensure accuracy, which may be compromised by requiring standards on the local level. Consequently, state testing regulations are frequently modified so localities that adopt specific testing standards may be burdened by frequent ordinance amendments.

Local Regulation of Testing, Distribution and Transportation

Transportation, distribution and testing of cannabis are generally matters of statewide concern. These license types are comprehensively regulated at the state level in most cases, so local governments tend to play a limited regulatory role. Localities in Colorado and other states typically regulate zoning/land use for these license types but otherwise generally find it unnecessary and impractical to exceed statewide requirements.

In California, there will continue to be unknowns surrounding these license types until statewide regulations are established and the inconsistencies between AUMA and MCRSA are resolved. Accordingly, any locality that establishes specific standards or requirements prior to state rulemaking will likely have to revisit those ordinances within a year.

As such, it is appropriate for Cathedral City to establish land use/zoning regulations and suitability requirements for testing laboratories, transporters and distributors, but to defer to forthcoming state regulations on all other particulars. Suitability requirements for these license types may simply be aligned with those in place for other cannabis licensees. Basic regulations aimed at achieving compliance with Cole Memorandum enforcement priorities are appropriate and important for

diversion prevention and for the protection of California cannabis businesses in advance of MCRSA and AUMA implementation.¹⁰

Cole Memo compliance is key, so it is critical that the City ensure appropriate security, tracking and vetting measures are ultimately in place. We anticipate that statewide regulations will address these areas of concern, but recommend a confirmatory review upon adoption of state regulations and adjustment of local ordinances as needed.

¹⁰ Deputy Attorney General James M. Cole. August 29, 2013. *Guidance regarding marijuana enforcement* [Memorandum]. Washington, D.C.: U.S. Department of Justice. Retrieved from: <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

	Testing Laboratory	Distributor	Transporter
MRCSA	<p><i>"Testing laboratory" means the premises where tests are performed on medical cannabis or medical cannabis products and that holds a valid certificate of accreditation.¹¹</i></p> <p>Notable Items: A testing laboratory licensee is prohibited from holding any other type of state license. A third-party accreditation body must accredit all testing laboratories. Regulated by the Department of Consumer Affairs.</p>	<p><i>"Distributor" means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.¹²</i></p> <p>Notable Items:¹³ Obtains finishes products from cultivators and manufacturers (mandatory, with limited exceptions¹⁴), ensures products are tested and transports to and from testing lab, conducts pre-sale quality assurance, and sells the approved products to licensed dispensaries. Transports products between the relevant licensed entities, but not to consumers. Must hold a Type 12 transporter license but may not hold any other type of state license. Must individually license each location where product is stored for the purposes of distribution.</p>	<p><i>"Transporter" means a person who holds a license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the bureau between licensees that have been issued a license pursuant to this chapter.¹⁵</i></p> <p>Notable Items: Only licensed transporters may transport medical cannabis or medical cannabis products from one licensee to another licensee.¹⁶ Cultivators and manufacturers (including nurseries and 10A producing dispensaries) may hold transporter license, subject to certain limitations.¹⁷</p>
AUMA	<p><i>"Testing service" means a laboratory, facility or entity in the state, that offers or performs tests of marijuana or marijuana products, including the equipment provided by such laboratory, facility, or entity, and that is both of the following: (1) Accredited by an accrediting body that is independent from all other persons involved in commercial marijuana activity in the state. (2) Registered with the Department of Health.</i></p> <p>Notable Items: A testing laboratory licensee is prohibited from holding any other type of state license.¹⁸ "Registered" is used in the definition above, but AUMA also references a testing laboratory license. Regulated by the Department of Public Health.</p>	<p>No "distributor" definition, but "distribution" definition in AUMA is consistent with MCRSA.</p> <p>Notable Items: Use of licensed distributor is optional. Methods for ensuring products undergo quality assurance a testing prior to distribution is TBD in rulemaking. Not required to hold transporter license because license type doesn't exist under AUMA. May not hold a large cultivation license and distributor license, but otherwise distributors not required to be independent of other license types.</p>	N/A

¹¹ Cal. Bus. & Prof. § 19300.5(ak).

¹² Cal. Bus. & Prof. § 19300.5(q).

¹³ Cal. Bus. & Prof. § 19334(a)(2).

¹⁴ Cal. Bus. & Prof. § 19326(b).

¹⁵ Cal. Bus. & Prof. § 19300.5(an).

¹⁶ Cal. Bus. & Prof. § 19326(a).

¹⁷ Cal. Bus. & Prof. § 19328(a)(10).

¹⁸ AUMA, Division 10, Chapter 5, § 26053(b).