

Robert J. Corry, Jr.
Attorney at Law

~

600 Seventeenth Street
Suite 2800 South Tower
Denver, Colorado 80202
303-634-2244 telephone
303-260-6401 facsimile
Robert.Corry@comcast.net
www.RobCorry.com

VIA ELECTRONIC MAIL

January 7, 2010

The Honorable Chris Romer
Colorado Senate
Denver, Colorado

Re: Preliminary Comments on Draft Text (Dec. 30, 2009)
Regulate Medical Marijuana

Dear Senator Romer:

Thank you for the opportunity to provide comments to your draft “Regulate Medical Marijuana” bill. I enjoyed our appearance on KBDI January 5, and am encouraged you committed to consider significant modifications to your draft, which cannot be supported by any serious patient or caregiver in Colorado’s Medical Marijuana community. On a personal note, though I appreciate our collegial and respectful dialogue, your obvious diplomatic skills are no replacement for substance. My clients’ lives literally depend on their access to medicine, and we will fight any government proposal that would restrict supply and raise costs, such as this proposal.

In general, the top three problems facing Medical Marijuana patients are (1) high cost of medicine; (2) choices and consistent supply of medicine; and (3) quality control and labeling of medicine. As an economist, you know that the only way to lower cost, on both a short- and long-term basis, is to increase supply. Your proposed bill would significantly increase costs to patients, thereby placing the most vulnerable of them in danger. Your bill would reduce the selection and consistency of medicine, driving most of the supply back to the dangerous criminal underground. Your bill does nothing to address quality and labeling of medicine, which the community is already developing faster and more effectively than government could for this unique community formed under slowly-clearing clouds of Prohibition.

Patients are caregivers are rightfully concerned with your stated motivation, as quoted in both the Boulder Daily Camera and Denver Post, to put half of Colorado's existing, taxpaying, job-creating, economically viable, caregivers "out of business." There is currently a shortage of caregivers, and we hope that eventually the supply and availability of medicine can increase to create significant decrease in price.

Specifically, the bill suffers from numerous deficiencies as follows. These comments are of a preliminary nature only, and given more time to study your 39-page proposal I might locate other defects. I thought it preferable to highlight the main problems rather than take the time to develop a comprehensive analysis since you indicated you were contemplating changes anyway.

Page 3, Section 1. Legislative Declaration:

The first sentence incorrectly limits the benefits of medical marijuana to treating "pain." Although pain relief is one major benefit of medical marijuana, many scholarly studies, physicians, and patients report that medical marijuana can actually improve or cure certain medical conditions, and prevent other conditions, rather than merely relieving pain. Medical marijuana is more than a band-aid for many patients. There are many other reasons for medical marijuana in addition to pain relief, and the declaration should reflect this significant fact.

Page 3-8, Medical Marijuana Licensing Authority:

In these times where our state government is literally bankrupt, we cannot afford to create an additional unnecessary layer of bureaucracy that will exist perpetually and carve out an imaginary justification for its own existence like a parasite, sucking tax dollars for generations. The Department of Health is already bloated, obstinate, hostile, and inefficient enough with documented misinformation about the average age of patients and its inexcusable and illegal delay of over 120 days in issuing simple registry cards and overcharging patients \$90.00 for the privilege of waiting nearly a half a year for a card that expires in a year. Patients cannot afford another hostile army of bureaucrats whose mission is to undermine the Colorado Constitution.

Page 4, Line 12:

Improperly delegates too much power and discretion to local authorities on an issue of statewide concern. Local governments have already demonstrated an extreme hostility to suffering patients and their needs, instead opting, ostrich-like, to try to hide from the future. Local governments, with some positive exceptions, have generally shown by their own arrogant and illegal actions (see Frasher v. City of Centennial, Arapahoe District Court 2009, which I litigated, successfully striking down an illegal local prohibition on medical marijuana) that they cannot be trusted to exercise any reasonable discretion on this issue. Of course locals

should retain neutral zoning power as to location of businesses, but nothing more. Giving these heartless local bureaucracies any more power is an invitation to them to continue to discriminate against suffering patients. For example, the City Council of Westminster, Colorado callously opted to shutter the doors of existing dispensaries while flatly refusing a courteous written engraved invitation to even take 15 minutes out of their day to personally visit the viable businesses they destroyed. Most other city council members are similarly arrogant. There are exceptions: some Denver City Council members have actually visited the businesses they seek to regulate, and you have as well, which we appreciate.

Page 4, Line 21:

Requires a public hearing on ALL complaints (and there will be some, especially when opponents (or even business competitors) discover this burdensome procedural hammer) made against a clinic or grower licensee, thus burying licensees and the government in expensive perpetual litigation. Believe it or not, there is a shortage of real lawyers who are competent and experienced in dealing with medical marijuana-related court or administrative proceedings. My law firm is too busy already.

Page 6, Line 9:

Criminal background checks as a requirement for serving as a caregiver are unconstitutional and unreasonably restrict patient choice of caregiver. Pursuant to the Colorado Constitution, Article XVIII § 14, the voters already defined a caregiver as an adult with a significant responsibility for the well-being of a patient, period. Not an adult who has lived an error-free life. Not an ordained saint, although some caregivers should qualify for that designation. The practical reality is that many caregivers, since they are knowledgeable in how to cultivate and produce marijuana, picked up criminal convictions at some point in their lives. These people now seek to turn their valuable knowledge into something that helps suffering patients. They should be welcomed to the business world, not shut out in the cold.

Page 7, Lines 9-15:

The Devil's Dictionary definition of "morality" is "that sneaking suspicion that someone, somewhere, may actually be having a good time." The case against medical marijuana closely relates to this irrational mentality, typically held by those individuals so dissatisfied with their own empty lives that they actually obsess about the manner in which other unknown people alleviate their physical conditions. Most of the complaints and concerns regarding medical marijuana relate to the signage on the physical locations themselves. This can be attributed mostly to a very vocal minority of fanatical biddies, grandmothers, and other Communist nanny-types who are somehow "offended" that some suffering people use a 10,000-year-old Old and New Testament-recognized scientifically-proven

holistic organic plant remedy instead of synthetic chemicals and pills. Until these poisonous haters die off (from their own narcotic and alcohol addictions that could be cured by the plant they hate), as an elected politician, you probably still have to put some grease on these very irritatingly squeaky wheels. Thus, a reasonable restriction on signage is probably an area that this community would reluctantly compromise on and which government could properly regulate. Your bill does the opposite by allowing unfettered advertising. We should discuss some acceptable compromises in this area along the lines of the tobacco industry, which agreed to limit its own ability to advertise.

Page 7, Lines 16-27:

This section provides that a person cannot refuse, even under the right to remain silent against self-incrimination, to provide testimony to the apparently god-like medical marijuana licensing authority. The Colorado State Legislature can never repeal the Fifth Amendment to the United States Constitution and should not even waste the court's time in attempting to do so. I will file a lawsuit against this bill in the unlikely event it becomes law over the objections of a thousand screaming patients, but I would rather have a challenge instead of a slam-dunk.

Page 8, lines 4-5:

This permits the all-powerful licensing authority to deny a license "in its discretion." For the reasons earlier expressed, government cannot be trusted to exercise any real discretion regarding medical marijuana, or the power to deny a license on a whim, regarding an alternative medicine it abhors.

Page 10, Lines 1-7:

This requires any growing location to post a sign on the planned grow location visible to all in the neighborhood, including children. This is ridiculous. This is an advertisement and open invitation for children and teenagers to break in and steal the marijuana they think might be inside, and get shot or killed in the process. This provision is dangerous and unenforceable, and must be eliminated. Grow operations must be as discrete and unknown as possible. Any alternative rule harms children and infringes on public peace and safety. No grower worth anything will comply with this. This requirement would drive grow operations back underground, all for the enjoyment and profit of foreign criminal drug cartels. I expect the prison-industrial complex, led by Warden Suthers, to strongly support this harmful provision, since it is full employment for them and their government-funded satraps.

Page 10, Lines 8-11:

This allows so-called “parties in interest” and other nattering self-important neighborhood nabobs to subpoena, cross-examine, and inquire into confidential medical information. This has no place in the United States of America, still a free country.

Page 11, Lines 22-23:

This would allow neighborhood residents to exercise a veto over location of an existing or new dispensary or caregiver operation on their whim. It gives effect to irrational prejudices against marijuana and must be eliminated.

Page 11, Lines 24-26:

This would allow the government, never a good assessor of supply and demand (see the Former Soviet Union with its interminable bread lines), to deny licensure of existing or new caregivers if there are already adequate (in the judgment of government) suppliers in the area. This is anticompetitive and creates government-imposed marijuana monopolies. Ironically, this is antithetical to the purpose of the bill in that it locks in the early movers (who are presumably offensive) and excludes the newer entrepreneurs who seek to bring their business acumen to bear on this burgeoning industry. If the existing players are somehow offensive, why would this bill lock in their market share in perpetuity and create a government-sponsored syndicate that excludes competition, all in the worst tradition of mob-style crime families?

Page 12, Lines 12-13:

Allows the government, with all of its evident knowledge about marijuana and the medical needs of each patient, to create a “cap” on the number of patients a particular caregiver can serve. This is illegal, and a violation of the constitutional right of the patient to determine his or her own caregiver. It would also harm the most vulnerable of patients who already have difficulties obtaining medicine at a low cost.

Page 13, Lines 10-12:

Grants the government the subjective discretion to deny a clinic or grower license based on the “character” of the applicant or its officers, if the government thinks that violations of this statute might occur. This allows petty government bureaucrats to completely shut down the medical marijuana supply chain on their imaginary whims, and if past actions are any guide, they will abuse every inch of power this statute gives them, and it gives them miles.

Page 13, Lines 13-18:

Again permits government to deny a license based on its own assessment as to whether local customers are already served by existing businesses, thus locking in a marijuana monopoly. Government as Al Capone. See comments above.

Page 14, line 10:

Prohibits government from issuing a license to “a person who is not of good moral character.” This would apply to growing licenses and clinic licenses. It is unlikely that Dr. James Dobson or The Pope will apply for these licenses, therefore government could deny any other fallible human sinner a license and effectively choke off the entire supply, or more probably just drive it back underground. The judgment of “good moral character” is also based partially on business persons/competitors and neighbors within the area, as determined by the local government. So both the state and local governments get to determine the “good moral character” issue. No real adult human being can survive such scrutiny.

Page 14, lines 19-22:

Requires 100% of officers, directors and 90% of stockholders in any business also be of “good moral character.” No company in the United States could meet such a standard. No legislature in the United States could meet such a standard. No city council in the United States could meet this standard. No governor’s office could either. Marijuana should not be held to standards no other entity can satisfy.

Page 15, Lines 4-5:

This prohibits a peace officer, or any member of a peace officer’s family, from obtaining a clinic or grow license. As a criminal defense lawyer, I know that a minority of police officers have difficulty complying with the “good moral character” requirements in this bill, but most of them are upstanding moral members of our community. If we do not trust police officers, or even more strangely and arbitrarily, their families to help suffering people who need marijuana, then who can we trust? One of my favorite dispensary clients has a son who serves as a Sheriff’s Deputy, and there is no problem whatsoever with this situation. This bizarre provision makes no sense, like the rest of this bill.

Page 15, line 23:

Requires clinic and grower licensees to provide fingerprints along with “personal history information concerning the applicant’s qualifications” to obtain a license. Like the “good moral character” requirements critiqued above, this would only inspire local witch hunts against medical marijuana caregivers who already have enough problems with conducting this controversial business. As for “qualifications,” under this standard, a first-time beer brewer such a John

Hickenlooper probably would have been denied his permission to brew beer, lacking any “qualifications” in this regard, so the man you may succeed as Mayor might have been denied the business platform that launched him to the Mayor’s Office in the first place. Someday, a dispensary owner may rise to be Mayor but your bill would deprive the community of such new innovative career-changers such as Mayor Hickenlooper.

Page 16, line 3:

Requires the State of Colorado to forward fingerprints, names, social security numbers, birth dates, addresses, and other identifying data of growers and clinics to the Federal Bureau of Investigation (FBI) for a federal background check. This makes the state government into a federal snitch, an unprecedented development in the history of separation of powers in the United States of America. With this extreme requirement, no self-respecting clinic or grower will ever comply with this law, making it even more unenforceable than current criminal prohibition against recreational marijuana, widely ridiculed by the populace. The State of Colorado should be protecting its citizens from the depredations of foreign sovereigns such as the federal government, which despite President Obama’s pronouncements, continues its hostility against the voters of the State of Colorado and our firm desire that medical marijuana be legal. Your earlier proposal that the Colorado Attorney General be required to defend Coloradoans persecuted by the federal government was a step in the right direction and should be re-inserted into your bill. But this proposal goes the opposite direction. Obviously the FBI cannot be trusted to respect state prerogatives regarding medical marijuana.

Page 16, lines 25-27:

Prohibits a clinic or grower from being within 500 feet of a school or day care center. There should be no arbitrary distance limit from schools and day care centers, which would effectively ban the operations in many parts of the state. There is no documented case of any child ever purchasing or obtaining medical marijuana from a dispensary. A distance limit accomplishes nothing, as children are mobile and can travel to dispensaries, if that were a problem which it is not. It is unclear what “problem” a distance limit from schools “solves.” Why is 499 feet from a school unacceptable but 501 feet acceptable? There is no answer to this rhetorical question, i.e., the very definition of arbitrary. It is also unfortunate that the State Legislature is asked to act as a local zoning board and asked to substitute its judgment over local zoning decisions. Your Senate District is close to 9th and Corona streets in Denver, which has a liquor store and a pharmacy directly across the street from a public elementary school, with no documented problems for decades.

Page 17, lines 3-5:

Prohibits a clinic or grower from being 20 miles from a Colorado state border. This is insane. It could deny citizens in Fort Collins, Grand Junction, Sterling, Burlington, Trinidad, Cortez, and other people and communities that happen to be close to the arbitrary state border lines, access to medicine. This seems utterly arbitrary, like most of these distance requirements. Are we protecting citizens from other states?

Page 17, lines 22-23:

Any transfer of a clinic or grower license must be pre-approved by the government, further locking in monopolies and devaluing the license. This is more government interference in the free market that will only harm patients, and participants will opt out of this non-transferable licensing scheme and go back underground, all to the benefit of cartels.

Page 21, lines 14-20:

This would permit local governments to limit the number of medical marijuana clinics and growers. It grants far too much power to locals, as many of them have expressed and acted on their desire to ban medical marijuana outright, so they would pass limits of “one” under this bill. Patients should decide through their free choices how many clinics and growers there should be.

Page 21, Lines 22-25:

Requires clinics and growers to notify the state within ten days of any employee change, an onerous requirement with which no other type of business in Colorado need comply.

Page 22, lines 11-12:

Requires all officers and board members to be residents of Colorado. There is no rational purpose for this, again a requirement that saddles no other business.

Page 22, lines 13-19:

Prohibits Sunday distribution of medicine or distribution outside of 8am through 8pm, also prohibits on-site consumption. Colorado has grown past antiquated “blue laws,” and this would only deny patients in difficult emergency situations their medicine. Dispensary hours should not be limited. Pharmacies are open 24 hours in some cases, since emergencies can occur and patients may need medicine at all hours. That said, most dispensaries now choose to limit their own hours, but should not be prohibited from having a 24-hour help line to provide medicine to patients in emergency situations on an as-needed basis. On-site consumption, if properly set up, can be an important aspect of dispensaries. Many patients need to medicate in private area of dispensary since they have no other

private area to do so, and children may be present in their homes, and the Constitution prevents use in “public view.” This would send people to public places to medicate, which is unsafe and unsightly, and illegal.

Page 22, Lines 20-21:

Limits caregivers to 1500 patients, which is unconstitutional and irrational. If a particular caregiver is compassionate and effective enough to accumulate more than 1500 patients (as many are currently), patients should not be arbitrarily restricted from selecting this caregiver. A similar objection exists to the prohibition on holding an ownership interest in more than three clinics at one time. This is yet another example of an attempt to repeal the laws of supply of demand, which government cannot do.

Page 23, lines 2-9:

Requires clinics to report on and act as informants against their own patients if the amount purchased exceeds two ounces per week. Although law enforcement frequently overuses paid snitches/criminals to do its dirty work, this bill would poison the confidential relationship between patient and caregiver and place them in an unnecessarily adversarial posture. It would just drive this back underground because no truly compassionate caregiver would comply with this evil requirement.

Page 23, Lines 15-19:

Prohibits a grower from “directly” providing medical marijuana to a patient. This is blatantly unconstitutional and inconsistent with reality. Caregivers are permitted by the constitution to provide for their patients. It sets up a required middleman, which increases costs to the patient.

Page 23, Lines 20-23:

Requires transactions be conducted by a “verifiable” payment method. I assume the intent is to eliminate cash transactions, by far the most common method in this business. Multinational credit card companies have shown extreme hostility to medical marijuana as have some banks. Many patients are too poor or disabled to have a credit card or a checking account and this provision only hurts them.

Page 23, Lines 24-25:

Prohibits growers from operating in any areas not zoned for agricultural or industrial uses. So now the State Legislature is acting as a local zoning board and substituting its judgment for local zoning issues, which is the one area the locals should retain some power.

Page 24, lines 10-26:

Grants the licensing authority extreme powers, including subpoena power, to harass and probe into confidential patient, caregiver, and physician issues.

Page 25, lines 8-9:

Allows the clinic or grow license to be “summarily suspended without notice,” which devalues the license altogether. Most will bypass this onerous and worthless license in favor of going back underground.

Page 26, lines 26:

Fines paid by licensees are credited to the General Fund, which is unconstitutional, just like the legislature’s own \$258,735 money grab on 4/20/09 (coincidental date?). The Constitution requires that all monies collected for medical marijuana be used to fund the administration of the program.

Page 29, lines 15-18:

Requires physician do perform follow-up care to the patient, even if the patient does not need or request it. This and other micromanagement of the ancient confidential doctor-patient relationship is without precedent in American law.

Page 30, lines 1-3:

Requires physician to have never had his or her Drug Enforcement Administration registration suspended, another unconstitutional requirement. The constitution requires a doctor to only have a current license to practice medicine in Colorado. Many doctors eschew the DEA process as it is too intrusive and bureaucratic, and they are not interested in making their patients addicted to synthetic narcotics.

Page 30, 22-27:

Requires the registry card to have the doctor’s name on it, a further violation of confidentiality, that will enhance witch hunts against the courageous physicians who do the right thing for their patients even in the face of government intimidation.

Page 32, lines 1-7:

Requires caregivers to obtain government approval before acting as such, another unconstitutional requirement. It is the patient who decides who his or her caregiver is, and only the patient.

Page 33, lines 1-6:

Further restricts patient choice by arbitrarily limiting them to four changes of caregiver per year. Some patients have more than four caregivers at any one time, and many patients change them frequently as the supply of medicine is quite inconsistent.

Page 34, lines 13-20:

Allows the government to deny a registry card or revoke it if the government decides, without a hearing or jury trial, that this bill or the constitution was violated. This is unconstitutional. The government's only constitutionally-permitted role regarding cards is to issue the card if the physician's recommendation and other information is valid.

Page 35, lines 1-11:

Prohibits a physician from being compensated in any way for his or her work, except by the patient directly. This is a requirement that no doctor in any other specialty must follow. Most doctors are compensated by the hospitals in which they practice, and doctors rarely collect money directly from their patients.

Pages 35-36:

Creates yet another layer of bureaucracy, the "Medical Marijuana Review Board," set up to intrude upon and interfere with confidential physician decisions regarding individual patients under the age of 21. The specter of these vulnerable young patients facing a Governor-appointed board of overseers for "permission" to access his or her constitutionally-protected, physician-recommended medicine does not belong in a free country. This Board's very existence is unconstitutional.

What Should be in the Bill

This is a constitutionally-protected medicine that is currently overpriced because of high demand and low supply. Patients depend on this medicine in some cases for their lives. Further restricting supply only drives up the cost for patients, who would be harmed by crushing regulations. The most vulnerable of patients are harmed the most.

This community is not opposed to reasonable regulations designed to help patients, but will oppose those that will restrict supply or quality. Some of the legislative ideas that should be considered are purity and quality labeling; warning

labels; prohibition on local infringement on the constitutional right to medical marijuana; prohibitions on discrimination in employment, education, professional licensure, housing, parenting, child custody, based on status as Medical Marijuana patient; statutory protection for entry-level caregivers to start operations without fear of prosecution; expansion of the power to provide recommendations to licensed chiropractors, licensed nurses, and licensed physical therapists; and creation and establishment of a University of Colorado research program into medical marijuana.

In conclusion, in working to help build this industry over the past nine years, I understand that marijuana remains a controversial medicine, although that is rapidly shifting with even the conservative American Medical Association endorsing its medical benefits. Luckily, the majority rules, and Colorado's compassionate voters are more numerous than those who would deny others this miracle medicine.

In conceptualizing this bill, it is helpful to consider another controversial medical issue, abortion. As we discussed previously, it would be interesting to do a "find & replace" on your bill and replace all references to "medical marijuana" with "abortion." I am sure Colorado's creative pro-life organizations would appreciate this blueprint for further regulation of that industry. Your statement that, because you are pro-choice, you would vote against a parallel regulatory regime for abortion providers, speaks volumes.

Thank you for considering these comments. Please call me at 303-634-2244 with any questions.

Sincerely,

Robert J. Corry, Jr.
Attorney and Counselor at Law