



The Feds and New York Allow Further Access to CBD and Medical Cannabis

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On September 28, 2018, the Drug Enforcement Administration (DEA) took the long-awaited step of rescheduling Epidiolex® – the first FDA-approved drug based on cannabidiol (CBD) – from Schedule I to Schedule V. Specifically, the DEA's **Rule** places "FDA-approved drugs that contain CBD derived from cannabis and no more than 0.1% THC in Schedule V."

Since Epidiolex is currently the only FDA-approved drug that contains CBD, the rescheduling applies only to Epidiolex and not CBD in general.

In June 2018, the FDA approved Epidiolex for treatment of seizures associated with two rare forms of epilepsy: Dravet Syndrome and Lennox-Gastaut syndrome. The active ingredient in the drug is CBD, one of more than 100 cannabinoids in the cannabis plant and, unlike tetrahydrocannabinol (THC), CBD is not psychoactive and won't get the user "high." Since CBD is extracted from the cannabis plant, its legality on the state and federal levels lies in a legal "gray area" and until the DEA's recent rescheduling, the makers of Epidiolex could not have legally distributed or sold the drug. With the DEA's rescheduling, Epidiolex can be distributed across the United States.

Those in the CBD industry must not interpret this order as broad federal approval of CBD. To the contrary, the DEA reinforced the

order's narrow scope, stating "any material, compound, mixture, or preparation *other than Epidiolex that falls within the CSA definition of marijuana* ... including any non-FDA-approved CBD extract that falls within such definition, remains a schedule I controlled substance under the CSA." Indeed, the DEA rescheduling order cites a stern reminder from the FDA commission that the agency has taken recent actions against companies distributing unapproved CBD products making unproven medical claims.

Read Wilson Elser's Cannabis Law [white paper](#) to learn more about the legal status of CBD.

New York Adds Acute Pain to Approved Medical Conditions for Medical Marijuana

On September 24, 2018, New York Governor Andrew Cuomo signed a bill adding acute pain management to the list of conditions for which medical marijuana can be recommended as an alternative to opioid use. Before this bill was signed into law, doctors were only permitted to recommend medical marijuana for chronic pain, in addition to a host of life-threatening medical conditions such as HIV and cancer. The bill also permits doctors to recommend medical marijuana to patients with substance use disorder in an effort to combat the growing opioid epidemic.

In a statement about the bill's passage, Governor Cuomo said, "in this battle against the opioid epidemic, it is critical that we use every means at our disposal to prevent the unnecessary prescription of these dangerous and addictive painkillers." To recommend medical marijuana for pain management, a registered physician must determine that the patient's pain degrades healthy and functional capability.

Passed in 2014, New York's Compassionate Care Act legalized medical marijuana, permitting registered physicians to recommend medical marijuana to certified patients for certain medical conditions. To become registered, physicians must complete a four-hour course that reviews the endocannabinoid system as well as the physiological and adverse effects of cannabis.

Over the past few years, New York has aimed to curb opioid prescriptions by adding conditions for which doctors can recommend medical marijuana. In March 2017, New York added chronic pain as a qualifying condition to its medical marijuana program.

By including chronic and acute pain in the list of conditions, legislators are providing New Yorkers with "new options, and preventing the danger that comes from opioid addiction," said Lieutenant Governor Kathy Hochul. The hope is that the more physicians can prescribe marijuana for acute or chronic pain, the less they will prescribe opioids.

In addition to the recent expansion of its medical marijuana program, New York is taking affirmative steps toward the legalization of adult-use recreational marijuana. In August 2018, Governor Cuomo appointed a workgroup to draft legislation for regulated adult-use marijuana for the legislature to consider in the upcoming session. As part of its efforts, the workgroup held a series of listening sessions in communities across the state to garner input from community members on the implementation of a regulated marijuana program in New York State. The workgroup will take these public comments into consideration when drafting the adult-use legislation.

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