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Practice Update

Florida Appellate Court Upholds Landmark Decision for Companies in the Emerging Cannabis Sector

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Akerman's Client, Florigrown, Prevails in Pivotal Case Impacting How Cannabis Businesses Will Operate in Florida

This week, Florida's First District Court of Appeal affirmed a landmark trial court temporary injunction Akerman obtained last year, holding that portions of Florida's 2017 medical marijuana statutes directly conflict with the Medical Marijuana Amendment in Florida's Constitution. The statutes mandate that medical marijuana treatment centers (MMTCs) do everything related to the medical marijuana supply chain (from seed to sale) to qualify for licensure (a limited, vertically-integrated licensing structure) while the Amendment allows MMTCs to do any one facet of that chain (a broad, horizontally integrated licensing structure). The temporary injunction prohibits the Florida Department of Health from continuing to follow that structure and to begin registering MMTCs consistent with the horizontal structure in the Constitution.

On July 9th, just three weeks after holding an unusually long oral argument (over an hour), the First District issued a decision upholding all key aspects of the temporary injunction. The Court found that Akerman's client Florigrown established a substantial likelihood of success that the vertical

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integration requirement is unconstitutional, that irreparable harm is occurring because of the unconstitutional statutory requirements, no adequate remedy exists, and the public interest is served by issuance of the injunction. The Court also found that the license caps set forth in the statute were unreasonable because they were based on the vertically integrated licensing structure. The Court concluded that the Department should be allowed a "reasonable period of time" to exercise its duties and promulgate new regulations pursuant to the Amendment—and then begin registering MMTCs under those new regulations.

The significance of this ruling to the medical marijuana industry in Florida cannot be overstated—the decision opens the door to the possibility of the Florida market opening up to additional medical marijuana businesses. Without the requirement of mandatory vertical integration, there would be considerably lower barriers to entry and myriad opportunities for businesses to focus their attention on core strengths, such as cultivating, processing, or dispensing. By contrast, under the current vertically integrated market, medical marijuana treatment centers must perform every function in the supply chain from seed to sale. This not only requires significantly more investment but also requires businesses to develop core competencies across commercial agriculture, commercial processing, commercial cooking, and highly-regulated retailing. Moreover, removal of the cap on licenses would facilitate greater patient access in addition to a greater variety of products that would naturally spring from a more competitive market.

If you have any questions about this decision or other issues involving Florida's medical marijuana laws or the marijuana laws of other states, please contact Jonathan Robbins or Ari Gerstin.

Disclaimer:
Possessing, using, distributing, and/or selling marijuana or marijuana-based products is illegal under federal law, regardless of any state law that may decriminalize such activity under certain circumstances. Although federal enforcement policy may at times defer to states' laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.