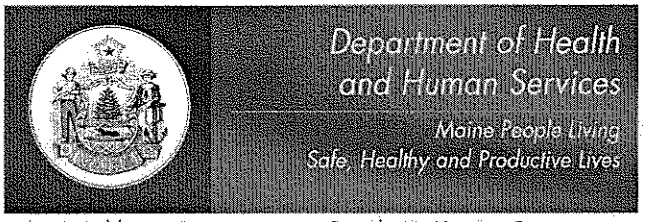
MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Division of Licensing and Regulatory Services

Dispensaries for Distributing Medical Marijuana

Open Registration Period



John E. Baldacci, Governor *Brenda M. Harvey, Commissioner*

REQUEST FOR APPLICATIONS

Maine Department of Human Services
Division of Licensing and Regulatory Services
41 Anthony Ave.
Augusta, Maine 04333

Deadline for Written Applications:
June 25, 2010
2:00 p.m.

Submit Application Package to:

Catherine M. Cobb
Maine Department of Health and Human Services
Division of Licensing and Regulatory Services
41 Anthony Ave.
State House Station #11
Augusta, Maine 04333-0011
Tel: (207) 287-9300 e-mail: catherine.cobb@maine.gov Fax: (207) 287-5807
For the Deaf or Hard of Hearing: 1-800-606-0215

1. Introduction

1.1 Purpose and Background

The Maine Department of Health and Human Services (DHHS) announces an open application for non-profit corporations to provide the services described herein. This document details the expectations, guidelines, and instructions for submitting an application, and the criteria to be used to select no more than 8 applications.

In November 2009, voters approved an initiated bill that changed Maine's ten year old medical marijuana laws. The initiated bill repealed the informal system protecting patients who grew and used marijuana for medical conditions. The Governor signed Public Law 2009, Chapter631 on April 9, 2010, in which additional changes to the law were passed by the 124th Legislature.

A dispensary system, designed to assist registered patients obtain marijuana for their medical conditions, was created. In the first year, which begins on July 1, 2010, no more than one dispensary will be registered in each of the eight (8) public health districts. A map showing the boundaries of the districts is attached as Exhibit A.

The purpose of this announcement is to solicit applications from non-profit corporations to develop and operate the first eight (8) dispensaries. The successful applicants will be permitted to proceed with the registration process. DHHS will hold the successful applicant to the timelines in the proposal to become registered and operate. In the event the selected applicant is materially unable to meet the timeframes and deliverables proposed, the DHHS can void the award, upon written notice, and will be free to select another application for that public health district.

At the end of one year, registered dispensaries will be required to re-register under the Rules Governing the Maine Medical Use of Marijuana Program (hereinafter MMMP). No more than one application will be selected for each public health district. Nothing in this solicitation, however, prevents DHHS from amending the rules to allow additional dispensaries in the future.

While Maine has legalized the use of marijuana for certain medical purposes, possession of marijuana is still a federal offense. Exhibit B is a Memorandum for Selected United States Attorneys, authored by Deputy U.S. Attorney General David W. Ogden, dated October 19, 2009, concerning investigations and prosecutions in states authorizing the medical use of marijuana. Maine makes no representation regarding federal immunity for anyone registered under this solicitation to cultivate marijuana to registered Maine patients and their caregivers for medical use.

1.2 Program Overview

Decisions about who may be certified to legally possess marijuana for medical use under the MMMP will be made by the Maine DHHS, in conjunction with allopathic and osteopathic physicians in this state who have bona fide physician/patient relationships. Dispensaries registered as such by the DHHS may be selected by a registered patient who desires assistance with cultivating marijuana for their medical use.

The purpose of the dispensary system is to improve the ability of registered patients to access marijuana for medical use. The amount of marijuana grown, cultivated and furnished by registered dispensaries will be tightly controlled and regulated by the above referenced rules. Despite the need for a successful business model, the overall program purpose is to serve registered patients.

A dispensary is not allowed to operate until it has met the registration requirements, and each principal officer, board member and employee has received its registry identification card. These cards are not transferrable. An applicant for dispensary registration may not acquire usable marijuana or mature marijuana plants except through the cultivation of marijuana by that non-profit dispensary.

A transition from the prior, informal system of designated caregivers to registration as primary caregivers, and development of registered dispensaries is anticipated. It is, as well, for patients under the informal system, none of whom had registry identification cards. For patients, the transition to the formal system described in the above rules must occur prior to January 1, 2011, when protections in the law will expire in favor of the new law.

The dispensary system will begin with a limited number of dispensaries being registered through the process described herein. This process will assure that by the time transition from the informal system is complete, that dispensaries will have available usable marijuana for patients who choose the dispensary for their marijuana needs.

2 Registry Requirements

2.1 Incorporation

A dispensary must be operated on a non-profit basis, and must be incorporated pursuant to Title 13-B. The bylaws and contracts with patrons must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its non-profit character. A non-profit dispensary is not required, however, to be recognized as a tax-exempt organization under 26 United States Code, Section 501(c)(3).

2.2 Location and Premises

Municipalities may regulate the number and location of dispensaries and adopt other local codes and ordinances. Evidence of compliance with local codes and ordinances is required prior to a certificate of registration being issued.

Regardless of whatever local rules apply, a dispensary shall not be located within 500 feet of the property line of a pre-existing public or private school.

The applicant may designate one location other than the physical location of the dispensary where marijuana may be grown by the applicant. Any location that grows or dispenses marijuana shall have protections for the premises, employees, principal officers and board members, registered qualifying patients and registered primary caregivers who may be on-site.
There shall be on-site parking, exterior lighting sufficient to deter nuisance activity and facilitate surveillance, but shall not disturb neighbors. There shall be devices or series of devices, including

but not limited to a signal system interconnected with a radio frequency or electronic device to detect an unauthorized intrusion. The interior shall be equipped with electronic monitoring, video cameras, and panic alarms.

Marijuana may only be grown in an enclosed, locked facility. Access to the enclosed, locked facility is limited to a cardholder who is a principal officer, board member or employee.

2.3 Disqualifying drug offenses

The DHHS will not issue a registration card to any principal officer, director or employee of a dispensary who has a disqualifying drug offense. A disqualifying drug offense is a drug conviction for violation of a state or federal law for which a sentence of one or more years may have been imposed. Independent contractors or others performing duties for the dispensary are considered employees for purposes of requiring for registry identification cards.

DHHS will conduct a criminal background check in each state in which the individual has resided as an adult. The purpose is to determine whether there are disqualifying drug offenses. The only exemptions to drug offenses are for conduct that would have been legal had the present law been in place at that time. The cost of criminal background checks will be responsibility of the applicant.

Each dispensary must operate as a drug and alcohol free workplace. It shall conduct annual unannounced drug testing for all dispensary board members (unless their sole responsibility is as a board member), principal officers and employees by an approved Employee Assistance Program. Any individual who has two confirmed positive substance abuse tests within a 12 month period of time shall be reported to the DHHS and his/her registration card shall be void, unless the individual is a registered patient and failed the test solely based on the presence of marijuana in the sample. The applicant must describe its substance abuse testing policies.

2.4 Fees

Each applicant during the open application phase shall provide a non-refundable, $15,000 application fee. Unsuccessful applicants will forfeit $1,000 of the fee, and be refunded $14,000.

As noted above, the cost of criminal background checks are the responsibility of the applicant. A dispensary will be charged $25 for each individual registration card required. If the dispensary or the location where marijuana will be grown changes location, a $1,000 fee will be assessed for processing the change of location application.

2.5 Dispensing Requirements

No more than 2.5 ounces of prepared marijuana may be furnished to a registered patient or a registered caregiver for a registered patient, during a 15-day period. In order to create an inventory for this purpose, a dispensary may have six (6) live marijuana plants per qualifying patient who has designated the registered dispensary in their application to the department. The dispensary may have cultivated plants in varying stages of processing in order to ensure that an inventory exists, provided there are not more than the number of live plants per patient specified above. The only exception to these limits will be for the first sixty (60) days after registration cards are issued, the dispensary may have twelve (12) live plants and others in various stages of cultivation even if there

no registered patients during that time period. This will allow the build-up of a preliminary inventory.

Prepared materials shall be kept under double lock, and inventoried daily by two people. Quantities of prepared marijuana must be weighed, logged in and signed out by two people when dispensed. Any change in the names and number of registry card holders associated with a dispensary requires immediate notification to the department in order that issued cards can be retrieved, and new cards issued.

The dispensary shall maintain a photocopy of each registered patient's or registered caregiver's registration card and copy of their driver's license, or other state issued identification card. Prior to dispensing marijuana in any form, the dispensary is required to verify the identity of the person to whom marijuana will be furnished. In addition, the expiration date must be observed in order to determine that the registration card is still valid.

2.6 Personnel Policies and Practices

All principal officers and board members must be residents of the state of Maine. Documentation of current state residency shall be maintained in the personnel files, including a copy of a Maine driver's license and physical home address (not mailing address) in Maine.

Each card holder must have a job description, which shall include his/her duties, authority, responsibilities, qualifications, and supervision requirements. Each card holder shall be trained in, and demonstrate adherence to, confidentiality requirements. There shall be evidence of periodic performance evaluations and disciplinary actions.

2.7 Patient Education

Dispensaries shall provide education about medical use of marijuana to registered patients and their registered caregivers. Strains of marijuana have different effects, as do various forms and route of administration. Dispensaries shall have educational materials available to assist in the selection of prepared marijuana. Dispensaries shall provide "tracking sheets" to registered patients and registered caregivers who request them to keep track of the strains used and their effects.

Educational materials shall also provide information on how to achieve proper dosage for different modes of administration. Emphasis will be on using the smallest amount possible to achieve the desired effect. The impact of potency shall also be explained. Information on tolerance, dependence and withdrawal shall be provided. Dispensaries are not required to continue to furnish marijuana for medical purposes if it is believed that a registered patient or caregiver is abusing marijuana or other substances. Information regarding substance abuse signs and symptoms shall be available, as well as referral information.

The dispensary shall provide information on whether their marijuana and associated products meet organic certification standards.

2.8 Sales Records

Dispensaries shall maintain sale records for six (6) years that include the name of the registered patient or registered caregiver to whom marijuana has been furnished, the date, the quantity and form, as well as the price. The records shall also indicate any marijuana paraphernalia that have been sold or distributed. Dispensaries are required to report sales to Maine Revenue Services, and collect and pay sales tax, as required.

2.9 Trip Tickets

Monitoring the flow of marijuana once it leaves the dispensary will be accomplished by the dispensary issuing a trip ticket, a copy of which shall be provided to the registered patient or registered caregiver to whom the marijuana is furnished. The trip ticket must be labeled to identify the dispensary, the product, the time and date of origin and destination of the product. These records shall be maintained for six (6) years.

3 Application Submission and Review Schedule

3.1 Critical Dates

May 5, 2010	Adoption of Emergency Rules Governing the Maine Medical use of Marijuana Program
May 10, 2010	Open application period begins
June 25, 2010	Open application period closes at 2:00 p.m. EST
July 9, 2010	Announcement of successful applicants

3.2 Application

Each applicant shall complete the application form for registration, with all its accompanying schedules. In addition, the applicant shall provide any additional application materials necessary to provide a complete, competitive response to each of the criteria and measures specified in this announcement.

The application shall be accompanied by a cover letter, signed by the chief executive officer authorized to act on behalf of the corporation, attesting to the accuracy and validity of all information that will be relied upon by the department in the selection and registration of the successful applicant. Nothing will prohibit unsuccessful applicants from pursuing applications as registered caregivers for patients under these rules.

The application form for registration shall be provided by the department. Additional narrative application materials required herein shall be typewritten on 8 ½ x 11 inch paper, and limited to 25 pages in length. All costs involved in the preparation and submission of the application are the responsibility of the applicant.

Until the closing date of the open application period (June 25, 2010 at 2:00 p.m.), questions concerning this announcement may be e-mailed to catherine.cobb@maine.gov. Phone inquiries will not be accepted, as questions and responses could be misinterpreted. All questions and responses will be posted on the following website for all potential applicants: www.maine.gov/dhhs/dlrs.

A signed original and 5 photocopies of the completed application, and a check for $15,000, is

required to be submitted and received by the department at the following address by the following date at time:

June 25, 2010, no later than 2:00 p.m., Eastern Standard Time, delivered to:

Division of Licensing and Regulatory Services
Maine Department of Health and Human Services
Attention: Open Application for Dispensary Services
41 Anthony Ave.
Augusta, ME 04333

A receipt will be provided for an application that is hand delivered. An application that is sent through the U.S. Mail is not guaranteed to arrive at the required time and place, and could be rejected if the applicant has no evidence of its receipt in accordance with this deadline.

4 Review and Evaluation Criteria

A four person review panel of department staff will evaluate each application and assign a score up to the maximum point value specified for each criterion and measure, based on the quality of the applicant's response. The maximum potential score for each application is one hundred (100) points. The actual score assigned for each criterion and measure may vary from zero (0) up to the maximum point value assigned. The scores on each measure assigned by the review panel will be based on consensus scores, or average score, where consensus is not achieved.

In order to be accepted for placement before the review panel, the application must be complete and be accompanied by a fee of $15,000. The minimum point value to proceed with an award is 70. The department is not required to make an award to any applicant whose score is less than 70, even if it is the only applicant for that public health district. In the event there is no successful application for a public health district, a new open application period for that district will be announced.

Each application shall address all criteria and measures, even when no point values are assigned. Failure to address all of the criteria and measures will result in the application being considered non-responsive and not accepted for review.

Criterion 1: Submission of Required Information Regarding Applicant and Facility (up to 25 points)

Measure 1: The applicant shall provide the legal name of the corporation, a copy of the articles of incorporation and by-laws of the corporation. [no points assigned]

Measure 2: The applicant shall provide the proposed physical address(s) of the dispensary and up to one site where marijuana may be grown, if a precise address has been determined. [no points assigned]

- ✓ For each proposed physical address, provide legally binding evidence of site control sufficient to enable the applicant to use and possess the subject property.

- ✓ If the applicant indicated that a precise address has not been determined, the applicant has at least identified the general location(s) where the facilities will be sited, and when.

Measure 3: The applicant shall provide evidence of compliance with local codes and ordinances for each physical address which will be used for dispensing and growing marijuana under the MMMP, and that neither location is within five hundred (500) feet of a preexisting public or private school boundary. [no points assigned]

Measure 4: The applicant shall describe the enclosed, locked facility that will be used in the growing and cultivation of marijuana, its security measures, as required in the rules, and whether it is visible from the street or other public areas. [up to 5 points]

Measure 5: The applicant shall provide the name, address and date of birth of each principal officer and board member of the dispensary, along with a photocopy of their driver's license or other state issued identification card. [no points assigned]

Measure 6: The applicant shall provide a list of all persons or business entities having direct or indirect authority over the management or policies of the dispensary, and a list of all persons or business entities having 5% or more ownership in the dispensary, whether or not the interest is in the land or buildings, including owners of any business entity which owns all or part of the land or building. [no points assigned]

Measure 7: The applicant shall provide the identity of any creditor holding a security interest in the premises, if any. [no points assigned]

Measure 8: The application shall include the required signed cover letter, and the completed application form supplied by the department. [no points assigned]

Measure 9: The applicant shall describe how the dispensary will operate on a long-term basis as a non-profit organization and a business plan that includes, at a minimum, the following: [up to 20 points]

- ✓ A detailed description about the amount and source of the equity and debt commitment for the proposed dispensary that demonstrates the immediate and long-term financial feasibility of the proposed financing plan, the relative availability of funds for capital and operating needs; and the financial capability to undertake the project.
- ✓ A copy of the proposed policy regarding services to registered patients who cannot afford to purchase marijuana for medical purposes.
- ✓ The application indicates whether or not the applicant will accept unused excess marijuana from registered patients or caregivers, the process for assuring that the marijuana is not adulterated (how it will be tested) and how it will be redistributed (cannot be sold) to those registered patients who cannot afford marijuana for medical purposes.
- ✓ Projected income statements for the first three (3) years after implementation (forms to be supplied by the department).

Criterion 2: Overall Health Needs of Registered Patients and Safety of the Public [up to 75 points)

Measure 1: The applicant demonstrates their proposed location will be convenient for registered

patients and caregivers. [up to 10 points]

Measure 2: The applicant demonstrates a steady supply of marijuana for medical use will be available to the projected number of registered patients. [up to 10 points]

- ✓ There is a start-up timetable which provides an estimated time from registration of the dispensary to full operation, and the assumptions used for the basis of those estimates.
- ✓ The applicant shall demonstrate knowledge of organic growing methods to be used in their growing and cultivation of marijuana.
- ✓ The applicant shall demonstrate that steps will be taken to ensure the quality of the marijuana, including purity and consistency of dose.
- ✓ The applicant discloses the various strains of marijuana to be dispensed, and the form(s) in which marijuana will be dispensed.

Measure 3: The applicant will demonstrate experience running a non-profit organization or other business. [up to 10 points]

Measure 4: The applicant demonstrates that its plan for record keeping, inventory, quality control and security and other policies and procedures will discourage unlawful activity. [up to 20 points]

Measure 5: The applicant fully describes a staffing plan that will provide accessible business hours, safe growing and cultivation, and maintenance of confidential information regarding grow sites and the identity of patient information. [up to 20 points]

Measure 6: The application indicates consent to pay for state and federal background checks, including fingerprinting for all proposed and future registry card holders. [no points assigned]

Measure 7: The application reflects a strong patient education component. [up to 5 points]

5 Appeal Rights

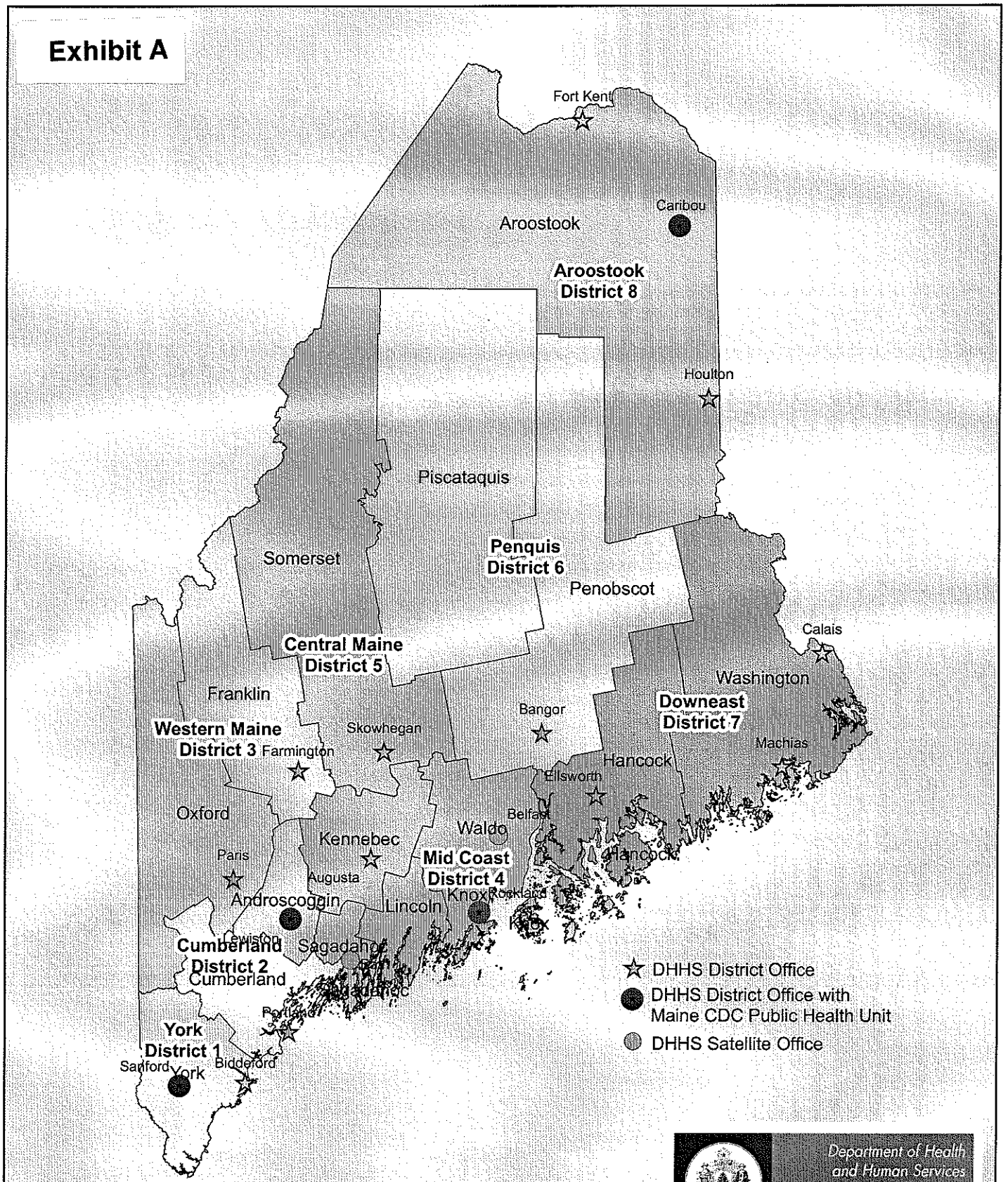
5.1 Final Agency Action.

The award decision shall be made in writing to the successful applicants. Written notice of denial of an application (non-selection) is considered final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

5.2 Record.

The record for judicial review is the applications and any attached supporting documents, any other documents relied upon by members of the scoring panel in its decision, consensus comments of the panel, notices of denial an acceptance, and any other written communications between the department and the applicants related to the decision.

Maine DHHS Districts and DHHS Office Locations



Updated April 13, 2009

Map created by the Office of Public Health Emergency Preparedness

Department of Health and Human Services
Maine People Living Safe, Healthy and Productive Lives

John E. Baldacci, Governor Brenda M. Harvey, Commissioner

U.S. Department of Justice

Office of the Deputy Attorney General

Exhibit B

The Deputy Attorney General

Washington, D.C. 20530

October 19, 2009

MEMORANDUM FOR SELECTED UNITED STATES ATTORNEYS

FROM: David W. Ogden
Deputy Attorney General

SUBJECT: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana

This memorandum provides clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana. These laws vary in their substantive provisions and in the extent of state regulatory oversight, both among the enacting States and among local jurisdictions within those States. Rather than developing different guidelines for every possible variant of state and local law, this memorandum provides uniform guidance to focus federal investigations and prosecutions in these States on core federal enforcement priorities.

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. One timely example underscores the importance of our efforts to prosecute significant marijuana traffickers: marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels.

The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources. In general, United States Attorneys are vested with "plenary authority with regard to federal criminal matters" within their districts. USAM 9-2.001. In exercising this authority, United States Attorneys are "invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such authority." *Id.* This authority should, of course, be exercised consistent with Department priorities and guidance.

The prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on

individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities.

Typically, when any of the following characteristics is present, the conduct will not be in clear and unambiguous compliance with applicable state law and may indicate illegal drug trafficking activity of potential federal interest:

- unlawful possession or unlawful use of firearms;
- violence;
- sales to minors;
- financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity and/or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;
- amounts of marijuana inconsistent with purported compliance with state or local law;
- illegal possession or sale of other controlled substances; or
- ties to other criminal enterprises.

Of course, no State can authorize violations of federal law, and the list of factors above is not intended to describe exhaustively when a federal prosecution may be warranted. Accordingly, in prosecutions under the Controlled Substances Act, federal prosecutors are not expected to charge, prove, or otherwise establish any state law violations. Indeed, this memorandum does not alter in any way the Department's authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property. This guidance regarding resource allocation does not "legalize" marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party or witness in any administrative, civil, or criminal matter. Nor does clear and unambiguous compliance with state law or the absence of one or all of the above factors create a legal defense to a violation of the Controlled Substances Act. Rather, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion.

Finally, nothing herein precludes investigation or prosecution where there is a reasonable basis to believe that compliance with state law is being invoked as a pretext for the production or distribution of marijuana for purposes not authorized by state law. Nor does this guidance preclude investigation or prosecution, even when there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests.

Your offices should continue to review marijuana cases for prosecution on a case-by-case basis, consistent with the guidance on resource allocation and federal priorities set forth herein, the consideration of requests for federal assistance from state and local law enforcement authorities, and the Principles of Federal Prosecution.

cc: All United States Attorneys

Lanny A. Breuer
Assistant Attorney General
Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Acting Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

	Start Up Year 7/1/10 to 6/30/11	First Full Fiscal Year 7/1/11 to 6/30/12	Second Full Fiscal Year 7/1/12 to 6/30/13
Revenue:			
Marijuana sales (in any form) to registered patients and registered caregivers			
Paraphernalia sales			
Other sales			
Other Income			
Total Revenue			
Expenses:			
Payroll, taxes and fringe benefits			
Cultivation			
Supplies			
Office Expenses			
Utilities			
Insurance			
Interest			
Depreciation/Amortization			
Leasehold Expenses			
Rent			
Bad Debt			
Total Expenses:			
Net:			
Personnel Categories	# of FTE's		
Administration			
Sales			
Cultivation			
Number of Patients:			
Estimated Price/Ounce			