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**COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH**

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March 1, 2018

Governor Jim Justice
Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

State Tax Commissioner Dale W. Steager
The Revenue Center
West Virginia State Tax Department
1001 Lee St. E.
Charleston, West Virginia 25301

President of the Senate Mitch Carmichael
Room 227M, Building 1
State Capitol Complex
Charleston, West Virginia 25305

Dr. Rahul Gupta, State Health Officer and
Commissioner of the West Virginia
Department of Health and Human
Resources
West Virginia Department of Health and
Human Resources
One Davis Square, Suite 100 East
Charleston, West Virginia 25301

Speaker of the House of Delegates Tim
Armstead
Room 228M, Building 1
State Capitol Complex
Charleston, West Virginia 25305

Mr. Jason Frame, Director of the West
Virginia Office of Medical Cannabis
West Virginia Department of Health and
Human Resources
One Davis Square, Suite 100 East
Charleston, West Virginia 25301

Secretary Bill Crouch
West Virginia Department of Health and
Human Resources
Office of the Secretary
One Davis Square, Suite 100 East
Charleston, West Virginia 25301

Dear Governor Justice, President Carmichael, Speaker Armstead, Secretary Crouch,
Commissioner Steager, Dr. Gupta, Mr. Frame:

As you are aware, Senate Bill 386 (referred to as the "West Virginia Cannabis Act") was signed into law on April 19, 2017, and defines in part that the term "medical cannabis" refers to cannabis for certified medical use by a West Virginia resident with a serious medical condition and is limited

by law to certain requirements stipulated in the Act. The Bureau for Public Health in West Virginia is charged with implementing the West Virginia Cannabis Act in West Virginia. However, other state agencies, including the State Treasurer's Office have a part in the implementation of the program based on statutorily defined duties.

The Treasurer's Office has serious concerns about the processing of these funds related to medical cannabis. The concerns stem from the direct conflict between federal law and state law on cannabis (marijuana) legality. The State Treasurer is statutorily and constitutionally prescribed to provide banking functions necessary for the State. Therefore, in our research, we have learned that the acceptance of funds surrounding all activities related to cannabis, even activities that are state-sanctioned, is a complicated issue. The federal law treatment on cannabis (marijuana) as currently written and enforced prohibits state-chartered and nationally chartered banks from accepting funds known to be related to cannabis.

In the Controlled Substance Act, Congress has generally prohibited the cultivation, distribution, and possession of marijuana and there are penalties associated with these crimes.¹ At this time, no state or local law supersedes federal law as it relates to cannabis, medical or otherwise. Cannabis (marijuana) is classified as a Schedule 1 drug under the Controlled Substance Act and therefore, can be punished as such.² The enactment of state laws across the United States legalizing both medical and recreational cannabis does not and has not changed its treatment under federal law.

The Department of Health and Human Resources (DHHR) of West Virginia recognizes this fact of the law. According to West Virginia's Office of Medical Cannabis website, under their *Frequently Asked Questions: General Information* section,³ the following is stated:

Does the Medical Cannabis Program protect against federal prosecution?

No. The U.S. Department of Justice (DOJ) has the authority to enforce civil and criminal federal laws relating to marijuana possession and use, regardless of state law. Growing, distributing, and/or possessing marijuana in any capacity, except through a federally-approved research program, is a violation of federal law, and no state or local law provides a legal defense to a violation of federal law. In light of current DOJ guidance, however, it may be unlikely that federal authorities would bring civil enforcement actions or criminal investigations and prosecutions against growers/processors, dispensaries, physicians, seriously ill individuals or caregivers as long as they are acting pursuant to the Act. A memorandum from the DOJ, dated August 29, 2013, explains the priorities of federal authorities regarding marijuana possession and use, including state medical marijuana programs.

¹ See 21 U.S.C. § 801 et. seq and U.S.C. § 841 et seq

² See 21 U.S.C. § 801 et. seq and U.S.C. § 841 et seq

³ See <http://www.medcanwv.org/>, accessed February 22, 2018.

Additionally, there have been significant changes in the federal landscape related to cannabis (marijuana) and the memorandum referred to above is no longer being used as the guidance on this issue. In October 2009, communication from the Obama Administration to federal prosecutors encouraged them not to prosecute people who distribute cannabis (marijuana) for medical purposes authorized by state law. In August 2013, the memorandum referenced in the DHHR response above (also known as the “Cole Memo”), the United States Department of Justice disseminated in communication that although the product itself is still illegal, the memorandum further emphasized the enforcement priorities previously identified⁴ and stated, “Outside of these enforcement policies, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotic laws.”⁵

As stated previously, this guidance is no longer in effect. In January 2018, Attorney General Sessions issued a memorandum that states, “These principles [referring to “well-established principles that govern all federal prosecutions”] requires federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community. Given the Department’s well-established general principles, previous nationwide guidance specific to marijuana is unnecessary and is rescinded, effective immediately.”⁶ This memo expressly negates any previous guidance on cannabis (marijuana) and is a rescission of any previous guidance documents.

⁴ DAG Memo, 8-29-2013, The enforcement priorities were identified as:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover of pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

⁵ *Id.*

⁶ Attorney General Sessions, Marijuana Enforcement Memo, January 4, 2018. Upon release of the memo, the Department of Justice summarized the memo as follows:

The Department of Justice today issued a memo on federal marijuana enforcement policy announcing a return to the rule of law and the rescission of previous guidance documents. Since the passage of the Controlled Substances Act (CSA) in 1970, Congress has generally prohibited the cultivation, distribution, and possession of marijuana.

In the memorandum, Attorney General Jeff Sessions directs all U.S. Attorneys to enforce the laws enacted by Congress and to follow well-established principles when pursuing prosecutions related to marijuana activities. This return to the rule of law is also a return of trust and local control to federal prosecutors who know where and how to

Simply stated, all banks are subject to federal law, whether the bank is a state-chartered bank or a national bank. Because cannabis (marijuana) is an illegal drug under the Controlled Substance Act, financial institutions could potentially be violating federal law by accepting moneys derived from the cannabis industry, even if authorized by state law. The potential federal statutory constructions triggered by accepting funds related to cannabis include the Controlled Substance Act, the USA Patriot Act, the Bank Secrecy Act, the Racketeer Influenced and Corrupt Organizations Act, and other federal statutes. With a violation of one of these laws, a bank could be penalized severely and lose its bank charter because it violated federal law. Because of these far-reaching legal implications, banks are unwilling to accept funds knowingly derived from cannabis, medical or otherwise. If a bank detects or knows of a suspicious transaction or one that violates Federal law, it must file a Suspicious Activity Report (SAR) with the appropriate Federal law enforcement agency and the Department of Treasury.⁷

The State Treasurer's Office is a member of the West Virginia Electronic Government Portal Advisory Board. This Board is responsible for managing information technology projects and providing oversight for state agency information technology projects. The State Treasurer's Office received a summary report on January 17 requiring a vote on January 18 regarding the Medical Cannabis Grower/Processor Licensing process in development to be implemented in March 2018. The Treasurer's Office stated the subject matter impedes a decision from the office at this time. However, the Treasurer's Office received confirmation within a day that the project had been approved by the Portal Board despite our expressed concerns.

The State Treasurer's Office is involved in the background development of the process for medical cannabis not only because of its membership on the portal board, but also because the proposed method of fee payment at the time of application for the Medical Cannabis Grower/Processor permit will be processed via Automated Clearing House (ACH) through the State Treasurer's Office contract with our current ACH vendor. An ACH is an electronic funds transfer-system run by the National Automated Clearing House Association (NACHA). . The funds from the ACH transactions at our ACH vendor bank eventually reach our state settlement vendor bank.

deploy Justice Department resources most effectively to reduce violent crime, stem the tide of the drug crisis, and dismantle criminal gangs.

It is the mission of the Department of Justice to enforce the laws of the United States, and the previous issuance of guidance undermines the rule of law and the ability of our local, state, tribal, and federal law enforcement partners to carry out this mission," said Attorney General Jeff Sessions. "Therefore, today's memo on federal marijuana enforcement simply directs all U.S. Attorneys to use previously established prosecutorial principles that provide them all the necessary tools to disrupt criminal organizations, tackle the growing drug crisis, and thwart violent crime across our country."

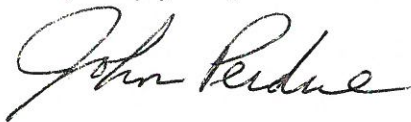
⁷ See 12 CFR 21.11, Suspicious Activity Report.

When the Treasurer's Office received the Portal Board information discussed above, we contacted our vendors to determine whether or not these funds would be accepted by them based on the illegality of cannabis on a federal level. Our vendors have indicated there are currently prohibitions from banking any producers, distributors or sellers of marijuana, whether for medical or recreational purposes. Further, our vendors currently do not desire to engage in accepting any deposits related to sales, fees, licenses, or taxes related to state-sanctioned medical cannabis sales. The interplay between the current federal law and the recent guidelines indicating potential legal repercussions preclude them from engaging in banking transactions relating to illegal activities, in this instance, cannabis. Our vendors will not bank with entities whose connection to cannabis, medical or otherwise, is clear and articulate. Additionally, these vendors indicate that the State must figure out its own internal methodology of accepting funds before it would be able to determine whether or not the process would be acceptable for them to receive the funds.

The entirety of this discussion shows there are significant problems for the processing of funds from a banking perspective related to medical cannabis on a state level. The Treasurer's Office is uncomfortable with accepting the funds related to medical cannabis because of the federal law implications that derive from accepting these funds. The collection of funds are received directly by the State via the Treasurer's Office and there is not an alternative to circumvent this direct collection. Therefore, in the best interest of the State, the Treasurer's Office is unwilling to accept the funds derived from medical cannabis at this time. Any other depositing alternative is not a viable option. One possible suggestion regarding our next step would be to seek an opinion and guidance from the Attorney General of what has been outlined in this letter.

Thank you for your time and attention to this matter. I am happy to discuss this issue further at your convenience.

Very truly yours,



John D. Perdue, Treasurer

cc: Senator Roman Prezioso, Minority Leader, West Virginia Senate
Delegate Tim Miley, Minority Leader, West Virginia House of Delegates
Mr. Brian Abraham, General Counsel, Office of the Governor
Mr. Patrick Morrissey, West Virginia Attorney General

Mr. John B. "JB" McCuskey, West Virginia State Auditor
Mr. Josh Stowers, Assistant State Treasurer, West Virginia State Treasurer's Office
Mrs. Misty Price, Deputy Treasurer of Cash Management, West Virginia State
Treasurer's Office
Mr. John Dunlap, Chief Technology Officer, West Virginia Office of Technology
Mr. Bobby Blakley, Regional President, Branch Banking and Trust Company
Mr. Tim Rieder, Senior Vice President, Government Banking Relationship Manager,
U.S. Bank