

Legal Representation in the Cannabis and Psilocybin Industries: Ethical Considerations

I. Navigating the Intersection of Emerging Markets, Shifting Legality, and Professional Ethics

- a. Increasing probability that cannabis business client will approach you or someone at your firm.
- b. Millions in potential revenue and taxes drive strong business incentives for states
 - i. Combined U.S. medical and recreational cannabis sales could reach \$33.6 billion by the end of 2023, largely driven by the opening of new adult-use markets.
 - ii. Retail cannabis sales are projected to be upwards of \$53.5 billion by 2027
- c. Complexity for businesses and attorneys in rapidly changing regulations
- d. Significant questions for lawyers advising clients in these emerging industries
- e. Conflicting state and federal laws create ethical challenges for attorneys
- f. Careful navigation allows lawyers to uphold ethical practice in burgeoning industries.

II. Our current situation:

- a. Cannabis Legalization Across the Nation: A Majority of States Onboard
 - i. A growing trend as the majority of states embrace cannabis through legislative measures.
- b. Psilocybin on the Horizon: Several States Pioneering New Programs
 - i. Momentum building as several states explore and initiate psilocybin programs.
- c. Federal Stance: Severe Prohibition Persists
 - i. Cannabis and psilocybin face federal prohibition at the most stringent level.
- d. Federal Authority: Broad Prosecution Powers
 - i. The federal government possesses the authority to prosecute various stakeholders:
 1. Customers, Business Owners, Banks, Lawyers, Investors, Insurers, Landlords.
- e. Selective Enforcement: Federal Government's Current Approach
 - i. Despite its authority, the federal government has not consistently pursued prosecution in the cannabis/psilocybin industry.

III. Tracing the Historical Regulation and Prohibition of Cannabis and Psilocybin

- a. Origins Rooted in Colonialization
 - i. Initial laws regulating opium in the 1800s shaped by colonial influence
 - ii. States enact laws regulating opium during this era
- b. Federal Pure Food and Drug Act (1906): Pioneering Federal Regulation
 - i. Early federal intervention in food and drug regulation

- c. Patchwork of State Laws: Inconsistencies in Drug Regulation
 - i. Varied state laws contribute to regulatory inconsistencies
- d. Federal Controlled Substances Act (1970): Expansion and Consolidation
 - i. Amalgamation and expansion of prior federal drug laws
 - ii. Classification of drugs into schedules based on abuse potential and medical use
 - iii. Empowerment of the DEA for enforcement

IV. Navigating the Current Federal and State Landscape of Cannabis/Psilocybin Regulation

- a. Federal
 - i. Controlled Substances Act (CSA): Rigorous Classification and Oversight
 - 1. Substance categorization into five schedules based on abuse potential and medical use
 - 2. Cannabis and psilocybin positioned in the stringent Schedule I
- b. State
 - i. Adoption of CSA or equivalent criminal provisions by most states
- c. The Great Divide
 - i. Surge in medical and recreational cannabis legalization
 - 1. Approximately 38 states legalized medical cannabis
 - 2. 24 states plus D.C. legalized recreational cannabis

V. Aligning Legal Practice with Ethical Standards: Model Rules of Professional Conduct

- a. Rule 1.2(d): Navigating Lawyers' Limitations on Assisting Clients with Criminal Conduct
- b. Rule 8.4(b): Ensuring Ethical Conduct Amidst Evolving Legal Landscapes
- c. State Adaptations: Facilitating Ethical Guidance for the Cannabis Industry
 - i. Examples of state variations:
 - 1. Strict allowance (e.g., WA)
 - 2. Strict prohibition (e.g., GA)
 - 3. Non-disciplinary policy (e.g., MA)

VI. The Emergence of Psilocybin Legislation and Industry

- a. Rising Wave of State Bills Focused on Psilocybin
 - i. Predominantly research bills and decriminalization efforts thus far
 - ii. There is growing investment and partnership activity in psychedelic drug development, with over 60 deals in 2023 year-to-date, up 500% over 2022. This signals increasing commercial interest in psychedelics as the regulatory environment becomes more welcoming.
- b. Parallels with Early Cannabis Industry: Legal Challenges and Conflict Resolution
 - i. Schedule I status and conflicts with state law
 - ii. State Adaptations and Ongoing Federal Prohibitions
 - iii. Ambiguity in legal guidance for lawyers across states
 - iv. Navigating complex regulations akin to those seen in the Oregon cannabis industry

- c. Model Ethics Rules and Psilocybin Industry
- VII. **Solutions for the Future**
- a. Status Quo of State-by-State Rules: Navigating Varied Regulatory Landscapes
 - b. Federal Rescheduling: Easing Restrictions While Navigating State/Federal Conflicts
 - c. ABA Model Rules Amendment: Providing Clearer National Ethical Guidance for Lawyers
 - d. Federal Legalization: A Comprehensive Resolution to State/Federal Conflicts in the Industry