Advising a Cannabis-Related Business

A Practical Guidance® Practice Note by
Patrick J. Hines and Fallon E. Martin, Hodgson Russ LLP

Patrick J. Hines
Hodgson Russ LLP

Fallon E. Martin
Hodgson Russ LLP

This practice note provides a high-level overview of some common considerations for professionals advising cannabis-related businesses.

Specifically, this practice note will discuss the following:

- Federal Regulation
- State Regulation
- Federal Policy toward State Legal Cannabis Businesses
- Corporate Structure and Governance
- Taxation
- Intellectual Property
- Real Estate
- Employment Implications
- Banking Concerns

No matter the jurisdiction, cannabis and its derivatives remain heavily regulated. As the industry continues to grow, and as laws continue to evolve, it is important for anyone engaged in a plant-touching business or servicing any aspect of the industry to be aware of the complex issues unique to cannabis regulation.

Because of the widely varied patchwork of regulation at the local, state, and federal levels, practitioners should familiarize themselves with the specific rules applicable in the jurisdictions where their clients operate.

For more general information regarding cannabis, see Cannabis Law Practice Overview and Cannabis Resource Kit.

Federal Regulation

Starting with Oregon's decriminalization of cannabis in 1973, individual states have removed restrictions on cannabis with increasing scope. California was the first state to legalize medical cannabis in 1996, and the trend has continued to gain momentum since then. In 2018, Congress legalized "hemp" cannabis (i.e., cannabis with delta-9 tetrahydrocannabinol (THC) content equal or less than 0.3% by dry weight). But non-hemp cannabis remains federally illegal for all purposes, including medical purposes. Below is a discussion of the federal regulation of cannabis.

Classification of Cannabis and Hemp

Under the Controlled Substances Act (CSA), cannabis remains a Schedule I controlled substance. Schedule I drugs, substances, or chemicals are defined as drugs with

no currently accepted medical use and a high potential for abuse. Cannabis-related activities such as importation, cultivation, manufacture, distribution, sale, possession, and use are illegal under U.S. federal law. Due to the classification of cannabis as a Schedule I substance, a wide array of ancillary activities—such as depositing the proceeds of a cannabis sale in a bank, leasing property used to cultivate cannabis, or even advertising cannabis for sale—also violate the CSA and potentially other federal laws.

In the 2018 Farm Bill (formally the Agricultural Improvement Act of 2018), the U.S. Congress legalized hemp cannabis by carving out an exception to the CSA which excluded hemp from the definition of cannabis. Hemp is defined in federal law as any part of the cannabis plant "including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not" whose concentration of delta-9 THC is 0.3% or lower by dry weight. THC is the cannabinoid in cannabis responsible for its intoxicating effects. There are other THC isomers such as delta-8 and delta-10 THC which have some intoxicating effect, but the federal definition of hemp makes specific reference to delta-9 THC. This leads to a legal loophole which some product manufacturers have attempted to exploit. In June 2021, the DEA Chief of Intergovernmental Affairs, Sean Mitchell, stated at a virtual town hall meeting that he considers the delta-8 and delta-10 isomers of THC to be federally legal so long as they are legally derived from hemp. However, some state programs, such as New York's, have banned delta-8 THC under their 2018 Farm Bill hemp programs.

The 2018 Farm Bill designated the U.S. Department of Agriculture (USDA) as the primary federal agency regulating the production of hemp. But it also allowed states, U.S. territories, and Indian tribes to assume regulatory authority within their respective borders by adopting a plan for the regulation of hemp production subject to approval by USDA. Those plans must be at least as restrictive as minimum standards set by USDA. Importantly, while states who adopt their own plans need not allow production of hemp within their borders, the 2018 Farm Bill provides that no state or Indian tribe may prohibit the interstate transportation of otherwise-legal hemp produced under a 2018 Farm Bill program.

Regulatory Authority over Hemp Products

While USDA or state programs regulate the production of hemp, several other federal agencies continue to assert regulatory authority over the marketing of hemp-derived products. For more information, see CBD Fundamentals and Cannabidiol (CBD) Oil and CBD Infused Products Advertising.

Food and Drug Administration

Under the Federal Food, Drug, and Cosmetic Act, the Food and Drug Administration (FDA) has authority to regulate hemp products introduced into interstate commerce when those products constitute a food, dietary supplement, cosmetic, or drug. Therefore, hemp products which meet that definition are under the FDA's jurisdiction and must receive pre-market approval.

The FDA's pre-market approval requirements are complex, and unique to each type of regulated product. For example, food additives must receive pre-market approval. But one exception to that requirement is if the additive is "Generally Recognized as Safe" (GRAS). Currently, the only parts of hemp which the FDA recognizes as GRAS are hulled hemp seed, hemp seed protein powder, and hemp seed oil—and only when marketed as human (not animal) food.

Companies marketing hemp-derived products must be careful not to make claims which suggest that the product is a "drug" (i.e., a product "intended to affect the structure or any function of the body of man," or "intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease"). See FDA's website. Several companies marketing cannabidiol (CBD) products have been the target of FDA warning letters when their marketing asserted that CBD has a wide range of therapeutic effects, where those claims had not been evaluated by the FDA. Note that like THC, CBD is a cannabinoid found in cannabis. But unlike THC, CBD does not have an intoxicating effect. As a matter of federal law, CBD cannot currently be sold as either a food ingredient or dietary supplement.

Federal Trade Commission

The FTC has also asserted regulatory jurisdiction over the marketing of hemp-derived products under the authority granted by the Federal Trade Commission (FTC) Act (15 U.S.C. § 45). The FTC Act prohibits deceptive advertising, and specifically prohibits claims that a product can prevent, treat, or cure human disease unless the claims are backed by competent science substantiating the claims. Like the FDA, the FTC has demonstrated that it will take adverse action against CBD companies making unsubstantiated claims about the health and wellness benefits of their products.

In sum, hemp cannabis has been legalized at the federal level, but remains heavily regulated by a patchwork

of federal agencies. This has led to confusion in the marketplace. For example, the wide proliferation of CBD products has led to a popular misconception that it is legal or unregulated. Anyone advising on the cultivation, production, or marketing of hemp-derived products must understand the complicated regulatory regime.

State Regulation

While non-hemp cannabis remains illegal at the federal level, every state in the United States treats cannabis in its own unique way. A detailed review of each individual jurisdiction's regulation of cannabis is beyond the scope of this practice note. But key elements of state cannabis regulation include:

- The extent to which each state has decriminalized possession of small amounts of cannabis
- The extent to which each state has legalized cannabis for medical purposes (commonly called medical cannabis) –and–
- The extent to which each state has legalized cannabis for nonmedical purposes by those over a certain age (commonly called adult-use cannabis or recreational cannabis)

Commercial Markets

Among the states that have legalized non-hemp cannabis in some form, there is further variation with respect to whether the states have also created legalized commercial markets for those products. Some states allow private citizens to cultivate their own cannabis at home for personal use but prohibit commercial markets. Some states do the opposite, and some states allow both. For example:

- Alaska allows noncommercial medical cannabis and commercial adult-use cannabis.
- Washington, D.C. allows commercial medical cannabis and noncommercial adult-use cannabis.
- New York allows commercial and noncommercial forms of medical and adult-use cannabis, subject to certain restrictions.

Decriminalization

Presently, 30 states and Washington, D.C. have decriminalized possession of small amounts of illicit cannabis (i.e., cannabis not legally acquired). Decriminalization refers to laws which reduce small possession offenses to civil infractions or violations that do not constitute a criminal offense—or at least do not include the possibility of incarceration.

Medical Marijuana/Cannabis Programs

Thirty-seven states, the Washington, D.C., Guam, Puerto Rico, and the U.S. Virgin Islands have approved medical marijuana/cannabis programs. State medical cannabis programs vary widely in their scope and implementation. Some programs restrict the type of medical conditions which qualify for treatment under the medical cannabis program, or have varying degrees of requirements to be certified as a medical cannabis patient. For example, in response to the opioid epidemic, New York recently amended the list of qualifying conditions under its program to include the use of cannabis as an alternative to opioid pain medication. State medical programs also regulate the levels of cannabinoids such as THC which can be present in medical cannabis products, or restrict the ways in which medical cannabis products can be consumed.

Adult-Use/Recreational Use

Currently, 19 states, Washington D.C., and Guam have legalized adult-use cannabis to some degree. Like other aspects of state cannabis programs, state adult-use programs vary widely. Some states allow private citizens to grow limited quantities of cannabis on their property without a license, some states allow businesses to deliver cannabis door to door, and some states limit where cannabis can be consumed.

Importantly for cannabis businesses, state laws vary with respect to whether vertical integration of cannabis businesses is allowed. Some states require complete vertical integration of cannabis businesses subject to limited exceptions, and others prohibit it. Vertical integration prohibitions or requirements have a major impact on how companies can do business in a particular state, and are a key consideration when forming a business model for a plant-touching business.

Restrictive State Regulations

As discussed in the Federal Regulation section, production of hemp-derived products is legal at the federal level. Compliance with federal law and regulation is required for any state program, but states are free to adopt regulations which are more restrictive than the federal baseline. Some states have created robust hemp production and retail sale programs which allow products like CBD, but others limit or prohibit ingestible hemp-derived products. A small group of states do not distinguish between hemp and non-hemp cannabis, and continue to treat both as prohibited controlled substances. If a state does not prohibit hemp cultivation or submit its own plan for USDA approval, then USDA controls hemp production in that jurisdiction. New Hampshire has taken this approach.

Federal Policy toward State Legal Cannabis Businesses

Given that businesses can operate in complete compliance with state law, while also in clear violation of federal law, any cannabis business must be made aware of the potential for federal enforcement. There is some federal guidance and legislation giving cover to state legal cannabis businesses, but federal law enforcement has always been clear that it has the authority to enforce federal law in states where non-hemp cannabis has been legalized.

Department of Justice

A 2013 memorandum from the Department of Justice (DOJ) (known as the Cole Memo) directed all U.S. attorneys to stop prioritizing adverse enforcement action against businesses and individuals who complied with applicable state law. This provided some peace of mind, but that peace was disrupted when then-attorney general Jeff Sessions rescinded the Cole Memo in 2018. At the same time, Sessions issued another memo stating that existing DOJ guidance rendered the Cole Memo unnecessary. While there was concern at the time that enforcement priorities at DOJ were shifting, there has remained a general policy of nonenforcement at DOJ through the successors to Sessions and including current Attorney General Merrick Garland. This policy applies to those complying with state law and does not apply to those dealing in illicit cannabis. For example, at his confirmation hearing, Garland expressed concern about illicit cannabis flowing across U.S. borders.

Rohrabacher-Farr Amendment

One source of explicit protection has been the Rohrabacher-Farr amendment (also known as the Rohrabacher-Blumenauer amendment). That legislation, first introduced in 2001, prohibits DOJ from expending funds to interfere with the implementation of state medical cannabis programs. It does not apply to adult-use cannabis programs. The amendment first became law in 2014 as part of an omnibus spending bill. It has since been extended in subsequent spending legislation. Most currently, it has been extended by a stopgap spending bill effective through December 3, 2021.

Financial Crimes Enforcement Network

Other important guidance comes from the Department of Treasury's Financial Crimes Enforcement Network (FinCEN). In 2014, FinCEN issued a memo which outlined how financial institutions should handle services to state legal cannabis businesses. Detailed within that memo are certain procedures that govern how institutions should ensure that their clients are complying with applicable state cannabis laws. Despite the rescission of the Cole Memo, which was issued around the same time as the FinCEN memo, the FinCEN memo has not been rescinded and continues to be followed.

Corporate Structure and Governance

The most common entity types used for cannabis-related businesses are corporations and limited liability companies (LLC). State laws may impact which type of entity makes sense for a particular type of operation. For example, a certain state's law may favor one or more entity types for licensing purposes. For more information regarding corporations and LLCs, see Corporations and Limited Liability Companies.

Corporations

If the business intends to raise funds from outside investors, a C corporation may be the best choice. A C corporation can issue different classes of stock to its investors, grant qualified stock options to employees, and is more sustainable for a potential initial public offering in the future. The C corporation protects its shareholders from personal liability relating to the business's federal income tax. On the downside, C corporations are subject to corporate income tax at the entity level, and shareholders must pay individual income tax when corporate income is distributed as dividends. This is often referred to as double taxation. In addition, C corporations must follow formal requirements to maintain the corporate structure, such as naming officers and directors, adopting bylaws, maintaining detailed books and records, and holding annual shareholder meetings. Many cannabis businesses are start-ups—especially those businesses in newly legalized cannabis markets. The complexities of operating and maintaining a C corporation may not be the best fit for clients who are new to running a business.

Depending on a business's plans for future growth, or the exit strategy for investors, an S corporation may not be preferred due to the limitations it entails. For example, an S corporation cannot have more than 100 stockholders and must only have one class of stock. In addition, only U.S. citizens may be stockholders (with some limited exceptions).

For more information, see Corporations and Business Entity Comparisons Chart.

Limited Liability Companies

An LLC is favorable if the client prefers a flexible and less-costly approach to organization and management. Unlike C corporations, LLCs are governed by an operating agreement which is written by the members themselves. LLCs are not required to follow strict corporate governance. Further, the profits and losses of the business flow through the members of the LLC. An LLC is not taxed at the entity level, and therefore losses can be used to offset other income on an individual tax return.

For more information, see Limited Liability Companies and Business Entity Comparisons Chart.

Corporate Governance

For any form of cannabis-related business, compliance must be the first and foremost priority. Because there is such a patchwork of state and local regulations, it is difficult to follow the rules. And if the company is operating in multiple states, compliance becomes increasingly important.

Like any other business, cannabis companies face mainstream corporate governance issues: transparency, conflicts of interest, and board composition. The fiduciary duties to shareholders that cannabis companies face because of complex regulations can place an extra burden on cannabis operators. When there is more distance between top leadership and the facilities, the leadership can be less engaged with day-to-day operations, making compliance more difficult. To best navigate these issues, the board of directors should help find the best options for public accountability and governance.

Taxation

Maximizing business expense deductions is a common tax strategy. Under the Internal Revenue Code, a business is entitled to do so for any business expense necessary for carrying on its trade. 26 U.S.C. § 162. These expenses often include employee compensation, rent, business interest, marketing and advertising, insurance, utilities, and other taxes.

Under 26 U.S.C. § 280E, business expense deductions are prohibited for any trade or business that involves "trafficking in controlled substances." Because cannabis is a Schedule I controlled substance, cannabis-related businesses are included in this prohibition, and as a result must pay taxes on all revenue without the benefit of being able to use business expenses (other than a narrowly defined cost of goods sold) to reduce their taxable income.

Over time, cannabis-related businesses have argued to the IRS that they should be allowed to deduct business expenses incurred for separate lines of business not directly related to the sale of cannabis. Some businesses have been successful with this argument, but only where they have been able to prove through meticulous recordkeeping that the two lines of businesses are, in fact, entirely separate. The IRS and courts have consistently held that if any part of a business relates to cannabis, the business is prohibited under Section 280E from deducting business expenses. In short, this is how the IRS punishes legalized cannabis companies.

There are three elements which determine the applicability of Section 280E:

- **A trade or business.** "An activity that the taxpayer is involved in with continuity and regularity, and for which the taxpayer's primary purpose for engaging in must be income or profit."
- **The trade or business traffics in a product.** There is no clear definition of trafficking for tax purposes, but courts have looked to other areas of the law including criminal law, for a definition. This question often comes down to how directly the business deals with the manufacture and/or sale of cannabis, referred to in short as "plant-touching" or "non-plant touching" businesses.
- **Controlled substance.** Marijuana remains a Schedule I controlled substance, and therefore 280E can apply to cannabis businesses operating in compliance with state law.

If 280E applies, "ordinary and necessary" business deductions will be disallowed. As a result, "phantom income" will be subject to tax. In some instances, the tax due can wipe out all net profit. However, 280E does not prohibit accounting for costs of goods sold (COGS) in determining gross income. COGS are the costs of acquiring inventory, through either purchase or production. For companies that manufacture or cultivate cannabis, certain related costs (rent, utilities, etc.) may be classified as COGS. Cannabis businesses looking to take aggressive tax positions should seek counsel from both legal and accounting professionals.

Intellectual Property

Cannabis businesses cannot obtain federal trademark protection from the U.S. Patent and Trademark Office for goods or services that are unlawful under the CSA. This makes it difficult to protect cannabis brands. Some businesses file trademark applications for cannabis goods

and services with the hope that the law will change while the application is pending. This is in part because, should federal law change and trademark protection become available, applicants will need to demonstrate use or intent to use their marks. A prior application is good evidence of prior use when opposing applications for similar marks later on.

The current lack of federal protection for trademarks does not mean cannabis businesses are completely without protection for their intellectual property. While the U.S. Patent and Trademark Office will not issue registrations for marks involving non-hemp cannabis, state laws concerning unfair competition and trademark protections may provide a remedy in jurisdictions where non-hemp cannabis is legal. That said, enforcement of rights to a mark on a state-by-state basis can be expensive, time-consuming, and ultimately an incomplete remedy.

Contrary to popular belief, cannabis-related businesses may obtain patent protection because patent protection does not require that the underlying use be "lawful commerce." Businesses may obtain design patents for products, utility patents for specific formulations or use techniques, and plant patents for specific types of plants. It is unclear how federal courts may interpret the laws should these patents be challenged or otherwise litigated while cannabis remains a Schedule I substance under the CSA.

Cannabis businesses may also obtain copyright protection for their label artwork and marketing materials so long as the work is novel, fixed in some tangible medium, and exists for more than just a passing duration. However, it is not well settled whether a court is required to enforce the copyrights of a cannabis company operating in violation of federal law.

For more information, see Cannabis Resource Kit, Patent Application Preparation and Filing (U.S. Plant Patent), and Trademark Strategies for Cannabis Products and Services.

Real Estate

Location is often, if not always, the first critical decision a cannabis business must make. State and local laws vary with respect to the types of uses allowed, zoning restrictions, and licensing restrictions. In addition to the difficulty cannabis businesses can face in finding suitable real estate, unwary landlords looking to work with cannabis businesses can also face unexpected pitfalls.

Finding a suitable property for commercial cannabis operations requires a holistic evaluation of many factors. State law often restricts the location of certain cannabis-related operations and sometimes prohibits co-location or other business structures and relationships. Some state laws allow local communities to prohibit some or all cannabis activity within their borders. Operators should evaluate local zoning ordinances, building codes, restrictive covenants, and even the general community attitude toward an industry which is still burdened by popular misconceptions and stereotypes.

Landlords should also be aware of their tenants' activities and diligent about the potential impact of those activities. Federal law currently prohibits knowingly opening, leasing, renting, using, or maintaining any place to permanently or temporarily manufacture, distribute, or use any controlled substance. 21 U.S.C. § 856(a)(1). As a result, using or leasing land for cannabis-related operations may trigger a host of adverse consequences. For example, if the landowner is receiving any kind of federal grants or other benefits, leasing to a cannabis business may lead to termination of those benefits. Another threat is the potential for asset forfeiture. While federal enforcement against otherwise-legal businesses has not been a priority, landlords should be diligent to ensure that their tenants continue to operate within applicable state law, or risk forfeiture of property due to its relationship to drug activity. Finally, landlords should carefully consider their own operations and relationships to ensure that a proposed tenant's activities do not violate agreements such as creditor relationships, security agreements, or insurance agreements.

For more information, see State-Legalized Marijuana and Real Estate.

Employment Implications

Despite wide adoption of medical marijuana programs and adult-use cannabis laws, employees subject to federal regulations must still refrain from using cannabis or will likely face consequences as a result. Under the famous Drug-Free Federal Workplace initiative, federal employees may not use cannabis. "The use of marijuana, whether on or off duty, is contrary to the efficiency of federal services." According to the 1986 Executive Order by President Regan, people who use marijuana are unsuitable for employment with the federal government.

Federal employees include all military service members, postal service workers, Department of Transportation workers, Department of Labor workers, politicians, legislative staff, and the Federal Bureau of Investigation.

Under more recent guidance adopted by the Biden administration, specifically the Office of Personnel Management guidance, there is less emphasis on cannabis use as a disqualifier. The new guidance provides a list of factors which will be considered when assessing whether an applicant using or in possession of cannabis is suitable for a federal position. The federal agency should consider:

- The nature of the position the applicant is seeking
- The nature and seriousness of the applicant's conduct
- The relevant circumstances surrounding the applicant's conduct, contributing societal conditions, absence, or presence of rehabilitation
- How recent the applicant's conduct took place –and–
- The applicant's age at the time of the conduct

As such, past cannabis use will be viewed differently than current and ongoing use.

In all states, employers may exclude cannabis from the workplace and prohibit employees from being impaired at work and on working time. Some state legislation, like New York's recently passed law, prohibits most employers from discriminating against an employee based on the legal use of consumable cannabis products where the use is outside of work hours, off the employer's premises, and without the use of the employer's equipment or other property. In other words, an employer may discipline an employee for being impaired by cannabis while working based on a "specific articulable symptom" that decreases the employee's performance of his or her job duties. But, the employer may not be able to discipline based on a random drug test which is positive for cannabis because without a specific articulable symptom, someone who used cannabis may test positive for days or even weeks after the use.

Qualified patients under existing medical marijuana programs may have additional protections. In many states, the laws regarding medical cannabis specifically address whether the law affects an employer's treatment of an employee-patient. For example, the medical cannabis laws in Arizona, Connecticut, Delaware, Minnesota, Maine, New York, and Rhode Island, among others, prohibit discrimination against employees for their participation in the program. Of course, these prohibitions do not apply to employees subject to federal regulation.

Other states, such as California, have laws that expressly allow employers to provide no additional workplace protections for medical cannabis patients, whether in hiring or continued employment. Qualified patients in these states are not protected from discipline even if their use of cannabis complied with state law, and was limited to nonwork hours.

All businesses (not only cannabis-touching businesses) should review their drug testing and use policies to ensure compliance with state law. Additionally, businesses may consider creating a narrowly tailored approach to making reasonable accommodations for each individual medical user—rather than using a blanket policy. This may decrease the risk of litigation.

For more information, see Cannabis Resource Kit, Medical and Recreational Marijuana State Law Survey, Privacy, Technology, and Social Media State Expert Forms Chart, and Drug and Alcohol Use, Testing, and Accommodation: Key Employment Law Issues.

Banking Concerns

Despite continued state-by-state legalization and growing federal support, access to banking and other financial services remains one of the biggest obstacles cannabis-related businesses must face.

Because cannabis remains a Schedule I substance, financial institutions remain hesitant to provide financial services to otherwise state legal cannabis-related businesses. This hesitation may be well founded, as financial services are subject to heavy federal oversight and regulation. Financial institutions widely avoid the cannabis industry because there is no complete assurance of protection from adverse action by federal regulators, which creates ongoing legal exposure for banks, depository institutions, payment processors, insurers, and other financial services providers.

In addition, financial institutions which service cannabis-related businesses must follow more stringent administrative guidelines and steps toward compliance under anti-money laundering regulations and the Bank Secrecy Act. For example, financial institutions must file suspicious activity reports (SARs) for every single cannabis-related transaction—even where operations are legal in that state. SARs not only create more scrutiny, but also increase the costs for adequate due diligence and additional administrative burdens.

Despite these challenges, a growing number of financial institutions are successfully servicing state legal cannabis businesses. An institution embarking on this cannabis endeavor must take certain steps to avoid violations, as well as resulting penalties and fines. Among those steps are heightened due diligence before servicing a client; reviewing internal compliance procedures; increased and

ongoing audit activity; and hiring, training, and overseeing additional employees dedicated to servicing cannabis clients.

To address the ongoing lack of access to financial services for otherwise state legal cannabis businesses, Congress has repeatedly introduced the SAFE Banking Act. That legislation would preclude federal regulators from taking adverse action against depository institutions solely because those institutions provided financial services to state legal cannabis businesses. For example, the SAFE Banking Act provides that a depository institution or Federal Reserve bank would not be liable or subject to forfeiture for loaning money to a legitimate cannabis-related business. While the SAFE Banking Act has passed the House of Representatives, the Senate has repeatedly refused to move the legislation forward.

For more information, see The SAFE Banking Act to Increase Access Banking Legal Marijuana-Related Businesses and U.S. House Passes the SAFE Banking Act to Increase Banking Access for Cannabis Businesses.

Conclusion

From early business planning, through licensing, to employment considerations and taxation, both plant-touching businesses and any company servicing any aspect of the industry will face obstacles. As the cannabis industry continues to grow, cannabis laws continue to evolve. As professional servicing cannabis-related businesses, it is important to recognize and understand the unique issues that may arise for cannabis clients. Unless cannabis is legalized at the federal level, cannabis-related businesses are technically operating illegally under federal law. While most state-compliant businesses operate successfully without interference by the federal government, some risk remains. In short, compliance is key. Professionals must stay diligent and up to date on the most current patchwork of regulations at the local, state, and federal levels.

Patrick J. Hines, Partner, Hodgson Russ LLP

Patrick J. Hines focuses his practice on business litigation and insurance defense matters. He has extensive experience defending catastrophic construction accident, products liability, car accident, and toxic exposure claims — including environmental mass tort litigation. In addition to his personal injury defense practice, Patrick handles a variety of business tort and contract litigation matters on behalf of financial institutions and other commercial clients, including claims involving breach of non-compete agreements, breach of fiduciary duty, tortious interference with contract, and other business torts. Patrick's commercial practice also involves defense and prosecution of claims involving intellectual property, including copyright and trademark disputes, trade secret claims, and confidentiality agreements.

Patrick is co-leader of the Hodgson Russ Hemp & Medical Cannabis Practice. In that role, he advises clients on a range of issues affecting the cultivation, processing, distribution, and sale of cannabis and hemp products. Patrick provides counsel to businesses seeking licenses to operate within the industry, as well as clients seeking to do business with the cannabis industry, with a focus on regulatory compliance and risk minimization. Disclaimer: Possession, use, distribution, and sale of cannabis and cannabis products is illegal under federal law. No legal advice Hodgson Russ gives is intended to provide any guidance or assistance in violating federal law.

Patrick is also a member of the Hodgson Russ Media Law & First Amendment Practice, which counsels clients on matters such as defamation claims, privacy law, right of access to information, and free speech.

Before joining Hodgson Russ, Patrick served as a summer law clerk for U.S. District Judge William M. Skretny, and as an intern with the Office of the Attorney General for the District of Columbia.

Fallon E. Martin, Associate, Hodgson Russ LLP

Fallon E. Martin is a member of the firm's Business Litigation Practice, where she assists firm clients with business disputes that cover various areas of substantive law. Her areas of focus include commercial disputes, contract litigation, and trade secret litigation. In addition, Fallon has experience in hemp and cannabis law, with a breadth of knowledge regarding cannabis licensing and regulatory compliance.

Fallon has experience handling commercial lease disputes between landlords and tenants, as well as wrongful death cases. She also has experience working on criminal investigations and various criminal matters.

Fallon served as an intern at the Erie County District Attorney's Office in the Felony Trial Bureau.