

## [Advertising Medical Marijuana on Broadcast Stations - Is It Legal, What Will the FCC Think?](#)

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As **medical marijuana** has become legalized or decriminalized in many states, broadcasters have looked at advertising for the services of clinics and dispensaries as a potential new revenue source. As some community newspapers and other local media have begun to advertise dispensaries in states where medical marijuana is legal, we've been asked many times whether broadcasters can start to run such ads as well. Many radio and TV stations have even been approached by the operators of these clinics, seeking to run advertising schedules. Should broadcasters accept such ads? We urge caution.

Even though many states have decriminalized medical marijuana, possession and distribution of marijuana is still a Federal crime. And broadcasters, unlike most other local media outlets, operate with **Federal licenses**. While the current US Attorney General has said that he will not criminally prosecute medical marijuana cases, the prohibition against marijuana remains on the books. A careful reading of the [Attorney General's directive on medical marijuana](#) shows that the Department of Justice has not said that medical marijuana is a legal substance, but only that, as a matter of prosecutorial priorities, the DOJ will not use its resources to target dispensaries and clinics operating under the color of state laws. So, while this Attorney General may not direct his Department to prosecute medical marijuana users or distributors, the possession of marijuana remains a Federal crime, and the Attorney General's memo makes clear that state laws cannot change this conclusion. Thus, there may be some zealous local Federal prosecutor who decides to enforce the law on his or her own. Or, perhaps of more concern to the broadcaster, is the fact that there may be some local citizen in an area served by a radio or television station that runs such an ad who complains about the content of the ad to the FCC. In fact, we understand that there are already such complaints pending at the FCC.

As we all know, complaints at the FCC are not processed immediately, so any complaint filed now may end up being resolved under a future administration that might take a very different position than does the current one on the application of Federal law in this area. With some old FCC cases on the books that penalized stations for even running songs with what were perceived to be pro-drug lyrics, any new administration could decide to make an example out of a broadcaster who decides to indulge. Adding to our discomfort is the fact that we are now entering a license renewal cycle, and these ads may provide certain elements in your community

one more reason to object to your license renewal – creating the uncertainty and delay that such objections can cause.

State laws on medical marijuana are themselves in a state of flux. Some states, which have had these laws in place for some time, still see situations where, from time to time, local officials in some part of the state decide to crack down on providers for not having lived up to all aspects of the local ordinances. And some states, while they may have adopted laws allowing for medical marijuana use, may not have licensed dispensaries or otherwise completed all rules necessary for the operation of clinics featuring medical marijuana, yet the dispensaries have opened for business even without final approvals. The uncertainty about the legal status of various clinics adds to the caution broadcasters need to exercise with respect to this topic.

We understand that a representative from the FCC said at that Radio Show in September that the FCC had not yet formulated a final policy on this topic. In an uncertain political climate, with a Federal law on the books banning the activity that you are thinking of advertising, there is risk for broadcasters running the ads. Until the FCC or other law enforcement authorities have issued clearer guidelines on medical marijuana advertising, broadcasters should approach such ads with extreme caution – and discuss with their own station attorneys the risks that they are running if they bow to the temptation to accept the ads

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