

## [More Concerns About The Broadcast of Medical Marijuana Ads](#)

by [David Oxenford](#)

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In March, [we cautioned broadcasters against the airing of ads for medical marijuana](#). Our concerns stemmed not only from a complaint pending at the FCC, but also because, despite the widespread belief that the Federal government no longer cared about medical marijuana use and sale, the Department of Justice had only said that prosecution was no longer a priority, not that it was no longer illegal. In recent months, our concerns seem more and more justified. We had worried about some local Federal prosecutor deciding that he or she had time to prosecute offenses, even though DOJ headquarters did not think it to be a priority. But, based on press reports and DOJ's own press releases, it looks like there has been at least some rethinking of the policies in Washington, DC as well. The DOJ appears to be backtracking on medical marijuana, now saying only that it won't prosecute individuals who use medical marijuana, but that dispensaries, even if set up under the color of state laws, are still illegal under Federal law and subject to Federal prosecution. Thus, broadcasters, as Federal licensees, need to exercise extreme care in advertising such dispensaries.

In the last few days, NPR has broadcast stories about the Department of Justice writing letters to authorities in [Rhode Island](#) and [Arizona](#), in both cases saying that the Federal government still considers the sale of marijuana, even medical marijuana, to be a Federal felony subject to prosecution. Both states are now reconsidering their laws that would otherwise allow for the operation of medical marijuana dispensaries. The DOJ, [on its website, cites a US Attorney in Washington State who has written to the landlords of medical marijuana dispensaries](#), warning them of the penalties that they may face if they allow these dispensaries to continue to operate, going so far as to warn them that they may face the forfeiture of their property to the government as it is being used to distribute prohibited drugs. As this letter states, "We intend to use the full extent of our legal remedies to enforce the law." This language should serve as a warning to broadcasters of the Federal government's attitude toward marijuana dispensaries.

Broadcasters are Federal licensees. The DOJ is now making clear that it still considers the sale of marijuana to be a Federal felony. What Federal licensee wants to be aiding and promoting the commission of a Federal felony? This is especially true with broadcasters being in a license renewal cycle, where their performance can be scrutinized not only by the government, but also by anyone who has any grievance with

the station. Any license renewal protest, no matter how flimsy, will delay the grant of the renewal, and a protest based on an issue like this, on an issue that is so confused within the Federal government, may tie up a renewal for quite some time. Thus, think twice before taking short term advertising revenues that could lead to long-term processing delays - blocking station sales and other regulatory approvals.

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