

# Philly-area law firms bullish on cannabis despite grave legal risks

Updated: AUGUST 21, 2017 — 11:50 AM EDT



## MCELFRESH LAW

Jessica McElfresh, a cannabis attorney in San Diego, was arrested at gunpoint in May and charged with conspiracy and other counts.



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Lawyers going into the marijuana business face potential arrest, disbarment, and even imprisonment. But they're gambling that the smoke will clear, and the federal government will eventually legalize cannabis.

Many of Philadelphia's biggest firms — [Duane Morris](#), [Fox Rothschild](#), and [Cozen O'Connor](#) among them — have set up practices recently to serve cannabis growers, dispensaries,

and related entrepreneurs as the state aggressively gears up to make medical marijuana available to patients by early 2018. Last month, [Pepper Hamilton](#) “formalized” its marijuana industry group.

“We saw it as a growth opportunity,” said [Joseph C. Bedwick](#), partner at Cozen O’Connor. But the continuing disconnect between state and federal laws, and the Trump administration’s antipathy toward marijuana, has created what Bedwick calls “a big ball of uncertainty.”

“At any moment, theoretically, they can say, ‘We’re going to crack down on this,’ ” Bedwick said. And with so many attorneys getting into the cannabis game, some doubt there will be enough work to sustain those practices.

Marijuana has been legalized in some form by legislatures in 26 states — Pennsylvania, New Jersey, and Delaware among them — and the District of Columbia. But federal law, under the [supremacy clause](#) of the U.S. Constitution, supersedes all state laws. And the U.S. government continues to view marijuana as a [Schedule 1](#) substance; it considers cannabis to have “no currently accepted medical use in treatment in the United States.” It remains a federal crime to possess, grow, distribute, or prescribe marijuana in any form.

Under the Obama administration, the U.S. Department of Justice took a hands-off approach to enforcement. [A 2013 memorandum](#) advised U.S. attorneys not to prosecute businesses that comply with state laws. A congressional rider to an appropriations bill, known as the [Rohrabacher-Blumenauer](#) amendment, forbids the justice department from spending money to prosecute medical cannabis patients and state-compliant programs. But neither the memo nor the amendment grants immunity, and both could be revoked without warning.

“You have a hatchet over your head with the federal government,” said [Andrew B. Sacks](#), chairman of the medical marijuana and hemp department at [Sacks Weston Diamond](#), which was among the first to represent marijuana-related businesses.

[Joshua Horn](#), co-chair of the cannabis practice at Fox Rothschild, is optimistic. He said it’s unlikely the feds would shut down state-legal medical marijuana operations, given the current status of the law, guidance from the DOJ, and budgetary constraints.

“They don’t have the manpower, they don’t have the budget, and popular will is strongly against it,” Horn said. “More than 90 percent of the people in the commonwealth support the medical marijuana program, and Pennsylvania isn’t the most liberal state.”

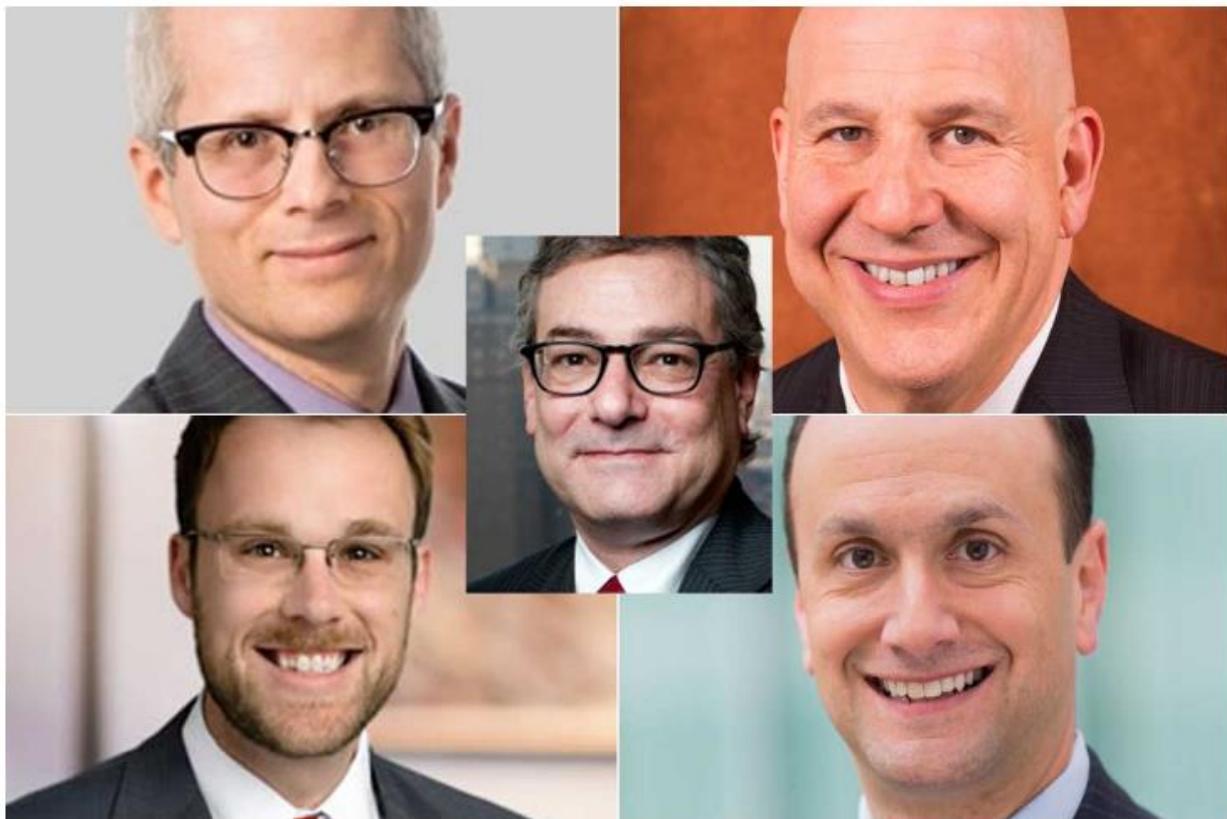
Few attorneys have been prosecuted under federal or local laws. However, California attorney [Jessica McElfresh](#) — who has represented cannabis clients for more than seven years — was arrested at gunpoint in May. The San Diego district attorney [charged McElfresh on multiple felony counts](#), alleging she helped hide evidence of a hash oil manufacturing facility. It seized her client files and issued a warrant for all of McElfresh’s cellphone location data for three years, along with her calendar, address book contacts, and internet searches.

“There have been attorneys that have been charged, but they participated more directly in the businesses,” McElfresh said last week. “There’s never been one like mine.”

Philadelphia attorney [Steven Schain](#) of the [Hoban Law Group](#) said he considers the San Diego case chilling.

“It represents a landmine in all our paths,” Schain said. “Sizzle aside, marijuana remains 100 percent illegal under federal law. Any real cannabis lawyer is exposed to massive federal and civil prosecution. But we’re willing to take the risk.”

Boutique firms were the the first to represent aspiring cannabis clients in the state, said Sacks. As trailblazers, they wrestled early on with the dilemmas created by the tension between the conflicting state and federal statutes.



**HANDOUT**

Philadelphia cannabis lawyers: Andrew B. Sacks of Sacks Weston Diamond (center) with (clockwise from left) Joshua Horn of Fox Rothschild, Steve Schain of Hoban Law Group, Joseph Bedwick of Cozen O'Connor, and William Roark of Hamburg, Rubin, Mullin, Maxwell & Lupin.

Even though Gov. Wolf signed the law legalizing medical marijuana in April 2016, attorneys were technically barred from offering advice to cannabis businesses.

“You can’t counsel a client to break the law,” said [William Roark](#), co-chair of the [Pennsylvania Bar Association’s Medical Marijuana and Hemp Law Committee](#) and a principal at [Hamburg,](#)

[Rubin, Mullin, Maxwell & Lupin](#). “There was no way this industry could take off without the availability of legal counsel.”

Roark, along with Sacks and other lawyers, petitioned the Disciplinary Board of the [State Supreme Court](#). In October, that board [issued an opinion](#) stating that attorneys could counsel clients about the Pennsylvania law but only if they made clear the consequences they might face for violating federal laws.

“If it scares them, then the lawyer has probably done their job in educating the client,” Roark said.

Though the boutiques, like Roark’s, were the first to have a toehold in the state, large national firms soon appeared. Of the [12 companies chosen by the state Department of Health](#) to grow cannabis, six were represented by out-of-state firms.

That hasn’t dampened the enthusiasm of attorneys wanting to get into the cannabis game. More than 145 lawyers have signed on to serve on marijuana committees run by the Pennsylvania and Philadelphia Bar Associations, said Sacks, who chairs those committees.

Hoban’s Schain doubts there’s enough work to warrant so many players.

“Legalized marijuana is suffused with irrational exuberance,” Schain said. “Everyone is convinced that somebody is making loads of money and trying to get a piece of the action. But if you’ve been in the industry more than 10 minutes, you know the reality is quite different.”

But Bedwick, of Cozen O’Connor, said that his firm was in for the long game and that many clients are related tangentially to the cannabis industry. They’re real estate owners, investors, lighting manufacturers, builders, and security companies. Those entrepreneurs are looking for advice on issues that include banking, taxation, intellectual property, and labor law.

“The industry will continue to expand. There will always be legal issues surrounding the sale and distribution of marijuana,” Roark said. “The number of permits out there is limited, but the number of individuals interested in entering the industry is massive.”

Read more by [Sam Wood](#)

**Published:** August 21, 2017 — 3:32 PM EDT

<http://www.philly.com/philly/business/cannabis/philly-area-law-firms-bullish-on-cannabis-despite-grave-legal-risks-20170821.html>