



**OKLAHOMA STATE BUREAU OF NARCOTICS  
AND DANGEROUS DRUGS CONTROL**

419 N.E. 38<sup>th</sup> Terrace  
Oklahoma City, Oklahoma 73105  
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**MEMORANDUM**

**To:** Donnie Anderson, Director, Oklahoma Bureau of Narcotics and Dangerous Drugs Control  
**From:** James Hutchison, OBA #35136, Assistant General Counsel  
**Date:** October 16, 2023  
**Re:** Professional or occupational license transfers involving controlled dangerous substances; specifically, as it relates to medical marijuana business licenses.

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**QUESTION PRESENTED**

Is a medical marijuana business license and/or registration transfer authorized by the Uniform Controlled Dangerous Substances Act and what impact does this have on controlled dangerous substances?

**BRIEF ANSWER**

Nothing in the Uniform Controlled Dangerous Substances Act (UCDSA) authorizes the transfer of a professional or occupational license required to engage in activities with controlled dangerous substances. Nothing in the UCDSA authorizes the transfer of a registration issued by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBNDD). OBNDD has never allowed registration transfers. Currently, medical marijuana businesses are the only businesses that register with OBNDD that have the ability to transfer their professional or occupational license issued from the Oklahoma Medical Marijuana Authority (OMMA). This ability to transfer a medical marijuana license appears to stem from SB 1033 passed during the 2021 legislative session which discusses the "transfer of a [medical marijuana] license." Historically, any buyer or purchaser of a registered business is required to obtain a new professional or occupational license, then OBNDD registration, then Drug Enforcement Administration (DEA) and/or Food and Drug Administration (FDA) registration with a



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“transfer” of controlled dangerous substance inventories and operations occurring between the registered seller and the newly registered buyer after all licensing and registrations have been activated. Transfers of controlled dangerous substances between OBNDD registered entities is generally authorized by the UCDSA. However, the ability to “transfer” the OMMA occupational license creates a scenario where the buyer or new owner possesses an OMMA license and no OBNDD registration and the seller no longer possesses an OMMA occupational license, thereby inactivating any OBNDD registration. Accordingly, any transfer of an OMMA license to new ownership that includes the transfer of medical marijuana or medical marijuana activities puts both parties in violation of the UCDSA.

**ANALYSIS**

“‘Person’ means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.” 63 O.S. § 2–101(30). In Oklahoma,

Every person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes any controlled dangerous substance within or into this state, or who proposes to engage in the manufacture, distribution, dispensing, prescribing, administering or use for scientific purposes of any controlled dangerous substance within or into this state shall obtain a registration issued by the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, in accordance with rules promulgated by the Director.

63 O.S. § 2–302(A). Marijuana is a Schedule I controlled dangerous substance. 63 O.S. § 2–204(C)(12). Registered persons may “possess, manufacture, distribute, dispense or conduct research with controlled dangerous substances to the extent authorized by their registration and in conformity with the other provisions of the Uniform Controlled Dangerous Substances Act.” *Id.* Additionally, “[n]o person engaged in a profession or occupation for which a license to engage in such activity is provided by law shall be registered under the Uniform Controlled



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Dangerous Substances Act unless such person holds a valid license of such person's profession or occupation.”

*Id.* at (L).

“No person or entity shall operate a medical marijuana business without first obtaining a license from the [OMMA] pursuant to 63 O.S. § 420 et seq., the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.1 et seq., other applicable Oklahoma law, and the Rules [of the OMMA].” OAC 442: 10-5-1. All medical marijuana license applicants are required to “submit a registration with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control as provided” in the UCDSA. 63 O.S. § 427.14. A medical marijuana business cannot operate in Oklahoma without being registered with OBNDD. Operating without a registration is a criminal violation of the UCDSA.

“Except as authorized by the Uniform Controlled Dangerous Substances Act, it [is] unlawful for any person to distribute, dispense, transport with intent to distribute or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance.” 63 O.S. § 2-401(A)(1). For marijuana, upon conviction, this is a potential punishment of up to five years imprisonment and a fine of up to \$20,000 for the first violation of unlawful distribution. *Id.* at (B)(2). Additionally, any person who engages in the “unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance... shall be punished by imprisonment” for a minimum of seven years, up to life in prison, and by a minimum fine of \$50,000. *Id.* at (G)(2). Any person convicted of unlawfully manufacturing or attempting to unlawfully manufacture “one thousand (1,000) kilograms or more of a mixture or substance containing a detectable amount of marihuana or one thousand (1000) or more marihuana plants regardless of weight... is guilty of aggravated manufacturing”



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which is be punished by imprisonment for a minimum of twenty (20) years up to life in prison with a minimum fine of \$50,000. *Id.* at (G)(3)(g).

In Oklahoma, medical marijuana businesses must be licensed with OMMA. The OMMA business license is the occupational license necessary to obtain OBNDD registration for any medical marijuana business. The requirement of a professional or occupational license before obtaining OBNDD registration is not unique to medical marijuana businesses. All other OBNDD registrants including, but not limited to, doctors, dentists, veterinarians, certain nurses, clinics, hospitals, pharmacies, and other pharmaceutical manufacturers and distributors are required to obtain and maintain a professional or occupational license before becoming an OBNDD registrant. These licenses are issued by such boards and authorities as the Oklahoma Medical Board, Oklahoma State Board of Pharmacy, Oklahoma Board of Nursing, Oklahoma State Board of Health, and Oklahoma Veterinary Board just to name a few. Additionally, virtually all OBNDD registrants, except for medical marijuana businesses, are required to register with the DEA and/or FDA.

Traditionally, when a registered business is sold or otherwise transferred, the purchasing entity or new ownership obtains the appropriate professional or occupational license, then the OBNDD registration, then any required federal registration. This allows the purchasing entity or new ownership to become fully compliant with all licensing and registration requirements prior to finalizing the sale of a business and any transfer of restricted activities or inventories or controlled dangerous substances. This procedure allows for a smooth transition of operations from the seller to the buyer where all restricted activities and controlled dangerous substances are transferred from the seller to the buyer or new owners at a predetermined date and time, similar to closing on a residential property. In this scenario, the seller remains in control of all operations and inventories of controlled

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dangerous substances up the point of closing when the buyer or new owners then takeover. The seller performs a final inventory of controlled dangerous substances, and the buyer conducts an initial inventory to ensure that nothing has been diverted. This allows for both parties to be lawfully registered and perform a transfer in conformity with the UCDSA. This procedure also allows the seller to maintain operations and inventories of controlled dangerous substances should the buyer or new ownership be denied licensing or registration for any reason.

The above procedure is authorized by the UCDSA because all operations and controlled dangerous substances always remain under the total control of an OBNDD registrant. It is an unlawful distribution on the part of the seller in violation of 63 O.S. § 2-401 if controlled dangerous substances are transferred to a buyer or new ownership prior to the buyer or new owner becoming fully registered in compliance with the UCDSA and other Oklahoma law. It is unlawful possession with intent to manufacture or distribute on the part of the buyer or new ownership in violation of 63 O.S. § 2-401 to take possession or control of controlled dangerous substances prior to becoming properly registered with OBNDD in accordance with the UCDSA and other Oklahoma law.

While the requirement for a professional or occupational license prior to OBNDD registration is not unique, the ability to *transfer the actual license itself is unique* to medical marijuana businesses. Except for medical marijuana business licenses issued by OMMA, no other professional or occupational license that is required to register with OBNDD is transferrable. This includes pharmacies and all other pharmaceutical manufacturers and distributors. Even alcohol and liquor licenses issued by the Alcoholic Beverage Laws Enforcement Commission (ABLE) are non-transferrable.



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OBNDD registrations have never been transferable. Transferability substantively interferes and conflicts with every other board or authority tied to OBNDD except for OMMA. License transferability is not authorized by the UCDSA or the federal Controlled Substances Act. Registrations are not designed to be transferable as the entire purpose behind registration is to know who is engaging in activities with controlled dangerous substances and to ensure those registrants are providing adequate safeguards against the theft and diversion of controlled dangerous substances.

Transfers of medical marijuana business licenses are authorized by 427.14(N) which reads “[n]othing shall authorize [OMMA] to deny... transfer of a license due to a change in ownership for the same business location previously licensed.” Laws 2021, SB 1033, c. 584, § 8, emerg. eff. May 28, 2021. This statute has been amended multiple times each legislative session since, which has created multiple “active” versions of the same statute. None of the other versions mention this ability to transfer a medical marijuana license. However, pursuant to Oklahoma Attorney General Opinion 89-011 (June 1, 1989), the language is still operatively in effect because it does not conflict with any of the other versions of the statutes. “The adoption of the latter statute in time does not automatically negate and repeal by implications the terms of the statute adopted first in time. Each instance must be reviewed by a case-by-case basis.” *Id.* However, whether license transfers are authorized by this statute or not is irrelevant to the issue at hand as it only applies to the transferability of a medical marijuana business license and not the transferability of the controlled substances themselves.

Transfers or sales of controlled dangerous substances must be done in accordance with the UCDSA. Controlled dangerous substances can only be sold, delivered, distributed, or transferred to other registrants of OBNDD or end-user patients within prescribed limits. Only registrants are permitted to engage in manufacturing

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and distributing controlled dangerous substances. While the registrant is the entity itself, the entity is a legal fiction that functions and operates under the ultimate authority of at least one beneficial owner. To allow an entity to maintain a registration without any regard to its ownership or control ignores the primary purpose of registration which is to regulate controlled dangerous substances and guard against the theft and diversion of those controlled dangerous substances. This is especially true for closely held corporations where a relatively small number of individuals are responsible for all inventory and operations.

Accordingly, any buyer or new owner of a registered business must have a new OBNDD registration issued in the name of the entity under the authority and control of those ultimate beneficial owners.

Some OBNDD registered entities have restricted ownership. Currently, the only OBNDD registrants subject to restricted ownership are pain management clinics pursuant to 63 O.S. § 2-302(C) and medical marijuana businesses pursuant to 63 O.S. § 420 *et seq.* Even still, all OBNDD entity registrations are issued to the entity under the authority and control of the ownership of that entity. This allows OBNDD to know who is in ultimate authority and control of the disposition of controlled dangerous substances. Some reasonable and limited exceptions to that general rule may exist when considering large, publicly traded corporations because strict regulation of ownership would be impossible and impractical to enforce and there are a multitude of other safeguards built in that work to guard against the theft and diversion of controlled dangerous substances. OBNDD recently made changes to its administrative rules to clarify both beneficial ownership and changes in ownership for registrants. These changes were meant to provide a better understanding of the purpose of registration and regulation of controlled dangerous substances. These changes were also intended to make it easier for registrants to understand what is required of them.

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The language in the emergency rule changes defining beneficial ownership was derived almost exclusively from the Financial Crimes Enforcement Network (FINCEN) and the Financial Action Task Force (FATF). These changes represent either new rules being adopted by those groups or recommendations and suggested changes to combat illicit money laundering with narcotics and terrorism financing networks. The language has been adopted by OBNDD to help facilitate our money laundering investigation mandate, but the agency does recognize that this touches on the medical marijuana industry as well. The language regarding changes in ownership was copied, almost verbatim, from the rules and regulations of the Oklahoma Board of Pharmacy due to its conciseness and clarity. Changes in ownership or purchases of registered business have occurred for decades without issue, but the specific transferability of the OMMA license (as opposed to the issuance of a new license for the buyer) presents conflicts with the UCDSA and the rule changes were intended to make the appropriate process clearer for all those affected.

If the OMMA license is sold or transferred to a purchasing entity or new owners, the OBNDD registration issued to the original OMMA licensee is no longer valid pursuant to 63 O.S. § 2-302(L). A transfer of the OMMA license to a purchasing entity or new ownership necessarily inactivates any OBNDD registration tied to the seller because the seller no longer has the requisite occupational license to maintain an OBNDD registration. Any buyer/transferee/new owner must have an active OBNDD registration before engaging in any authorized activity or taking possession of any medical marijuana pursuant to the UCDSA. This creates an issue for businesses trying to sell because the business is forced to sell or liquidate all inventories of controlled dangerous substances prior to the new ownership or purchasing entity taking over. Therefore, the transfer of an OMMA license cannot be accommodated when it also involves the sale or transfer of medical marijuana inventory. Even if it could be

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accommodated within OBNDD rules in some form, this transferability is still not authorized by the UCDSA, and everything done without UCDSA authorization is generally criminal in nature.

There is currently a moratorium in place on the issuance of new medical marijuana business licenses. 63 O.S. § 427.14a. Consequently, OBNDD has seen a sharp increase in the number of OMMA license transfers. However, a potential solution to the issue may exist in the moratorium language itself. The moratorium “shall not apply... to the issuance of a medical marijuana business license necessitated by a change in the ownership” of the business. *Id.* In accordance, OBNDD has suggested the issuance of a new medical marijuana business license, instead of the license transfer, as a viable solution that is authorized by the UCDSA and allows for a smooth transition of operations and inventory. The step-by-step process could be as follows:

1. Buyer and Seller formally notify OMMA and OBNDD of pending business sale. Seller maintains all licenses, registrations, and operations through closing (including submitting renewal applications if the sale occurs over an expiration period).
2. Buyer applies for and gets approved for OMMA license.
3. Buyer applies for and gets approved for OBNDD registration.
4. Buyer and Seller have ten days (or some reasonable time frame) from the approval of the Buyer’s OBNDD registration to close and finalize the sale of the business.
  - a. During the closing or just prior to closing, Seller will conduct final inventory of all medical marijuana (METRC should already contain all this information).
  - b. Medical marijuana inventory and operations could formally be transferred to the buyer at the closing responsibility for all inventory and business operations.
5. Buyer or Seller notifies OMMA and OBNDD of completed closing and Seller’s OMMA license and OBNDD registration are inactivated.

This is substantively similar to how almost every other registered business sale has occurred for decades, though overly simplified for illustrative purposes. This also gives the added benefit of the seller maintaining licensing and registration should the buyer be denied licensing or registration for any reason. The seller would be permitted



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to continue the business and/or elicit a new potential buyer without being forced to shut down operations. This sounds like a simple solution on paper, but OBNDD recognizes that implementation may prove to be a challenge as it could require some level of coding and programming changes with software used by both OBNDD and OMMA.

63 O.S. § 427.14(P) also presents a potential challenge to this suggestion for marijuana growers because it states, “[n]o more than one medical marijuana commercial grower license shall be issued for any one property.” This law was passed during the 2023 legislative session to address a specific technique used criminal elements to flood the licensing system with multiple applications for a single property in the hopes of one being approved to provide cover for black-market operations. With multiple grows on a single property, it is difficult, if nearly impossible, to distinguish separate businesses from one another as required by the UCDSA and rules and regulations of OBNDD. This makes effective enforcement nearly impossible. Arguably however, the intent of the legislature in passing this law was to prevent multiple active grows from operating on a single property, not to prevent an existing marijuana grow from being sold to new ownership or a different business. Such an interpretation is likely a reasonable one especially when read in the context of other statutes impacting medical marijuana businesses. This is an issue that should be addressed at the next legislative session.

In addressing license transfers, OBNDD has been working diligently with our partners at the OMMA and the Office of the Attorney General to develop a solution that conforms with both the UCDSA and other Oklahoma law. Nothing in the UCDSA prevents a registered business from being bought or sold, but the current process creates a mechanism where the UCDSA is violated every time an OMMA license is “transferred” and the sale involves medical marijuana inventory.

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**CONCLUSION**

Neither professional or occupational license transfers nor registration transfers are authorized by the UCDSA. Generally, acts done in violation of the UCDSA or not otherwise specifically authorized by the UCDSA are criminal in nature. The historical practice has been for all buyers or new owners of registered businesses to become fully licensed and registered under their authority prior to effectuating the sale of a registered business which allows for a transfer of inventory and operations between two registrants. This is not applicable when no controlled dangerous substances are involved in the transaction. When no controlled dangerous substances are involved, a professional or occupational license could theoretically be bought, sold, or traded without restriction by the UCDSA.

Accordingly, the present license transfer process is not authorized by the UCDSA and cannot be accommodated or endorsed by OBNDD. Any transfer of controlled dangerous substances (marijuana) between a buyer and seller involved in a license transfer could subject both parties to administrative, civil, and criminal liability under the current practice. Potential solutions exist, but those solutions must be implemented in coordination with other state agencies to comply with the law.

Respectfully,

A handwritten signature in blue ink, appearing to read "James Hutchison".

**JAMES HUTCHISON**, OBA #35136  
*Assistant General Counsel*  
Oklahoma State Bureau of Narcotics  
and Dangerous Drugs Control