

FOR COMPASSION'S SAKE: AN EXAMINATION OF THE MEDICAL MARIJUANA LAWS OF NEW JERSEY AND GERMANY

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Introduction

Both New Jersey and Germany have legalized the use of medical marijuana for their citizens.¹ This article seeks to compare the medical marijuana laws of these jurisdictions. Part I of the article examines the historical background of marijuana regulation in New Jersey and Germany. Part II discusses the current regulatory schemes in New Jersey and Germany. Part III concludes the article, comparing the medical marijuana laws of New Jersey and Germany.

Part I: Historical Background for the Regulation of Marijuana Consumption in New Jersey and Germany

A. New Jersey

Marijuana has been used for its medicinal value in the United States since the nineteenth century.² By the end of the nineteenth century “cannabis became, alongside tobacco and cotton, one of the leading crops produced in the Americas.”³ It was not until 1937 that the word marijuana appeared in Federal legislation, the Marihuana Tax Act of 1937.⁴ While Congress considered the bill, United States Commissioner of Narcotics, Harry J. Anslinger, argued that “[m]arihuana [was] an addictive drug which produced

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¹ See N.J. STAT. ANN. § 24:6I-1 (West 2019); Gesetz zur Änderung betäubungsmittelrechtlicher und anderer Vorschriften [Act to Amend Narcotic Drugs Provisions and Other Related Provisions], Mar. 6, 2017, BGBl I at 403 (Ger.), http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bbgb117s0403.pdf (last accessed Jan. 17, 2019).

² Melissa Brown, Comment, *The Garden State Just Got Greener: New Jersey is the Fourteenth State in the Nation to Legalize Medical Marijuana*, 41 SETON HALL L. REV. 1519, 1522 (2011).

³ Carlos Alvarez, Article, *A Call to Higher Action: Cannabis Prohibition in the United States and Canada Makes for an Uncertain Future*, 24 U. MIAMI INT'L & COMP. L. REV. 441, 450 (2017).

⁴ David R. Katner, *Up In Smoke: Removing Marijuana from Schedule I*, 27 B.U. PUB. INT. L. J. 167, 175 (2018).

in its users insanity, criminality, and death.”⁵ The legislation passed and provided that physicians could prescribe marijuana to their patients, so long as a tax was paid for its use.⁶ As a result of the legislation marijuana was dropped from the Federal Pharmacopeia⁷, a move that was opposed by the American Medical Association.⁸ Although the text of the statute itself did not prohibit the medicinal use of marijuana, it effectively made it impossible for anyone to produce marijuana legitimately for medicinal purposes.⁹

Over the course of the twentieth century, Congress acted further. In 1951 with the passage of the Boggs Act¹⁰, people found possessing or distributing marijuana could be punished severely.¹¹ Marijuana was officially made illegal with the Controlled Substance Act (“CSA”) in 1970.¹² Like lysergic acid diethylamide (LSD) and heroin, marijuana was classified as a Schedule I drug under the act.¹³ Notably, “[t]he CSA classifies drugs as Schedule I if they (1) have a ‘high potential for abuse,’ (2) have ‘no *currently accepted medicinal use in treatment in the United States*,’ and if (3) ‘[t]here is a lack of accepted safety for use of the drug . . . under medical

⁵ Erwin Chemerinsky et al., *Cooperative Federalism and Marijuana Regulation*, 62 UCLA L. REV. 74, 81 n.13 (2015).

⁶ Katner, *supra* note 3, at 175. *See also Marihuana Tax Act of 1937*, Pub. L. No. 75-238, 50 Stat. 551 (1937).

⁷ The Federal Pharmacopeia, known today as the United States Pharmacopeia, “contained formulas for the preparation of . . . drugs considered to be ‘the most fully established and best understood’ at the time.” Inder Partap Singh, Anita Szajek, *What is a Pharmacopeia?*, USP.ORG (Aug. 7, 2014), <https://qualitymatters.usp.org/what-pharmacopeia>.

⁸ Chermersinsky et al., *supra* note 4, at 82. *See also Alvarez, supra* note 2, at 453 (“The American Medical Association (AMA), vigorously opposed marijuana’s drop from the Federal Pharmacopeia, contending that the use of cannabis could be useful for medicinal purposes, and that there was no legitimate evidence demonstrating cannabis to provoke criminal conduct”).

⁹ Alvarez, *supra* note 2, at 453-54.

¹⁰ The Boggs Act “provided uniform penalties for the Narcotic Drug Import and Export Act and the Marihuana Tax Act. The provisions of the act mandated that those charged and convicted of a first offense involving cocaine, marijuana, or opiates receive two to five years in prison, second-time offenders were to be given five to 10 years, and third-time offenders were to receive 10 to 20 years.” Virginia L. Rothwell, *Boggs Act*, ENCYCLOPEDIA OF DRUG POL’Y 96, 96 (Mark A. R. Kleiman, James E. Hawdon, eds. 2011), <http://sk.sagepub.com.proxy.libraries.rutgers.edu/reference/drugpolicy/n42.xml?term=boggs%20act>.

¹¹ Katner, *supra* note 4, at 175. *See also Boggs Act of 1951*, Pub. L. No. 82-255, 65 Stat. 767 (1951); Rothwell, *supra* note 10.

¹² Alvarez, *supra* note 3, at 454-55.

¹³ Chemerinsky et al., *supra* note 5, at 82.

supervision.”¹⁴ With the passage of the CSA, marijuana was prohibited in all fifty states. In New Jersey, the possession of marijuana outside the confines of its medical marijuana law is a crime that, depending on the amount of marijuana or marijuana plants possessed, can lead to a conviction for a first-degree crime carrying a ten to twenty-year prison sentence, and a fine of up to \$300,000.¹⁵

Then, in January of 2010 New Jersey became the fourteenth state in the United States to legalize the medical use of marijuana.¹⁶ The legislation, known as the New Jersey Compassionate Use Medical Marijuana Act (“CUMMA”)¹⁷, found that “[m]odern medical research has discovered a beneficial use for marijuana in treating or alleviating the pain or other symptoms associated with certain debilitating medical conditions.”¹⁸ The legislature also noted that a vast majority of marijuana enforcement is done at the state level, and that New Jersey was joining the other thirteen states which had legalized marijuana “for the health and welfare of its citizens.”¹⁹ As will be illustrated below, New Jersey’s history of marijuana use and regulation is similar to that of Germany.

B. Germany

Like in the United States, the use of marijuana for medicinal purposes has a long history in Germany. As early as the 12th century, cannabis products appeared in medical texts as a remedy for headaches and as a topical treatment for sores and wounds.²⁰ Until the mid-18th century local hemp seeds were used to cultivate marijuana and was used as a cure for a number of illnesses such as “inflammation of the breast...gonorrhoea...cough, stitch, jaundice, and worms.”²¹ Much like marijuana’s inclusion in the Federal Pharmacopeia²², marijuana was included in a prominent German

¹⁴ Amanda Frankel, Article, *Dr. Greenthumb Goes to Washington: A Scientific Argument for the Legalization of Medical Marijuana*, 14 SETON HALL CIR. REV. 125, 129 (2017) (quoting 21 U.S.C. § 812(b)(1) (2012)) (emphasis added) (alteration in original).

¹⁵ N.J. STAT. ANN. § 2C:35-5(10)-(11) (West 2019); *See id.* § 2C:43-6(a)(1).

¹⁶ Brown, *supra* note 2, at 1519-20.

¹⁷ N.J. STAT. ANN. § 24:6I-1.

¹⁸ *See id.* § 24:6I-2(a).

¹⁹ *See id.* §§ 24:6I-2(b)-(c).

²⁰ Franjo Grotenhermen, *The Medical Use of Cannabis in Germany*, 32 J. DRUG ISS. 607, 607-08 (2002).

²¹ *Id.* at 608.

²² *See supra* text accompanying note 7.

pharmaceutical book in the middle of the 18th century.²³ Twelve pages were devoted to the potential medicinal value of cannabis, discussing recommendations to its use as a remedy for jaundice, gonorrhoea; and as both an analgesic and anesthetic.²⁴

As time progressed Europeans who travelled further into the Middle East and Asia were introduced to a more potent form of cannabis, what Germans dubbed Indian Hemp.²⁵ Research on this more potent form of cannabis continued throughout the 19th century in Germany, with it being featured in prominent medical journals as a remedy for a variety of ailments.²⁶ During the peak of medicinal marijuana use in 19th century Germany a company known as “E. Merck in Darmstadt was the leading manufacturer of cannabis preparations in Europe at the time, producing cannabis extracts in large quantities.”²⁷

Yet, just as in the United States, by the 1930s the recreational use of cannabis was prohibited in Germany.²⁸ The sale of Indian hemp had already been restricted to pharmacies in the late nineteenth century with the Pharmacy Ordinance of 1872.²⁹ Calls for further regulation of cannabis in Europe culminated with the International Opium Convention in 1925.³⁰ After a gathering of European nations agreed to ban the export of cannabis products to countries that prohibited it, several countries, including Germany, banned the nonmedical use of the drug.³¹ By 1958 Germany prohibited the medical use of marijuana.³²

From 1972 into the present, marijuana has been subject to the restrictions imposed by the Narcotics Law that replaced prior laws regulating marijuana.³³ When the law was enacted, cannabis

²³ Grotenhermen, *supra* note 20, at 608. The text was known as *Apparatus medicaminum tam simplicium quam praeparatorum et compositorium* by John Andrae Murray and was published between 1776 and 1789. *Id.*

²⁴ Grotenhermen, *supra* note 20, at 608.

²⁵ *Id.*

²⁶ *Id.* at 608-09.

²⁷ *Id.* at 609.

²⁸ *Id.* at 612.

²⁹ DANILO BALLOTTA ET AL., *Cannabis Control in Europe*, A CANNABIS READER: GLOB. ISSUES & LOC. EXPERIENCES, SERIES 8, VOL. 1, EUROPEAN MONITORING CTR. FOR DRUGS & DRUG ADDICTION, LISBON 100 (2008).

³⁰ *Id.* at 101.

³¹ *Id.* See also Grotenhermen, *supra* note 20, at 612.

³² Grotenhermen, *supra* note 20, at 612.

³³ *Id.*

was classified as an Annex I drug.³⁴ Drugs in this classification are “not prescribable’ and ‘not negotiable.’”³⁵ Drugs that are subject to Annex I are available on a limited basis for research purposes.³⁶ Under German law possession of illegal drugs is a crime punishable by up to five years in prison.³⁷

With the beginning of the twenty-first century, medical marijuana progressively became available. In 1998 dronabinol, a derivative of THC and the main psychoactive component of marijuana, was rescheduled to Annex III and became available by prescription.³⁸ Further, although “no prosecuted patient who had taken cannabis medicinally [had] ever been acquitted by a German court...first offenders had a good chance that the prosecuting attorney would refrain from prosecution because of ‘low guiltiness’ if the confiscated amount of cannabis was low.”³⁹ This is because under the German Narcotics Act a prosecutor is allowed discretion to not prosecute in cases where “the offender’s guilt could be regarded as minor, if there is no public interest in a criminal prosecution and if the offender cultivates, produces, imports, exports, carries in transit, acquires, otherwise procures or possesses narcotic drugs in small quantities exclusively for his personal use.”⁴⁰

In conjunction with this prosecutorial discretion in the enforcement of German Narcotics laws against people who were using marijuana for medicinal purposes, people pursued other methods to obtain medical cannabis. One such method included filing petitions with the German Government under the Narcotics Act to be exempted from its requirements.⁴¹ After a German high court decision and four years of discussion, Germany’s Federal

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ EMCDDA, *Germany: Country Drug Report 2018*, EMCDDA, http://www.emcdda.europa.eu/countries/drug-reports/2018/germany/drug-laws-and-drug-law-offences_en (last accessed Feb. 3, 2019). *See also* Betaeubungsmittelgesetz [Narcotic Drugs Act], July 28, 1981, BGBL I at 358, § 29 (Ger.), https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/Gesetze_und_Verordnungen/GuV/N/Narcotic_Drugs_18_12_2009.pdf (last accessed on Feb. 3, 2019).

³⁸ Grotenhermen, *supra* note 20, at 612.

³⁹ *Id.* at 617.

⁴⁰ Betaeubungsmittelgesetz [Narcotic Drugs Act], July 28, 1981, BGBL I at 358, § 31a (1) (Ger.).

⁴¹ *Id.* at § 3.

Institute for Drugs and Medical Devices (BfArM) started to grant limited waivers for people to use medical marijuana, in spite of the fact that the drug remained scheduled on Annex I.⁴² Yet such waivers were rarely granted.⁴³ As reported by the *Global Legal Monitor* “[b]y April 5, 2016, there were only 647 patients in possession of such a permit.”⁴⁴ However, this all changed in March 2017 when Germany’s medical marijuana law went into effect, moving marijuana to Annex III and allowing doctors to prescribe the drug on a case-by-case basis.⁴⁵

Part II: The Current Regulatory Schemes of New Jersey and Germany

A. New Jersey’s Compassionate Use Medical Marijuana Act

With passage of the Compassionate Use of Medical Marijuana Act (“CUMMA”) New Jersey legalized medical marijuana in 2010.⁴⁶ The use of medical marijuana under the act is confined to “qualifying patients.”⁴⁷ Under the act a qualifying patient is “a resident of the State [of New Jersey] who has been provided with a certification by a physician pursuant to a bona fide physician-patient relationship.”⁴⁸ The physician relationship required for a certification to be issued is one that “the physician has ongoing responsibility for the assessment, care, and treatment of a patient’s debilitating medical condition.”⁴⁹

The certification required by the physician must include “[a] statement that the physician has an ongoing responsibility for the

⁴² Ned Stafford, *German Patients Are Allowed Marijuana for Medical Uses*, BRIT. MED. J. 500 (2009).

⁴³ Jenny Gesley, *Germany: Medical Marijuana Act Enters into Force*, GLOB. LEGAL MONITOR (Mar. 13, 2017), <http://www.loc.gov/law/foreign-news/article/germany-medical-marijuana-act-enters-into-force/>.

⁴⁴ *Id.*

⁴⁵ Gesetz zur Änderung betäubungsmittelrechtlicher und anderer Vorschriften [Act to Amend Narcotic Drugs Provisions and Other Related Provisions], Mar. 6, 2017, BGBl I at 403, Art. 1(2) (Ger.), http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bbgb117s0403.pdf (last accessed Jan. 17, 2019). *See also* Gesley, *supra* note 43. Drugs placed in Annex III are “are restricted to medicinal use prescribed on a ‘Narcotics Prescription.’” Grotenhermen, *supra* note 20, at 612.

⁴⁶ N.J. STAT. ANN. §§ 24:6I-1 - 16 (West 2019).

⁴⁷ *See id.* § 24:6I-3.

⁴⁸ *Id.*

⁴⁹ *Id.*

assessment, care and treatment of the patient's debilitating medical condition . . . [and a] statement that the patient's diagnosis qualifies as a debilitating medical condition that authorizes the patient to use medicinal marijuana.”⁵⁰ A debilitating medical condition is defined by statute and regulation.⁵¹ The list includes terminal illnesses if the patient has less than twelve months to live, seizure disorders, post-traumatic stress disorder, and glaucoma, if resistant to traditional treatment; also HIV and cancer, among other conditions.⁵² The statute also covers “severe or chronic pain, severe nausea or vomiting,” if caused from any enumerated disease or condition or treatment thereof.⁵³ Amendments that were approved to the regulations governing the medical marijuana program added anxiety and chronic pain to the list of debilitating medical conditions under the statute.⁵⁴

Once the patient has the necessary certification, the patient (or their caregiver) may then apply to the State for a “Registry identification card.”⁵⁵ In order for the patient or caregiver to acquire this card they must submit the certification, completed by their physician to the State Department of Health, along with the name and address of the patient and/or caregiver, the name and address of the physician who issued the certification, and the necessary fee to apply.⁵⁶ The act defines primary caregivers as: “any person who is a New Jersey resident over the age of eighteen, not a primary caregiver for another patient registered in the program,” and “has never been convicted of possession or sale of a controlled dangerous substance, unless such conviction occurred after the effective date [October 1, 2010] of this act and was for a violation of federal law

⁵⁰ N.J. ADMIN. CODE §§ 8:64-2.5(a)(4), (7) (2019).

⁵¹ See N.J. STAT. ANN. § 24:6I-3 (West 2019); N.J. ADMIN. CODE § 8:64-1.2 (2019).

⁵² N.J. STAT. ANN. § 24:6I-3.

⁵³ *Id.*

⁵⁴ Rule Proposals, Health – Public Health Services Branch – Division of Medicinal Marijuana, 50 N.J.R. 1398(a), 4, 22 (June 18, 2018). See also Payton Guion, *N.J. Just Doubled its Medical Marijuana Program. See Where the 6 new Dispensaries Will be*, N.J.COM (Dec. 18, 2018), <https://www.nj.com/marijuana/2018/12/nj-just-doubled-its-medical-marijuana-program-see-where-the-six-new-dispensaries-will-be.html>.

⁵⁵ N.J. STAT. ANN. § 24:6I-3 (West 2019).

⁵⁶ See *id.* §§ 24:6I-4(a)(1)-(4). As of the writing of this article the regular fee to apply for a registration card is \$100, with a reduced fee of \$20 for senior citizens and military veterans. New Jersey Department of Health, *Medicinal Marijuana Program: Patient FAQs*, NJHEALTH (Jan. 28, 2019), https://www.nj.gov/health/medicalmarijuana/pat_faqs.shtml#5 (last accessed Feb. 3, 2019).

related to possession or sale of marijuana that is authorized under this act.”⁵⁷ However if the primary caregiver applying can “affirmatively demonstrate to the commissioner clear and convincing evidence of rehabilitation” of their crime they can become a caregiver.⁵⁸ The statute lays out a series of factors the commissioner can consider to make this determination.⁵⁹ Under the program caregivers must undergo criminal background checks and be fingerprinted.⁶⁰

When applicants are approved they are placed on a confidential list that is shared with “authorized employees of State or local law enforcement agencies, only as necessary to verify that a person who is engaged in the suspected or alleged medical use of marijuana is lawfully in possession of a registry identification card.”⁶¹ The patient or the caregiver may then go to an alternative treatment center to have their allotted marijuana dispensed to them.⁶² As provided by the act the maximum amount of marijuana that may be prescribed to a patient in the program is two ounces per month and patients are able to receive 90 day supplies of marijuana.⁶³ Under the CUMMA a patient may only go to one alternative treatment center to receive medical marijuana.⁶⁴

Alternative treatment centers, like the patients who go to them, must also go through a registration process. CUMMA provides that the Department of Health should seek to ensure the availability of alternate treatment centers throughout the State.⁶⁵ To that end, CUMMA allows “pursuant to need” for “at least two [alternate treatment centers] each in the northern, central, and southern regions of the State. The first two centers issued a permit in each region shall be nonprofit entities.”⁶⁶ The Department of Health has the discretion to determine how many alternate treatment centers can operate in New Jersey, so long as that number does not fall below six non-profit entities within the state.⁶⁷

⁵⁷ N.J. STAT. ANN. § 24:6I-3 (West 2019).

⁵⁸ *See id.* § 24:6I-4(c)(5).

⁵⁹ *See id.* §§ 24:6I-4(c)(5)(a)-(h).

⁶⁰ *See id.* § 24:6I-4(c)(1).

⁶¹ *See id.* § 24:6I-4(f)(2).

⁶² N.J. STAT. ANN. § 24:6I-10 (West 2019).

⁶³ *See id.* §§ 24:6I-10(a)-(b).

⁶⁴ *See id.* § 24:6I-10(d).

⁶⁵ *See id.* § 24:6I-7(a).

⁶⁶ *Id.*

⁶⁷ N.J. STAT. ANN. § 24:6I-10 (West 2019); *see* Nat. Med., Inc. v. N.J. Dept. of Health & Senior Servs., 52 A.3d 207, 209 (N.J. Super. Ct. App. Div. 2012).

In first implementing the legislation the Department of Health attempted to only open four non-profit alternative treatment centers in the State.⁶⁸ This measure was met with a concurrent resolution by the legislature and the Department of Health eventually promulgated rules to allow applications for six non-profit entities to operate within the State.⁶⁹

A for-profit company that sought a permit (but did not send an application to the Department of Health) filed a lawsuit arguing that the Department of Health was required by statute to allow for-profit entities to apply for a permit as an alternative treatment center.⁷⁰ In spite of the fact that the company never submitted an application to operate as a treatment center, and thus did not have a final agency decision to appeal from; the Appellate Division held that they had jurisdiction over the case due to the fact that the Department of Health made it clear that they were not accepting applications from for-profit corporations for one of the initial licenses to operate as an alternative treatment center.⁷¹

The court, interpreting the statute found that the legislature vested discretion in the Department of Health to open as many treatment centers as it deemed necessary so long as it did not dip below the statutory requirement of six.⁷² The court affirmed the Department of Health's power to determine who can, and who cannot, operate alternative treatment centers.⁷³ In December 2018 the State finished selecting six new entities to open alternative treatment centers in the State, and as of the writing is not accepting more applications to open alternative treatment centers.⁷⁴ Like in the previous offering, entities that did not get selected to become treatment centers in the most recent offering are challenging the actions of the Department of Health in selecting the candidates for new alternative treatment centers.⁷⁵

⁶⁸ *Nat. Med., Inc.*, 52 A.2d at 209-10.

⁶⁹ *Id.*

⁷⁰ *Id.* at 208, 210-11.

⁷¹ *Id.* at 211-12.

⁷² *Id.* at 213.

⁷³ *Id.*

⁷⁴ New Jersey Department of Health, *Medicinal Marijuana Program: Alternative Treatment Centers*, NJHEALTH (Dec. 17, 2018), <https://www.nj.gov/health/medicalmarijuana/alt-treatment-centers/> (last accessed Feb. 21, 2019).

⁷⁵ Susan K. Livio and Payton Guion, *These Weed Growers Didn't Get Picked to Grow Medical Marijuana in N.J. Now They are Ready for a Fight*, N.J.COM (Feb. 2, 2019), <https://www.nj.com/marijuana/2019/02/these-weed-growers-didnt-get-picked-to->

People acting on behalf of each entity applying to become an alternative treatment center must undergo a criminal background check and be fingerprinted.⁷⁶ As defined by statute the people who must be examined include “any owner, director, officer, or employee.”⁷⁷ Like the process of applying to be a caregiver, an entity can be disqualified if any of the parties mentioned above have been convicted of a controlled substances offense.⁷⁸ However, also like the process of applying for a caregiver the entity can show that any of the people who have been convicted of a controlled substances offense have been rehabilitated.⁷⁹

The alternative treatment centers are authorized by statute “to acquire a reasonable initial and ongoing inventory” of cannabis.⁸⁰ The regulations promulgating the act provide that alternative treatment centers “limit its inventory of usable marijuana and seeds to reflect current patient needs as identified by the number of patients registered with the alternative treatment center.”⁸¹ The regulations also provide that the marijuana cultivated must be grown inside, must be sold at a consistent unit price, and comply with New Jersey Department of Agriculture inspection and enforcement activities.⁸²

The alternative treatment centers in dispensing its products to patients can do so in a variety of forms. CUMMA does not limit “the number of strains of medical marijuana cultivated, and may package and directly dispense marijuana to qualifying patients in dried form, oral lozenges, topical formulations, or edible form, or any other form as authorized by the commissioner.”⁸³ Edible forms are only available to children.⁸⁴ While the act places limitations upon the quantity of marijuana dispensed to patients, the people who interact with medical cannabis, and the entities that dispense it; the act provides great flexibility how the end-user consumes marijuana.

grow-medical-marijuana-in-nj-now-they-are-ready-for-a-fight.html. The entities not selected are taking issue with how the selection process was conducted, particularly that an entity “received drastically different scores on its application from different judges.” *Id.*

⁷⁶ N.J. STAT. ANN. § 24:6I-7(d)(1) (West 2019).

⁷⁷ *Id.*

⁷⁸ *See id.* § 24:6I-7(d)(2).

⁷⁹ *See id.* § 24:6I-7(d)(6).

⁸⁰ N.J. STAT. ANN. § 24:6I-7(a) (West 2019).

⁸¹ N.J. ADMIN. CODE § 8:64-10.1(a)(3) (2019).

⁸² *See id.* §§ 8:64-10.1(a)(1)-(2), (4).

⁸³ *See id.* § 24:6I-7(a).

⁸⁴ *Id.*

Notably, CUMMA provides that health insurance does not have to reimburse patients for the costs of procuring medical marijuana.⁸⁵

This is not to mean that one who is authorized to use medical marijuana by statute can use it anywhere. Per statute, medical marijuana cannot be consumed in public places such as “school grounds, in any correctional facility, at any public park or beach, at any recreation center, or in any place where smoking is prohibited pursuant to” New Jersey law.⁸⁶ CUMMA also provides that a person cannot operate a vehicle of any kind whilst under the influence of medical marijuana.⁸⁷ To further maintain control of who can buy and consume medical marijuana CUMMA makes it a third degree crime to sell or distribute false registration cards; and makes it a fourth degree crime to possess or present to a law enforcement officer a false registration card.⁸⁸

As of the writing of this article New Jersey’s Medical Marijuana program is on the cusp of expansion. A bill currently working its way through the legislature would:

Expand access to edible forms of cannabis for patients of all ages; Give advance practice nurses and nurse practitioners authority to recommend patients to the program; Permit out-of-state medicinal marijuana patients from the 32 states where it is also legal to buy and consume cannabis in New Jersey; Shield employees from losing their jobs because they are registered patients; Protect patients from losing visitation or custody of their children because they are registered in the program; [and] Phase out the 6.625 percent sales tax over five years.⁸⁹

The Bill will also progressively increase the amount of cannabis one can have per month to 3 ounces.⁹⁰ With New Jersey seeking to expand its medical marijuana program, it is instructive to turn to a

⁸⁵ N.J. STAT. ANN. § 24:6I-14 (West 2019).

⁸⁶ *See id.* § 24:6I-8(b).

⁸⁷ *See id.* § 24:6I-8(a).

⁸⁸ *See id.* § 24:6I-9.

⁸⁹ Susan K. Livio, *It Will be Easier to Get Medical Marijuana in N.J. Under Bill That Got Key Approval Today*, N.J.COM (Nov. 26, 2018), https://www.nj.com/marijuana/2018/11/panel_oks_larger_weed_purchases_fewer_doctor_visit.html. *See also* S.10 and 2426, 218th legis., 2018-19 Sess. (N.J. Jan. 31, 2019).

⁹⁰ Livio, *supra* note 89. *See also* S.10 and 2426, 218th legis., 2018-19 Sess. (N.J. Jan. 31, 2019).

jurisdiction just starting its foray into medical marijuana, Germany.

B. Germany's Medical Marijuana Laws

Germany's legalization of marijuana, unlike New Jersey, was accomplished through amending a series of laws.⁹¹ These amendments moved marijuana from Annex I to Annex III, allowing doctors to prescribe marijuana.⁹² Marijuana can only be prescribed to someone with a "serious illness," and the doctor recommending the treatment has to confirm that there is either no generally accepted medical treatment for the condition, or if there are alternative treatments; the doctor believes that the patient should be treated with marijuana after weighing the risks of marijuana and the condition of the patient.⁹³ For either option the "there needs to be the likelihood that the treatment will have a noticeable positive effect on the illness or on certain symptoms."⁹⁴

What constitutes a serious illness is not defined by the act.⁹⁵ Regulations promulgated prior to the passage of the act indicate that "an illness that is either life-threatening or that will affect the quality of life permanently because of the severity of the resulting health problems."⁹⁶ The act also provides that a patient's health insurance will cover the cost of medicinal marijuana.⁹⁷ In Germany the cultivation of cannabis for medical use will eventually be

⁹¹ See Gesetz zur Änderung betäubungsmittelrechtlicher und anderer Vorschriften [Act to Amend Narcotic Drugs Provisions and Other Related Provisions] (Amendment Act), Mar. 6, 2017, BGBl I at 403, Art. 1(2) (Ger.), http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bbgb117s0403.pdf (last accessed Jan. 17, 2019).

⁹² See *supra* text accompanying note 45.

⁹³ Gesetz zur Änderung betäubungsmittelrechtlicher und anderer Vorschriften [Act to Amend Narcotic Drugs Provisions and Other Related Provisions], Mar. 6, 2017, BGBl I at 403, § 4 (Ger.). See also Gesley, *supra* note 43.

⁹⁴ Gesetz zur Änderung betäubungsmittelrechtlicher und anderer Vorschriften [Act to Amend Narcotic Drugs Provisions and Other Related Provisions], Mar. 6, 2017, BGBl I at 403, § 4 (Ger.). See also Gesley, *supra* note 43.

⁹⁵ Gesley, *supra* note 43.

⁹⁶ Gesley, *supra* note 43 (quoting Arzneimittelrichtlinie [Regulation on Medicinal Products], Dec. 18, 2008, BAnz AT § 12, ¶ 3 (Ger.), Mar. 31, 2009, https://www.g-ba.de/downloads/62-492-1349/AM-RL_2016-10-20_iK-2017-02-15_AT-10-01-2017-B2.pdf (last accessed Feb. 5, 2019).

⁹⁷ Gesetz zur Änderung betäubungsmittelrechtlicher und anderer Vorschriften [Act to Amend Narcotic Drugs Provisions and Other Related Provisions] (Amendment Act), Mar. 6, 2017, BGBl I at 403, § 4 (Ger.). See also Gesley, *supra* note 43.

controlled entirely by the Federal Institute for Drugs and Medical Devices (BfArM).⁹⁸ At the moment however, medical marijuana from foreign countries is being imported to meet the demand while BfArM sets up growing operations.⁹⁹ In 2017 alone, “44,000 units of the plant covered by health insurance were distributed to patients.”¹⁰⁰

BfArM through delivery contract seeks to centralize cultivation and distribution of marijuana throughout Germany.¹⁰¹ These delivery contracts are designed to have entities grow Marijuana throughout Germany and then store the BfArM owned marijuana throughout Germany until it is sold to pharmacies or manufacturers of cannabis medicine.¹⁰² The process for offering these delivery contracts was complicated by a German appellate court’s decision to stop the initial process of offering these contracts.¹⁰³ This initial process was halted after the court found that BfArM did not give enough time to entities seeking to become growing centers of medical marijuana to apply, which then led BfArM to adjust their criterion mid-way through the process.¹⁰⁴ The new process will provide for 10,400 kilograms (or 22,928 pounds) of

⁹⁸ Gesley, *supra* note 43. See also Gesetz zur Änderung betäubungsmittelrechtlicher und anderer Vorschriften [Act to Amend Narcotic Drugs Provisions and Other Related Provisions] (Amendment Act), Mar. 6, 2017, BGBl I at 403, § 1 (Ger.).

⁹⁹ Cannabis Agency, FED. INST. FOR DRUGS & MED. DEVICES, https://www.bfarm.de/DE/Bundesopiumstelle/Cannabis/Cannabisagentur/_node.html (last accessed Feb. 5, 2019). Thus far, Germany has had to import its medical marijuana from Canada and the Netherlands; Naomi Kresge, *Germany is Looking for its First-Ever (Legal) Pot Growers*, BLOOMBERG (Jan. 28, 2019), <https://www.bloomberg.com/news/articles/2019-01-28/german-cannabis-office-seeks-local-growers-to-secure-pot-harvest>.

¹⁰⁰ *From ‘Skyrocketing’ Demand to Skepticism: One Year of Medical Marijuana in Germany*, THE LOCAL (Mar. 8, 2018), <https://www.thelocal.de/20180308/one-year-of-medical-marijuana-in-germany>.

¹⁰¹ Cannabis Agency, FED. INST. FOR DRUGS & MED. DEVICES, https://www.bfarm.de/DE/Bundesopiumstelle/Cannabis/Cannabisagentur/_node.html (last accessed Feb. 5, 2019).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Grace Dobush, *Why Can’t Germany get its Medical Marijuana Industry Going?*, HANDELSBLATT TODAY (Jan. 2, 2019), <https://www.handelsblatt.com/today/companies/cannabis-why-cant-germany-get-its-medical-marijuana-industry-going/23811676.html?ticket=ST-1668740-xVBkVGB2Ixi1taaDtpLq-ap5>.

cannabis to be grown in Germany over the course of four years.¹⁰⁵ The offer is being divided into lots of growth with each lot being equivalent to 200 kilograms (or 440 pounds) of marijuana per year.¹⁰⁶ A single entity can secure a maximum of five lots each, enabling smaller entities to compete for delivery contracts to grow cannabis.¹⁰⁷ The next part of the article seeks to compare the two regulatory schemes, discussing their similarities and differences.

Part III: Similarities and Differences Between New Jersey's and Germany's Regulatory Schemes

There are three critical differences between New Jersey and Germany's regulatory scheme for cannabis. Particularly when a doctor can prescribe cannabis and how cannabis is distributed to patients in the programs. As to when a doctor can prescribe cannabis, New Jersey provides a list of conditions, by statute and regulation, where a doctor can prescribe medical marijuana.¹⁰⁸ Germany on the other hand, leaves the decision in the hands of the doctor to determine whether someone's treatment will benefit from medical marijuana.¹⁰⁹ This discretion on the part of the doctor is with the caveat that the use of marijuana will benefit the patient's treatment.¹¹⁰

Another notable difference is the manner in which marijuana reaches the patient. In New Jersey, medical marijuana is cultivated and sold at alternative treatment centers located throughout the state.¹¹¹ All of these centers are non-profit entities closely monitored by the State.¹¹² In Germany, the cultivation of marijuana will be controlled by the State through the award of delivery contracts with marijuana growers, the grown marijuana is owned by the State; and the State sells marijuana to pharmacies

¹⁰⁵ Press Release, *Tender for the Cultivation of Cannabis for Medical Purposes: 79 Bidders Have Submitted Tenders, The Contract Should be Awarded in the Second Quarter of 2019*, FED. INST. FOR DRUGS & MED. DEVICES (Jan. 28, 2019), <https://www.bfarm.de/SharedDocs/Pressemitteilungen/DE/2019/pm1-2019.html>.

See also Kresge, *supra* note 99.

¹⁰⁶ Press Release, *supra* note 105.

¹⁰⁷ *Id.*

¹⁰⁸ *See* N.J. STAT. ANN. § 24:6I-3 (West 2019). *See also supra* text accompanying note 51.

¹⁰⁹ *See supra* text accompanying note 89-90.

¹¹⁰ *See supra* text accompanying note 89.

¹¹¹ N.J. STAT. ANN. § 24:6I-7 (West 2019). *See also supra* text accompanying note 63.

¹¹² *See infra* Section II.A.

and cannabis medicine manufacturers in Germany.¹¹³ Lastly, unlike New Jersey which does not require insurance to cover a patient's medical marijuana costs¹¹⁴, Germany through its regulatory scheme forces insurance to pay the costs for a patient's medical marijuana.¹¹⁵

There are three key similarities. The marijuana being grown in both jurisdictions cannot be grown for a profit.¹¹⁶ Whether it is New Jersey with non-profit entities controlling the growth and sale of marijuana¹¹⁷, or Germany where the State ultimately owns and sells marijuana to pharmacies.¹¹⁸ Marijuana cultivation is also controlled in some direct or indirect way by a State Agency that is concerned with public health.¹¹⁹ Finally the grown cannabis is located throughout the jurisdiction during its initial manufacture.¹²⁰

Conclusion

For the present,¹²¹ both jurisdictions (albeit with differing schemes) heavily regulate and confine the use of marijuana to serve medical needs alone. Both jurisdictions, in spite of their differences, seek to have the government (whether that is the State government in the case of New Jersey, or the Federal government in the case of Germany) play a major role in regulating the distribution of medical marijuana but accomplish that goal in differing ways. New Jersey's model takes the decision of what types of medical conditions should be treatable by cannabis away from doctors but decentralizes the method which marijuana reaches the patient.

While Germany's model grants more discretion to doctors in determining whether to prescribe medical marijuana, Germany's

¹¹³ See *supra* text accompanying notes 95-101.

¹¹⁴ N.J. STAT. ANN. § 24:6I-14 (West 2019).

¹¹⁵ Gesetz zur Änderung betäubungsmittelrechtlicher und anderer Vorschriften [Act to Amend Narcotic Drugs Provisions and Other Related Provisions] (Amendment Act), Mar. 6, 2017, BGBL I at 403 (Ger.), http://www.bgb1.de/xaver/bgb1/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bbgb117s0403.pdf (last accessed Jan. 17, 2019). See also Gesley, *supra* note 43.

¹¹⁶ See *infra* Section II.

¹¹⁷ See *infra* Section II.A..

¹¹⁸ See *infra* Section II.B.

¹¹⁹ See *infra* Section II.

¹²⁰ See *infra* Section II.

¹²¹ As of the writing of this article the New Jersey legislature is considering legalizing the recreational use of marijuana. S. 2703, 218th legis., 2018-19 Sess. (N.J. Nov. 26, 2018).

method of marijuana distribution with the government selling marijuana to pharmacies and manufacturers is a twist on New Jersey's model. Like New Jersey, the cannabis itself is located throughout Germany. Unlike New Jersey, Germany actually owns the marijuana until it reaches the pharmacy or the manufacturer of cannabis-based medicine. The similar regulatory schemes of New Jersey and Germany provide a series of ideas that officials in other jurisdictions can use in informing their decisions about how to regulate the use of medical marijuana, for compassion's sake.