

# Medical Marijuana North Dakota

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# About Me...

Tara B. Brandner is an Assistant Attorney General in the State and Local Government Division of the North Dakota Office of the Attorney General. She has been with the office since June of 2016. She represents the Aeronautics Commission, Board of Accountancy, Board of Dental Examiners, Board of Examiners for Nursing Home Administrators, Commission on Legal Counsel for Indigents, Council on the Arts, Department of Commerce, Department of Health, Department of Labor, Human Resources Management Services, Information Technology Department, and State Library.

Prior to working in the Attorney General's Office, Tara was employed with the Minnesota Department of Human Services in St. Paul, Minnesota. Tara received her J.D. from the University of St. Thomas School of Law and M.B.A. from the University of St. Thomas Opus College of Business.

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intended as legal advice.  
Please consult your  
assigned legal counsel for  
specific questions.**

# Agenda

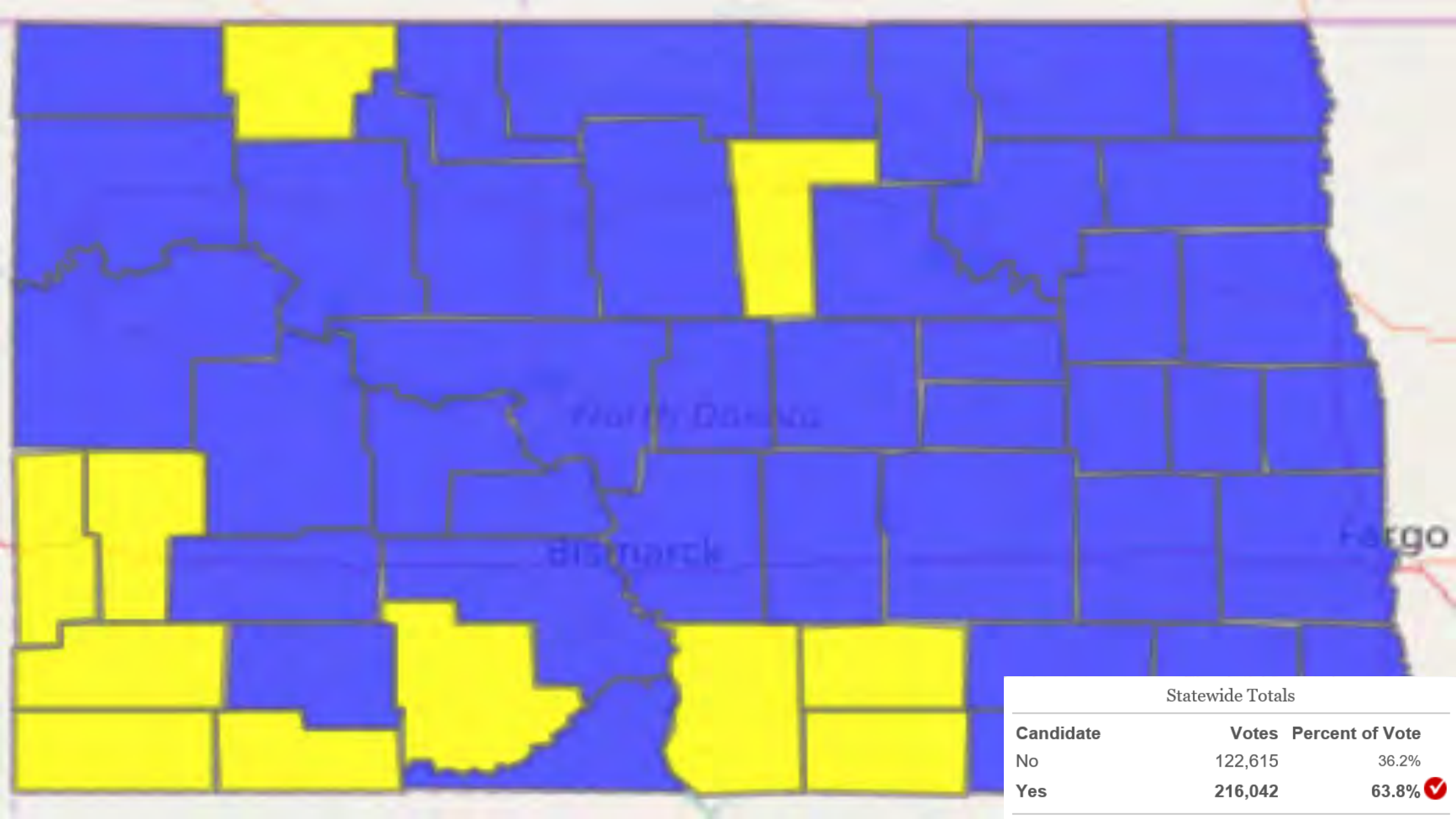
- History of the Compassionate Care Act
- The Cole Memo
- Attorney General Opinion 2017-L-06
- Status of the ND Medical Marijuana Program.
- North Dakota Numbers
- Constitutional Issues Related to Marijuana Legalizations


# History of the Compassionate Care Act

# History

- November 8, 2016
  - Initiated Measure 5, legalizing the use of medical marijuana for patients with qualifying medical conditions, was approved by North Dakota voters.





Statewide Totals		
Candidate	Votes	Percent of Vote
No	122,615	36.2%
Yes	216,042	63.8% 

# History

- Implementation of Measure 5
  - Analysis raised significant concerns and required statutory amendments
- Legislative Amendment – SB 2344
  - Repealed and replaced N.D.C.C. ch. 19-24 with N.D.C.C. ch. 19-24.1.
  - N.D.C.C. ch. 19-24.1 incorporates the priorities addressed in the Cole Memo issued by the U.S. Dept. of Justice
  - [US DOJ Cole Memo](#)
  - Attorney General Sessions rescinded the Cole Memo on January 4, 2018.
- Signed by the Governor on April 17, 2017
- Attorney General Opinion 2017-L-06



# ***N.D. Constitution – Article 3, Section 8***

If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. ***An initiated or referred measure which is approved shall become law thirty days after the election,*** and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. ***A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.***

# The Cole Memo

# The Cole Memo

“The Department is also committed to using its *limited investigative and prosecutorial resources* to address the *most significant threats* in the *most effective, consistent, and rational way*. In furtherance of those objectives, as several states enact laws relating to the use of marijuana for medical purposes, the Department in recent years has *focused its efforts on certain enforcement priorities* that are particularly important to the federal government.”

# The Cole Memo

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

# The Cole Memo

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession and use on federal property.

**Attorney  
General Opinion  
2017-L-06**



# Opinion: 2017-L-06

## QUESTION:

- Whether the two-thirds vote requirement contained in Article III, § 8 of the North Dakota Constitution, applies to N.D.C.C. ch. 19-24.1 for seven years.

## HOLDING:

- N.D.C.C. ch. 19-24.1 retains initiated status and is subject to the constitutional limitations provided in N.D. Const. art. III, § 8.

# Opinion: 2017-L-06

## ANALYSIS:

- The North Dakota Supreme Court held that where the Legislative Assembly amended and reenacted an initiated measure, its initiative character was not destroyed, and any subsequent amendments were still subject to the constitutional limitations provided by the then-current provision which is now found at N.D. Const. art. III, § 8.4
  - *State ex rel. Strutz v. Baker*, 299 N.W. 574, 575-76, 580 (N.D. 1941). See also *State ex rel. Dahl v. Dewing*, 131 N.W.2d 434, 437 (N.D.1964); N.D.A.G. 49-102.

# Opinion: 2017-L-06

## ANALYSIS:

- The *Strutz* Court discussed at length the distinction between an amendment and a repeal.<sup>6</sup> While the Court stated “[a] repeal destroys; an amendment keeps alive,” the practical distinction the Court drew between an amendment and a repeal is instructive for the present case.
- “An amendment is a change or alteration of a law or of some of its provisions...and merely continues a law...in changed form.”
- The Court further provided, “[i]f it were the intention to merely re-enact the particular provision of a former law in the new act operative in its own terms and remedy independent of the other portions of the act, alike in the new as in the old act, there is no repeal, because repeal is the absolute doing away with for all purposes.”

# Opinion: 2017-L-06

## ANALYSIS:

- Prior to its repeal, N.D.C.C. ch. 19-24 was substantially similar to N.D.C.C. ch. 19-24.1 in both scope and operation. “There may be some changes, but the law is the same law, so far as the law is concerned. Although N.D.C.C. ch. 19-24 has been repealed, the purpose and principle of Initiated measure No. 5 remains in effect at N.D.C.C. ch. 19-24.1
- The Legislative Assembly has not absolutely done away with Initiated Measure No. 5.
- Statement of Legislative Intent.

# Status of the Medical Marijuana Program in North Dakota

# Process Overview

Patient has a debilitating medical condition

Health Care Provider executes a written certification

Patient applies for a registry identification card with DoH

Approved patient receives a registry identification card

Patient can purchase usable marijuana at registered compassion centers



# Debilitating Medical Conditions

- Agitation of Alzheimer's disease or related dementia
- AIDS
- Amyotrophic Lateral Sclerosis (ALS)
- Anorexia Nervosa
- Anxiety Disorder
- Autism Spectrum Disorder
- Brain Injury
- Bulimia Nervosa
- Cancer
- Crohn's disease
- Decompensated Cirrhosis caused by Hepatitis C
- Ehlers-Danlos Syndrome
- Endometriosis
- Epilepsy
- Fibromyalgia
- Glaucoma
- HIV
- Interstitial Cystitis

# Debilitating Medical Conditions

- Migraine
- Neuropathy
- Posttraumatic Stress Disorder (PTSD)
- Rheumatoid Arthritis
- Spinal Stenosis or chronic back pain with objective neurological indication of intractable spasticity
- Tourette Syndrome
- Terminal Illness
- A chronic or debilitating disease or medical condition or treatment for such disease.

# Debilitating Medical Conditions

## Terminal Illness

- A disease, illness, or condition of a patient:
  - For which there is not a reasonable medical expectation of recovery;
  - Which as a medical probability, will result in death of the patient, regardless of the discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes; and
  - As a result of which, the patient's health care provider would not be surprised if death were to occur within six months.

# Debilitating Medical Conditions

## Chronic Conditions

- A chronic or debilitating disease or medical condition or treatment for such disease or medical condition that produces one or more of the following:
  - Cachexia or wasting syndrome;
  - Severe debilitating pain that has not responded to previously prescribed medication or surgical measures for more than three months or for which other treatment options produced serious side effects;
  - Intractable nausea;
  - Seizures; or
  - Severe and persistent muscle spasms, including those characteristic of multiple sclerosis

# Written Certification

## Health Care Providers

- Includes:
  - Physicians
  - Advanced Practice Registered Nurse
  - Physician Assistants
- Must be licensed to practice in North Dakota.

# Written Certification

## Requirements

- Executed by a health care provider stating that the patient has a debilitating medical condition.
- Can only be executed in the course of a *bona fide provider-patient relationship*.

**Health care providers do *not* prescribe medical marijuana.**



# Minor Patients

- Additional Requirements Include:
  - Documentation indicating the health care provider has explained the potential risks to the parent or legal guardian
  - Parent or legal guardian must consent in writing to the following:
    - Allow the minor's use of medical marijuana
    - Serve as the minor's designated caregiver
    - Control acquisition and dosage
    - Prevent the access to the minor

Minor patients ***must*** have a parent or legal guardian serve as a designated caregiver.

# Patient Applications

- Applications for Patients and Designated Caregivers were accepted as of the end of October 2018. The first patient cards were sent to patients and caregivers in January 2019.
  - Applications must be accompanied by a Written Certification from a Health Care Provider.
  - NO PRESCRIPTIONS. Controlled Substances Act. 21 U.S.C. § 812(b)(1) (2017).
- Electronic Applications.

# Designated Caregiver

An individual who agrees to manage the well-being of a registered qualifying patient with respect to the qualifying patient's medical use marijuana.

# Compassion Center Agent

A principal officer, board member, member-manager, governor, employee, volunteer, or agent of a compassion center.

# Registry Identification Cards

## Qualifying Patients

- Qualifying Medical Condition
- Written Certification
- Application Fee - \$50/year (fee may be waived for minor)

## Designated Caregivers

- 21 years of age
- Passed a criminal history record check
- Application Fee - \$50/year

## Compassion Center Agents

- 21 years of age
- Passed a criminal history record check
- Application Fee - \$200/year (fee waived for lab agent)

# NORTH DAKOTA MEDICAL MARIJUANA



PATIENT  
 NAME: John ZZTest  
 DATE OF ISSUE: 04-25-2019  
 DATE OF EXPIRATION: 02-13-2020  
 ID NUMBER: G372G6YWL2  
 DRIED LEAVES AND FLOWER: Standard



# NORTH DAKOTA MEDICAL MARIJUANA

## PATIENT

If found or to verify card, contact the Division of Medical Marijuana at (701) 328-1311.  
 Counterfeiting, replicating, alteration or misuse of this card is prohibited by law. Use or possession of this card by any person other than the intended cardholder is unlawful.



G3 72 G6 YW L2



Dried Leaves/Flower Possession Limits:  
 No = 0.0 oz  
 Standard = 3.0 oz  
 Enhanced = 7.5 oz



# Compassion Centers



## 2 Manufacturing

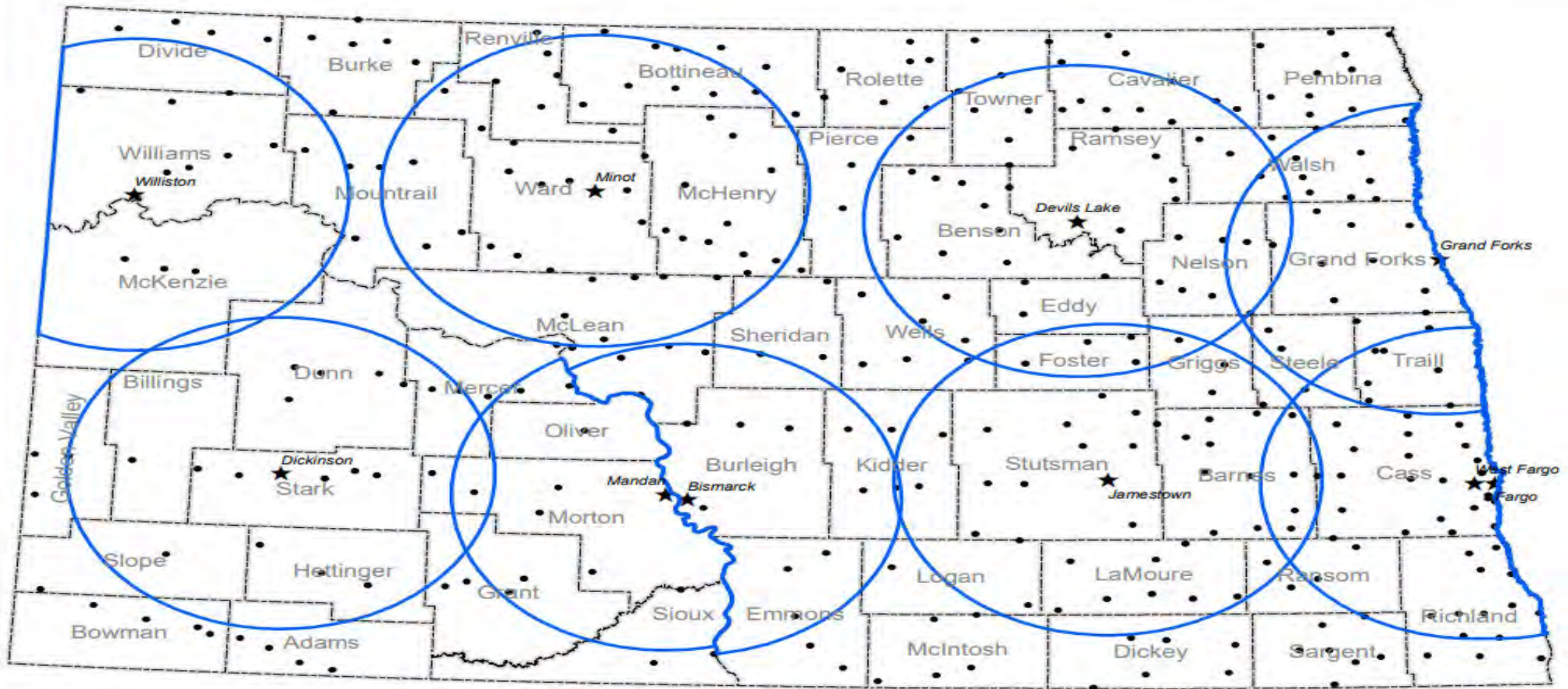
- Grow to meet demand.
- Growers, Producers, Processors
- \$110,000/2 years for registration

## 8 Dispensaries

- 3,500 ounce limit
- Patient Educators
- \$90,000/2 years for registration







Date: 12/28/2017 by AMKFritz H:\CityMap\_Update\Landscape.mxd

### 50-mile Radius Around Identified Communities

- 50-mile radius
- ★ Major Community
- Populated Place
- County Boundary







# Compassion Center Operation

## Inspections

- Compassion centers are subject to random inspection

## Quality Testing

- Quality sampling conducted by the Dept.
- Pesticide testing

## Safety and Security Requirements

- Limited access to production and processing
- Fully operational security system with backup system

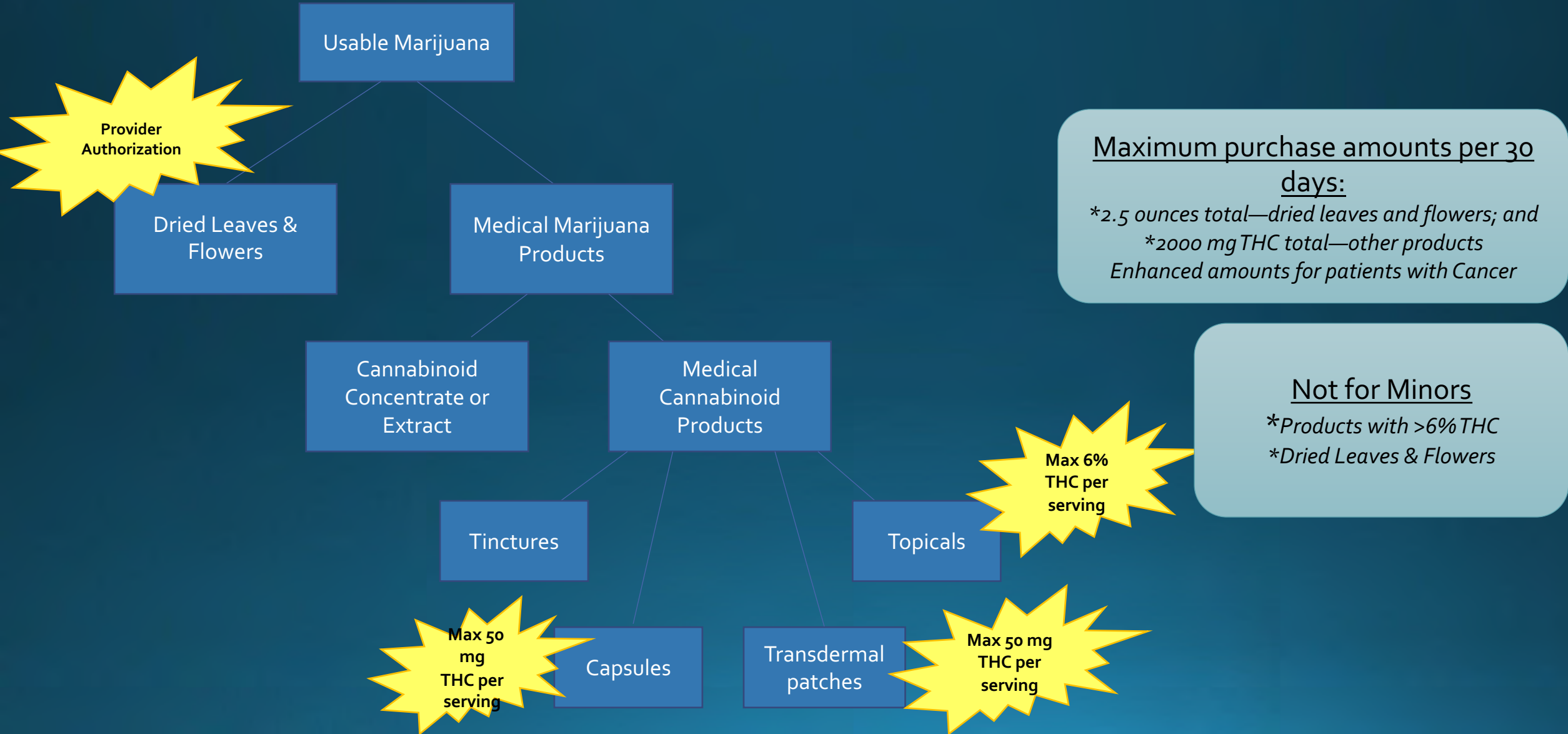
## Inventory Controls

- Seed to sale tracking

# Laboratory

- Marijuana is subject to random compliance testing by a State Laboratory for the following items prior to its sale to a dispensary:
  - Pesticides and degradation compounds
  - Microbiological contaminants and mycotoxins
  - Solvents
  - Water activity and moisture content
  - Concentration

# Types of Usable Marijuana



# Cannabinoid Edible Products

Means a food or potable liquid into which a cannabinoid concentrate or the dried leaves or flowers of the plant of the genus cannabis is incorporated.

***CANNABINOID EDIBLE PRODUCTS ARE PROHIBITED UNDER  
NORTH DAKOTA LAW***

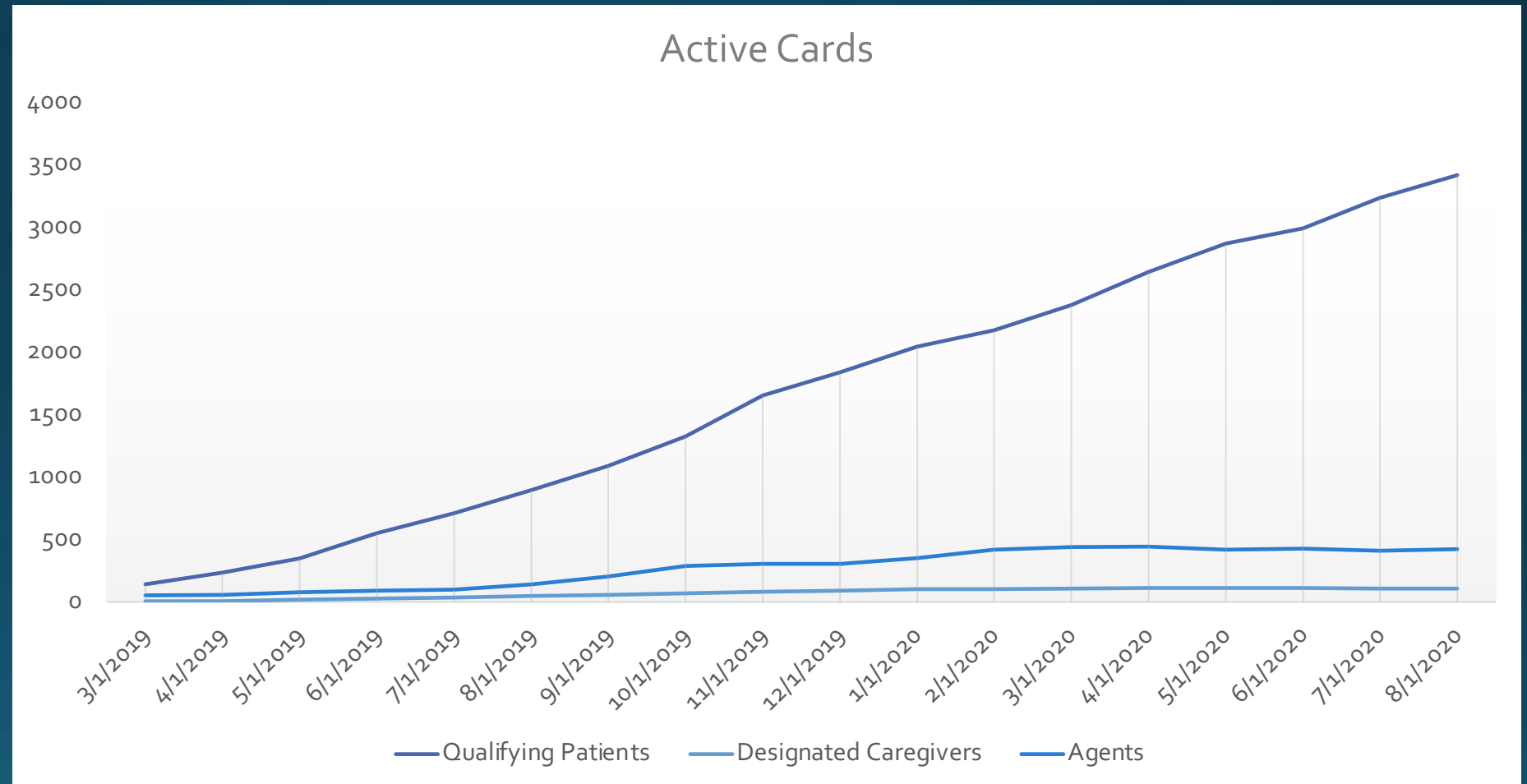


# North Dakota Medical Marijuana Program in Numbers

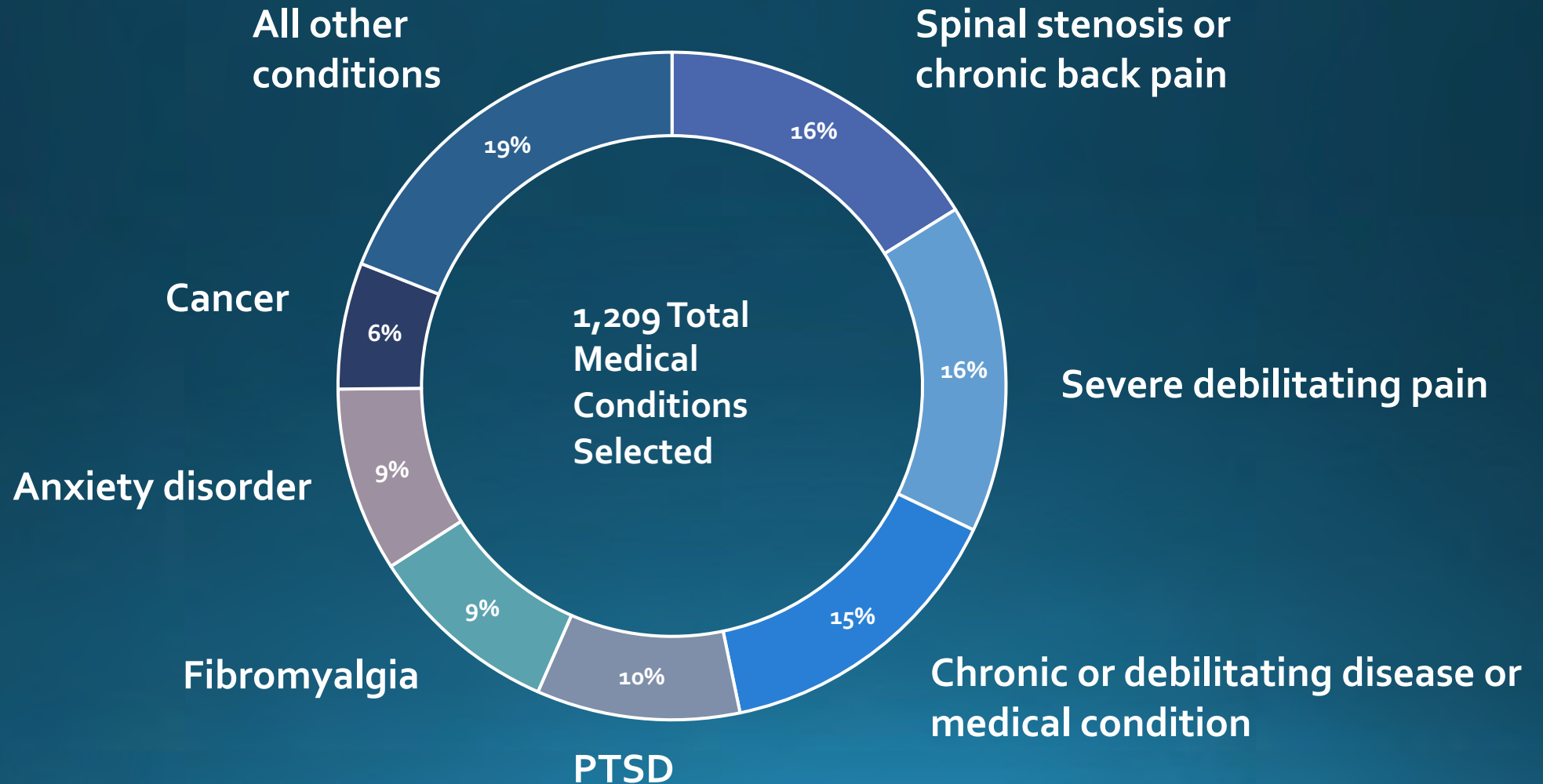


# Registry Identification Cards

3,415 Active Patient Cards (8/1/2020)



# Debilitating Medical Conditions



# Constitutional Issues Related to Marijuana Legalization

# Constitutional Issues

## Supremacy Clause

- State legalization and federal prohibition

## Search and Seizure

- Odor Alone Probable Cause Standard
  - *Unless the police have information at the time of the search suggesting that possession is authorized by the state's medical cannabis law.*
- K-9 Searches

## Advertising

- First Amendment

## Employment Law Issues

- Drug Free Workplace Act
- Lawful Activity
- Reasonable Accommodation

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