

## **A Loss of the Medicinal Market**

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*The purchase and consumption of “medical” cannabis in California has been subsumed and supplanted by “adult-use” or “recreational” cannabis after the implementation of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) in California. Consumer demographic data points to a veritable disappearance of the legal medicinal cannabis market in California relative to the adult-use or recreational market. Anecdotal and sales data point to the almost complete withdrawal of medicinal consumers of legal cannabis and likely defection to and embrace of the illicit market. These consumer shifts can be principally attributed to the implementation of new taxes and fees and the resultant price increases for legal product pricing out high volume medicinal consumers and thus limiting access to those that not only need cannabis the most, but for whom legalization promised increased access. This article intends to examine the loss of a medical market in three parts:*

*1.) (a) Identifying if and to what extent consumer behavior has changed in response to the implementation of the MAUCRSA. This initial inquiry identifies a true “medicinal” consumer outside of the rather simplistic identification used at points of sale. Sales data in the City of Sacramento is a reliable data source to ascertain the extent to which the typical medicinal consumer continues to purchase legal cannabis from licensed retailers or if they now buy from other sources and (b) analyzing other key indicators of the shifting market and patterns of consumption such as (i) the number of medicinal v. recreational licenses awarded in the state, (ii) the number of square feet of cultivation canopy designated as medicinal compared to adult-use cultivation, (iii) identifying how many medical county cards have been obtained in the state compared to the number of pre-prop 64 “medical” consumers existed, (iv) quantifying the amount of product designated for medicinal consumers in retail locations relative to recreational consumers, and (v) considering what percentage of those purchasing “medicinal” cannabis are actually between the ages of 18 and 21 will show a dramatic shift away from the realization of any true medicinal market.*

*2.) Upon demonstrating that consumer behavior has changed (and that medicinal consumers are not in fact simply continuing to purchase legal product by showing their ID and purchasing recreational product because it’s simpler and easier), then identifying and discussing the drivers of such behavior including: (i) tax policy, price sensitivity and consumer elasticity (how does the taxation of cannabis compare to other “vice” products and to what extent does price sensitivity drive consumers to illegal markets; how does taxation compare to pharmaceuticals; how does taxation compare to medicinal states like Michigan), (ii) changes in marketing resulting from both regulatory hurdles including those for the promotion and marketing of “medical” cannabis (medical claims are prohibited from being used in marketing, advertising, or packaging) and from attempts to appeal to recreational consumers, (iii) quality and quantity of available products appropriate for medicinal consumers, and (iv) other potential drivers of behavior outside of price, advertisements, and product availability.*

3.) Finally, on the basis that consumption patterns have changed resulting from any one or several drivers of the implementation of the MAUCRSA, this proposed article will take a prescriptive approach to analyzing the consequences of the shifting market, including a discussion of (i) the consequences for access (or lack thereof) for medicinal consumers, (ii) societal conceptions of cannabis as vice or as medicine, (iii) political ramifications and efforts supporting legalization in additional localities and states and even federal legalization, (iv) the funding of research into medical or therapeutic benefits, and (v) what could or should be the takeaways for how to approach taxation and regulation going forward.

Ultimately, it may very well be that the implementation of the MAUCRSA ushered in a characterization and treatment of the legal market in California as a vice industry rather than a medically related industry as is apparent in both the enforcement and taxation practices of both regulators and decision makers. The medicinal narrative being lost in the cacophony of adult-use legalization has resulted in an ironic disconnect that many of the calls for “access” and legalization hearkening to a compassionate medicinal modality are made concomitantly with regulations and tax policies that both defy and deny the very “access” and medicinal ideological underpinnings with which the legalization policy argument was and still is largely situated.