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**Statement on Approving Regulations from the Medical Cannabis Commission
Regarding Registered Cannabis Establishments**

Today, I approved regulations submitted by the Medical Cannabis Commission.

Under the Administrative Procedure Act, agencies submit new regulations to the Attorney General. Neb. Rev. Stat. § 84-905.01. The Attorney General determines whether the agency has statutory authority to promulgate the regulations, whether the regulations are constitutional, and whether the regulations are substantially the same as those published for public comment. *Id.*

I write to highlight that an outstanding legal challenge may erase the statutory authority for the regulations, and that future medical cannabis regulations may raise concerns under the federal Constitution.

There is no question that the Nebraska Medical Cannabis Regulation Act provides on its face statutory authority for the medical cannabis regulations. The Act gives the Medical Cannabis Commission exclusive “power to regulate all phases of the control of the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered cannabis establishments” in Nebraska. Neb. Rev. Stat. § 71-24,110. That power includes the power to adopt and promulgate rules and regulations. *Id.* § 71-24,111(12).

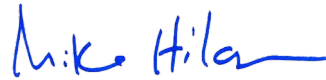
That authority is in effect, however, only insofar as the Nebraska Medical Cannabis Regulation Act is in effect. And that is a serious question that is currently being considered by the Nebraska Supreme Court. This office has uncovered unprecedented levels of malfeasance relating to the ballot initiative that placed the Act before the People. In order to protect the integrity of our election process, this office has challenged whether the Act was in fact lawfully before the People. On December 3, 2025, that case was submitted to the Nebraska Supreme Court for decision. *See Kuehn v. Evnen*, No. S-24-901. If the Nebraska Supreme Court (or a district court on remand) concludes that the Nebraska Medical Cannabis Regulation Act did not receive enough signatures to be placed on the ballot, the Act would no longer be good law, and any medical cannabis regulations promulgated under the Act would lack the requisite statutory authority.

As to constitutionality, I conclude that the medical cannabis regulations do not clearly violate the state or federal Constitutions on their face. Historically, and consistent with the Nebraska Supreme Court’s practice of presuming that regulations are valid, *see, e.g., Valpak of Omaha, LLC v. Nebraska Dep’t of Revenue*, 290 Neb. 497 (2015), the Attorney General’s Office presumes an agency’s regulations are constitutional. Applying that presumption here, the medical cannabis regulations do not clearly offend the Supremacy Clause, which makes federal law “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. Federal statutory law prohibits the possession and distribution of marijuana. 21 U.S.C. §§ 812(c)(10), 841, 844(a). But since 2014, Congress has consistently included a rider to appropriations bills that disallows federal funds to be used to prevent States with a medical cannabis program “from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.” *See* Pub. L. 119-74, § 531, 140 Stat. 5, 57 (Jan. 23, 2026). The federal rider signals a legislative intent not to criminalize the possession and distribution of marijuana for *medical* purposes. Consistent with the rider is the federal Drug Enforcement Administration’s recent decision to reschedule marijuana from a Schedule I controlled substance to a Schedule III controlled substance in States that have medical-marijuana regimes. *See* 91 Fed. Reg. 22714 (Apr. 28, 2026). Because the medical cannabis regulations do not clearly implement a federally unlawful *recreational* marijuana regime, they are not facially preempted by federal law.*

This constitutional analysis carries two important qualifications. First, that these particular regulations appear to be properly aimed at regulating marijuana for medicinal use does not mean that future regulations necessarily will. Any medical cannabis regulations that allow access to marijuana untethered to a plausibly medical purpose without adequate patient protections are “medical” in name only and may slip into a preempted recreational marijuana scheme. Medical cannabis regulations cannot avoid a constitutional problem merely by being labeled as “medical” without considering their substantive effects. Second, while I conclude that these regulations are facially consistent with federal law, the regulations may contravene federal law as applied in certain situations. *E.g., Bourgoin v. Twin Rivers Paper Co.*, 187 A.3d 10, 12 (Me. 2018); *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.*, 230 P.3d 518, 520 (Or. 2010). Nothing in this analysis should be interpreted as opining on whether the medical cannabis regulations would be constitutional in a future, fact-bound, as-applied challenge.

* As this rulemaking by the Medical Cannabis Commission shows, Nebraska’s medical cannabis regime is in its infancy. Congress did not include Nebraska on the list of States for which the United States Department of Justice cannot prosecute medical-marijuana-related crimes in its most recent appropriation rider. *See* Pub. L. 119-74, § 531, 140 Stat. 5, 57 (Jan. 23, 2026). Consistent with its historical practice, I assume Congress will add Nebraska to that list in a future appropriations bill. If Congress chooses not to, that may give rise to an inference that Congress does not intend to exempt Nebraska’s medical marijuana regime from federal law’s reach. In that scenario, the facial constitutionality of the medical cannabis regulations may be called into question. At this stage, however, due to the newness of Nebraska’s medical marijuana regime, Nebraska’s exclusion from the most recent appropriation rider does not clearly place the medical cannabis regulations at odds with the Supremacy Clause.

Finally, my review of the medical cannabis regulations does not imply my support for or opposition to the regulations as a policy matter. When I was elected Attorney General, I took an oath to uphold the Constitution. In carrying out that oath, I performed my statutory duty to review the lawfulness of agency regulations without respect to policy implications. The medical cannabis regulations will now be forwarded to the Governor for his approval. *See* Neb. Rev. Stat. § 84-908.



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