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A marijuana grow room at Theory Wellness' cultivation facility in August 2017. (Photo by Shira Schoenberg)

COURTS / MARIJUANA

# Attorney accused of bribery in seeking Medford marijuana

# Medford marijuana license

## O'Donovan allegedly paid relative of police chief, who cooperated in FBI probe



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### **SOMERVILLE ATTORNEY** Sean

O'Donovan was arrested Friday and charged with trying to bribe a family member of the Medford police chief to convince the chief to help a marijuana company he represented obtain a license.

The marijuana company, which was not named in the indictment but which *CommonWealth* confirmed is Theory Wellness, has not been charged with wrongdoing.

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O'Donovan, 54, who was arrested in West Yarmouth, faces one charge of bribery and two counts of wire fraud in US District Court in Boston. He pleaded not guilty and was released on personal recognizance.

This is the second major municipal bribery case involving the lucrative recreational marijuana industry, which was legalized in 2016. It highlights again the immense power municipalities have in awarding licenses.

No one answered the phone Friday at O'Donovan's law office. His attorney,

prominent Boston criminal defense lawyer Martin Weinberg, said, “We intend to vigorously contest these charges and establish that the acts as alleged fall outside the parameters of federal criminal law.”

Weinberg said federal bribery laws look at whether a public official was offered or paid money. “We contest this case does not come close to that paradigm,” he said.

Lizzy Guyton of South & Hill Strategies, which represents Theory Wellness, said, “As the public court documents released today repeatedly confirm, Theory Wellness had no knowledge of or involvement with Mr. O’Donovan’s alleged behavior. The allegations against him are disturbing, and, as a result, Theory Wellness has terminated its relationship with Mr. O’Donovan.”

First Assistant US Attorney Joshua Levy pointed to the contract Theory Wellness signed with O’Donovan as a key factor behind O’Donovan’s actions. “Motivated by the prospect of a lucrative annuity, he embarked

on a corrupt scheme to ensure his client would secure the right to open a business in Medford,” Levy said at a press conference Friday.

O’Donovan was hired by Theory Wellness, a company involved in cultivation and retail sales of marijuana, as a consultant to navigate local permitting and licensing requirements in Medford.

The city of Medford had decided to only allow three retail marijuana stores, and there were 10 retailers who applied. Decisions on which companies would get a host community agreement were made by the mayor, based on the recommendations of a five-member Cannabis Advisory Committee. One of the committee members was Medford Police Chief Jack Buckley.

According to the indictment issued by a federal grand jury, O’Donovan signed an agreement with Theory Wellness to pay him a monthly fee of \$7,500 until the company received a host community agreement. After

received a host community agreement. After that, if the company secured a license, O'Donovan would get 1 percent of the company's annual gross profit, estimated at over \$100,000 a year, a benefit that would go to his heirs after he died. O'Donovan received the \$7,500 each month from January 2019 through January 2022.

Theory Wellness says O'Donovan requested the provision giving him 1 percent of ongoing profits. Several marijuana industry lawyers said that appears to be an unusually lucrative arrangement in the industry today, and it can raise ethical concerns about potential conflicts of interest. But it is not illegal for a lawyer to take a success fee, and it is not unheard of for consultants to take equity in a marijuana company in exchange for services.

O'Donovan is a former Somerville alderman who **was profiled** in the *Boston Globe* in 2016 due to his strong influence in then-Boston Mayor Marty Walsh's administration.

According to the indictment, O'Donovan knew an unnamed "close family relative" of Buckley. O'Donovan sought to bribe the relative to get Buckley to favorably rank his client's application and to advise the Medford mayor to enter into a host community agreement with his client.

"Motivated by the prospect of a lucrative annuity, he embarked on a corrupt scheme to ensure his client would secure the right to open a business in Medford," said First Assistant US Attorney Joshua Levy at a press conference Friday.

Joseph Bonavolonta, special agent in charge of the FBI in Boston, said O'Donovan had one goal: to help his client build a substantial cannabis business so he could reap the profits. "To accomplish that goal, he would not let anything get in his way, including the law," Bonavolonta said. "Attorney O'Donovan went from practicing law to breaking it and will now have to answer for his alleged crimes."

According to the indictment, O'Donovan first met the relative in February 2021 in a Somerville parking lot, and offered the relative \$25,000 for his cooperation in speaking to Buckley on behalf of O'Donovan's client. The relative told the chief about the offer, and the chief immediately reported it to the FBI. The relative agreed to cooperate with the FBI, record any interactions with O'Donovan, and turn over any text messages from him. Buckley did not know which marijuana company O'Donovan represented and was not informed about future contacts



between O'Donovan and his relative.

According to the indictment, O'Donovan met the relative multiple times in parking lots and other locations to discuss his offer.

O'Donovan told the person he was “trying to get the edge” in the host community agreement process, and if he got his client an agreement O'Donovan would profit since “I'm on the books for years.”

O'Donovan told the relative that if the chief gave his client a high score, the relative would get paid. At one point, O'Donovan said, “If I give you cash, there will be no trace.”

O'Donovan said the client would write O'Donovan a check and “I'll pay the taxes on it and I'll give you the difference...no one's going to f-ing know about it.”

At one point, at the direction of the FBI, the relative told O'Donovan that the chief would change his ranking to put O'Donovan's client first because of the payment to the relative, and O'Donovan said “perfect.”

The relative and O'Donovan allegedly discussed how to cover up the money, with O'Donovan suggesting that the payment be disguised as a loan or as payment for municipal consulting. O'Donovan paid the relative \$2,000, hand-delivered in cash as a down payment.

Theory Wellness ultimately ranked first in Medford's approval process and obtained a host community agreement. It is still going through the municipal permitting process for construction, and the municipal permitting must be completed before it can apply to the Cannabis Control Commission for a license.

Prosecutors say the police chief did not know Theory Wellness was O'Donovan's client, and there is no evidence O'Donovan's actions affected the approval process.

Medford Mayor Breanna Lungo-Koehn said in a statement, "This indictment shows our community that your leaders in Medford will not tolerate any suspected attempts of

influencing or misleading the public, nor misconduct, and we will bring any such occurrences directly to the authorities. I have zero tolerance for government corruption, public employee corruption, or any attempted misdeeds that would erode the public's trust.”

Lungo-Koehn said she was told about the FBI investigation late last year. “I supported their efforts and offered every bit of information and insight that I had,” she said.

There is no evidence anyone at Theory Wellness knew about the attempted bribery. When O'Donovan suggested hiring the relative as a consultant for the permitting process, Theory Wellness CEO Brandon Pollock, who is not named in the indictment, refused, saying Theory Wellness is an “above board company,” according to the indictment.

Guyton said the company, which cooperated with the US Attorney's office, “is currently

evaluating options for potential legal claims” against O’Donovan.

Guyton said Theory Wellness secured its host community agreement after a thorough and transparent application process in full accordance with the law. “Today’s developments do not impact the business or the future of the Medford dispensary,” she said. “As the municipal permitting and construction process continues, Theory Wellness looks forward to contributing positively to the Medford community and creating local jobs.”

Theory Wellness is one of Massachusetts’ largest locally-owned cannabis companies. It operates three medical marijuana dispensaries, two recreational stores, indoor and outdoor grow facilities, and a manufacturing facility.

The wire fraud charges O’Donovan faces carry a maximum sentence of 20 years in prison, and bribery carries a maximum sentence of 10 years.

The Cannabis Control Commission declined to comment.

Last year, Fall River Mayor Jasiel Correia was sentenced to six years in federal prison for extorting bribes from marijuana companies seeking to obtain host community agreements from that city.

Attorneys say the two cases raise a broader issue about the municipal approval process.

Jim Smith, a marijuana industry attorney for Smith, Costello, and Crawford, said most building projects in other industries involve public hearings and a defined, transparent process run by a board or council.

“You don’t need the police chief to sign off or the mayor or the chief executive officer of the community,” Smith said. Smith said the marijuana approval process, which is different in different communities but generally requires sign-off by the mayor or town governing board, “gave a lot of

town governing board, gave a lot of individual authority to individual people... which leads to the potential for malfeasance.”

Smith said the huge number of checks and balances imposed by the licensing process, combined with the financial benefits of being among the first stores to open, leads to an industry that is financially stressed and desperate to open quickly. “The process is broken,” Smith said.

Adam Fine, a marijuana industry attorney with Vicente Sederberg, said the requirement for marijuana businesses to sign a host community agreement with their host municipality has been problematic from the start. “It’s just become a recipe for abuse,” Fine said. “People start to think this becomes a pay to play, and that’s part of the problem.”

Bills have passed the House and the Senate to reform the host community agreement process, limiting the ability of communities to ask for high fees or extra charitable donations. A final version of the bill is being

negotiated by a conference committee.

Meet the Author

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Sen. Soma Chang-Diaz, the Senate chair of the Committee on Cannabis Policy, said the case points to the need to reform the host community agreement process. “The influence of money throughout the HCA process is undeniable, although it’s usually not this blatant or corrupt,” Chang-Diaz said in an email. “Whether it comes in the form of outright bribery or just wealthy individuals having a massive head start in the licensing process, this is a distortion of the cannabis statute’s original intent.”

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