

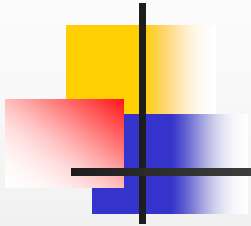
Update: Michigan's Medical Marihuana Act

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Michigan Medical Marihuana Act





Current Law

- Marijuana is classified as a Schedule 1 drug under the Michigan Public Health Code, MCL 333.7212.
- It is a Schedule 1 drug if the Michigan Board of Pharmacy:

“finds that the substance has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.”



Federal Law

- A first offender convicted of the federal crime of possession of marihuana is punished by a sentence of zero to one year in federal prison and a mandatory fine of \$1,000.00 (21 U.S.C. Sec. 844).
- *Gonzales v. Raich*, 545 U.S. 1 (2005), was a case in which the United States Supreme Court ruled that "Under the Commerce Clause of the United States Constitution, Congress may ban the use of cannabis even where states approve its use for medical purposes."



Marihuana Potency

Average THC:

2008: 10.1%

2007: 7.3%

1983: <4%

A 50% concentration of THC can remain in the body up to 8 days after marihuana use.



Traffic Deaths Involving Drugs

In Michigan, traffic deaths involving drugs increased 43% from 98 in 2007 to 140 in 2008.

Ballot Proposal

#1 of 2008

- Permit physician approved use of marihuana by registered patients with debilitating medical conditions cancer, glaucoma, HIV, AIDS, hepatitis C, MS and other conditions as may be approved by the Department of Community Health (MDCH).
- Permit registered individuals to grow limited amounts of marihuana for qualifying patients in an enclosed, locked facility.
- Require MDCH to establish an identification card system for patients qualified to use marihuana and individuals qualified to grow marihuana.
- Permit registered and unregistered patients and primary caregivers to assert medical reasons for using marihuana as a defense to any prosecution involving marihuana.



Michigan's Medical Marihuana Act

November 4, 2008:

Michigan voters approved Ballot Initiative that legalized Medical Marihuana (MCLA 333.26421-333.26430).

On December 4, 2008:

Michigan's Medical Marihuana law takes effect. The law required the MDCH to implement rules within 120 days.

On April 4, 2009:

MDCH adopts rules to implement the Act.



2 Options Under the Act

1. Formal Registry Identification Card Program
2. Statutory Affirmative Defense Pursuant to Section 8 of the Act



Registry Statistics

- 11,517 applications received as of 12/11/09
- 9,125 cards issued
 - 6,439 patients registered
 - 2,686 caregivers registered
- 1,981 applications denied
 - Reason for denial typically is that application is incomplete – missing photo; missing physician certification; application form incomplete; insufficient fee
 - Some denied because medical condition is not covered such as depression

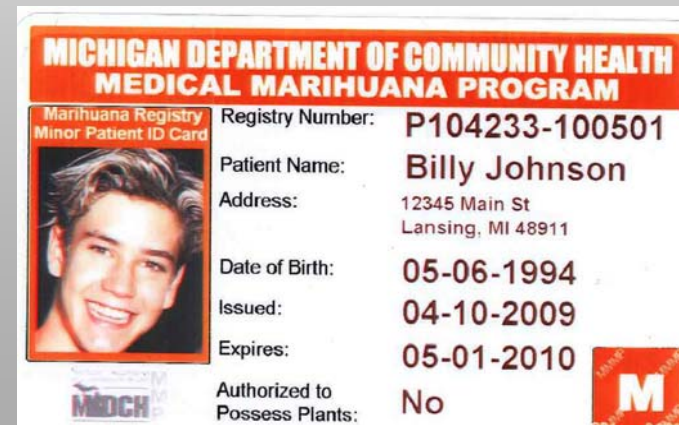
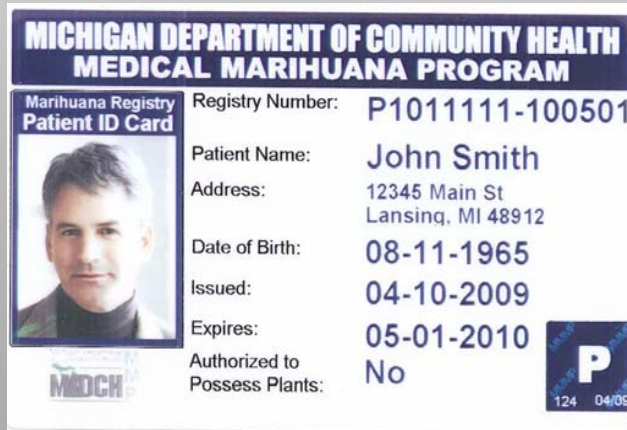


Purpose of Registry

- To provide a registration system for individuals who meet the definition of a qualified patient to use marihuana for medical purposes
- To identify individuals designated as the primary caregiver for a qualified patient
- To enable registrants to use marihuana within limits of statute without fear of violating law

Identification Card System

MDCH has established an identification card system for patients qualified to use Marihuana and individuals qualified to be primary caregivers.



Michigan Medical Marihuana Act



Application Process for the Registry ID Card

- As of April 4, 2009, an applicant submits a MDCH approved application, fee, copy of current photo ID and a physician certification to MDCH
 - Fee is \$100 for patient or \$25 if receiving SSI, receiving full Medicaid benefits, or SSD
- MDCH reviews and approves/denies application with 15 days of receipt
- MDCH issues registration card with 5 days of approval
- The card is only good for 1 year and must be renewed annually.



Registry Cards

QUALIFYING PATIENT:

- Blue
- No photo
- Registry number, name, address, DOB, issued date, expiration date, authorized to possess plants – yes or no
- Back will identify caregiver, if any



Registry Cards

PRIMARY CAREGIVER

- Green
- No photo
- Registry number, name, address, DOB, issued date, expiration date, authorized to possess plants – yes or no
- Reverse side will have related PATIENT information – Registry Number, name, issued date, expiration date.
- ONE CARD FOR EACH PATIENT

Confidentiality of the Card

- MDCH keeps a confidential list of the individuals to whom it has issued a card.
- The names and other identifying information on the list are confidential and exempt from disclosure under the Freedom of Information Act.



Qualifying Patient

A person who has been diagnosed by a physician as having a debilitating medical condition.

Certain Specific Debilitating Medical Conditions



- Cancer
- Glaucoma
- Positive HIV
- AIDS
- Hepatitis C
- Amyotrophic lateral sclerosis (Lou Gehrig's Disease)
- Crohn's Disease
- Agitation of Alzheimer's disease
- Nail patella

Covered Debilitating Medical Conditions



- Cachexia or wasting syndrome
- Severe and chronic pain
- Severe nausea
- Seizures, including but not limited to those characteristics of epilepsy; or
- Severe and persistent muscle spasms



Debilitating Medical Condition is not Enough

The mere presence of such debilitating medical condition does not entitle a patient to certification. To certify the patient, the physician must specifically give an opinion that the patient will “likely” receive a “palliative or therapeutic benefit.”



Physician is not Prescribing Marihuana

- The certifying physician is not prescribing marihuana, physicians cannot do so.
- The physician is not recommending marihuana; the law does not require them to do so.
- The physician is only stating an “opinion” as to the likelihood of a medical benefit, and can do so under the law without any legal or professional liability, except that a physician is always subject to professional malpractice.



Physicians Play a Key Role

Only a physician (M.D./D.O) licensed in Michigan can make a valid certification.



Benefit of Participation in the Registry Identification Program

- A registered “Qualifying Patient” is allowed to possess an amount of marihuana that does not exceed 2.5 ounces of usable marihuana and allowed to cultivate 12 marihuana plants kept in an enclosed, locked facility.
- Either the Qualifying Patient or the Primary Caregiver can be allowed to possess the marihuana plants.
- A patient is protected from “arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau” for medicinal use or possession of marihuana.

Statutory Affirmative Defense



Section 8(a) states that “Except as provided in Section 7, a patient and a patient’s primary caregiver, if any, may assert, the medical purpose for using marihuana as a defense to any prosecution involving marihuana.”



Element #1: Physician's Statement

A physician (Licensed M.D./D.O.) has stated that:

- In the physician's professional opinion
- After having completed a full assessment of the patient's medical history and patient's medical condition
- Which assessment was made in the course of a bona-fide physician-patient relationship
- That the patient is likely to receive therapeutic or palliative benefit
- From the medical use of marihuana
- To treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

Element #2:

Reasonably Necessary Quantity

The patient and the patient's primary caregiver, if any, were collectively

- In possession of a quantity of marihuana that was:
- Not more than was reasonably necessary
- To ensure the uninterrupted availability of marihuana
- For the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.



Element #3: Medical Purpose

The patient and the patient's primary caregiver

- Were engaged in the:
- Acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana
- To treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.



Standard for the Affirmative Defense

The affirmative defense, by contrast to the Registry ID Card Program, requires no advance action or expense, no formalities, and its scope is quite broad.

Qualifications for Registered Primary Caregiver



- Patient designates an individual as the primary caregiver on the registration application form

The primary caregiver must:

- be 21 years old
- have no felony convictions involving illegal drugs
- agree to assist patient with medical use of marihuana



Possession, Cultivation, and Plant Limits for a Registered Primary Caregiver

- 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the department's registration process.
- For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.



Designation

- The patient could designate a caregiver, and would have to indicate whether the patient or the caregiver would be allowed to possess Marijuana for the patient's medical use.
- Each patient could only have one caregiver and each caregiver could assist no more than five patients.



Relevant Definitions

Medical Use:

The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered patient's debilitating medical condition or symptoms associated with the debilitating medical condition.



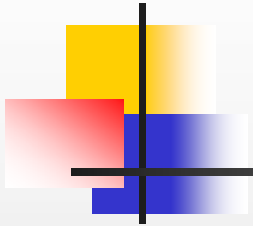
Enclosed, Locked Facility

A closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient.



Compensation for Registered Primary Caregiver

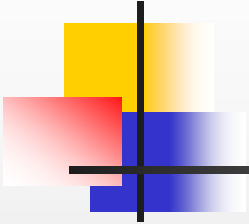
A caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation shall not constitute the sale of controlled substance.



Not Subject to Arrest

These primary caregivers shall not be subject to arrest, prosecution, or civil penalty or disciplinary action by a business or professional licensing board or bureau, for the medical use of Marihuana.

In the Presence or Vicinity



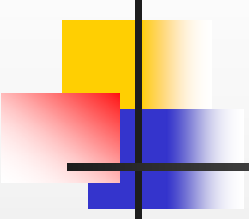
A person shall not be subject to arrest or prosecution, solely for being in the presence or vicinity of the medical use of marihuana, or for assisting a registered qualifying patient.



No Probable Cause

The possession or application for a registry identification card would not constitute probable cause or reasonable suspicion and could not be used to support the search of the person or property of an individual who possesses or applies for a card, or otherwise subject the person to inspection by local, county, or state governmental agencies.

What is Prohibited Under the Act?

- 
- Smoking marijuana “in any public place”
 - Smoking marijuana on any form of public transportation
 - Any use by a person who has no serious or debilitating medical condition
 - Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana
 - Any use or possession in a school bus
 - Any use or possession on the grounds of any preschool, primary, or secondary school
 - Any use or possession in any correctional facility



Parole and Probation

MCL 771.3 reads:

- “During the term of his or her probation, the probationer shall not violate any criminal law of this state, the United States, or another state or any ordinance of any municipality in this state or another state.”
- For those individuals who are on supervised release, parole, or probation, a sentencing court can order that this individual not be allowed to use or possess medical marihuana.

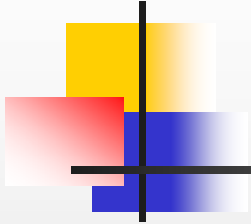


Other Michigan Laws

Section 7(e) reads that:

“All other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided by this act.”

Operation of a Motor Vehicle



What about a driver who may not be
“under the influence” of marihuana,
but may be in violation of MCL 257.
625(8)-Operating Under the
Influence of Drugs-Per Se?

Recent Medical Marijuana Decisions in Michigan

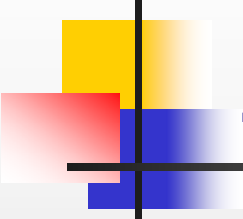


- *People v. Cook*, Marquette County, December 14, 2009;
- *City of Troy v. Dodge*, Oakland County, October 29, 2009;
- *People v. Martin*, Dickinson County, September 30, 2009
- *People v. Collins*, Livingston County, September 10, 2009
- *People v. Bliss*, Kent County, September 1, 2009
- *People v. McGrath*, Wexford County, September 9, 2009
- *People v. Rude*, Alpena County, August 21, 2009
- *People v. Dutton*, Eaton County, August 20, 2009
- *People v. Dietz*, Branch County, July 27, 2009
- *People v. Burke*, Livingston County, April 16, 2009



Recent Medical Marijuana Decisions in Michigan

- *People v. Walburg*, Ottawa County, November 3, 2009
- *People v. King*, Shiawassee County, October 21, 2009
- *People v. Redden*, Oakland County, June 18, 2009
- *People v. Peterson*, Alger County, April 6, 2009
- *People v. Campbell*, Tuscola County, February 27, 2009



People v. Rigo, 81 Cal. Rptr. 2d 624 (1999)

- The defendant failed to seek approval until 3 1/2 months after he was arrested and while his motion for pretrial diversion was pending.
- The defendant did not seek medical approval until the consequences of the justice system gave him the impetus to do so and did not do so in a reasonable amount of time for reasons independent of his arrest.
- Defendant's medical condition did not bring him to consult a doctor; rather the Twin Cities police officers did.



Catch-22

- Individuals who have been issued a marijuana registry identification card can legally purchase marijuana, but the person selling it to them can be prosecuted.
- Qualifying patients can cultivate their own medical marijuana, but there is no place to legally purchase the seeds.
- There is no language in the Act that protects anyone from being terminated from their job for the medical use of marijuana.



What About the Plants?

- Michigan does not limit the size or distinguish between seedlings and mature, producing plants.
- A caregiver can cultivate 12 marijuana plants per patient for up to 5 patients. However, the law does not set any parameters as to how much the caregiver can charge for their services.
- 12 plants can produce quite a bit of marijuana. The annual yield of a 12 plant indoor marijuana grow site would generate between 44 and 72 ounces.
- It can be assumed that the primary caregiver is not legally allowed to keep part of the “harvest” as payment.



U.S. Attorney General's Position

- On March 18, 2009, Attorney General Eric Holder signaled a change on medical marihuana policy saying "federal agents will target marihuana distributors only when they violate both federal and state law."
- His position is a departure from the Bush Administration, which targeted medical marihuana dispensaries in California even if they complied with that state's law.
- "Given the limited resources that we have, our focus will be on people, organizations that are growing, cultivating substantial amounts of marihuana and doing so in a way that's inconsistent with federal and state law," the attorney general said.



Recent Position by the U.S. Attorney

- On October 19, 2009, the Obama administration put forth new legal guidelines.
- Prosecutors will be told it is not a good use of their time to arrest people who use or provide medical marijuana in strict compliance with state law.



California Attorney General's Position

- When an individual claims protection under the Act, but has no valid identification to make this claim, the person may be arrested and the marihuana may be seized. It will then be up to the person to establish his or her medical marihuana defense in court.
- If a person has what appears to be valid medical marihuana documentation, but exceeds the applicable possession, all marihuana should be seized. It will then be up to the person to establish his or her medical marihuana defense in court.



Traffic Stops

If the officer has probable cause that the driver is under the influence then do sobriety tests and then request consent for a blood draw. If there is no consent and you have probable cause then seek a search warrant.



Return of Seized Medical Marihuana

- State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under 21 U.S.C. 885(d). Once the marihuana is returned, federal authorities are free to exercise jurisdiction over it. 21 U.S.C. 812(c)(10).



Law Enforcement

- A qualifying patient and caregiver could face felony penalties of imprisonment for up to two years and/or fine of not more than \$2,000.00 and revocation of his/her ID card for selling Marihuana to someone who is not allowed to use Marihuana.
- The Act would impose a \$500.00 fine for fraudulent representation of any fact or circumstance relating to the medical use of Marihuana to avoid prosecution.



Concerns About the Act

- Potential conflict with MCLA 257.625(8);
- Does not specify how patients and caregivers would acquire Marijuana for medical purposes;
- The affirmative defense section applies to “persons” rather than just to “qualifying patients.”



Verifications

- The act speaks to strict confidentiality of registrant information.
- Verifications can **ONLY** be given to law enforcement personnel.



- Verifications are now available through LEIN.
- Query can be made for registration number.
- Verifications can ONLY be given to law enforcement personnel.
- Passing on information violates HIPAA



Future Concerns

- Profiteering
- Regulating/prohibiting medical Marihuana dispensaries through ordinances
- Exposure to federal prosecution
- Medical marihuana in jails
- Defendant on probation/parole
- Children's day care centers
- Adult foster care homes
- Nursing homes
- Colleges and universities
- School zones
- Work-place
- CCW Permits

Medical Marihuana in the News in Michigan

- West Branch man says police seized legal marihuana plants, investigators say little about ongoing probe.
- The Bay City Times Thursday September 17, 2009, 7:53 PM



Michigan Medical Marihuana Act



Recent Legislation

State Senator Wayne Kuipers recently has introduced legislation that would:

- Treat medical marihuana as any other Schedule II drug.
- Require a doctor's prescription, with the drug sold only through a pharmacist.
- License 10 growers statewide to provide medical marihuana to pharmacists.
- It should be noted any changes in the law would require three-quarter majority votes in both state chambers.



ARIDE

- Advanced Roadside Impaired Driving Enforcement
- Program was developed by NHTSA with input from the IACP.
- It was created to address the gap in training between the Standardized Field Sobriety Testing (SFST) and the Drug Evaluation Classification (DEC) Program.
- It provides officers with the opportunity to develop advanced skills and knowledge that will assist them in identifying alcohol and drug impaired drivers.



Issue

Current OUID Per Se statute prohibits operation with any marihuana or the active ingredient THC in the person's system. What if law enforcement needs to show marihuana substantially affects an individual's ability to operate a vehicle in a normal manner?



Why ARIDE?

- Better identification of drugged drivers
- Better arrests
- Better prosecutions
- Saved lives

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