It’s been nearly 2 1/2 years since Robert Young, the Chief Justice of the Michigan Supreme Court, pronounced himself “so sick of medical marijuana cases,” yet the cases keep coming. So, for that matter, does the legislation. Is medical marijuana the bane or boon of Michigan communities? And what, if anything, should cities and villages do about it?

Part of the answer depends on how the community answers other questions about marijuana. Is cannabis an irrationally suppressed potential wonder drug, or is it a threat to the healthy mental development of America’s youth? Is the marijuana industry a powerful economic stimulant, or is it a growing menace to society? There is no obvious right or wrong answer to these questions, and the newest legislation allows local communities to pretty much decide for themselves.

It is fairly clear, looking at both the Michigan Medical Marihuana Act (“MMMA” – yes, that’s marijuana with an “h,” the old-fashioned spelling) and cases interpreting the MMMA, that the 2008 voter initiative which birthed the MMMA opened the marijuana door only a crack. It did not provide for dispensaries or other retail sale models which have come into being in other states. It permitted only registered “caregivers,” having no more than 72 plants (a total only reached if the caregiver is himself a registered patient), to grow medical marijuana and supply it to others.

But the MMMA also paved the way for the growth of a semi-legal marijuana industry—prohibited by federal law, but partially immunized from prosecution and even arrest under state law. For example, the law grants immunity from professional discipline, as well as any other civil or criminal penalty, for doctors who certify a patient’s medical need for marijuana. Though there are exceptions to immunity, this protection for doctors appears to have undermined the medical need restriction on access to cannabis. Consider, for example, the case in which a doctor who certified his patient’s medical “need” admitted under cross-examination that he knew of no studies which supported marijuana’s medical use, “but . . . would very much like to find out.” It is perhaps no surprise that many card-carrying MMMA “patients” resemble recreational users.
And though it does not take effect for roughly a year, the new Medical Marihuana Facilities Licensing Act (“MMFLA”) will likely open the door still further, if only because facilities for growing and selling marijuana will come out of the shadows. Going forward, medical marijuana will be a licensed and regulated commodity.

**Which Way Does Your Community Lean?**

So each Michigan municipality has choices to make. Maybe your community is not troubled by wider use of marijuana because many of your constituents are themselves recreational users. Alternatively, your citizens may be motivated by compassion to the extent that they can tolerate sham patients as long as anyone with a genuine medical need has access to marijuana-based medicines. Or perhaps your community is anxious for the economic activity which a rising tide of industrial and retail marijuana enterprise seems to promise.

On the other hand, your community may view with horror the potential detriments to family values and public safety associated with heavier marijuana use. Notwithstanding the new licensing scheme, you may have serious concerns about shady operators and criminal exploitation of marijuana storage, transport, production, and sale. You may think medical marijuana is appropriate for some communities, but not yours.

The picture is completely different under the new MMFLA, however. Though the MMFLA offers legitimacy to heretofore illegal dispensaries (now called “provisioning centers”) and large grow operations, no MMFLA facility can get an operating license unless the host community adopts an ordinance authorizing the particular type of facility in question. The community has control, as well, over the number and type(s) of facilities the community will host. Traditional zoning tools, such as separation requirements (from churches, schools, etc.) and districting (e.g., limiting dispensaries to certain zoning districts) are available, too. The only real limits on local authority under the MMFLA are non-interference with state licensure of operators and state regulation of the purity and price of marijuana products.

**Consequences of New Marihuana Licensing Act**

It seems likely that licenses which legitimize large growers and provisioning centers will be both sought-after and profitable. One corollary is that any community in which the marijuana industry would like to locate (or remain and grow) can expect feverish lobbying until/unless it adopts an ordinance authorizing MMFLA facilities. Another likely consequence of the new law is that black marketeers will rise up to compete with licensed marijuana businesses. Licensed

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*Is medical marijuana the bane or boon of Michigan communities?*

**What Control Mechanisms Are Available?**

In either case, what can you do? One traditional municipal response to activities within a community is zoning. Under the MMMA, though, the Michigan Supreme Court says that in the event of a conflict between the MMMA and local zoning, the MMMA wins. The Court also broadened the immunity conferred by the MMMA to include immunity from injunctions against zoning violations. So fines, criminal penalties, and injunctions are all off the table if a community wishes to enforce a zoning ordinance against an MMMA-compliant caregiver. This would seem to render enforcement of zoning rules against MMMA-compliant operators impractical. What disincentive can the community impose on zoning violators who comply with the MMMA?
legitimate operators may become allies—along with federal, state, and county law enforcement agencies—in local efforts against illicit over-limit caregivers and other unlicensed growers and sellers.

At the same time, communities which have tolerated illegal dispensaries and grow operations in their midst will finally be able to treat them as ordinary businesses, subject to normal regulation. Host communities can also charge annual regulatory fees of up to $5,000 per facility, and can share in dispensary tax revenues to help defray costs associated with hosting these entities.

The array of medical marijuana cases which have sickened the state Supreme Court stems from local efforts to deal with a world in which marijuana is illegal under federal, state, and local laws, but a segment of society is sometimes deemed immune from those laws. That segment is about to become larger, or at least more conspicuous, but communities are gaining new coping mechanisms as well. Michigan’s cities and villages will try once more to find the right balance.

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