

Arizona Medical Marijuana Act

John G. Kerkorian, Esq.

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Overview

- November 2010: Voters pass Proposition 203.
- Arizona becomes the 15th state to legalize medical marijuana.
- The first state with explicit **non-discrimination** provisions.
- Use or possession of marijuana for medical purpose still unlawful under federal law.

Overview

- Purpose: To protect patients, physicians and caregivers.
- Arizona Department of Health Services regulates.
 - Issues registry identification cards to patients, caregivers, and dispensaries – “Cardholders.”
 - Develop new regulations to implement law.

The Basics

- Permits Arizona residents who suffer from certain “debilitating medical conditions to possess and use medical marijuana.”
 - Cancer.
 - Glaucoma.
 - HIV/AIDS.
 - Hepatitis C.
 - ALS.
 - Crohn’s Disease.
 - Agitation of Alzheimer’s Disease.

The Basics

- A chronic or debilitating disease or its treatment that produces cachexia or wasting syndrome; *severe and chronic pain*, severe nausea; seizures . . . or severe and persistent muscle spasms.
- Any other medical condition or its treatment later deemed by ADHS to constitute a “chronic medical condition.”

Cardholders

- Qualified Patients – a person who has been diagnosed by a physician with a debilitating medical condition and whose diagnosis authorizes use of medical marijuana.
- Designated Caregivers – an adult who has agreed to assist a qualified patient with the medical use of marijuana; or
- Non-profit medical marijuana dispensary agent – an adult officer, board member, employee or volunteer of a dispensary.

Non-Discrimination

- Employment.
- School enrollment.
- Leasing rental properties.
- Receipt of medical care.
- Child custody/visitation.

Non-Discrimination

- Medical Marijuana Act does not
 - Authorize a person to undertake any task under the influence of marijuana that would constitute negligence or professional malpractice.
 - Authorize possessing or using marijuana on a school bus or on school grounds.
 - Authorize smoking marijuana on public transportation or in a public place.
 - Require reimbursement from health insurance companies.

Non-Discrimination

- Employers may discipline or take other adverse action against Cardholders for engaging in certain activities during working hours and on the employer's property.
 - Using marijuana.
 - Possessing marijuana.
 - Being *impaired* because of marijuana use.

Impairment

- Act does not provide guidance for determining impairment.
- No generally accepted standards for determining impairment.
- A few states (Pennsylvania, Ohio, and Nevada) have enacted DUI laws that define impairment.

Safety-Sensitive Positions

- Employers are not liable for taking actions against employees who work in safety sensitive positions, if the employer has a **good faith belief** that the employee is engaged in the current use of any drug, whether legal, prescribed by a physician or otherwise, **if the drug could cause an impairment or otherwise decrease or lessen the employee's job performance or ability to perform the employee's job duties.**

Safety-Sensitive Positions

- Good faith regarding the effects of the drug can be based on:
 - Results of drug and alcohol tests.
 - Statements by the employee.
 - Warning labels.
 - Information from physician or pharmacists.
 - Reputable sources on internet or other printed materials.
 - “Other information the employer in good faith believes to be reliable.”

Common Questions.

- Can employer ask applicants if they use medical marijuana?
- What if applicant tests positive in pre-employment screening?
 - Notice of disability?
 - Interactive process obligations triggered?
- What about FMLA?

What Employers Can Do Now.

- Review policies and forms dealing with drug use and testing so they expressly state the required legal standard and make clear that testing includes medical marijuana.
- Ensure status of employees or applicants as medical marijuana users is kept confidential and disclosed on need to know basis.
- Consistently apply disability, leave of absence and drug testing policies.
- Consult with counsel before making determination as to employment status of anyone using medical marijuana.