

MEDICAL MARIJUANA: *Can Cannabis Still Get You Canned?*

Presented By: Dave Riepenhoff & Frank Hatfield

Fishel Hass Kim Albrecht LLP

CCAO/CORSA

209 E. State Street

Columbus, Ohio 43215

PH: 614-221-5627 • 888-757-1904



**FISHEL HASS
KIM ALBRECHT LLP™**
Attorneys at Law

OVERVIEW – REGULATORY FRAMEWORK

- Ohio becomes the 25th state to allow marijuana for medical purposes.
- Two years to complete implementation:
 - May 2017 - Commerce – rules for licensure of cultivators
 - September 2017 - Commerce and Pharmacy – program rules
 - September 2018 - Program must be fully operational
- Ohio Medical Marijuana Control Program website:
<http://medicalmarijuana.ohio.gov/default>
- CCAO County Advisory Bulletin 2016-02:
<http://www.ccao.org/userfiles/CAB2016-02%20%208-17-16.pdf>



REGULATORS

- **Department of Commerce**
 - Licenses cultivators, processors, or testing laboratories
 - Maintain an electronic database to monitor medical marijuana from its seed source through its cultivation, processing, testing, and dispensing
- **State Board of Pharmacy**
 - Licenses retail dispensaries
 - Registers patients and caregivers
 - Monitors dispensing of medical marijuana through OARRS (Ohio Automated Rx Reporting System)
- **State Medical Board**
 - Issues doctors a “certificate to recommend”



MEDICAL MARIJUANA - DEFINITION

- **Federal Law: Marijuana = Schedule I Controlled Substance Act**
 - No currently accepted medical use
 - Lack of accepted safety for use under medical supervision
 - High potential for abuse
 - 8-11-16 DEA Declined to Reschedule Marijuana
- **State Law: Medical Marijuana = Schedule II Controlled Substance**
 - Marijuana that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose [ORC Sec. 3796.01]



MEDICAL MARIJUANA FOR USE

- **“Recommend” for specific list of qualifying medical conditions [ORC Sec. 4731.30]**
- **Dispensed:**
 - **As oils, tinctures, plant material, edibles, patches**
 - **Not in form considered attractive to children**
 - **Prohibits smoking or combustion**
 - **Allows for vaporization**
- **THC content:**
 - **Plant material – not more than 35%**
 - **Extracts – not more than 70%**



PATIENT USE

- **Physical exam – diagnosis – Dr./Patient relationship**
- **Patient registration – by doctor to Pharmacy Board**
- **Prescription required to obtain medical marijuana**
 - **Valid – not more than 90 days – three day renewals – new exam**
- **Possession by registered patient**
 - **Medical marijuana – paraphernalia or accessories**
 - **Amount possessed – not to exceed a 90-day supply**



IMPACT ON PRO-LEGALIZATION GROUPS

- The passage of House Bill 523 has essentially ended attempts by pro-legalization groups to fully legalize marijuana in Ohio through ballot initiatives.
- As of this time there are no strong legalization efforts.



EMPLOYMENT RAMIFICATIONS

- Employers are not required to permit or accommodate an employee's use, possession, or distribution of medical marijuana.
- Employers are not required to allow employees to be under the influence while at work.
- Employers are not prohibited from establishing and enforcing:
 - Drug testing policy
 - Drug-free workplace policy
 - Zero-tolerance drug policy



EMPLOYMENT RAMIFICATIONS (CONT.)

- Employers are not prohibited from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions or privileges of employment because of that person's use, possession, or distribution of medical marijuana.
- Also, HB 523 does not permit a person to commence a cause of action against an employer for taking any of the above actions.



IMPACT ON WORKERS' COMP & BENEFITS

- An employee who tests positive or refuses to submit a drug test may be disqualified for compensation and benefits under the Ohio Workers' Compensation Act.
- An employee who is discharged because of the use of medical marijuana is considered to have been discharged for just cause with regard to unemployment compensation and other related pay and benefits.



ADA/FMLA

- Marijuana is still a Schedule I drug (DEA declined to reclassify as of 8/11/2016) making it illegal under federal law for all purposes, including medicinal, for the foreseeable future.
- Use of medical marijuana is not covered or protected by the ADA or FMLA.



SUGGESTIONS FOR EMPLOYERS

- **Employers should:**
 - **Establish and consistently enforce a:**
 - **Drug testing policy,**
 - **Drug-free workplace policy, or**
 - **Zero-tolerance drug policy**
 - **Communicate to all employees that even those using marijuana with a valid prescription are still in violation of the drug policy.**



SUGGESTIONS FOR EMPLOYERS (CONT.)

- **Employers should also inform employees that:**
 - The employer doesn't permit or accommodate an employee's use, possession, or distribution of medical marijuana;
 - The employer may refuse to hire or may discharge, discipline or take other action against an individual because of the person's use, possession, or distribution of medical marijuana;
 - An employee who tests positive or refuses to submit a drug test may be disqualified for compensation and benefits under the Ohio Workers' Compensation Act; and
 - An employee discharged under the Drug-Free Policy will be considered to have been discharged for cause with regard to unemployment compensation or other related pay and benefits.



Thank You!

IF YOU HAVE ANY QUESTIONS, PLEASE ASK!!

CCAO/CORSA

209 E. State Street
Columbus, Ohio 43215



PH: 614-221-5627 • 888-757-1904

