

Criminal Jurisprudence & Practice Committee Marijuana Subcommittee
Thursday, March 3, 2011, 2 PM Teleconference

NOTES

Attendees: Daniel Corrigan Grano, Timothy Hilton Havis

SBM Staff: Elizabeth Lyon, Carrie Sharlow

What are the procedural issues with the defense/prosecution of a Medical Marijuana Case?

The recent Court of Appeals case of *People v. Kolanek* decided that a person has to have a doctor certification for use of medical marijuana before the person's arrest. People were getting arrested and getting certification after arrest.

Note: A person with a medical marijuana card can have twelve plants. The possession of twenty plants is a felony. There is no explanation as to the charge for having between thirteen and nineteen plants.

Can a search warrant include a medical marijuana license? Is this a HIPPA issue due to the medical nature?

If a person with a medical marijuana license is pulled over for drunk driving, does the DWI probation of controlled substance use apply? While on probation a person must follow federal and state law; marijuana use is still illegal under federal regulations.

Are judges handling the cases in the same fashion?

What legislation has already been introduced in the 2011-2012 Session?

1. SB 0017 (Jones) Health; pharmaceuticals; formation of medicinal marihuana clubs or operation of medical marihuana bars; prohibit. Amends [1978 PA 368 \(MCL 333.1101 - 333.25211\)](#) by adding sec. 7421.
2. SB 0099 (Jones) Crimes; controlled substances; possession of certain schedule 1 controlled substances; prohibit, and provide a penalty. Amends sec. 7403 of [1978 PA 368 \(MCL 333.7403\)](#).
3. SB 0213 (Casperon) Health; pharmaceuticals; prohibition on dispensing a prescription for a controlled substance received via electronic means from an individual licensed to practice dentistry in a state other than Michigan; remove.
4. HB 4369 (Liss) Health; pharmaceuticals; electronic monitoring system for certain dispensed controlled substances; allow health care benefit plans to access.

Senate Bill 0017 (2011) <- what's this?

Sponsor Rick Jones









Categories Health, pharmaceuticals; Controlled substances, use; Controlled substances, marihuana

Health; pharmaceuticals; formation of medicinal marihuana clubs or operation of medical marihuana bars; prohibit. Amends 1978 PA 368 (MCL 333.1101 - 333.25211) by adding sec. 7421.


Documents

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 	Senate Enrolled Bill Enrolled bill is the version passed in identical form by both houses of the Legislature.

Senate Fiscal Analysis

 	COMMITTEE SUMMARY (Date Completed: 3-3-11) This document analyzes: SB0017
 	FLOOR SUMMARY (Date Completed: 3-4-11) This document analyzes: SB0017

History (House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
1/19/2011	SJ 3 Pg. 54	REFERRED TO COMMITTEE ON HEALTH POLICY
3/8/2011	Expected in SJ 21	REPORTED FAVORABLY WITH SUBSTITUTE S-1
3/8/2011	Expected in SJ 21	COMMITTEE RECOMMENDED IMMEDIATE EFFECT
3/8/2011	Expected in SJ 21	REFERRED TO COMMITTEE OF THE WHOLE WITH SUBSTITUTE S-1

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SENATE BILL No. 17

January 19, 2011, Introduced by Senator JONES and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding section 7421.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7421. (1) A PERSON SHALL NOT ORGANIZE OR OPERATE A
2 MARIHUANA CLUB.

3 (2) A PERSON SHALL NOT OPERATE A MARIHUANA BAR OR KNOWINGLY
4 ALLOW LAND OR A STRUCTURE ON LAND OWNED BY OR IN THE POSSESSION OF
5 THE PERSON TO BE USED AS A MARIHUANA BAR.

6 (3) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
7 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR
8 A FINE OF NOT MORE THAN \$500.00, OR BOTH.

9 (4) AS USED IN THIS SECTION:

1 (A) "MARIHUANA BAR" MEANS, SUBJECT TO SUBDIVISION (C),
2 PROPERTY WHERE AN INDIVIDUAL IS ALLOWED TO USE MARIHUANA UNDER THE
3 MICHIGAN MEDICAL MARIHUANA ACT, 2008 IL 1, MCL 333.26421 TO
4 333.26430, IF THE USE OF MARIHUANA ON THE PROPERTY IS CONDITIONED
5 ON THE PAYMENT OF A FEE.

6 (B) "MARIHUANA CLUB" MEANS, SUBJECT TO SUBDIVISION (C), AN
7 ASSOCIATION OF INDIVIDUALS WITH MEMBERSHIP RESTRICTED TO THOSE WHO
8 PAY MONEY OR ANY OTHER THING OF VALUE TO BECOME MEMBERS, THE
9 PURPOSE OF WHICH IS TO ALLOW MORE THAN 1 INDIVIDUAL TO USE
10 MARIHUANA UNDER THE MICHIGAN MEDICAL MARIHUANA ACT, 2008 IL 1, MCL
11 333.26421 TO 333.26430, AT THE SAME TIME IN THE SAME PRIVATE PLACE.


12 (C) "MARIHUANA BAR" AND "MARIHUANA CLUB" DO NOT INCLUDE ANY OF
13 THE FOLLOWING:

14 (i) PROPERTY USED AS A HOSPICE LICENSED UNDER PART 214.

15 (ii) PROPERTY USED AS A NURSING HOME OR SKILLED NURSING
16 FACILITY LICENSED UNDER PART 217.

17 (iii) PROPERTY WHERE MARIHUANA IS LEGALLY DISPENSED UNDER THE
18 MICHIGAN MEDICAL MARIHUANA ACT, 2008 IL 1, MCL 333.26421 TO
19 333.26430.

20 (D) "PAYMENT OF A FEE" MEANS THE PAYMENT OF MONEY OR ANY OTHER
21 THING OF VALUE. PAYMENT OF A FEE INCLUDES THE PURCHASE OF GOODS OR
22 SERVICES, INCLUDING GOODS OR SERVICES THAT ARE NOT INCIDENTAL TO
23 THE USE OF MARIHUANA, AND THE PAYMENT OF MONEY OR ANY OTHER THING
24 OF VALUE TO BELONG TO AN ASSOCIATION OF INDIVIDUALS.









Senate Bill 0099 (2011)  <- what's this?**Sponsor** Rick Jones**Categories** Crimes, controlled substances; Controlled substances, other; Controlled substances, penalties

Crimes; controlled substances; possession of certain schedule 1 controlled substances; prohibit, and provide a penalty. Amends sec. 7403 of 1978 PA 368 (MCL 333.7403).







Documents

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Senate Fiscal Analysis

 	COMMITTEE SUMMARY (Date Completed: 2-7-11) This document analyzes: SB0099
 	FLOOR SUMMARY (Date Completed: 2-9-11) This document analyzes: SB0099
 	ANALYSIS AS REPORTED FROM COMMITTEE (Date Completed: 2-15-11) This document analyzes: SB0099

History (House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
2/1/2011	SJ 8 Pg. 102	REFERRED TO COMMITTEE ON JUDICIARY
2/9/2011	SJ 10 Pg. 133	REPORTED FAVORABLY WITHOUT AMENDMENT
2/9/2011	SJ 10 Pg. 133	COMMITTEE RECOMMENDED IMMEDIATE EFFECT
2/9/2011	SJ 10 Pg. 133	REFERRED TO COMMITTEE OF THE WHOLE
2/9/2011	SJ 10 Pg. 127	REPORTED BY COMMITTEE OF THE WHOLE FAVORABLY WITHOUT AMENDMENT(S)
2/9/2011	SJ 10 Pg. 127	PLACED ON ORDER OF THIRD READING
2/15/2011	SJ 12 Pg. 147	PASSED ROLL CALL # 14 YEAS 37 NAYS 0 EXCUSED 1 NOT

		VOTING 0
2/15/2011	HJ 13 Pg. 158	received on 02/15/2011
2/15/2011	HJ 13 Pg. 159	read a first time
2/15/2011	HJ 13 Pg. 159	referred to Committee on Judiciary

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SENATE BILL No. 99

February 1, 2011, Introduced by Senator JONES and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7403 (MCL 333.7403), as amended by 2010 PA 352.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7403. (1) A person shall not knowingly or intentionally
2 possess a controlled substance, a controlled substance analogue, or
3 a prescription form unless the controlled substance, controlled
4 substance analogue, or prescription form was obtained directly
5 from, or pursuant to, a valid prescription or order of a
6 practitioner while acting in the course of the practitioner's
7 professional practice, or except as otherwise authorized by this
8 article.

9 (2) A person who violates this section as to:

1 (a) A controlled substance classified in schedule 1 or 2 that
2 is a narcotic drug or a drug described in section 7214(a) (iv), and:

3 (i) Which is in an amount of 1,000 grams or more of any mixture
4 containing that substance is guilty of a felony punishable by
5 imprisonment for life or any term of years or a fine of not more
6 than \$1,000,000.00, or both.

7 (ii) Which is in an amount of 450 grams or more, but less than
8 1,000 grams, of any mixture containing that substance is guilty of
9 a felony punishable by imprisonment for not more than 30 years or a
10 fine of not more than \$500,000.00, or both.

11 (iii) Which is in an amount of 50 grams or more, but less than
12 450 grams, of any mixture containing that substance is guilty of a
13 felony punishable by imprisonment for not more than 20 years or a
14 fine of not more than \$250,000.00, or both.

15 (iv) Which is in an amount of 25 grams or more, but less than
16 50 grams of any mixture containing that substance is guilty of a
17 felony punishable by imprisonment for not more than 4 years or a
18 fine of not more than \$25,000.00, or both.

19 (v) Which is in an amount less than 25 grams of any mixture
20 containing that substance is guilty of a felony punishable by
21 imprisonment for not more than 4 years or a fine of not more than
22 \$25,000.00, or both.

23 (b) Either of the following:

24 (i) A substance described in section 7212(1) (g) or 7214(c) (ii)
25 is guilty of a felony punishable by imprisonment for not more than
26 10 years or a fine of not more than \$15,000.00, or both.

27 (ii) A controlled substance classified in schedule 1, 2, 3, or

1 4, except a controlled substance for which a penalty is prescribed
2 in **SUBPARAGRAPH (i) OR** subdivision (a), ~~(b) (i)~~, (c), or (d), or a
3 controlled substance analogue is guilty of a felony punishable by
4 imprisonment for not more than 2 years or a fine of not more than
5 \$2,000.00, or both.


6 (c) Lysergic acid diethylamide, peyote, mescaline,
7 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
8 classified in schedule 5 is guilty of a misdemeanor punishable by
9 imprisonment for not more than 1 year or a fine of not more than
10 \$2,000.00, or both.

11 (d) Marihuana, **CATHA EDULIS, SALVIA DIVINORUM, OR A SUBSTANCE**
12 **DESCRIBED IN SECTION 7212(1)(H)** is guilty of a misdemeanor
13 punishable by imprisonment for not more than 1 year or a fine of
14 not more than \$2,000.00, or both.

15 (e) A prescription form is guilty of a misdemeanor punishable
16 by imprisonment for not more than 1 year or a fine of not more than
17 \$1,000.00, or both.

18 (3) If an individual was sentenced to lifetime probation under
19 subsection (2) (a) (iv) as it existed before March 1, 2003 and the
20 individual has served 5 or more years of that probationary period,
21 the probation officer for that individual may recommend to the
22 court that the court discharge the individual from probation. If an
23 individual's probation officer does not recommend discharge as
24 provided in this subsection, with notice to the prosecutor, the
25 individual may petition the court seeking resentencing under the
26 court rules. The court may discharge an individual from probation
27 as provided in this subsection. An individual may file more than 1

1 motion seeking resentencing under this subsection.

Senate Bill 0213 (2011)  <- what's this?

Sponsors Thomas Casperson - (primary)
Bruce Caswell, Mark Jansen, Mike Nofs









Categories Health, pharmaceuticals; Occupations, dentists; Controlled substances, other; State agencies (existing), community health

Health; pharmaceuticals; prohibition on dispensing a prescription for a controlled substance received via electronic means from an individual licensed to practice dentistry in a state other than Michigan; remove.

Documents

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History (House actions in lowercase, Senate actions in UPPERCASE)

Date 	Journal	Action
3/2/2011	SJ 19 Pg. 242	REFERRED TO COMMITTEE ON HEALTH POLICY

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SENATE BILL No. 213

March 2, 2011, Introduced by Senators CASPERSON, CASWELL, JANSEN and NOFS and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7405, 17708, 17751, and 17763 (MCL 333.7405, 333.17708, 333.17751, and 333.17763), sections 7405, 17708, and 17763 as amended by 2009 PA 150 and section 17751 as amended by 2006 PA 672.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7405. (1) A person:

2 (a) Who is licensed by the administrator under this article
3 shall not distribute, prescribe, or dispense a controlled substance
4 in violation of section 7333.

5 (b) Who is a licensee shall not manufacture a controlled
6 substance not authorized by his or her license or distribute,
7 prescribe, or dispense a controlled substance not authorized by his

1 or her license to another licensee or other authorized person,
2 except as authorized by rules promulgated by the administrator.

3 (c) Shall not refuse an entry into any premises for an
4 inspection authorized by this article.

5 (d) Shall not knowingly keep or maintain a store, shop,
6 warehouse, dwelling, building, vehicle, boat, aircraft, or other
7 structure or place, that is frequented by persons using controlled
8 substances in violation of this article for the purpose of using
9 controlled substances, or that is used for keeping or selling
10 controlled substances in violation of this article.

11 (e) Who is a practitioner shall not dispense a prescription
12 for a controlled substance written and signed or transmitted by
13 facsimile, electronic transmission, or other means of communication
14 by a physician prescriber **OR DENTIST PRESCRIBER** licensed to
15 practice in a state other than Michigan, unless the prescription is
16 issued by a physician **PRESCRIBER OR DENTIST** prescriber who is
17 authorized under the laws of that state to practice **DENTISTRY,**
18 medicine, or osteopathic medicine and surgery and to prescribe
19 controlled substances.

20 (2) A person who violates subsection (1) is subject to the
21 penalties prescribed in section 7406.

22 Sec. 17708. (1) "Preceptor" means a pharmacist approved by the
23 board to direct the training of an intern in an approved pharmacy.

24 (2) "Prescriber" means a licensed dentist, a licensed doctor
25 of medicine, a licensed doctor of osteopathic medicine and surgery,
26 a licensed doctor of podiatric medicine and surgery, a licensed
27 optometrist certified under part 174 to administer and prescribe

1 therapeutic pharmaceutical agents, a licensed veterinarian, or
2 another licensed health professional acting under the delegation
3 and using, recording, or otherwise indicating the name of the
4 delegating licensed doctor of medicine or licensed doctor of
5 osteopathic medicine and surgery.

6 (3) "Prescription" means an order for a drug or device written
7 and signed or transmitted by facsimile, electronic transmission, or
8 other means of communication by a prescriber to be filled,
9 compounded, or dispensed. Prescribing is limited to a prescriber.
10 An order transmitted in other than written form shall be
11 electronically recorded, printed, or written and immediately dated
12 by the pharmacist, and that record constitutes the original
13 prescription. In a health facility or agency licensed under article
14 17 or other medical institution, an order for a drug or device in
15 the patient's chart constitutes for the purposes of this definition
16 the original prescription. Subject to section 17751(2),
17 prescription includes, but is not limited to, an order for a drug,
18 not including a controlled substance as defined in section 7104
19 except under circumstances described in section 17763(e), written
20 and signed or transmitted by facsimile, electronic transmission, or
21 other means of communication by a physician prescriber **OR DENTIST**
22 **PRESCRIBER** licensed to practice **DENTISTRY, MEDICINE, OR OSTEOPATHIC**
23 **MEDICINE AND SURGERY** in a state other than Michigan.

24 (4) "Prescription drug" means 1 or more of the following:

25 (a) A drug dispensed pursuant to a prescription.

26 (b) A drug bearing the federal legend "CAUTION: federal law
27 prohibits dispensing without prescription" or "Rx only".

1 (c) A drug designated by the board as a drug that may only be
2 dispensed pursuant to a prescription.

3 Sec. 17751. (1) A pharmacist shall not dispense a drug
4 requiring a prescription under the federal act or a law of this
5 state except under authority of an original prescription or an
6 equivalent record of an original prescription approved by the
7 board.

8 (2) A pharmacist may dispense a prescription written and
9 signed or transmitted by facsimile, electronic transmission, or
10 other means of communication by a physician prescriber **OR DENTIST**
11 **PRESCRIBER** in a state other than Michigan, but not including a
12 prescription for a controlled substance as defined in section 7104
13 except under circumstances described in section 17763(e), only if
14 the pharmacist in the exercise of his or her professional judgment
15 determines all of the following:

16 (a) That the prescription was issued pursuant to an existing
17 physician-patient **OR DENTIST-PATIENT** relationship.

18 (b) That the prescription is authentic.

19 (c) That the prescribed drug is appropriate and necessary for
20 the treatment of an acute, chronic, or recurrent condition.

21 (3) A pharmacist or a prescriber shall dispense a prescription
22 only if the prescription falls within the scope of practice of the
23 prescriber.

24 (4) A pharmacist shall not knowingly dispense a prescription
25 after the death of the prescriber or patient.

26 Sec. 17763. In addition to the grounds set forth in part 161,
27 the disciplinary subcommittee may fine, reprimand, or place a

1 pharmacist licensee on probation, or deny, limit, suspend, or
2 revoke the license of a pharmacist or order restitution or
3 community service for a violation or abetting in a violation of
4 this part or rules promulgated under this part, or for 1 or more of
5 the following grounds:

6 (a) Permitting the dispensing of prescriptions by an
7 individual who is not a pharmacist, pharmacist intern, or
8 dispensing prescriber.

9 (b) Permitting the dispensing of prescriptions by a pharmacist
10 intern, except in the presence and under the personal charge of a
11 pharmacist.

12 (c) Selling at auction drugs in bulk or in open packages
13 unless the sale has been approved in accordance with rules of the
14 board.

15 (d) Promoting a prescription drug to the public in any manner.

16 (e) In addition to the prohibition contained in section
17 7405(1)(e), dispensing a prescription for a controlled substance as
18 defined in section 7104 that is written and signed or transmitted
19 by facsimile, electronic transmission, or other means of
20 communication by a physician prescriber **OR DENTIST PRESCRIBER** in a
21 state other than Michigan, unless the prescription is issued by a
22 physician prescriber **OR DENTIST PRESCRIBER** who is authorized under
23 the laws of that state to practice **DENTISTRY**, medicine, or
24 osteopathic medicine and surgery and to prescribe controlled
25 substances.

House Bill 4369 (2011)  <- what's this?

Sponsors Lesia Liss - (primary)
Kate Segal, Vicki Barnett, Harold L. Haugh

Categories Health, pharmaceuticals; State agencies (existing), community health; Insurance, health; Insurance, health care corporations; Insurance, health maintenance organizations; Controlled substances, use









Meetings Health Policy 3/10/2011

Health; pharmaceuticals; electronic monitoring system for certain dispensed controlled substances; allow health care benefit plans to access.



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HFA - Legislative Analysis

 	Committee Summary (03-02-11) This document analyzes: HB4369
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History (House actions in lowercase, Senate actions in UPPERCASE)

Date	Journal	Action
3/2/2011	HJ 20 Pg. 269	introduced by Representative Lesia Liss
3/2/2011	HJ 20 Pg. 269	read a first time
3/2/2011	HJ 20 Pg. 269	referred to Committee on Health Policy
3/3/2011	HJ 21 Pg. 275	printed bill filed 03/03/2011

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HOUSE BILL No. 4369

March 2, 2011, Introduced by Reps. Liss, Segal, Barnett and Haugh and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7333a (MCL 333.7333a), as added by 2001 PA 231.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7333a. (1) The department shall establish, by rule, an
2 electronic system for monitoring schedule 2, 3, 4, and 5 controlled
3 substances dispensed in this state by veterinarians, and by
4 pharmacists and dispensing prescribers licensed under part 177 or
5 dispensed to an address in this state by a pharmacy licensed in
6 this state. The rules shall provide an appropriate electronic
7 format for the reporting of data including, but not limited to,
8 patient identifiers, the name of the controlled substance
9 dispensed, date of dispensing, quantity dispensed, prescriber, and
10 dispenser. The department shall require a veterinarian, pharmacist,

1 or dispensing prescriber to utilize the electronic data transmittal
2 process developed by the department or the department's contractor.
3 A veterinarian, pharmacist, or dispensing prescriber shall not be
4 required to pay a new fee dedicated to the operation of the
5 electronic monitoring system and shall not incur any additional
6 costs solely related to the transmission of data to the department.
7 The rules promulgated under this subsection shall exempt both of
8 the following circumstances from the reporting requirements:

9 (a) The administration of a controlled substance directly to a
10 patient.

11 (b) The dispensing from a health facility or agency licensed
12 under article 17 of a controlled substance by a dispensing
13 prescriber in a quantity adequate to treat a patient for not more
14 than 48 hours.

15 (2) Notwithstanding any practitioner-patient privilege, the
16 director of the department may provide data obtained under this
17 section to all of the following:

18 (a) A designated representative of a board responsible for the
19 licensure, regulation, or discipline of a practitioner, pharmacist,
20 or other person who is authorized to prescribe, administer, or
21 dispense controlled substances.

22 (b) An employee or agent of the department.

23 (c) A state, federal, or municipal employee or agent whose
24 duty is to enforce the laws of this state or the United States
25 relating to drugs.

26 (d) A state-operated medicaid program.

27 (e) A state, federal, or municipal employee who is the holder

1 of a search warrant or subpoena properly issued for the records.

2 (f) A practitioner or pharmacist who requests information and
3 certifies that the requested information is for the purpose of
4 providing medical or pharmaceutical treatment to a bona fide
5 current patient.

6 (g) An individual with whom the department has contracted
7 under subsection ~~(9)~~—(8).

8 **(H) THE HEALTH CARE PAYMENT OR BENEFIT PROVIDER FOR THE**
9 **PURPOSES OF ENSURING PATIENT SAFETY AND INVESTIGATING FRAUD AND**
10 **ABUSE. AS USED IN THIS SUBDIVISION, "HEALTH CARE PAYMENT OR BENEFIT**
11 **PROVIDER" MEANS A PERSON THAT PROVIDES HEALTH BENEFITS, COVERAGE,**
12 **OR INSURANCE IN THIS STATE, INCLUDING A HEALTH INSURANCE COMPANY, A**
13 **NONPROFIT HEALTH CARE CORPORATION, A HEALTH MAINTENANCE**
14 **ORGANIZATION, A MULTIPLE EMPLOYER WELFARE ARRANGEMENT, A MEDICAID**
15 **CONTRACTED HEALTH PLAN, OR ANY OTHER PERSON PROVIDING A PLAN OF**
16 **HEALTH BENEFITS, COVERAGE, OR INSURANCE SUBJECT TO STATE INSURANCE**
17 **REGULATION.**

18 (3) Except as otherwise provided in this part, information
19 submitted under this section shall be used only for bona fide drug-
20 related criminal investigatory or evidentiary purposes or for the
21 investigatory or evidentiary purposes in connection with the
22 functions of a disciplinary subcommittee or 1 or more of the
23 licensing or registration boards created in article 15.

24 (4) A person who receives data or any report under subsection
25 (2) containing any patient identifiers of the system from the
26 department shall not provide it to any other person or entity
27 except by order of a court of competent jurisdiction.

1 (5) Except as otherwise provided in this subsection, reporting
2 under subsection (1) is mandatory for a veterinarian, pharmacist,
3 and dispensing prescriber. However, the department may issue a
4 written waiver of the electronic reporting requirement to a
5 veterinarian, pharmacist, or dispensing prescriber who establishes
6 grounds that he or she is unable to use the electronic monitoring
7 system. The department shall require the applicant for the waiver
8 to report the required information in a manner approved by the
9 department.

10 (6) In addition to the information required to be reported
11 annually under section 7112(3), the controlled substances advisory
12 commission shall include in the report information on the
13 implementation and effectiveness of the electronic monitoring
14 system.

15 (7) The department, in consultation with the controlled
16 substances advisory commission, the Michigan board of pharmacy, the
17 Michigan board of medicine, the Michigan board of osteopathic
18 medicine and surgery, the Michigan state police, and appropriate
19 medical professional associations, shall examine the need for and
20 may promulgate rules for the production of a prescription form on
21 paper that minimizes the potential for forgery. The rules shall not
22 include any requirement that sequential numbers, bar codes, or
23 symbols be affixed, printed, or written on a prescription form or
24 that the prescription form be a state produced prescription form.
25 In examining the need for rules for the production of a
26 prescription form on paper that minimizes the potential for
27 forgery, the department shall consider and identify the following:

1 (a) Cost, benefits, and barriers.

2 (b) Overall cost-benefit analysis.

3 (c) Compatibility with the electronic monitoring system
4 required under this section.

5 ~~—— (8) The department shall report its findings under subsection~~
6 ~~(7) to the members of the house and senate standing committees~~
7 ~~having jurisdiction over health policy issues not later than~~
8 ~~October 1, 2002, and before the electronic monitoring system~~
9 ~~required under this section becomes operational.~~

10 (8) ~~(9)~~—The department may enter into 1 or more contractual
11 agreements for the administration of this section.

12 (9) ~~(10)~~—The department, all law enforcement officers, all
13 officers of the court, and all regulatory agencies and officers, in
14 using the data for investigative or prosecution purposes, shall
15 consider the nature of the prescriber's and dispenser's practice
16 and the condition for which the patient is being treated.

17 (10) ~~(11)~~—The data and any report containing any patient
18 identifiers obtained therefrom is not a public record, and is not
19 subject to the freedom of information act, 1976 PA 442, MCL 15.231
20 to 15.246.

21 (11) ~~(12)~~—As used in this section, "department" means the
22 department of ~~consumer and industry services~~ **COMMUNITY HEALTH**.



Everything Michigan

Can Oakland County legal cases help clear haze of Michigan's medical marijuana law?

Published: Monday, January 03, 2011, 2:25 PM Updated: Monday, January 03, 2011, 4:03 PM



By **Jonathan Oosting** | **MLive.com**

More than two years after Michigan voters approved the use of medical marijuana, a series of legal cases involving Oakland County could help shape application of the law for years to come.

While Michigan's law allows registered patients to use the drug, marijuana remains illegal under federal law, and several local municipalities have banned or regulated it.

That disconnect has led to various levels of enforcement and regulation, and many Oakland County leaders are calling on Lansing to clarify the situation.

Jan. 3, Hometown Life: "The law is a total mess," said Bloomfield Township attorney William Hampton. "The Legislature must do something about this. It's such a poorly written law."

It's an issue that needs to be worked out between local municipalities, counties and the state legislature in 2011, said state Rep. Vicki Barnett, D-Farmington Hills.

She said there has been some talk among Oakland County officials and a bipartisan group of Oakland County state legislators, but nothing has been ironed out to clarify the law or the wishes of the voters. She hopes to see the issue addressed in 2011.

But absent action from Lansing, it could be up to the courts to resolve a number of outstanding interpretive issues stemming from arrests and regulations in Oakland County.

Are marijuana dispensaries legal?

Under the orders of Sheriff Mike Bouchard, Oakland County authorities in August **raided a medical**



File Photo

A budding medical marijuana plant.

marijuana dispensary in Ferndale and arrested nine people. While the defendants are accused of various drug-related crimes, Bouchard and County Prosecutor Jessica Cooper have both suggested such clinics are illegal, despite **a local ordinance** allowing them. Michigan law allows registered caregivers to grow up to 12 plants each for as many as five patients but does not indicate whether they can grow or sell their product in a shared space.

Have some Michigan municipalities taken regulation too far?

In part due to confusion surrounding the state law, several Michigan municipalities have attempted to ban or highly-regulate medical marijuana at the local level. While state law trumps local ordinances, enforcement typically occurs at a local level, and critics say some cities have denied residents easy access to the legally-recognized medicine.

The **ACLU of Michigan last month filed a lawsuit** against Livonia, Birmingham and Bloomfield Hills, arguing city ordinances effectively banned medical marijuana. Separately, two Oakland County attorneys filed **a lawsuit against Bloomfield Township** for an ordinance prohibiting marijuana growing and requiring patients to register with local police. "We think the township ordinances are not only unconstitutional, but they directly conflict with the state law that was passed by 63 percent of the people," said Neil Rockind.

Does the 'inartfully drafted' legislation trump other state laws?

Robert Redden and Torey Clark were arrested for growing marijuana at their Madison Heights home in 2009 shortly after registering but before they'd received their state ID cards. Authorities say they possessed too many plants and didn't keep them in an enclosed, locked facility as required.

A lower court initially dismissed the charges, but Michigan Appeals Court Judge Peter O'Connell agreed with a decision to reinstate the charges and warned Michigan's **"inartfully drafted"** medical marijuana law needs changes. In fact, he suggested all Michigan citizens avoid using marijuana or risk violating state law. The case is now heading to Michigan Supreme Court, and the couple's defense attorney has called on the judiciary to **resolve "beleaguering" interpretive issues**.

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Editorial: How to fix medical marijuana in Michigan

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By The Grand Rapids Press Editorial Board

Two things are clear about medical marijuana in Michigan. First, voters more than two years ago overwhelmingly approved the use of the otherwise illegal drug to help cancer patients and others who can benefit from its pain-relieving, appetite-inducing effects.

Second, administration of that citizen-approved law is a mess. Local communities are in a quandary about how exactly to regulate the drug. Some have banned it altogether, as Wyoming did in November, in absence of clear regulations from the state. Others, such as Grand Rapids, have adopted zoning ordinances to ensure the caregivers who grow marijuana are licensed as home-based businesses and do not pose a danger to their neighbors.

This legal patchwork serves no one well. The Legislature should do what it frequently must when voters approve new statutes — pass enabling laws that respect the will of voters and set in place reasonable safeguards against illegal activity. Newly inaugurated lawmakers, along with Gov. Rick Snyder, have the opportunity to clear away the confusing haze surrounding the law and provide the needed guidance. The absence of legislative action has left a morass that will ultimately be sorted out by courts — not a smart or democratic way to cement public policy.

The law, passed by 63 percent of voters in November 2008, allows people to register with the Michigan Department of Community Health to become sanctioned medical marijuana patients. A registered patient must have a medical condition defined under the law — including AIDS, glaucoma, cancer, chronic pain and others — and be certified by a physician. Patients are allowed to possess up to 2.5 ounces of the drug at one



Grand Rapids Press file photo

A bud from a medical marijuana plant legally grown in a Northwest Side basement in Grand Rapids.

time and grow 12 plants in “an enclosed, locked facility.” Qualified “caregivers” can grow plants for up to five patients.

To date 83,552 people have applied with the state to become qualified patients and 45,808 have been granted that status. Those numbers alone should light a fire under lawmakers. There is widespread public demand for medical marijuana, coupled with widespread confusion about how it should be regulated.

Federal law prohibits marijuana, although the Obama administration has vowed not to crack down on state-sanctioned medical uses. Still, the threat of federal enforcement may be enough to scare people away who legitimately need the drug. In addition, state law faces different interpretations in different jurisdictions.

A lot of questions confront those growing and using medical marijuana. If you want to grow the plants, where do you obtain seeds or seedlings, and is obtaining them even legal? How to guarantee that other people in a home where marijuana is grown don't use the drug for non-medical purposes? What about businesses that have strict no-tolerance policies on drug use in the work place? Can those companies legally fire workers who have the drug in their system even if that worker is a registered patient?

The ideal would be to have physicians prescribe medical marijuana and pharmacies dispense it, ensuring that family doctors closely supervise its use. Under current laws, however, that would jeopardize the licenses of those health professionals.

Meanwhile, Wyoming faces a lawsuit from the American Civil Liberties Union for its blanket ban. Other cities and townships are debating prohibitions and regulations.

More guidance is needed from lawmakers. The confusion, like the number of medical marijuana users, is only growing.

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