



Medical Marijuana

PBI – Exceptional Children's Conference

October 8, 2018

WARNING

- Possessing, using, distributing and/or selling marijuana *is still a federal crime!*
- This presentation is not intended to provide any guidance or assistance in violating federal law.



Overview

- General overview of Pennsylvania's Law
- What does the law say about schools?
- What to do about Students who want to use medical marijuana?
- How does this compare to other states?
- What is on the horizon?
- Doesn't it matter that this is illegal under federal law and what about Rohrabacher-Blumenauer?

***What does Pennsylvania's
Medical Marijuana Law Say?***

The Law

- On April 17, 2016, Pennsylvania became the 24th state in the nation to allow for medical marijuana with the approval of The Medical Marijuana Act, 35 PS 10231.101 et seq.



What is permissible under the law?

- May be in a pill, oil, gel, cream, ointment, vaporized or nebulized, liquid or tincture forms are permissible.
- Dry leaf or plant forms permitted with limitations.
- However, it may not be smoked or incorporated into an edible form.



Who can have medical marijuana?

- Patient or a caretaker.
- To qualify as a patient, you must (1) have a serious medical condition, (2) meet the requirements for certification under the Act, and (3) be a resident of Pennsylvania.
- Under the law, are issued an identification card.

What qualifies as a serious medical condition?

- Cancer
- HIV/AIDS
- Amyotrophic lateral sclerosis
- Parkinson's Disease
- Multiple Sclerosis
- Damage to the nerve tissue of the spinal cord with objective neurological indication of intractable spasticity
- Epilepsy
- Inflammatory Bowel Disease
- Neuropathies
- Huntington's Disease
- Post-Traumatic Stress Disorder
- Intractable Seizures
- Sickle Cell Anemia
- Glaucoma
- Certain severe and chronic pain that are neuropathic in origin
- Certain other types of chronic pain for which conventional or opiate therapy is contraindicated or ineffective
- Autism
- Crohn's Disease

Student Use

Limited Guidance in the Law

- Some states have provided limitations or prohibitions as to use at school, while others have specifically allowed it.
- Pennsylvania's law states that PDE is to issue regulations within 18 months of May 17, 2016. 35 PS 10231.2104.
- Regulations have not been issued yet and it is unclear what they will say.

Temporary Guidance from PDE

Recommended Guidance: A parent, legal guardian or caregiver *may* administer medical marijuana to their child/student on school premises provided that the parent, legal guardian or caregiver: (1) provides the school principal with a copy of the Safe Harbor Letter; and (2) notifies the school principal, in advance, of each instance on which the parent or caregiver will administer the medical marijuana to the child/student. The school principal shall provide notification to the school nurse in each instance a parent or caregiver will be administering medical marijuana to the child/student as well. The parent/caregiver shall follow all school protocols applicable to visitors to the school during the school day.

A parent, legal guardian or caregiver shall bring to the school and administer the medical marijuana to their child/student without creating a distraction, and shall promptly remove any excess medical marijuana and related materials from the school premises after the administration of medical marijuana is complete. The school shall provide a secure and private location for the parent/legal guardian/caregiver to administer the medical marijuana to the student.

Students themselves shall not be permitted to possess any form of medical marijuana at any time on school property or during any school activities on school property.

What have other states done?

- A New Jersey case found that there is no requirement to allow use of medical marijuana on school grounds under the IDEA. Maple Shade Township Bd. of Educ., 115 LRP 54740 (SEA NJ 2015).
- New Jersey has since passed a law requiring that it be permitted.
- A federal judge in Illinois ordered it under Section 504, but no Opinion issued. See Surin v. Schaumburg Sch. Dist. 54.

Student Issues

- Controlling students having and using medical marijuana school grounds.
- Referral for IDEA or Section 504 Evaluation?
- Disciplining students for the use/possession of such items. See e.g. Eugene Sch. Dist. 104 LRP 42399 (Or. SEA 2004)(finding discipline permissible)
- Do you need to permit it under Section 504 or IDEA?
- If you do allow it, need to worry about liability and insurance.

Federal Law Implications

What about federal law?

- Still illegal!
- Could attach to federal grants and the like and need to double check.
- May raise issues under Drug Free Schools and Campuses Act.
- Wide discretion to federal agencies as to what they can do about this.

What about Rohrabacker- Blumenauer?

- Attachment to federal budget that prohibits use of federal funds to prosecute people using medical marijuana.
- To be eligible, must be in strict compliance with the state law. U.S. v. Pisarski
- Unclear if you can do that in Pa. in schools.
- Has recently been called into question in Congress and DOJ wants it ended.

What is on the horizon on federal law?

- Trump has stated he supports state laws to permit it, but also indicated federal government can still go after those who use it.
- Sessions has said “knowledge that this drug is dangerous, you cannot play with it, it is not funny, it’s not something to laugh about... and to send that message with clarity that good people don’t smoke marijuana” and clearly wants to prosecute.
- Congress has given mixed messages on the issue from attempts to revise federal law to allow it to efforts to crack down on it.
- Should be prepared for all eventualities!

QUESTIONS

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