



# Overview of Michigan's Medical Marijuana Laws

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# Agenda

- ▶ Introduction of Marijuana Law Section
- ▶ Overview of Michigan Medical Marihuana Act
- ▶ Overview of Medical Marihuana Facilities Licensing Act
- ▶ Overview of Marihuana Tracking Act
- ▶ Federal Issues
- ▶ Question and Answer

# Marijuana Law Section

- Formed as section of State Bar of Michigan in 2016
- First association of its kind in the nation
- Over 630 members
- Represents an array of practice areas and types of law firms

# Michigan Medical Marijuana Act

- ▼ Initiated law passed on November 8, 2008
- ▼ 3,008,980 (63%) voted for, and 1,792,870 voted against (37%)
- ▼ Majority in each of the State's 83 counties
  - ▼ Highest - Washtenaw - 71.5%
  - ▼ Lowest - Huron - 50.5%
- ▼ Effective December 4, 2008
- ▼ “The MMMA does *not* create a general right for individuals to use and possess marijuana in Michigan. Possession, manufacture, and delivery of marijuana remain punishable offenses under Michigan law. Rather, the MMMA’s protections are limited to individuals suffering from serious or debilitating medical conditions or symptoms, to the extent that the individuals’ marijuana use ‘is carried out in accordance with the provisions of [the MMMA].’” - *People v Kolanek* (MSC, 2012)

# Overview of MMA

- Individuals with debilitating medical conditions can use marijuana for medicinal purposes
- Patients can possess up to 2.5 ounces of marijuana and grow up to 12 plants in an enclosed, locked facility
- Patients can identify a caregiver, who can assist them with the medical use of marijuana
- Caregiver can serve up to 5 patients
  - Can possess up to 2.5 ounces and grow up to 12 plants for each patient

# Protections in MMMA

- ▼ Section 4 Immunity
  - ▼ Patient not subject to arrest, prosecution, or penalty if he or she possesses less than 2.5 ounces and 12 plants in enclosed, locked facility
  - ▼ Caregiver not subject to arrest, prosecution, or penalty if he or she possesses less than 2.5 ounces and 12 plants per patient
  - ▼ Presumption that patient or caregiver is in compliance if they have a card and not more marijuana than allowed under Section 4
- ▼ Section 8 Affirmative Defense
  - ▼ With certain exceptions, can raise defense in any marijuana-related prosecution
  - ▼ Must show:
    - ▼ Physician has stated that patient will receive therapeutic or palliative benefit from marijuana use
    - ▼ Patient and/or caregiver not in possession of more marijuana than "reasonably necessary to ensure the uninterrupted availability of marijuana..."
    - ▼ Patient and/or caregiver possessed marijuana related to the use for medical purposes

# Prohibitions in MMA

- Cannot undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice
- Possess or use marijuana on a school bus, at a school, or in a correctional facility
- Smoke marijuana on public transportation or in a public place
- Operate a motor vehicle, aircraft, snowmobile, ORV, or motorboat under the influence of marijuana
- Use marijuana if you do not have a debilitating medical condition
- Use butane extraction to separate resin in a public place, in a vehicle, in a home, or in the curtilage of a home
- Use butane extraction in an unreasonable or reckless manner
- Felony to sell to someone who does not have a card

# Marijuana-Infused Products

- ▼ PA 283 of 2016 amended definition of "usable marijuana" to include resin
- ▼ Extended Section 4 immunity to patients manufacturing infused products for their own use and to caregivers manufacturing for the use of their patients
- ▼ Prohibited a patient to transfer infused products to anyone and caregivers from transferring to anyone other than their patients
- ▼ Created rebuttable presumption that weight listed on label or manifest is correct
- ▼ Allows patients and caregivers to have a total of 2.5 ounces of usable marijuana and "usable marijuana equivalents"
- ▼ One ounce of usable marijuana equals
  - ▼ 16 ounces of marijuana-infused product in solid form
  - ▼ 7 grams of marijuana-infused product in gaseous form
  - ▼ 36 fluid ounces of marijuana-infused product in liquid form
- ▼ Extends Section 4 immunity to:
  - ▼ Patients or caregivers purchasing marijuana from a licensed provisioning center
  - ▼ Patients or caregivers selling marijuana seeds or seedlings to a licensed grower
  - ▼ Caregivers transferring marijuana to a safety compliance facility

# Notable MMMA Cases

- *Casias v Walmart* (WD Mich, 2012)
  - ▲ MMMA does not regulate private employment actions
- *Ter Beek v Wyoming* (MSC, 2014)
  - ▲ CSA does not preempt MMMA
  - ▲ MMMA preempts local ordinances that prohibit patients and caregivers from engaging in conduct protected by the MMMA
- *People v McQueen* (MSC, 2013)
  - ▲ MMMA allows caregiver to sell to his or her patients, but cannot sell to anyone else, and patients cannot sell to anyone
- *People v Koon* (MSC, 2013)
  - ▲ MMMA superseded Motor Vehicle Code's zero tolerance provision
- *People v Bylsma* (MSC, 2012)
  - ▲ Patient or caregiver possesses marijuana if they exercise dominion or control over it
- *Braska v Challenge Manufacturing* (MCA, 2014)
  - ▲ Patient fired for medical marijuana use cannot be denied state unemployment benefits
- *People v Carruthers* (MCA, 2013)
  - ▲ An edible containing THC extract from marijuana resin is not "usable marijuana" under the MMMA

# Medical Marihuana Facilities Licensing Act Overview

- ▶ Creates five types of licenses:
  - ▶ Growers
    - ▶ Cultivates, dries, trims, or cures and packages marihuana
      - ▶ Class A - up to 500 plants
      - ▶ Class B - up to 1,000 plants
      - ▶ Class C - up to 1,500 plants
  - ▶ Processors
    - ▶ Extracts resin from marihuana or creates and packages marihuana-infused products
  - ▶ Provisioning Centers
    - ▶ Sells or provides marihuana to patients and caregivers
  - ▶ Secure Transporters
    - ▶ Stores and transports marihuana and money associated with the purchase and sale of marihuana between facilities
  - ▶ Safety Compliance Facilities
    - ▶ Tests marihuana for contaminants, as well as for THC and other cannabinoids

# Medical Marihuana Licensing Board Overview

- Creates Medical Marihuana Licensing Board to:
  - ▲ Implement and administer the MMFLA
  - ▲ Make licensing determinations
  - ▲ Oversee the activities of licensed medical marihuana facilities
  - ▲ Work with LARA to promulgate administrative rules relating to the operation, health, and safety of marihuana facilities
- Creates the Medical Marihuana Licensing Board within LARA
  - ▲ Five members
    - One member appointed from list of three submitted by Speaker
    - One member appointed from list of three submitted by SML
    - No more than three members can be from one political party
    - Cannot have direct or indirect financial interest in facility or applicant
    - No felony convictions or convictions for misdemeanors involving drugs, dishonesty, theft or fraud
  - Four year terms, but one initial member will serve for two years and two initial members will serve for three years
    - May hire staff, including full-time executive director
    - Must hold at least two public meetings per year

# MMFLA Advisory Panel

- ▼ Medical Marihuana Facilities Advisory Panel
- ▼ 17 members appointed by Governor
  - ▼ Representatives from state departments, local units of government, law enforcement, and licensees
- ▼ Must be appointed within three months of effective date
- ▼ Must meet at least once within a month of appointment
- ▼ Business conducted in accordance with Open Meetings Act
- ▼ Panel “may make recommendations to the board concerning promulgation of rules and, as requested by the board or the department, the administration, implementation, and enforcement of this act and the marihuana tracking act.”

# MMFLA Timeline

- December 20, 2016 - Effective date of MMFLA
- March 20, 2017 - Deadline for Advisory Panel to be appointed
- April 19, 2017 - Advisory Panel must have met at least once
- December 15, 2017 - Individuals can begin to apply for licensure

## MMFLA Protections

- ▼ licensees, as well as their agents, acting within scope of license and rules are not subject to marihuana-related criminal penalties, criminal or civil prosecutions, searches or inspections except as authorized under MMFLA, seizure of marihuana or property, or sanctions by a business or professional licensing board
- ▼ Property owners are protected from owning, leasing, or permitting operation of facility on their property unless they are aware that licensee is violating the MMFLA
- ▼ Patients and caregivers are not subject to prosecution or penalty for purchasing marihuana from a provisioning center
- ▼ Certain acts regulating commercial entities do not apply to facilities

# MMFLA Licenses Generally

- Can begin applying for licenses December 15, 2017
- Applicants must provide Board with general identifying information, including information on every person who has an ownership interest in the applicant, as well as criminal, licensing, and financial background information
- Certain individuals are ineligible
  - Convicted of felony or released from incarceration for felony within 10 years
  - Convicted of drug-related felony within 10 years
  - Convicted of misdemeanor involving drugs, theft, dishonesty, or fraud within 5 years
- Must notify the municipality where the applicant will operate that it is seeking a license within 10 days
  - Municipalities may limit number and type of facilities within jurisdiction
  - May charge annual licensing fee of up to \$5,000

# MMFLA Tax

- ▶ Tax - 3 percent on gross retail receipts of all provisioning centers
  - ▶ 25 percent to municipalities where facilities are located, in proportion to the number of facilities
  - ▶ 30 percent to counties where facilities are located, in proportion to the number of facilities
  - ▶ 5 percent to county sheriffs in counties where facilities are located, in proportion to the number of facilities
  - ▶ 30 percent to the State. Until 9/30/18 this money is deposited into the First Responder Presumed Coverage Fund and, thereafter, into the GF
- ▶ 5 percent to MCOLES
- ▶ 5 percent to MSP

# MMFLA Regulatory Assessment

- Imposed upon all licensees except safety compliance facilities
- Facilities pay a proportionate share of the total cost
- Calculated annually to cover the following costs:
  - LARA's costs to implement, administer, and enforce the Act
  - Costs of any medical marihuana-related legal costs incurred by the AG
  - Costs of any medical marihuana-related costs incurred by MSP
  - Costs of any medical marihuana-related costs incurred by the Department of Treasury
  - \$500k to LARA to license substance use disorder programs
  - Amount equal to 5% of the amount paid to LARA, the AG, MSP, and the \$500k to DHHS for substance abuse-related expenditures
  - Costs related to SFSTS
  - Administrative costs for MCOLES

# Marijuana Tracking Act

- ▶ Establishes statewide seed-to-sale tracking system
- ▶ Department must seek bids to operate and maintain system
- ▶ Requires all licensees to adopt third party inventory control and tracking system that can interface with system
- ▶ System will track all plants, products, packages, patient and caregiver purchase totals, waste, transfers, conversions, sales, and returns
- ▶ Track all test results and allow for product recalls
- ▶ Allow licensees to verify that patients or caregivers have valid cards and are within purchase limits
- ▶ Provide LARA, Board, and law enforcement access to database necessary to enforce their roles under the MMFLA

# Federal Issues

- ▲ Controlled Substances Act
  - ▲ Criminalizes the manufacture, importation, possession, use and distribution of marijuana
- ▲ *Raich v Gonzales*, (USSC, 2005)
  - ▲ Commerce Clause allows Congress to criminalize the possession and use of marijuana, even when done in accordance with state law
- ▲ Cole Memo
  - ▲ DOJ has limited investigative and prosecutorial resources, so using them on individuals operating pursuant to state laws may not be the best use
  - ▲ DOJ will focus on eight enforcement priorities
  - ▲ Up to states to have strong and effective regulatory and enforcement systems
- ▲ Rohrabacher-Farr Amendment
  - ▲ DOJ cannot use appropriated funds to “to prevent...States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”
  - ▲ Recent 9th Circuit opinion interpreted this broadly to mean that DOJ cannot prosecute individuals under the CSA who are complying with state laws
  - ▲ Recently extended through April 28, 2017

# Biggest Hurdles

- ▼ Access to financial institutions
  - ▼ Treasury and FinCEN guidance
- ▼ Taxes
- ▼ 280e
- ▼ Uncertainty regarding Trump Administration Position

# Questions?

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