Trying to Understand Medical Marijuana in your Township

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BACKGROUND—DEFINITION

“Medical Marijuana” is defined in R.C. 3796.01 as: Marijuana that is cultivated, processed, dispensed, tested, possessed, or used for medical purposes.

BACKGROUND—SCHEDULE I

In August 2016, the DEA refused to remove marijuana as a Schedule I drug.

- Schedule I is the most tightly restricted category for drugs that have “no currently accepted medical use” and “a high potential for abuse.”
- The DEA said it is not a safe and effective medicine.

Since 1972, there have been multiple attempts to reclassify marijuana.
BACKGROUND—SCHEDULE II

Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence.

These drugs are also considered dangerous.

ADVISORY COMMITTEE

The Medical Marijuana Advisory Committee is coordinated by the Board of Pharmacy. It is responsible for developing and submitting to the Department of Commerce, Board of Pharmacy, and Medical Board any recommendations related to the Medical Marijuana Control Program. Its membership is appointed by the Governor, Senate President and Minority Leader of the Ohio Senate, and Speaker and Minority Leader of the Ohio House of Representatives.

http://medicalmarijuana.ohio.gov/advisory-committee
ADVISORY COMMITTEE

- Curtis L. Passafume, Jr., R.Ph. (Chair), practicing pharmacist and member of the State of Ohio Board of Pharmacy.
- Stephanie M. Abel, Pharm.D., practicing pharmacist.
- James “Ted” Bibart, representing patients.
- Tony E. Coder, Jr., representing persons involved in the treatment of drug and alcohol addiction.
- Michael G. Hirsch, representing agriculture.
- Sheriff John Lenhart, representing local law enforcement.
- Jason Kaseman, representing labor.
- Martin McCarthy, Jr., representing caregivers.
- Dr. Jerry W. Mitchell, Jr., practicing physician.
- Nancy Walsh Mosca, CNP, practicing nurse.
- Dr. Amol Soin, practicing physician and member of the State Medical Board of Ohio.
- Michael E. Stanek, representing employers.
- Gary L. Wenk, engages in academic research.

TIMELINE

September 8, 2016
HB 523 establishes the basic framework for Ohio’s Medical Marijuana Control Program.

May 6, 2017
Ohio law requires the Ohio Dept. of Commerce to adopt cultivator rules.

http://medicalmarijuana.ohio.gov/Timeline
Ohio law requires the Ohio Dept. of Commerce to adopt processor rules.

Ohio law requires the Ohio Dept. of Commerce to adopt testing laboratory rules.

Ohio law requires the State of Ohio Bd. of Pharmacy to adopt dispensary rules.

Ohio law requires the State of Ohio Bd. of Pharmacy to adopt patient/caregiver rules.

Ohio law requires the State Medical Board of Ohio to adopt rules for physicians certified to recommend medical marijuana.

Ohio law requires the Ohio Medical Marijuana Control Program to be fully operational.
NUMBER OF CULTIVATOR PROVISIONAL LICENSES

OAC 3796:2-1-01
A. Until September 8, 2018, the director of the department of commerce or the director’s designee may issue up to 12 Level I and 12 Level II cultivator provisional licenses, with no more than two Level I and two Level II cultivator provisional licenses being issued in any one designated territory, in consideration of the ranking of the applicants in accordance with the criteria listed in section 3796.09 of the Revised Code and this chapter.

B. Beginning September 9, 2018 and in accordance with section 3796.05 of the Revised Code, the director or the director’s designee may issue additional provisional licenses for cultivators in a designated territory, if the population of this state and the number of patients seeking to use medical marijuana support additional licenses, at the discretion of the director.

C. In the event additional provisional licenses are deemed necessary, the department will follow the application procedures outlined in rule 3796:2-1-02 of the Administrative Code.

“Designated territory” means a specific region within the state, as determined by the program.

SIZE OF CULTIVATION FACILITIES

• “Level I cultivator” means a cultivator that is permitted to operate up to 25,000 square footage of space designated as the marijuana cultivation area in the application, unless a request for expansion is approved by the director of the department under rule 3796:2-1-09 of the Administrative Code.

• “Level II cultivator” means a cultivator that is permitted to operate up to 3,000 square footage of space designated as the marijuana cultivation area in the application, unless a request for expansion is approved by the director of the department under rule 3796:2-1-09 of the Administrative Code.
CULTIVATOR MARIJUANA
CULTIVATION AREA EXPANSION

OAC 3796:2-1-09
Beginning September 9, 2018, the director or the director's designee may approve a one-time, marijuana cultivation area expansion of an existing cultivator's facility, such that the approval of a proposed expansion shall not result in a total marijuana cultivation area that exceeds 50,000 square feet for Level I cultivators and 6,000 square feet for Level II cultivators, if the population of this state and the number of patients seeking to use medical marijuana support such expansion.
BOARD OF PHARMACY – Dispensary Proposed Rules

HIGHLIGHTS:
• License Quota: The Board of Pharmacy may issue up to 40 dispensary licenses. The rules permit the Board to issue additional licenses based upon state population, patient population and geographic distribution of dispensary sites to ensure patient access.
• Certificate of Operation: A provisional licensee must pass a final inspection within six months of the issuance of a provisional dispensary license.
• Licensing Fees: The biennial licensing fee (i.e. once every two years) for a dispensary will be $80,000. The fee ensures a well-regulated, sustainable program and falls within the fee range set by other states operating medical marijuana programs.
• Financial Responsibility: Dispensaries must demonstrate adequate capital to meet facility plans and operational needs.
• Reporting to OARRS: Dispensaries will be required to report dispensing information to the Ohio Automated Rx Reporting System in real-time (within 5 minutes of dispensing) to prevent medical marijuana diversion.

HIGHLIGHTS (cont’d):
• Dispensary Clinical Director: Requires each dispensary to have a clinical director that is a licensed pharmacist or licensed prescriber. The clinical director is responsible for training dispensary employees, reviewing dispensing errors and serving as a clinical resource (for example, providing information on drug interactions) for dispensary employees.
• Employee ID Cards: All dispensary employees and owners are required to be licensed by the Board. Owners/employees must wear a state-issued medical marijuana owner/employee ID card while on dispensary premises.
• Security, Control and Storage of Medical Marijuana: Dispensaries will be required to maintain records and implement specific security measures, including surveillance cameras, to prevent diversion.
• Patient Education: Requires dispensaries to have a policy in place for the education of patients and caregivers and establishes medical marijuana-related educational materials that must be made available to patients and caregivers.
• Inspections and Enforcement: The Board of Pharmacy has the authority to conduct inspections of dispensaries and bring enforcement actions against dispensaries and licensed employees/owners.
QUALIFYING MEDICAL CONDITIONS

Under Ohio law, all of the following are qualifying medical conditions (R.C. 3796.01(A)(6):

- Acquired Immune Deficiency Syndrome (AIDS)
- Alzheimer’s Disease
- Amyotrophic Lateral Sclerosis (ALS)
- Cancer
- Chronic Traumatic Encephalopathy
- Crohn’s Disease
- Epilepsy (or another seizure disorder)
- Fibromyalgia
- Glaucoma
- Hepatitis C
- Inflammatory Bowel Disease (IBD)
- Multiple Sclerosis (MS)
- chronic and severe or intractable pain
- Parkinson’s Disease
- HIV+
- Post-Traumatic Stress Disorder (PTSD)
- Sickle Cell Anemia
- spinal cord disease or injury
- Tourette’s Syndrome
- traumatic brain injury
- Ulcerative Colitis

PERMISSIBLE FORMS/METHODS OF USE

Medical Marijuana may be dispensed only in these forms (R.C. 3796.06):

- Oils
- Tinctures
- Plant material
- Edibles
- Patches

The law prohibits the use of medical marijuana by smoking or combustion, but does allows for vaporization (vaping).
**RIGHTS OF A REGISTERED PATIENT**

A patient registered under *Ohio Revised Code* (R.C.) 3796.22 who obtains medical marijuana from a licensed retail dispensary licensed may do the following:

1. Use medical marijuana;
2. Possess medical marijuana, subject to R.C. 3796.22(B);
3. Possess any paraphernalia or accessories specified in rules adopted under R.C. 3796.04.

**TIPS FOR A REGISTERED PATIENT**

- Registered patients are only allowed to possess a 90-day supply.

- R.C. 3796.22(D) does not allow a registered patient to operate a motor vehicle while under the influence of Medical Marijuana.
LIABILITY

**R.C. 3796.24(E)**
Notwithstanding any conflicting provision of the Revised Code, a person's status as a registered patient or caregiver is not a sufficient basis for conducting a field sobriety test on the person or for suspending the person's driver's license. To conduct any field sobriety test, a law enforcement officer must have an independent, factual basis giving reasonable suspicion that the person is operating a vehicle under the influence of marijuana or with a prohibited concentration of marijuana in the person's whole blood, blood serum, plasma, breath, or urine.

**R.C. 3796.24(G)**
This chapter does not do any of the following:

1. Require a physician to recommend that a patient use medical marijuana to treat a qualifying medical condition;
2. Permit the use, possession, or administration of medical marijuana other than as authorized by this chapter;
3. Permit the use, possession, or administration of medical marijuana on federal land located in this state;
4. Require any public place to accommodate a registered patient's use of medical marijuana;
5. Prohibit any public place from accommodating a registered patient's use of medical marijuana;
6. Restrict research related to marijuana conducted at a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity.
ZONING MATTERS

R.C. 5713.30(A)(5)

• "Land devoted exclusively to agricultural use" includes tracts, lots, or parcels of land or portions thereof that are used for conservation practices, provided that the tracts, lots, or parcels of land or portions thereof comprise twenty-five per cent or less of the total of the tracts, lots, or parcels of land that satisfy the criteria established in division (A)(1), (2), (4), or (5) of this section together with the tracts, lots, or parcels of land or portions thereof that are used for conservation practices.

• Notwithstanding any other provision of law to the contrary, the existence of agritourism on a tract, lot, or parcel of land that otherwise meets the definition of "land devoted exclusively to agricultural use" as defined in this division does not disqualify that tract, lot, or parcel from valuation under sections 5713.30 to 5713.37 and 5715.01 of the Revised Code.

• A tract, lot, parcel, or portion thereof on which medical marijuana, as defined by section 3796.01 of the Revised Code, is cultivated or processed is not land devoted exclusively to agricultural use.

Proximity

• Except as provided in division (B) of this section, no medical marijuana cultivator, processor, retail dispensary, or laboratory that tests medical marijuana shall be located within five hundred feet of the boundaries of a parcel of real estate having situated on it a school, church, public library, public playground, or public park.

• If the relocation of a cultivator, processor, retail dispensary, or laboratory licensed under this chapter results in the cultivator, processor, retail dispensary, or laboratory being located within five hundred feet of the boundaries of a parcel of real estate having situated on it a school, church, public library, public playground, or public park, the department of commerce or state board of pharmacy shall revoke the license it previously issued to the cultivator, processor, retail dispensary, or laboratory.
Location Regulation

R.C. 519.21(D):
Nothing in this Section prohibits a township zoning commission, board of township trustees, or board of zoning appeals from regulating the location of medical marijuana cultivators, processors, or retail dispensaries or from prohibiting such cultivators, processors, or dispensaries from being located in the unincorporated territory of the township.

R.C. 3796.29:
• The legislative authority of a municipal corporation may adopt an ordinance, or a board of township trustees may adopt a resolution, to prohibit, or limit the number of, cultivators, processors, or retail dispensaries licensed under this chapter within the municipal corporation or within the unincorporated territory of the township, respectively.
• This section does not authorize the legislative authority of a municipal corporation or a board of township trustees to adopt an ordinance or resolution limiting research related to marijuana conducted at a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity.
EMPLOYMENT ISSUES

Time to REVISIT and UPDATE your employee handbook!
R.C. 3796.28(A)(1)
Nothing in this chapter requires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana.

R.C. 3796.28(A)(2)
Nothing in this chapter prohibits an employer 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.
R.C. 3796.28(A)(3)
Nothing in this chapter prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy.

R.C. 3796.28(A)(4)
Nothing in this chapter interferes with any federal restrictions on employment, including the regulations adopted by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as amended.
R.C. 3796.28(A)(5)
Nothing in this chapter permits a person to commence a cause of action against an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana.

R.C. 3796.28(A)(6)
Nothing in this chapter affects the authority of the administrator of workers' compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established in accordance with rules adopted by the administrator under Chapter 4123 of the Revised Code.
R.C. 3796.28(B)
A person who is discharged from employment because of that person's use of medical marijuana shall be considered to have been discharged for just cause for purposes of division (D) of section 4141.29 of the Revised Code if the person's use of medical marijuana was in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana.
THANK YOU

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