

The Laws and Ethics of Medical Marijuana

The legalization of medical marijuana has been a subject of controversy for years; however, marijuana has been used in medicine since as early as 2737 B.C.¹ In recent years, more and more people have shown support for medical marijuana. Since California legalized medical marijuana, nineteen other states, along with the District of Columbia, have also passed laws allowing the use of medical marijuana.² It is important to note that although medical marijuana has been legalized in the following states, it is still illegal under federal law, and dispensaries as well as patients may be federally prosecuted at any time. The laws pertaining to medical marijuana vary from state to state. Even more so, the differing regulation laws may also exist at city and county levels within these states. Because there are so many varying laws for each state in regards to who is considered a caregiver, what specific types of doctors can prescribe medical marijuana, how licenses are obtained to dispense medical marijuana, permits for medical marijuana patients, privilege revocation etc., the following paragraphs will be more focused towards the patients' rights as to the amount and use of their medical marijuana as well as patient registry and dispensary permission information.

California was the first state to legalize medical marijuana in 1996. Proposition 215 protects medical marijuana patients from being prosecuted by state law, and it also protects the physicians, caregivers, and other prescribers of medical marijuana from being prosecuted for prescribing or recommending the use of medical marijuana. Patients have access to dispensaries in California. Legislative statute SB420 began taking effect in 2004, allowing patients to cultivate their own marijuana while setting the guidelines for marijuana cultivation and possession. This law also sets up a voluntary state identification card system. Under this statute, the most plants a patient can possess are six mature plants or twelve immature plants, and the patient is permitted to possess up to eight ounces of processed cannabis, which is cannabis that can be smoked. Statute SB420 also states that individual cities and counties are not allowed to enact lower limits than what has been set up as the state standard. As for the use of medical marijuana, statute SB420 forbids smoking in "no smoking zones, within 1000 feet of a

school or youth center except in private residences; on school buses, in a motor vehicle that is being operated, or while operating a boat”.³

Alaska, Oregon, and Washington all passed laws legalizing medical marijuana in 1998. In Alaska, Ballot Measure #8 was approved in 1998 and took effect in March of 1999. Patients and caregivers may not possess more than one ounce of processed marijuana, and they may not cultivate more than three mature and three immature marijuana plants. Dispensaries are not permitted in Alaska. In June of 1999, an amendment to this law, Senate Bill 94, enacted a mandatory patient registry and stated that patients had to possess a valid ID card to have protection from prosecution. Medical marijuana patients may not use marijuana in plain view of the general public, in the workplace, in any facility monitored by the Department of Administration, on or within 500 feet of school grounds or youth recreational centers, or on a school bus.⁴

In Oregon, Measure 67 was approved in November of 1998 and took effect in December of 1998. Under this law, patients and caregivers may not possess more than three ounces of processed marijuana, and they may not cultivate more than three mature marijuana plants and four immature plants. Although patients and caregivers are allowed to cultivate their own marijuana, House Bill 3052, which took effect July of 1999, states that they are only allowed to cultivate in one location. There was also another bill that was passed in January of 2006, Senate Bill 1085, that raised the amount of cannabis a patient can possess. This law allows a medical marijuana patient to possess 24 ounces of processed marijuana, six mature plants, and 18 immature seedlings. Oregon has an established patient registry. Something interesting about the Oregon Court of Appeals is that they have permitted patients from out of state to get a registration ID card to guard them from prosecution while in Oregon. However, the out of state patients are required to obtain a recommendation from an Oregon licensed physician.⁵

In Washington, voters approved Measure 692 also in November of 1998, and the law took effect on the same day. Under this law, patients and caregivers are not allowed to possess or cultivate more than a 60-day supply of marijuana. This law has not established a state patient registry. Senate Bill 6032 was an amendment to the law that ordered the Department of Health to define what exactly qualified as a “60-

day supply of marijuana for qualifying patients”. In October of 2008, guidelines were set up which specified that a medical marijuana patient could “cultivate up to 15 cannabis plants and/or possess up to 24 ounces of usable marijuana. These limits took effect in November of 2008. There was an additional amendment, Senate Bill 5798, that took effect in June of 2010 allowing other health care professionals including but not limited to naturopaths, physician’s assistants, and advanced registered nurse practitioners to legally recommend marijuana therapy to patients.⁶

Maine was the only state to legalize medical marijuana in 1999. Voters approved Question 2 in November of 1999, and the law took effect in December of 1999. Patients and caregivers may possess no more than two and one-half ounces of processed marijuana, and they may not cultivate more than six mature plants. There are additional qualified patients who can possess harvested marijuana in varying stages to ensure that they are able to maintain the supply for their personal needs. Maine authorizes the use of visiting qualified patients of medical marijuana to engage in the use of medical marijuana for 30 days without having to obtain a Maine registration card. However, visiting patients are not authorized to obtain their medical marijuana from Maine. Senate Bill 611 established a confidential patient registry and ID card system. It also allowed for state-licensed nonprofit marijuana dispensaries. LD 1811 was signed into law in 2010 allowing the creation of up to eight nonprofit medical cannabis dispensaries, making one for each of the state’s public health districts. In July 2011, LD 1296 was signed into law eliminating the mandate that required patients to be registered with the state in order to receive legal protection.⁷

In 2000, Colorado, Hawaii, and Nevada passed their laws legalizing medical marijuana. Colorado approved Amendment 20 in November of 2000, and the law took effect in June of 2001. Medical marijuana patients in Colorado may possess no more than two ounces of processed marijuana, and they may not have more than six plants. Amendment 20 establishes a patient registry that issues ID cards to qualifying patients. Medical marijuana laws do not have provisions protecting out-of-state medical marijuana patients. House Bill 1284 was passed in June of 2010, regulating cannabis dispensaries. These facilities must obtain proper licenses and be in compliance with local zoning codes. Licensed dispensary owners are required to undergo a criminal background check by the state. Beginning in July of 2010 HB

1284 also grants local municipalities authority to prohibit the establishment of dispensaries in their communities. Another amendment signed into law in June of 2010 was Senate Bill 109, which limits the authority of physicians to recommend cannabis therapy to certain patients.⁸ Hawaii passed Senate Bill 862 in June of 2000, and the law took effect in December of 2000. Patients and primary caregivers may possess up to three ounces of processed marijuana, and they may cultivate no more than three mature plants and four immature plants. Hawaii has a mandatory, confidential patient registry that issues ID cards. The Hawaii medical marijuana laws do not protect visitors to the state.⁹

In Nevada, Question 9 was passed in November of 2000 and the law took effect in October of 2001. Question 9 recognized the medical use of marijuana which removed the state penalties associated with it. Patients and caregivers may possess no more than one ounce of processed marijuana. Like Hawaii, Nevada patients may not cultivate more than three mature plants and four immature plants. Nevada established a voluntary patient registry. Patients who get arrested on a marijuana possession who did not choose to register can use the “affirmative defense of medical necessity”. This defense is popular among many of the states that have legalized marijuana with voluntary registries. Nevada law, also like Hawaii, does not apply to medical marijuana patient visitors to the state. In June 2013, SB 374 was passed into law, calling for the construction of 66 medical marijuana dispensaries. This bill also increased the limit of marijuana patients are allowed to possess from one ounce of processed marijuana to two and one-half ounces and increased plant cultivation from three plants to twelve.¹⁰

Vermont and Montana both legalized medical marijuana in 2004. Vermont legalized medical marijuana under Senate Bill 76 in May of 2004, and the law began taking effect in July 2004. Vermont law allows patients to possess up to one ounce of processed marijuana, and patients are permitted to cultivate one mature marijuana plant and three immature plants. Senate Bill 76 also established a mandatory patient registry. There were two amendments to this law. Senate Bill 7 took effect in July of 2007. This law expanded the list of medical conditions that qualified a patient for medical marijuana. Senate Bill 17 became law in 2011 allowing up to four state-licensed medical marijuana dispensaries. Each dispensary is able to serve no more than 1,000 patients.¹¹ In Montana, Initiative 148 was approved

in November 2004, and the law took effect the same day. This law established a patient registry and permitted patients or caregivers to cultivate no more than six plants. Senate Bill 423 was an amendment to this law that took effect in July 2011. This law enforced stricter requirements for patients to qualify for medical marijuana. It also reprimands physicians if they recommend more than 25 patients per year for medical marijuana.¹²

Rhode Island was next in line to legalize medical marijuana in January 2006 under the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act. Patients under this law are able to possess two and one-half ounces of processed marijuana and twelve plants. The law specifically states that the cannabis must be stored indoors. Rhode Island has a mandatory patient registry. Patients who visit Rhode Island must have some proof that they are legally able to use medical marijuana in order to avoid prosecution. In 2009, SB 185 was amended to this law allowing nonprofit state-licensed medical marijuana dispensaries. In 2011, the governor at that time, Lincoln Chafee, suspended the dispensary licensing system indefinitely for fear of federal law enforcement. In May of 2012, Governor Chafee signed into law SB 2555. This law allowed the state to establish three small-scale medical marijuana dispensaries, and each dispensary could not possess more than 1,500 ounces of processed marijuana at one time.¹³

In April of 2007, New Mexico passed SB 523, and the law started taking effect July 2007. This law ordered the Department of Health to provide the rules and regulations pertaining to legal medical marijuana by October of 2007. The amendment to this law was not finalized until January 2009. Medical marijuana patients in New Mexico are able to legally possess up to six ounces of processed marijuana, and they may cultivate four mature marijuana plants along with 12 immature plants. The state allows dispensaries. Patients visiting New Mexico are not protected under their medical marijuana laws.¹⁴ Following New Mexico, Michigan passed Proposal 1 to legalize marijuana in November 2008, and the law took effect in December 2008. Medical marijuana patients may possess two and one-half ounces of processed marijuana. They may also cultivate up to 12 marijuana plants as long as they are grown in a

locked facility. This law has established a patient registry. Michigan allows visiting patients to use their medical marijuana if proper qualifying paperwork is presented.¹⁵

In 2010, New Jersey, the District of Columbia, and Arizona all legalized medical marijuana. The New Jersey Compassionate Use Medical Marijuana Act was passed in January 2010, but did not take effect until October 2010. Patients are forbidden to cultivate their own marijuana plants and can only possess two ounces of marijuana per month. SB 2842 is an amendment to this law allowing the sale of cannabis and edible cannabis products; however, the edible products are limited to patients 18 or younger.¹⁶ Visitors are not protected by New Jersey laws. In the District of Columbia, medical marijuana dispensaries were authorized by legislation in May 2010. In July, this legislation became law without federal interference. The D.C. Health Department authorized eight dispensaries to be established with each dispensary limited to cultivating no more than 95 plants at a time. Patients may not grow their own plants, but they may possess up to two ounces of processed marijuana. The District of Columbia does not have a patient registry, and their laws do not protect visiting patients.¹⁷ Arizona approved Proposition 203 in November of 2010, and the law took effect in April of 2011. State licensed dispensaries are allowed under this law. Patients may not possess more than two and one-half ounces of processed marijuana, and they may not cultivate more than 12 plants; however, if a patient lives within 25 miles of a dispensary, they may not cultivate any marijuana plants. Visiting patients in Arizona are protected under their medical marijuana laws.¹⁸

In May 2011, Delaware legalized medical marijuana under Senate Bill 17. This law allows at least one state-licensed dispensary per county. Patients can possess up to six ounces of processed marijuana, but they must obtain the marijuana from a dispensary since Delaware law forbids home cultivation. Delaware has a mandatory patient registry established. Also under this law, visiting medical marijuana patients are protected from prosecution.

Connecticut and Massachusetts both legalized medical marijuana in 2012. In Connecticut, Public Act 12-55 was signed into law in June and took effect in October. There is a patient registry established in Connecticut. Patients and caregivers may possess a combined one-month supply of cannabis. Home

cultivation is not addressed with this law. Patients can get their marijuana from certified pharmacists at licensed dispensaries; however, state-licensed dispensaries have not yet been established.¹⁹ Massachusetts approved Question 3 in November 2012, and the law took effect in January of this year. There is a patient registry in Massachusetts. Qualified patients may possess up to a 60-day supply of marijuana. This law approves the establishment of 35 state-licensed dispensaries. Medical marijuana patients visiting Massachusetts are not protected under these laws.

New Hampshire and Illinois are the most recent states to pass laws legalizing marijuana. New Hampshire approved House Bill 573 in July of this year. This law establishes four state-sanctioned dispensaries for qualifying patients. Patients are permitted to possess up to two ounces of cannabis, but the cannabis must be obtained from a state-licensed facility. Since this law is still in its earliest state of process, it is estimated that it may take regulators around two years to get the medical marijuana program fully functional.²⁰ In Illinois, Public Act 098-0122 was passed this year. Under this act, patients will be allowed to possess up to two and one-half ounces of processed marijuana during a 14-day period. The cannabis must be obtained from an intrastate source. Illinois plans to enact regulations on home cultivation and a patient registry along with state-licensed dispensaries. They will be adopting some policies set up by states who have already established their medical marijuana laws. This act is set to take effect in January of 2014.²¹

Now that the current general medical marijuana laws have been laid out, we can now focus on the ethical issues surrounding the controversial therapy. There is a multitude of factors contributing to why some states have allowed medical marijuana and why others, including the federal government, have not. The ethical issues I will explore in this portion of the paper include medical marijuana prescriptions for children, the overhanging federal prohibition, the public opinion shift, and the profitability as it relates to taxes.

Almost no one would suggest that children ever be granted access to marijuana; however, physicians across the country are increasingly being faced with the ethical dilemma of whether or not to prescribe medical marijuana to children to treat a variety of symptoms. Just one example that gained

national attention, as a result of a documentary aired on CNN, involves a five year-old named Charlotte. She had been diagnosed with Dravet Syndrome causing her to have hundreds of potentially severe seizures a week. When all other treatments had failed, her family explored the use of medical marijuana after learning of its success in other child-patients. The family had an extremely difficult time locating a doctor that would be open to prescribing medical marijuana to a patient of such a young age. The family was finally successful at getting her the prescription and the results were astounding. Her condition improved drastically and her number of seizures decreased to just a few a week.²²

When one first thinks about giving medical marijuana to children, it is easy to assume that the children are given marijuana in its processed form and the children are getting stoned. What many people fail to realize is that there are strains of marijuana that can be used that are low in Tetrahydrocannabinol (THC). This is the ingredient in marijuana that causes the user to experience the “high.” Charlotte was given a strain of marijuana very low in THC and given it orally in her food as well. This obvious success story has driven other doctors to re-think their opinions on child medical marijuana use.

An additional ethical dilemma posed by medical marijuana involves not only doctors but lawyers and growers and distributors as well. All of those who have involvement with medical marijuana must ponder the ethical dilemma of knowingly breaking a federal law to be involved with this treatment. Even if all fifty states decided tomorrow to pass medical marijuana legislation, medical marijuana could still be considered illegal in federal courts. Doctors who prescribe medical marijuana risk their medical licenses and freedom by prescribing it to their patients. Lawyers who decide to defend patients who have been arrested on federal narcotics charges as a result of their prescription for medical marijuana know that despite their client possibly being terminally ill or handicapped, they remain guilty in the eyes of the federal government. Similar dilemmas apply to the growers and distributors who may be operating completely legal under state law and are in the business to help people with serious illnesses. The constant fear that these people feel each day is a tremendous moral dilemma, as they must decide whether or not to risk their freedom for the sake of improving the lives of others.²³

Another ethical dilemma focuses on the shift of public opinion that has occurred in the past few decades. Now more than ever, there is an overwhelming call for medical marijuana research and legalization. Politicians and doctors who may feel that medical marijuana is beneficial to patients are still feeling the peer pressure and are reluctant to show support because middle-age and older Americans are still in a majority against its use. These older Americans were brought up watching government propaganda films such as reefer madness, and remember the days when Harry J. Anslinger, America's first and longest serving drug czar began his campaign against marijuana.²⁴ Even middle-age Americans remember the 1970s when President Nixon began his own war on drugs and first classified marijuana as a schedule-1 drug, stating it had no medical benefits and is harmful and addictive as heroin and ecstasy.²⁵ Even recently, the Reagan's made a name for themselves in the America's "War on Drugs" in which marijuana was a main target.²⁶ With the United States government showing such staunch opposition to all things marijuana for the last century, it has been an extremely slow process in shifting public opinion and opening people's minds to the ideas that maybe marijuana does have medicinal benefits. Until public opinion shifts even more and additional states pass legislation, medical marijuana research won't get federal funding, thus physicians and patients alike will be swayed to not pursue marijuana as a legitimate option for relief of their illness.

The final ethical dilemma which will be mentioned here is felt mostly by those who oppose medical marijuana legislation. Those members of society who are against medical marijuana for a multitude of different reasons find it hard to argue with the fact that medical marijuana if regulated and supported by the state would bring in tremendous revenue in the form of tax dollars each year.²⁷ Oppositionists must struggle with the knowledge that by opposing medical marijuana legislation, they are costing their state millions of dollars in tax revenues that could be put towards roads and education and even youth and teen drug prevention and awareness programs. In Colorado alone, over \$9,000,000 in tax revenue was brought in from medical marijuana sales at state dispensaries.²⁸ Oakland, California raised \$1,400,000 alone in 2011 off of their medical marijuana dispensaries.²⁹

These have been the current laws and ethical issues pertaining to medical marijuana in our country. As more states continue to pass legislation for the legalization of marijuana there will also continue to be ethical and legal dilemmas for patients and providers of medical marijuana. As additional states allow the use of medical marijuana, the federal government will face increasing pressure to change its stance on the issue. Medical marijuana patients have enough to worry about with their disease, hopefully one day soon they will not have to worry about losing their freedom too.

¹ <http://content.time.com/time/health/article/0,8599,1931247,00.html>

² <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>

³ <http://www.canorml.org/medical-marijuana/patients-guide-to-california-law>

⁴ <http://touchngo.com/lglcntr/akstats/Statutes/Title17/Chapter37/Section040.htm>

⁵ <http://norml.org/legal/item/oregon-medical-marijuana>

⁶ <http://norml.org/legal/item/washington-medical-marijuana>

⁷ <http://norml.org/legal/item/maine-medical-marijuana>

⁸ <http://norml.org/legal/item/colorado-medical-marijuana>

⁹ <http://norml.org/legal/item/hawaii-medical-marijuana>

¹⁰ <http://norml.org/legal/item/nevada-medical-marijuana>

¹¹ <http://norml.org/legal/item/vermont-medical-marijuana>

¹² <http://norml.org/legal/item/montana-medical-marijuana>

¹³ <http://norml.org/legal/item/rhode-island-medical-marijuana>

¹⁴ <http://norml.org/legal/item/new-mexico-medical-marijuana>

¹⁵ <http://norml.org/legal/item/michigan-medical-marijuana>

¹⁶ <http://norml.org/legal/item/new-jersey-medical-marijuana>

¹⁷ <http://norml.org/legal/item/district-of-columbia-medical-marijuana>

¹⁸ <http://norml.org/legal/item/arizona-medical-marijuana>

¹⁹ <http://norml.org/legal/item/connecticut-medical-marijuana>

²⁰ <http://norml.org/legal/item/new-hampshire-medical-marijuana>

²¹ <http://www.ilga.gov/legislation/publicacts/98/PDF/098-0122.pdf>

²² http://www.cnn.com/2013/08/07/health/charlotte-child-medical-marijuana/index.html?iid=article_sidebar

²³ http://www.ctnewsjunkie.com/archives/entry/medical_marijuana_poses_ethical_challenges_for_lawyers/

²⁴ <http://www.imdb.com/title/tt0028346/>

²⁵ <http://www.justice.gov/dea/druginfo/ds.shtml>

²⁶ <http://www.drugpolicy.org/new-solutions-drug-policy/brief-history-drug-war>

²⁷ <http://www.huffingtonpost.com/news/legalize-marijuana-tax-revenue>

²⁸ <http://www.colorado.gov/cs/Satellite/Revenue-Main/XRM/1251633259746>

²⁹ http://www.nytimes.com/2012/02/12/us/cities-turn-to-a-crop-for-cash-medical-marijuana.html?_r=2&