

Ohio's Medical Marijuana Law

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"Let's get together and feel alright" sang the Ohio legislature to those suffering from ailments like: Alzheimer's disease, Epilepsy, Fibromyalgia, and Parkinson's disease. Those are just a few of the "qualifying medical conditions"[1] in House Bill 523 for which a physician may prescribe medical marijuana. The physician, however, must first be granted a certificate to recommend by the State of Ohio Medical Board.[2]

Ohio Specifics

Ohio's medical marijuana law took effect on September 8, 2016. It allows the cultivation, processing, testing, dispensing, and use of medical marijuana per a physician's recommendation. Interestingly, patients who receive a physician's medical marijuana recommendation will be unable to smoke it, as this use is expressly prohibited under the law.[3] Patients, on the other hand, will be able to ingest "edibles" or even absorb marijuana through the skin by a patch.

A physician holding a certificate to recommend may recommend medical marijuana treatment only if there is "bona-fide" physician-patient relationship established.[4] Physicians are also required to submit an annual report describing their observations of the effectiveness of medical marijuana on their patients and to complete at least two hours of continuing education relating to medical marijuana per year.[5] Importantly, physicians have been granted immunity under the law for recommending a patient's use of medical marijuana.[6]

Federal Illegality

Still, marijuana remains illegal at the federal level under the Controlled Substances Act (CSA)[7] and one side effect of this is that marijuana businesses are unable to pay payroll taxes in compliance with IRS requirements. The IRS requires payroll taxes to be deposited using the electronic federal tax payment system,[8] but marijuana businesses are unable to do so because most banks

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refuse to offer them accounts in fear of being punished by federal regulators for housing dollars earned through illegal means.[9]

While Ohio marijuana businesses may be powerless over the electronic payment of payroll taxes, they – along with other Ohio citizens – can take comfort knowing that federal prosecutors will not be after them for using medical marijuana in violation of federal law. The United States Department of Justice (USDOJ) has stated that its general policy is not to interfere with the medical use of marijuana pursuant to state laws that tightly regulate and control the medical marijuana market.[10] This guidance does not mean that those using or dispensing medical marijuana will be immune from *federal* prosecution,[11] but it does mean that they should not be bothered by federal prosecutors for their participation in the medical marijuana industry pursuant to Ohio law. The USDOJ's view is certainly subject to change depending on the outcome of the 2016 presidential election, but there are multiple outlets reporting that Hillary Clinton and Donald Trump both support the use of marijuana for medicinal purposes.[12]

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[1] Sec. 3796.01(A)(6).

[2] Sec. 4731.30(B)(1).

[3] Sec. 3796.06(B)(1).

[4] Sec. 4731.30(C).

[5] Sec. 4731.30(E)-(F).

[6] Sec. 4731.30(H).

[7] 21 U.S.C. §§ 812(b)(1), 841(a)(1).

[8] IRS Publication 15 (2016), p. 27, *available at*: https://www.irs.gov/pub/irs-pdf/p15.pdf.

[9] Kennedy, James W. *Marijuana Dispensary Settles Case after IRS Suggests It Engage in Money Laundering*. *Tax Foundation* (Apr. 20, 2015), *available at*: http://taxfoundation.org/blog/marijuana-

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dispensary-settles-case-after-irs-suggests-it-engage-money-laundering.

[10] *See* P. 2 Op. 2016-6, Oh. Sup. Ct. (August 5, 2016) (citing Memorandum from James M. Cole, Deputy Attorney General, to all United States Attorneys, Guidance Regarding Marijuana Enforcement (August 29, 2013)).

[11] *See id.* at 3 (emphasis added).

[12] *See* http://fortune.com/2016/07/12/hillary-clinton-donald-trump-marijuana/; http://www.parentherald.com/articles/54648/20160714/hillary-clinton-donald-trump-agree-one-issue-legalized-marijuana.htm

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