

An Introduction to Pennsylvania's Medical Cannabis Law



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Act 16 – 35 Pa.C.S.A. §10231.101 *et seq.*

- Act 16 permits production and distribution of Medical Cannabis.
- Medical Cannabis is legal for a patient with a “qualifying condition.”
- Creates a system of licensing and regulating grower/processor regulating dispensaries.
- Physician training and registry.
- Patient registry and civil/criminal protections.
- Oversight from the Department of Health.



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Medical Cannabis Qualifying Conditions

- HIV/AIDS
- Cancer
- ALS
- PTSD
- Autism
- Glaucoma
- Chronic neuropathic pain
- Parkinson's Disease
- MS
- Epilepsy
- Severe Seizure Disorder
- IBS
- Crohn's
- Neuropathies
- Sickle Cell Anemia
- Huntington's Disease
- Cancer in remission
- Opioid addiction therapy
- Spasticity
- Neurodegenerative



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Medical Cannabis Qualifying Conditions

- Estimated patient population of up to 200,000-215,000.
- Over 125,000 patients and caregivers registered
- Advisory Board creating procedure for adding qualifying conditions
- Board recommended adding Anxiety and Insomnia – up to Secretary of Health Dr. Levine to approve



Registering at Patient

- A patient with a qualifying condition may register with the Department of Health
- Patient MUST be a Pennsylvania resident with a valid PA Driver's License or PA Identification
- Patient is not prohibited if patient has criminal convictions
- Once registered, patient must be seen by a physician registered with the Department of Health to make recommendations
- Over 1000 physicians currently registered



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Registering at Caregiver

- Must be over 21
- Register with Department of Health and undergo background check
- Convictions prohibited
- May have no more than 5 patients
- May purchase medical cannabis products from dispensary and deliver to patient.
- Necessary for patients under 18 or patients who cannot physically go to a dispensary



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Medical Marijuana Products

- Oil, tincture, topical, pill or liquid form
- Smoking prohibited.
- Third party lab testing required
- No strain restrictions or THC caps
- Edibles prohibited but physician may recommend incorporating product into edible form.



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Is Medical Cannabis Safe?

- LD 50 rating is “so low that one would have to consume 1500 pounds of marijuana in a single day.”
- United States holds patent on THC’s neuroprotectant and antioxidant qualities.
- There have been **zero fatal overdoses** in the entire history of the human race.
- Dr. Cyril Wecht: “I have never attributed a case of death to acute cannabinoid toxicity.”
- DEA has admitted the “gateway drug” theory is false.
- DEA Judge Francis Young: “Marijuana in its natural form is one of the safest therapeutically active substances known to man.” (1988)



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Patient Protections

- Protection from arrest, employment discrimination, housing discrimination and custody discrimination.
- Criminal penalties for illegal diversion.
- Not permitted to possess medical cannabis from another state.
- May not smoke, grow or dispense medical marijuana.
- Registration may be revoked.
- Patient registry protected from law enforcement or public disclosure. Intended to be confidential.
- Patient may retain firearms under PA law, but may be prohibited from new firearm purchase.



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35 Pa.C.S.A. §10231.2301 – Patient Protections

- a) **Licensure.**--None of the following shall be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a Commonwealth licensing board or commission, solely for lawful use of medical marijuana or manufacture or sale or dispensing of medical marijuana, or for any other action taken in accordance with this act:
- b) **Employment.**—
- 1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana
 - 2) (2) Nothing in this act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment.
 - 3) Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law.
- c) **Custody determination.**--The fact that an individual is certified to use medical marijuana and acting in accordance with this act shall not by itself be considered by a court in a custody proceeding. In determining the best interest of a child with respect to custody, the provisions of 23 Pa.C.S. Ch. 53 (relating to child custody) shall apply.



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Impacts on Rental Housing

- No express protections from housing discrimination for medical patients and or caregivers in section 2103
- When PA legalized medical cannabis, it became the 29th state to do so (there are now 34 states and the District of Columbia that permit some form of medical cannabis).
- PA does not need to “reinvent the wheel” as these issues have been litigated in other states



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Impacts on Rental Housing - Litigation

- Federal Courts in Washington and Michigan have addressed housing discrimination
- Analyzed protections provided by the Fair Housing Act (FHA), the Americans with Disabilities Act (ADA) and the Rehabilitation Act
- Litigation involved a housing authority and a federally subsidized housing project



Impacts on Rental Housing - Litigation

- Marijuana remains Schedule I federally
- Court found that each Act prohibited illegal use of controlled substances
- Federal law does not recognize ANY medical use of cannabis
- Courts held that medical cannabis patients are not protected by the Acts because of it's Schedule I status



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Impacts on Rental Housing – Practical Effect in PA

- Because Act 16 does not provide any protections against housing discrimination Courts likely to rule against patients as they have in other states
- Just because a residential landlord can prohibit medical cannabis use it doesn't follow that they should
 - Little to no chance of prosecution – unaware of any such cases
 - Frustrates goals of Act 16 to provide a treatment alternative
- A patient may not smoke medical cannabis – grounds for eviction



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Impacts on Rental Housing – Prohibited Patient/Tenant Conduct

- A patient may not smoke medical cannabis. Dry leaf forms may only be “vaporized” or incorporated in to edible products
- A patient may not “dispense” his or her medical cannabis products
 - Dispensing includes “sharing” “selling” or even “giving away”
- A patient may not possess “black market” cannabis
 - Act 16 only provides protections for medical cannabis products purchased from the dispensary
 - A patient possessing non-dispensary cannabis is subject to prosecution and conviction.



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Impact on Commercial Real Estate

- Act 16 provides for 25 cultivation licenses and 50 retail dispensary licenses (all have been awarded, about half are functional)
- A dispensary license holder may have up to three retail storefronts
 - Local dispensaries have locations in The Strip, Sq. Hill, East Liberty, New Kensington, Uniontown, Monroeville, Butler, Zielienople, Cranberry and Greensburg.
 - Patients free to use ANY dispensary
- All licenses awarded – unlikely that a purchaser of real estate will purchase a property with a cultivation facility or dispensary



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Impact on Commercial Real Estate

- Applicants for cultivation or dispensary licenses required to show zoning approval during application phase
- Ancillary business CANNOT possess medical cannabis
 - Physician certification office
 - Paraphernalia retailers
 - Lighting equipment, growing equipment
 - Pennsylvania Medical Marijuana Educational Center



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More Information

Email patrick@cannabislegalsolutions.net
andrew@cannabislegalsolutions.net

Visit: www.governor.pa.gov/topic/medical-marijuana

Visit www.cannabislegalsolutions.net

Thank you for your continued support!



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