



MICHIGAN STATE POLICE

LEGAL UPDATE

No. 103

June 5, 2013

This update is published by the Michigan State Police, Office of the Director, Legislative and Legal Resources Section. Questions and comments may be directed to MSPLegal@michigan.gov. Past editions can be found at www.michigan.gov/msp-legal.

MEDICAL MARIHUANA

The protections of the Michigan Medical Marihuana Act extend to a registered qualifying patient who internally possesses marihuana while operating a vehicle unless the patient is under the influence of marihuana.

In *People v. Koon*, the defendant was stopped by a police officer for a traffic violation. During the stop, the defendant informed the officer he had a medical marihuana patient registry identification card and had smoked marihuana five to six hours prior to being stopped. A blood test showed THC in his system. The defendant was charged with operating a motor vehicle with a schedule 1 controlled substance in his body in violation of MCL 257.625(8).

The [Michigan Vehicle Code \(MVC\)](#), [MCL 257.625\(8\)](#), prohibits a person from operating a vehicle with any amount of a schedule 1 controlled substance in his or her body. The [Michigan Medical Marihuana Act \(MMMA\)](#) provides protections to registered qualifying patients who internally possess marihuana, but, as detailed in [MCL 333.26427\(b\)\(4\)](#), the MMMA does not protect registered qualifying patients who operate a vehicle while “under the influence” of marihuana. The MMMA does not define what it means to be “under the influence” of marihuana.

As discussed in [Legal Update No. 96](#), the Michigan Court of Appeals previously stated the definition of “under the influence” for purposes of the MMMA is the same as the definition of “under the influence” for purposes of MCL 257.625(8). The Michigan Court of Appeals concluded that the defendant could be convicted under MCL 257.625(8) for having any amount of marihuana in his body without proof that he had acted in violation of the MMMA by operating a vehicle under the influence of marihuana.

The Michigan Supreme Court reversed the Michigan Court of Appeals and concluded that the MMMA’s protections supersedes the MVC’s zero-tolerance provision and allows a registered qualifying patient to drive when he or she has the presence of marihuana in his or her system, but is not otherwise under the influence of marihuana. The Court did not set the

exact parameters of when a person is “under the influence;” however, the Court concluded the phrase clearly contemplates something more than having any amount of marihuana in one’s system and requires some effect on the person.

Therefore, officers must be able to articulate facts that support a finding of probable cause that a registered qualifying patient is under the influence of marihuana in order to arrest a registered qualifying patient for violating MCL 257.625(8).

A registered qualifying patient is not entitled to immunity from arrest, prosecution, or penalty under section 4 of the Michigan Medical Marihuana Act for transferring marihuana to another registered qualifying patient. A registered primary caregiver is not entitled to immunity under section 4 of the Michigan Medical Marihuana Act for transferring marihuana to anyone other than a registered qualifying patient connected to the caregiver through Michigan’s registration process.

In *State v. McQueen*, the defendants, a registered qualifying patient and primary caregivers, owned and operated a medical marihuana dispensary. Members of the dispensary were either registered qualifying patients or registered primary caregivers. Members stored marihuana at the dispensary that was available for purchase to other members of the dispensary. The dispensary charged a fee for each sale.

The Michigan Supreme Court reversed the portion of the decision of the Michigan Court of Appeals, discussed in [Legal Update No. 89](#), excluding sales from the definition of “medical use.” The MMMA, [MCL 333.26423\(f\)](#), defines the term “medical use” to include transfers of marihuana. The Court held the term “medical use” as defined in the MMMA encompasses the sale of marihuana “to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition.”

The Court looked to Section 4 of the MMMA, [MCL 333.26424](#), to determine if the section’s immunity provisions applied to patient-to-patient sales of

marihuana. MCL 333.26424 sets forth the requirements for a person to be entitled to immunity for the medical use of marihuana. MCL 333.26424(a) protects registered qualifying patients from arrest, prosecution or penalty for the medical use of marihuana in accordance with the MMMA. Additionally, MCL 333.26424(b) protects registered primary caregivers from arrest, prosecution, or penalty for assisting a qualifying patient connected to the caregiver through Michigan's registration process with the medical use of marihuana in accordance with the MMMA.

The Court held that to be eligible for immunity under MCL 333.26424, a registered qualifying patient must be engaging in marihuana-related conduct for the purpose of alleviating the patient's own debilitating medical condition or symptoms associated with the condition.

Similarly, the Court held that to be eligible for immunity under MCL 333.26424, a registered primary caregiver must be engaged in marihuana-related conduct for the purpose of alleviating the debilitating medical condition, or symptoms associated with the debilitating medical condition, of a registered qualifying patient to whom the caregiver is connected through Michigan's registration process.

As a result, the Court held that MCL 333.26424 does not offer immunity from arrest, prosecution, or penalty to a registered qualifying patient who transfers marihuana to another registered qualifying patient, nor does it offer immunity to a registered primary caregiver who transfers marihuana to anyone other than a registered qualifying patient to whom the caregiver is connected through Michigan's registration process.

Additionally, the court examined MCL 333.26424(i) which protects a person from arrest, prosecution, or penalty in any manner solely for being in the presence or vicinity of the medical use of marihuana in accordance with the MMMA or for assisting a registered qualifying patient with using or administering marihuana. The Court stated the defendants were not "solely...in the presence of vicinity of the medical use of marihuana" because they were actively facilitating patient-to-patient transfers of marihuana for monetary gain.

The Court held the terms "using" and "administering," for purposes of MCL 333.26424(i), are limited to conduct involving the actual ingestion of marihuana. The Court noted the transfer, delivery, and acquisition of marihuana are three activities that are part of the "medical use" definition of marihuana that the drafters

of the MMMA chose not to include as protected activities within MCL 333.26424(i). Therefore, the defendants' assistance to patients in acquiring marihuana was not protected by this section.

Section 4 of the Michigan Medical Marihuana Act does not provide a registered primary caregiver with immunity from arrest, prosecution, or penalty when growing marihuana collectively with other registered primary caregivers and registered qualifying patients.

In *People v. Bylsma*, the defendant, a registered primary caregiver under the MMMA, was charged with manufacturing marihuana in violation of the [Public Health Code](#) following an execution of a search warrant where the police seized approximately 88 plants from a warehouse space the defendant leased. A single lock secured the warehouse space, which was divided into three separate booths. The booths were latched but not locked, and the defendant moved plants between the booths. The defendant claimed that as the registered primary caregiver for two registered qualifying patients, he was allowed to possess 24 plants, that other registered primary caregivers and registered qualifying patients owned the remaining plants, and that all of them used the warehouse space as a common enclosed, locked facility.

In order for a registered primary caregiver to receive immunity under [MCL 333.26424\(b\)](#), the registered primary caregiver may not possess more than 12 plants kept in an enclosed, locked facility for each qualifying patient to whom he or she is connected through Michigan's registration process. Likewise, in order for a registered qualifying patient to receive immunity under [MCL 333.26424\(a\)](#), the registered qualifying patient may not possess more than 12 plants kept in an enclosed, locked facility.

The Michigan Supreme Court held that only one of two people may possess a patient's 12 marihuana plants for purposes of immunity from arrest, prosecution, or penalty under MCL 333.26424(a) and MCL 333.26424(b):

- The registered qualifying patient himself or herself, if the qualifying patient has not specified that a primary caregiver be allowed to cultivate his or her marihuana plants, or
- The qualifying patient's registered primary caregiver, if the qualifying patient has specified that a primary caregiver be allowed to cultivate his or her marihuana plants.

The Court examined the definition of the term “possession” for purposes of the MMMA. Possession of marihuana is one activity that constitutes “medical use” of marihuana under the MMMA; however, the MMMA does specifically define “possession.” The Court held that the MMMA incorporates the definition of possession of controlled substances used in longstanding Michigan law (actual or constructive). The essential inquiry is whether there is a sufficient nexus between the defendant and the contraband, including whether the defendant exercised dominion and control over it. The Court found the defendant exercised dominion and control over all the marihuana plants seized from the warehouse space.

The defendant asserted that the definition of “enclosed, locked facility” in MCL 333.26423 allows multiple patients and caregivers to combine their marihuana into a single enclosed, locked facility as long as only registered qualifying patients and registered primary caregivers are allowed access to the enclosed, locked facility. The Court held that for a registered qualifying patient or registered primary caregiver to receive immunity under MCL 333.26424, the “enclosed, locked facility” housing marihuana plants must be such that it allows only one person to possess the marihuana plants in the facility, either the registered qualifying patient or the registered primary caregiver with whom the registered qualifying patient is connected through Michigan’s registration process.

The Court determined that because the defendant possessed more plants than he was allowed to possess under MCL 333.26424(b) and he possessed plants on behalf of patients with whom he was not connected through Michigan’s registration process, the defendant was not entitled to immunity from arrest, prosecution, or penalty under MCL 333.26424.

The Michigan Penal Code amended to include restrictions on transporting usable marihuana in or upon a motor vehicle.

[Public Act 460 of 2012](#) amended the Michigan Penal Code by adding [MCL 750.474](#). Under MCL 750.474, a person shall not transport or possess usable marihuana as defined in [MCL 333.26423](#) in or upon a motor vehicle or any self-propelled vehicle designed for land travel unless the usable marihuana is one or more of the following:

- Enclosed in a case that is carried in the trunk of the vehicle.
- Enclosed in a case that is inaccessible from the interior of the vehicle, if the vehicle in which the person is travelling does not have a trunk.

A person who violates MCL 750.474 is guilty of a 93-day misdemeanor.

The definition section of the Michigan Medical Marihuana Act was amended, including provisions for growing marihuana plants outdoors.

[Public Act 512 of 2012](#) made various amendments to the MMMA, including the following:

The definition of “bona fide physician-patient relationship” was added to [MCL 333.26423\(a\)](#).

The definition of “enclosed, locked facility” in [MCL 333.26423\(d\)](#) was amended to mean a closet, room, or other comparable, stationary, and fully enclosed area equipped with secured locks or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient.

Marihuana plants grown outdoors are considered to be in an enclosed, locked facility if the plants:

- Are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure;
- Are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that is anchored, attached, or affixed to that ground that prevents access by the general public;
- Located on land that is owned, leased, or rented by either the registered qualifying patient or a person designated through Michigan’s registration process as the primary caregiver for the registered qualifying patient or patients for whom the marihuana plants are grown; and
- The structure must be equipped with functioning locks or other security devices that restrict access to only the registered qualifying patient or the registered primary caregiver who owns, leases, or rents the property on which the structure is located.

Enclosed, locked facility includes a motor vehicle if both of the following conditions apply:

- The vehicle is being used temporarily to transport living marihuana plants from one location to another with the intent to permanently retain those plants at the second location.
- An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marihuana plants belong or the individual designated through Michigan’s registration process as the primary caregiver for the registered qualifying patient.

The definition of “primary caregiver” or “caregiver” in [MCL 333.26423\(h\)](#) was revised to mean a person who:

- is at least 21 years old,
- has agreed to assist with a patient’s medical use of marihuana,
- has not been convicted of any felony within the past 10 years, and
- has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in [MCL 770.9a](#).

[MCL 333.26424\(a\)](#) and [MCL 333.26424\(b\)](#) were amended to require a qualifying patient or a primary caregiver to present both his or her registry identification card and a valid driver license or government-issued photo identification card, in order to be protected from arrest.

SUBSCRIPTIONS

In order to receive the Update via e-mail, click [here](#) or go to www.michigan.gov/msp-legal and click on “subscribe to legal updates.”