



O-HIGH-O:
Ohio's Medical Marijuana
Statute & Its Legal Impact



THE CHAMBER
Of Greater Springfield

Presented to Chamber of Greater Springfield by:

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Marijuana leaf or buckeye leaf?



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Medical Marijuana: History and Law

- 2015 – Issue 3
- Legislation signed in June 2016
 - Ohio now has licensed cultivators, testing labs, processors and dispensaries.
 - Must have a card issued by a doctor registered with Ohio to buy from a licensed dispensary.
 - Ohio not alone – 38 states have legalized medical marijuana; 15 have legalized recreational



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Statutes and regulations governing medical marijuana

- O.R.C. 3796 – Medical Marijuana Control Program
- OAC 3796.1-1 Program Definitions
- OAC 3796.2 Cultivators
- OAC 3796.3 Processors
- OAC 3796.4 Testing Laboratories
- OAC 3796.5 Administration and enforcement

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Statutes and regulations governing medical marijuana

- OAC 3796.6 Dispensaries
- OAC 3796.7 Patients and Caregivers
- OAC 3796.8 Forms and Methods of Administration
- OAC 4731.32 Physicians

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How to become a medical marijuana user

- 1. Patients must have a qualifying medical condition.
- 2. Patients must have a medical marijuana card, issued by a doctor registered with Ohio specifically for prescription medical marijuana. (There are 3 in Clark County.)
- 3. Patients must buy the medical marijuana from a licensed dispensary. (There are 2 in Springfield.)

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Medical Marijuana

Per ORC 3796.01, Patients qualify if they have these conditions:

HIV/AIDS

Alzheimer's disease

ALS (Amyotrophic lateral sclerosis)

Cachexia – new 2019

Cancer

CTE (chronic traumatic encephalopathy)

Crohn's disease

Epilepsy or another seizure disorder

Fibromyalgia

Glaucoma

Hepatitis C

IBD (inflammatory bowel disease)

MS (multiple sclerosis)

Pain – chronic/severe or intractable

Parkinson's disease

Positive Status for HIV

PTSD (post traumatic stress disorder)

Sickle cell anemia

Spinal cord disease or injury

Tourette's syndrome

Traumatic brain injury

Ulcerative colitis

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Medical Marijuana

- New conditions can be added by petitioning state medical board.
- In 2019, the Board rejected the following conditions:
 - Anxiety (Met requirements of new scientific info per OAC 4731-32-05)
 - Autism (Met requirements of new scientific info per OAC 4731-32-05)
 - Depression (Did not contain supporting doc. needed per rule)
 - Insomnia (Did not contain supporting doc. needed per rule)
 - Opioid addiction (Did not contain supporting doc. needed per rule)

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- The State Medical Board of Ohio established an annual process where members of the public may petition the Board to add new qualifying medical conditions. The next petition period is scheduled to open on November 1, 2020 and close on December 31, 2020.
- In 2019, The Board received 27 submissions for new conditions
 - Cachexia only was added as a qualifying condition.
 - Other conditions previously recognized were expanded.

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Medical Marijuana

- **(CNN)**Browns and Bengals fans don't fear -- help may soon be here. But it's not the franchise savior you've been dreaming of.
- The State Medical Board of Ohio is officially considering a petition that asks Cleveland Browns or Cincinnati Bengals fandom be considered a qualifying condition to legally obtain medical marijuana.



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Medical Marijuana

- Law prohibits smoking marijuana or growing it at home.
 - Can receive orally via oil, tincture, capsule, or edible;
 - Can receive via vaporizing;
 - Can receive via transdermal patches, lotions, creams or ointments.



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Marijuana and the brain video

<https://www.cnn.com/2020/01/09/us/ohio-browns-bengals-marijuana-spt-trnd/index.html>

Medical Marijuana

- 6/1/19 – 35,162 registered patients in Ohio
- 12/31/19 – 78,376 registered patients in Ohio
- 10/31/20 – 147,678 registered patients in Ohio

That's approx. 7,000 new
medical marijuana patients every



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Cost of Medical Marijuana

Terrasana Labs (Springfield) prices:

- Flower - \$32 - \$42 each (2.83 g.)
- Tincture - \$36 (110 mg)
- Edibles - \$15 - \$49 (assorted)
- Vape (.5G) - \$45 - \$60
- Gear \$3 - \$189
- Extract \$40 - \$80

Ohio has not fixed any prices. They vary from dispensary to dispensary.

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Impact on Ohio Workplaces

O.R.C. 3796.28 Rights of Employer

- Employers should review and update Drug Free and Zero Tolerance Policies (Employers have wide latitude; Decide your company culture)
- If employers don't have one, it is recommended that one be drafted.
- Medical Marijuana users are not entitled to Unemployment Benefits ("Just cause" under statute)
- Legal for employers to fire for possession or distribution of marijuana.
- Legal for employers to fire for use (medicinal use included) provided use violates employer's Drug Free or Zero Tolerance Policies



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Impact on Ohio Workplaces

- No change to Workers' Comp Defenses
 - Positive alcohol and drug tests may be a defense to a BWC claim, but it is a long shot. MUST HAVE REASONABLE SUSPICION.
 - An employer may challenge a BWC claim where the employee tests positive for medical marijuana, but even a longer shot.
 - Voluntary abandonment will not prohibit a terminated employee from receiving TTD if:
 - Employee not impaired at time of injury; or
 - Post-injury drug test shows marijuana usage sometime in the past.

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Impact on Ohio Workplaces

- Employer's obligation to accommodate is *murky*.



- Ohio law specifically states that “*nothing in this chapter requires an employer to permit or accommodate an employee’s use, possession, or distribution of medical marijuana.*” The words “*this chapter*” causes concern that employees might be able to pursue claims against employers under other chapters like Ohio’s disability chapter (R.C. 4112);
- Ohio has not heard such a case yet.

Requesting a Reasonable
ACCOMMODATION



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- Virtually all state courts that have heard this issue have held that employers are not obligated to accommodate. This is predominantly because marijuana is still a Schedule I illegal substance under federal law.
- A Massachusetts court recently held that employers must determine if the requested accommodation is reasonable.
- At present, Ohio courts are likely to follow the majority of cases that say employer is not obligated to accommodate.

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Impact on Ohio Workplaces

- Take-aways:

1. Determine your culture – How will you treat medical marijuana?
2. Update your policies to reflect culture/expectations.
3. Train your employees, supervisors, managers to spot impairment.
4. Update post-accident packet to include reasonable suspicion checklist.
5. If an accommodation is requested, engage in the interactive process.

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“The times they are a changin...”

Bob Dylan

- 12/4/2020 – The U.S. House voted 228 to 164 to legalize marijuana (5 R’s in favor; 6 D’s against).
- Marijuana Investment, Opportunity and Expungement Act (MORE) will de-schedule marijuana and expunge records of those convicted of marijuana offenses. The future of the bill is uncertain.
- Oregon passed Measure 110 in November election legalizing possession and personal use of all drugs (manufacture and sale illegal)

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Impact on Criminal Law

- At present, Federal law makes no distinction between medical marijuana and recreational marijuana.
 - Marijuana is a schedule I controlled substance under federal law.
21 U.S.C. §812(c).
 - Federal banking laws require banks to report criminal activity to federal authorities.
 - Federal laws also prohibit gun purchase or possession of firearms by illegal drug users, including medical marijuana.



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Impact on Criminal Law

- Ohio law does distinguish between medical marijuana and recreational marijuana.
 - Recreational marijuana in Ohio is a schedule I controlled substance.
 - Medical marijuana is a schedule II controlled substance only for purposes of O.R.C. Chapter 3796. See, O.R.C. §3796.01(B).

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Impact on Criminal Law

- No one may operate a motor vehicle while under the influence of marijuana – medical or recreational. See, O.R.C. §3796.22
 - There is no breathalyzer for marijuana.
 - Only blood or urine tests will show marijuana usage and the presence of THC.
 - A person can be charged with OVI if they have 2 ng/ml of THC in blood or 10 ng/ml of THC in urine, or 50 ng/ml of THC metabolite in blood or 35 ng/ml of THC metabolite in urine.

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Impact on tax law

1. Medical marijuana businesses are effectively taxed at a higher rate.
2. 26 U.S.C. §280E prevents deductions of most ordinary and necessary business expenses for those businesses that “traffic” in Schedule I and II controlled substances.
3. Businesses have tried to set up separate management companies to handle ordinary and necessary business expenses, so that deductions can be taken. However, a recent tax court decision does not permit it. *Alternative Health Care Advocates v. Comm’r*, 151 T.C. 225 (Dec. 20, 2018)

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TAX

Impact on tax law

How's business in Ohio's medical marijuana industry?

- Sales were expected to be between \$200 and \$400 million annually.
- 2020 sales through August approximate \$120 million
- July 2020 set a sales record of \$21.4 million
- Ohio sales lag compared to other states perhaps due to price – average price per gram at an Ohio dispensary is \$18.47, whereas Michigan's is \$9.38, and on the street it is \$8.42.

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Michigan

- Medical marijuana has been legal since November 2008;
- Recreational marijuana has been legal since November 2018, with legal recreational sales commencing on Dec.1, 2019.
- Allows a private employer to maintain and enforce a zero-tolerance drug and alcohol policy.
- Employers are not required to accommodate the medical use of marijuana in any workplace.

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West Virginia

- Medical marijuana use is legal.
- Employers cannot discriminate based on the fact that someone has a medical marijuana card.
- Employers are not required to make accommodations for the use of medical marijuana on employer property.
- Employers may still discipline an employee for working under the influence.

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Kentucky

- No legal use of marijuana is permitted.

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Indiana

- No legal use is permitted.

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Breathalyzers

- A University of Pittsburg team developed a breathalyzer to measure THC as reported in an August 27, 2019 Science Daily article.
- Hounds Labs, out of Oakland, CA, has created a marijuana breathalyzer that was tested by some law enforcement officers over Labor Day 2019.

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My hobbies include
smoking weed and
swimming with dolphins



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CBD Products (Hemp)

- **What is Hemp?**

- Cannabis plant, grown for its many industrial uses;
- Does not produce the intoxicating effects of the cannabis plant, marijuana;
- Yields a strong fiber, used in textiles; the seed has nutritional value and can be eaten; and Cannabidiol, or CBD can be extracted from the plant.

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Difference between Hemp and Marijuana

- Levels of THC
 - While hemp and marijuana are both cannabis, hemp does not produce the same intoxicating effect marijuana does.
 - According to the USDA, hemp must contain less than .3% THC.
 - Marijuana contains a higher level of THC, often over 10%.



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Ohio Law on Hemp

- 2018 Farm Bill – Federal Expansion of Hemp Cultivation
- Senate Bill 57 (2019)
 - Legalized hemp and hemp-derived cannabidiol oil;
 - Decriminalizes hemp, making it a legal crop for Ohio farmers to cultivate and process;
 - It allows for the creation of a hemp program to be administered by the Ohio Department of Agriculture;
 - Sets up a licensing structure for farmers who are interested in growing the crop and those interested in processing it.

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Farmers and hemp

- Farmers will have to obtain a license to grow hemp.
- The goal is to have farmers licensed and able to plant the crop by Spring of 2020.



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Selling/Testing CBD

- It is now legal to sell properly inspected CBD products in Ohio.
- The Ohio Department of Agriculture will be testing all CBD products for safety and accurate labeling to protect Ohio consumers.

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Does CBD affect drug tests?

- Drug screening detects the presence of THC not CBD;
- Hemp-based CBD products can contain traces of THC;
- CBD products often have more THC than claimed;
- Look for a manufacturer that can provide a Certificate of Analysis, or COA for its product.



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Thank You!

Questions?

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