

Medical Marijuana: A Tale of Competing Statutes

**Marka B. Fleming
Gwendolyn McFadden-Wade
North Carolina A&T State University**

**Jean T. Wells
Howard University**

In November 2004, Jake Jones was hired as a grocery stocker at TarMart in Kalamazoo, Michigan. Throughout his employment he proved to be a good employee. Early in 2009, Jones registered with the state of Michigan and obtained the appropriate registry card to allow him to use marijuana for medical purposes. Thereafter, Jones began using the drug while off-duty and away from work. In November 2009, after an injury on the job, Jones tested positive for marijuana during a mandatory company drug test. As a result, he was fired from TarMart and he sued.

OVERVIEW

In November 2004, Jake Jones was hired as a grocery stocker at TarMart in Kalamazoo, Michigan. Throughout his employment he proved to be a good employee. Early in 2009, Jones registered with the state of Michigan and obtained the appropriate registry card to allow him to use marijuana for medical purposes. Thereafter, Jones began using the drug while off-duty and away from work. In November 2009, after an injury on the job, Jones tested positive for marijuana during a mandatory company drug test. Jones was fired from TarMart and he sued.

JONES'S MEDICAL CONDITION

At the age of 17, Jones was diagnosed with sinus cancer and an inoperable brain tumor. These conditions cause him to endure, among other things, excruciating ongoing pain in his head and neck which significantly affects his ability to speak. For years, his oncologist prescribed a drug called Lorcet that offered him only minimal pain relief and caused him to suffer from severe nausea. However, he refuses to let his debilitating illness prevent him from living a full and successful life.

At 29 years-old, Jones was a married father with two children, working at the TarMart in Kalamazoo, Michigan. Jones began as an entry level grocery stocker and worked his way up to a managerial position. In fact, he was even recognized as the store's 2008 Associate of the Year. That's understandable because once he proudly exclaimed:

I gave them everything...110 percent every day. Anything they asked me to do I did. More than they asked me to do. 12 to 14 hours a day.
(Dawson & Graban, 2010).

In an effort to better manage his ongoing pain and suffering, Jones's oncologist recommended that he try marijuana as permitted by the newly enacted Michigan Medical Marijuana Act. In 2009, he obtained the appropriate registry card from the Michigan Department of Community Health and began using the drug after work during off-duty hours in the privacy of his home. The results were immediate and profound. His pain decreased dramatically. The new medicine did not induce nausea. Jones regained his appetite and he was able to regain some of the weight he had lost during chemotherapy and radiation treatments. In regards to his use of marijuana for medical purposes, Jones explained:

It helps tremendously...I only use it to stop the pain. To make me feel more comfortable and active as a person (Frauenfelder, 2010).

JONES'S TERMINATION

In November 2009, Jones injured himself at work by twisting his knee while pushing a cart. Although he came to work the next day, he had trouble walking and was driven to the emergency room by a TarMart manager to receive treatment. Since he was injured on the job, he was administered a standard drug test at the hospital in accordance with TarMart's drug use policy for employees.

Prior to taking his drug test, Jones showed his registry card to the testing staff to indicate that he was a qualifying patient for medical marijuana under Michigan's law. He then submitted to the routine urine test for drugs.

One week after the drug test was administered, TarMart notified Jones that he tested positive for marijuana. He immediately met with his shift manager to explain the positive drug test. He showed the manager his registry card and also stated that he never smoked marijuana while at work or came to work under the influence. Jones explained that the positive drug test resulted from his previous ingestion of marijuana within days of his injury in order to treat his medical condition. The shift manager made a photocopy of Plaintiff's registry card. The following week, TarMart's corporate office directed Tray Sill the store manager of the Kalamazoo store, to fire Jones due to the failed drug test.

TARMART'S RESPONSE

In an e-mail from headquarters, TarMart's spokesman Reginald Ross explained the company's drug use policy:

In states, such as Michigan, where prescriptions for marijuana can be obtained, an employer can still enforce a policy that requires termination of employment following a positive drug screen. We believe our policy complies with the law and we support decisions based on the policy (Meno, 2010).

BACKGROUND OF MEDICAL MARIJUANA UNDER FEDERAL LAW

In 1970, Congress passed the Controlled Substances Act (CSA) as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 812). This law established a "single system of control for both narcotic and psychotropic drugs for the first time in US history" and created five schedules to classify controlled substances (ProCon.Org).

On August 14th of the same year, then Assistant Secretary of Health, Dr. Roger O. Egeberg wrote a letter recommending the plant, marijuana, be classified as a Schedule I substance, which are illegal drugs "classified as having a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug or other substance under medical supervision" (see Exhibit 1).

EXHIBIT 1

21 U.S. Code § 812 - Schedules of controlled substances

Under the Controlled Substances Act of 1970, the schedules are as follows:

- (1) Schedule I.— Encompasses a drug or other substance that “has a high potential for abuse;” that “has no currently accepted medical use in treatment in the United States;” and there “is a lack of accepted safety for use of the drug or other substance under medical supervision.”
- (2) Schedule II.— Encompasses a drug or other substance that “has a high potential for abuse;” that “has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions;” and “abuse of the drug or other substances may lead to severe psychological or physical dependence.”
- (3) Schedule III.— Encompasses a drug or other substance that “has a potential for abuse less than the drugs or other substances in schedules I and II;” that “has a currently accepted medical use in treatment in the United States;” and “abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.”

- (4) Schedule IV.— Encompasses a drug or other substance that “has a low potential for abuse relative to the drugs or other substances in schedule III;” that “has a currently accepted medical use in treatment in the United States;” and “abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.”
- (5) Schedule V.— Encompasses a drug or other substance that “has a low potential for abuse relative to the drugs or other substances in schedule IV;” that “has a currently accepted medical use in treatment in the United States;” and “abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.”

In particular, Egeberg’s letter stated the following:

Some question has been raised whether the use of the plant itself produces “severe psychological or physical dependence” as required by a schedule I or even schedule II criterion. Since there is still a considerable void in our knowledge of the plant and effects of the active drug contained in it, our recommendation is that marihuana be retained within schedule I at least until the completion of certain studies now underway to resolve the issue. If those studies make it appropriate for the Attorney General to change the placement of marijuana to a different schedule, he may do so in accordance with the authority provided under section 201 of the bill (Gupta, 2013).

Today, nearly 45 years after Egeberg’s recommendation, marijuana remains classified under federal law as an illegal Schedule I drug.

Modern research suggests that marijuana is a valuable aid in the treatment of pain relief – particularly of neuropathic pain (pain from nerve damage) – nausea, spasticity, glaucoma, and movement disorders. Marijuana is also a powerful appetite stimulant, specifically for patients suffering from HIV, the AIDS wasting syndrome, or dementia (NOML). As a result, twenty- three states and the District of Columbia have laws legalizing marijuana for medical purposes.

The twenty-three states that have enacted medical marijuana laws are: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont & Washington.

MEDICAL MARIJUANA UNDER MICHIGAN LAW

In 2008, the state of Michigan passed the Michigan Medical Marijuana Act to provide protections for the medical use of marijuana. The Act defines the term “medical use” to include “the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition or symptoms associated with the debilitating medical condition” (see Exhibit 2).

EXHIBIT 2

Mich Comp. Laws §333.26423 (2008) (selected portions)

Definitions

Sec. 3. As used in this act:

(b) "Debilitating medical condition" means 1 or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(3) Any other medical condition or its treatment approved by the department, as provided for in section 6(k).

(e) "Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

(f) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(i) "Qualifying patient" or "patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(j) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(k) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

Under Michigan's medical marijuana statute, the term "debilitating medical condition" includes the following:

- cancer
- glaucoma
- positive status for human immunodeficiency virus
- acquired immune deficiency syndrome
- hepatitis C
- amyotrophic lateral sclerosis
- Crohn's disease
- agitation of Alzheimer's disease
- nail patella
- or the treatment of these conditions.

Although the term "debilitating medical condition" is defined broadly under Michigan's law, only a "qualifying patient" who is issued a "registry identification card" by the Michigan Department of Community Health is permitted to administer or use medical marijuana. Therefore, any "qualifying patient" who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution or penalty of any manner or denied any right of privilege, including but not limited to civil penalty or disciplinary action by a business" (see Exhibit 3).

EXHIBIT 3

Mich Comp. Laws §333.26424 (2008)

Protections for the Medical Use of Marihuana in Michigan

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount. The privilege from arrest under this subsection applies only if the qualifying patient presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the qualifying patient.

REFERENCES

- Dawson P. & Graban C. (2010 March 12). Walmart fires Michigan Man for Using Medical Marijuana, Retrieved from <http://archive.wzzm13.com/news/story.aspx?storyid=119421>
- Gupta, S. (2013 August 8). Why I Changed My Mind on Weed, Retrieved from <http://www.cnn.com/2013/08/08/health/gupta-changed-mind-marijuana/index.html>
- Frauenfelder, M. (2010 March 13). Walmart Fires Employee with Inoperable Brain Tumor for Legally using Marijuana Outside of Work, Retrieved from <http://boingboing.net/2010/03/15/walmart-fires-medica.html>
- Meno, M. (2010 March 14). Walmart Fires Cancer Patient for Legally Using Marijuana, Retrieved from http://www.alternet.org/story/146031/walmart_fires_cancer_patient_for_legally_using_medical_marijuana
- Michigan's Medical Marijuana Statutes, Mich Comp. Laws §333.26423 & §333.26424 (2008), Retrieved from [http://www.legislature.mi.gov/\(S\(cwa4tcr1msul4zrm4ovv2axf\)\)/mileg.aspx?page=getobject&objectname=mcl-333-26423](http://www.legislature.mi.gov/(S(cwa4tcr1msul4zrm4ovv2axf))/mileg.aspx?page=getobject&objectname=mcl-333-26423)
- Northup, L. (2010 March 14). Walmart Fires Employee for Using Medical Marijuana, Retrieved from <http://consumerist.com/2010/03/14/walmart-fires-employee-for-using-medical-marijuana/>.
- ProCon.Org, Historical Timeline History of Marijuana as Medicine - 2900 BC to Present, Retrieved from <http://medicalmarijuana.procon.org/view.timeline.php?timelineID=000026>
- NOML, Medical Use, Retrieved from <http://noml.org/marijuana/medical>
- 21 USC § 812 (1970) Retrieved from <https://www.law.cornell.edu/uscode/text/21/812>