

# LAWYERS JOURNAL

## Committee offers FAQ on several marijuana questions

By Zandy Dudiak

When Pennsylvania's first medical marijuana dispensaries opened their doors in mid-February, they triggered a lot of questions.

The ACBA has some answers – 13 of them, to be precise.

To provide some guidance, the ACBA's medical marijuana committee compiled a 13-point Frequently Asked Questions list and made it accessible to the public on the ACBA website. The FAQ includes a disclaimer that the information cannot be relied upon as legal advice but that those with questions should seek guidance from a legal professional.

"Everyone's curious," said Cátia Kossovsky, chair of the 7-month-old Medical Marijuana and Hemp Law Committee. "They want to know what it is and how it affects them."

Noting that she recently spoke to a group of 85 gastroenterologists from UPMC and Allegheny Health Network about the issues, Kossovsky said concerns have prompted a variety of clients to contact their attorneys for legal advice.

"Medical marijuana issues affect every single practice of law," Kossovsky said.

Areas such as employment, law enforcement, medicine and business have an obvious involvement. But the state law also brings into play legal issues that touch education, real estate, contract, banking, bankruptcy and tax laws.

Enacted in April 2016, the state's Medical Marijuana Act permits growers, processors and dispensaries to provide medical marijuana for patients with specific medical conditions. Confusion arises because, although it's legal under state law, the cultivation, manufacturing, transportation, sale, distribution, dispensation and possession of cannabis violates the federal law that classifies marijuana as a Schedule I controlled substance.

Although there are 29 states that permit medical marijuana in different forms, they do not all have reciprocity agreements for certified users from other states, Kossovsky said.

"Every state is different," said Patrick Nightingale, committee member. "You cannot carry it across state lines. Once it crosses state lines, it breaks federal law."

Medical doctors and doctors of osteopathic medicine (MDs and ODs) must attend a four-hour training course before they can be licensed and certified by the state Department of Health to "recommend" medical marijuana (it cannot be "prescribed" under federal law) and certify medical marijuana patients. A list of doctors is available on the department's website.

In Pennsylvania, Nightingale said, certified users are not permitted to smoke or make edibles from medical marijuana. They must also keep the product in the dispensary packaging and their patient identification on hand if they are transporting it within the state, Nightingale added.

### Legal education

The ACBA is working with the Pennsylvania Bar Association, Philadelphia

Bar and Dauphin County Bar on medical marijuana issues. To help ACBA members gain more knowledge of the law, there are two local educational opportunities this spring:

- The TED Talks-style keynote CLE of the 56th annual ACBA Bench-Bar Conference will cover medical marijuana. The conference will be held June 14-16 at Seven Springs Mountain Resort.
- The World Medical Cannabis Conference & Expo, which runs from April 12 to 14 at the David L. Lawrence Convention Center, will include legal education session.

Under federal law, a person using medical marijuana is prohibited from possessing a firearm. Patrick Nightingale, who helped craft the FAQ, said that while gun ownership violates federal law, there is "practically zero-percent chance" of someone being prosecuted. However, medical-marijuana patients may run into difficulty with applying for a concealed weapon permit, he said, and if a patient lies about using medical marijuana and is caught, the offense would be a felony.

Although state police originally had access to the patient registry, Nightingale said that access was revoked because of privacy concerns. Educating and providing guidance to law enforcement about the rights of patients under the medical marijuana law, particularly related to DUI, will be important, he said.

"As long as we in the bar association work to educate the police and law enforcement, we will ultimately protect the patients," Nightingale said.

Committee Vice-Chair Jean Novak has taken it upon herself to meet with small business groups interested in learning more about the law's effect on them. Because of the uncertainty of federal enforcement, she tells employers not to allow medical marijuana on their premises.

Individuals working for federal contractors are prohibited from using any marijuana, as are any government-regulated workers, such as bus and truck drivers. Use of medical marijuana is not permitted on jobs where it could be a danger to one's self, fellow workers or the public, such as working on high voltage, public utilities or with chemicals, Novak said.

"You can't be impaired," she said. "The statute makes that clear."

Drug tests for employment are another area of concern as the THC in medical marijuana will show up in a drug test.

“If you are a certified patient, you need to tell the testing agency before you take the drug test” Novak said. “The problem is if you don’t tell the testing agency, they will return a positive test.”

If testing agency knows, it can return a negative result for a certified user. There has been pushback from certified users who don’t want to admit to using medical marijuana because it is breaking a federal law, Novak said, yet they might have to tell their employer anyhow if the test is positive.

Novak has heard from certified users that people from other states have lost their jobs, though she said employers can’t discriminate because a person is a certified user.

“It’s brand new,” Novak said. “Our thought is that we’re going to have to wait for some cases to bubble up through the system before we see how things work.” ■

## **FAQ FYI**

The medical marijuana FAQ is currently highlighted on the [acba.org](http://acba.org) homepage. Its permanent address is [www.acba.org/Marijuana](http://www.acba.org/Marijuana). The FAQ is accessible to the public.