

The Michigan Medical Marihuana Act

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Learning Objectives

At the completion of this program, the participant will be able to:

- discuss the ballot proposal process, particularly as it pertains to the creation of Michigan's Medical Marijuana Act.
- discuss the statutory tenants of the Michigan Medical Marijuana Act.
- identify barriers that exist between state and federal law.
- explain the current challenges pharmacy professionals face for their patients who utilize medical marijuana.

The Michigan Medical Marihuana Act (MMMA) that was debated, passed and enacted is a very complex topic. This article will explore, explain and expound upon these complexities to differentiate between the rumors, the misnomers and the legitimate concerns pharmacy professionals should have when pondering the potential repercussions the Act might have on his/her profession. After having read this article, one should understand Michigan's medical marijuana act and recognize that it not only could affect pharmacy, but probably will in the not-so-distant future. To accomplish this task, the article first will examine the ballot initiative process, which very few Michiganders fully understand; thereafter, it will become clear how the proposal was created, passed and enacted. Second, the Michigan Medical Marihuana Proposal 08-1 will be explained in detail. Third, similarly to any new law, there are many terms and stipulations that need to be explained. Fourth, this article will reveal and explain two interesting problems with the law. Finally, we will discuss specific ways MMMA will affect pharmacists and what action they should take. It is important to note that this article takes no position as to whether medical marijuana is an appropriate or necessary form of pain therapy. The primary purpose is to explain the complexities of the MMMA thoroughly, then attempt to explain why pharmacy professionals, for or against the treatment, need to participate in pharmacy advocacy to ensure that their interests and views are taken into account.

The Ballot Proposal Process

The Michigan Medical Marijuana Proposal 08-1 was an initiative brought forth by the Michigan Coalition for Compassionate Care (MCCC). The goal of the initiative was to give the public a chance to vote on whether it thought “medical marijuana” should be permissible as a pain therapy treatment. The measure asked in particular if Michiganders thought patients with debilitating diseases should be permit to consume marijuana in order to manage their pain. However, before we journey too far into the details and complexities of the Act, we first need to understand the initiative process itself. An initiative, or the right to initiate legislation, refers to the attempt that a single citizen or a group of citizens can make in order to change aspects of laws or the constitution that governs them. In order to successfully create an initiative and have it reach the ballot, the citizens must fulfill several requirements dictated by the Michigan Election Law. The requirements of an initiative differ depending on the goal of the initiative; however, given the nature of the Michigan Medical Marihuana Act, we will focus on the requirements for amending, creating or enacting a statute or a law.

The first, and most important criterion, that any group or individual has to meet is receiving at least eight percent of the total votes cast for the governor’s seat in the last gubernatorial election to sign a petition, stating that they want the measure on the ballot. The petitioners also have to adhere to strict guidelines that control the font size, length and the rules as to how the petition is presented and circulated. Once the petitioners have fulfilled the requirements, the petition is then submitted, *preferably* 160 days before the next general election, to the Secretary of State and the Board of State Canvassers. The stipulation of 160 days is not mandatory; however, if the petitioners fail to submit the petition prior to this time period, the State cannot guarantee that the initiative will be placed on the ballot.

Upon receiving the petition, the Secretary of State and the Board of State Canvassers check to ensure that the petitioners have met all the guidelines and that the signatures are valid. The petition then is submitted to the Michigan Legislature, where members have 40 days to take an action on the petition: accept and enact; amend; or reject. If the legislature opts not to act on the petition, it then must be place on the ballot and subjected to the voters’ will. If the legislature and the petitioners both have different proposals on the ballot that conflict with one another, which happens with frequency, then the proposal that receives the majority of the vote will be enacted and take effect 10 days after the official declaration of the vote.

This initiative process is rather complex; however, it is also very powerful and difficult to overturn. It is important to note that the governor has no right to veto a passed ballot proposal, and the legislature has to get a *three-fourths* majority to amend the initiative once it is passed. This means that once the people have spoken, it is very hard to change the enacted law; unless there is another initiative to amend the original, which is highly unlikely. Now that we have discussed the way in which an initiative is created, let's explore the Medical Marijuana Proposal itself.

The Medical Marijuana Proposal 08-1

The Medical Marijuana Proposal 08-1 is the perfect example to demonstrate the way that advocacy, in the form of an initiative, can reform state statutes. The proposal also exemplifies that legislation, derived from the public, can affect the profession of pharmacy in profound ways. However, one might contend, "Pharmacy has not been impacted directly by the implementation of this initiative." That is correct; however, it does not take a person with a crystal ball to see the "writing on the wall." This marijuana reform will have a drastic impact on the profession in the future, regardless as to whether pharmacists want to be involved or not. However, the more pharmacists who arm themselves with the knowledge about the legislative process, the more likely it will become that they will be doing the proverbial writing and decide their own destiny.

On March 3, 2008, the Michigan Coalition for Compassionate Care (MCCC) submitted its petition with signatures of the eight percent of the total vote cast for all candidates for governor at the last gubernatorial election, totaling 304,101, to the Secretary of State and the Board of State Canvassers. The Elections Division of the Secretary of State and the Board of State Canvassers confirmed that the MCCC had fulfilled all the requirements and that its petition signatures were valid; therefore, the petition was then presented to the legislature. As stated above, the legislature has 40 days to take an action in regards to the petition, which in this case the legislature did not take any action. Therefore, the initiative was sent to the Board of State Canvassers to be prepared for the ballot.

The voters then saw this on their ballots on Nov. 4, 2008:

PROPOSAL 08-1

A LEGISLATIVE INITIATIVE TO PERMIT THE USE AND CULTIVATION OF MARIJUANA FOR SPECIFIED MEDICAL CONDITIONS

The proposed law would:

- Permit physicians approved use of marijuana by registered patients with debilitating medical conditions including cancer, glaucoma, HIV, AIDS, hepatitis C, MS, and other conditions as may be approved by the Department of Community Health.
- Permit registered individuals to grow limited amounts of marijuana for qualifying patients in an enclosed, locked facility.
- Require Department of Community Health to establish an identification card system for patients qualified to use marijuana and individuals qualified to grow marijuana.
- Permit registered and unregistered patients and primary caregivers to assert medical reasons for using marijuana as a defense to any prosecution involving marijuana.

Should this proposal be adopted?

As we know, the proposal passed with overwhelming support from all the counties in Michigan. This initiative is now in effect; therefore, let's discover what the Michigan Medical Marijuana Act exactly entails.

The Medical Marihuana Act

The Michigan Medical Marihuana Act, much like all the other laws in the state, is complex; filled with highly specific definitions and stipulations. Therefore, in this section the definitions and stipulations that regulate the law will be explained in detail. The law decrees:

“AN INITIATION of Legislation to allow under state law the medical use of marihuana; to provide protections for the medical use of marihuana; to provide for a system of registry identification cards for qualifying patients and primary caregivers; to impose a fee for registry application and renewal; to provide for the promulgation of rules; to provide for the administration of this act; to provide for enforcement of this act; to provide for affirmative defenses; and to provide for penalties for violations of this act.” (Legislative Internet Technology Team in cooperation with the Michigan Legislative Council, 2009)

What does this mean? As one can tell by reading the law, there are many vague terms. First, to understand the law, must define certain terms that it refers to with frequency.

Defining the Law

Who Qualifies?

A “qualifying patient” refers to a person who has undertaken and completed the proper steps to receive a valid registry identification card. This means that s/he has gone to a physician, with whom s/he has created a sufficient physician-patient relationship, and that physician has determined that the best course of pain treatment for his/her disease would be medical marijuana. Upon coming to this decision, the patient retrieves two forms from the Michigan Department of Community Health (MDCH), or in particular the Michigan Medical Marihuana Program (MMMP), which is the program that the MDCH created to handle Michigan’s medical marihuana system. One of these forms, the “Attending Physician’s Statement” form, is given to the physician who is required to explain in detail the extent of the physician-patient relationship; why s/he believes that medical marihuana is the best course of action; and is required to provide documentation of the patient’s medical history. After the physician fills out the form and submits it to the MMMP, the patient then fills out the second form, which is an application to receive the valid registry identification card. When sending in the application, the patient is required to pay a fee to the MMMP of \$100 (unless the qualifying patient can demonstrate that s/he is currently eligible for the

Medicaid Health Plan or receiving SSI benefits. If this can be proven, then the application fee is \$25.) If the MMMP determines the petition is valid and all the proper requirements are met, the patient is then sent the identification within 15 days of applying. Upon receiving the identification card, the patient is free from any arrest, persecution or penalties by the State for using the marihuana. It also means that the State is not allowed to permit businesses, and occupational or professional boards, to discriminate or punish someone for using marijuana who is a qualifying patient.

What Medical Conditions Warrant the Use of Medical Marihuana in Michigan?

Now that we understand to whom the term “qualifying patient” refers, we must explain what type of medical conditions warrant the qualified patients to use medical marihuana. The law states those with “debilitating medical conditions” are qualified to consume marihuana. These “debilitating medical conditions” are defined as cancer, glaucoma, HIV, AIDS, hepatitis C, amyotrophic lateral sclerosis, Crohn’s disease, agitation of Alzheimer’s disease, nail patella or the treatment of those conditions. This definition also extends to a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following symptoms or syndromes: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis. In addition to these, it also includes any other medical condition or its treatment approved by the Department of Community Health. It is important to mention that the MDCH has not added any additional ailments to this list. Used together, the terms “qualifying patient” and “debilitating medical conditions” explain how a patient applies for medical marihuana, what medical conditions the patients must have and who can use medical marihuana without fear of arrest, prosecution and/or penalties for using or cultivating marijuana. However, there are still several definitions that must be explained.

Who Qualifies as a Primary Caregiver, and What Does That Person Do?

The law states it will “provide for a system of registry identification cards for qualifying patients and primary caregivers.” So, now that we know who the “qualifying patients” are, who and what classify as “primary caregivers”? A “primary caregiver” refers to an individual at least 21 years of age who has agreed to assist with a patient’s medical use of marijuana and who has never been convicted of a felony involving illegal drugs. This means that a primary caregiver is given a host of

responsibilities, such as growing, cultivating, preparing and assisting the qualifying patient in using his/her medical marihuana. Another interesting aspect of a primary caregiver is that s/he is allowed to perform these duties for up to, but not exceeding, five qualifying patients without arrest, prosecution and/or penalties for providing the services to the patients. This means that the State government is not allowed to permit businesses, and occupational or professional boards, to discriminate or punish someone for being involved with the medical marijuana, if s/he qualifies as a primary caregiver.

How Much Marihuana Does the Law Permit Qualified Persons To Possess?

The qualifying patients in Michigan will be allowed to possess 2.5 ounces of marijuana and are allowed to cultivate no more than 12 plants, strictly for medicinal purposes. However, as stated above, a primary caregiver can oversee up to five qualifying patients; therefore, s/he is able to have the legal amount for up to five patients. This obviously is a significant increase in the amount of usable marihuana s/he is allowed to carry and amount of plants s/he is allowed to cultivate. When cultivating the marihuana, the patient or primary caregiver must keep the plants in an enclosed, locked facility.

Other Pertinent Aspects of the Law

There are four additional aspects of the MMMA that must be described. First, the law states that insurance companies will not be required to cover the expenditures that a qualifying patient might accrue when utilizing this method of treatment. Second, a qualifying patient is not permitted to undertake any task under the influence of marihuana, when it would constitute negligence or professional malpractice, i.e., operating a motor vehicle. In addition, the qualifying patient is not allowed to possess or use marihuana in a school bus; on the grounds of any preschool or primary or secondary school; or in any correctional facility. Qualifying patients are also not allowed to consume marihuana on any form of public transportation or in any public place. Third, the law also provides that physicians who inform or recommend this method of treatment will not and cannot be subjected to any persecution in the form of arrest, penalties or restrictions on their licenses by any boards, in particular the Board of Medicine or the Board of Osteopathic Medicine. These boards in particular are highlighted because the only physicians that are allowed to make this decision are medical doctors (MD) and doctors of osteopathic medicine (DO). Lastly, the MMMA permits

individuals to use “debilitating medical conditions” as a legal defense when being tried for marihuana-related infractions.

The Two Major Problems with the Law

The MMMA is extremely thorough. It mandates who can use and cultivate marihuana; provides a system of registry with identification cards; and has established a new department within the MDCH, the MMMP, to oversee the patients and the system. However, it has failed to answer one crucial question; “How does a ‘qualifying patient’ with a ‘debilitating medical condition’, who has received an identification card, actually obtain medical marihuana?” The answer that the MDCH and the MMMP provide is, “The MMMP is not a resource for the growing process and does not have information to give to patients.” (State of Michigan, 2009) As a pharmacist, you are aware that since the enactment of the Controlled Substance Act, marihuana has been deemed by the Board of Pharmacy to be a Schedule 1 substance. Therefore, physicians are not allowed to prescribe marihuana; and consequently, pharmacists are not allowed to dispense marihuana. So, if a qualifying patient is not provided with the marihuana from the MDCH and MMMP, and s/he is unable to receive a prescription for marihuana, where does a qualifying patient obtain the marihuana? The only possible avenue that patients may come to possess medical marihuana is through a non-medical mechanism; namely, a marihuana dealer! Obviously, this issue breeds a host of concerns. By not being provided a source for obtaining the medical marihuana, patients could be put in dangerous situations to receive the marihuana. On top of this concern, marihuana dealers have no mechanism ensuring that the patient is receiving marihuana with a consistent potency. This precarious avenue of acquisition also does not ensure that someone is taking into account the other medicines that the patient is currently taking and the potential interactions that the patient could incur. Unfortunately, finding a way to obtain the medical marihuana is not the only problem that qualifying patients face.

State Laws vs. Federal Laws

Even though Michigan voters, along with voters in 12 other states, have deemed the use of marihuana for certain patients acceptable, the federal government has remained firm in its position; marihuana is illegal for everyone. In *Gonzales v. Raich*, 2005, the federal government’s ban on medical marihuana was not only made lucid, but was also deemed justifiable by the United States Supreme Court. Angel Raich, the defendant in the case, was legally cultivating and using “home-grown” medical marihuana, which was permitted under California’s Compassionate Use Act

(CCUA). However, the federal Drug Enforcement Administration (DEA) performed a raid on Raich's growing facility and destroyed all *six* of her plants, citing that she had violated the federal Controlled Substance Act. When the case made it to the United States Supreme Court, the Court decided that under the Commerce Clause authority in the federal government possession, Congress could prohibit, which it still is doing currently, the use and cultivation of marijuana in any state. Therefore, in light of the contradiction between the state and federal laws; and now knowing that the federal law 'trumps' the state law, it is obvious that any asylum that qualifying patients, primary caregivers and physicians are provided under the State law, do not have to be respected by Federal entities.

How Does the Michigan Medical Marihuana Act Affect Pharmacists?

The next logical question is, "Okay, if qualifying patients have no way of obtaining medical marihuana, and the federal ban 'trumps' the state sanctuary, how is medical marihuana going to have a significant impact on the profession of pharmacy?" Certainly, this is a legitimate question, and it implies that there will not be an impact on the profession. However, it is the contention of this article that the MMMA will affect the profession within the near future. To demonstrate this claim, we will begin by explaining the pertinent reasons that serve as evidence that medical marihuana will receive federal asylum. After this has been established, we will discuss two justifications, one stemming from self-interest and one for the protection of others, why pharmacists should involve themselves in the topic of medical marihuana.

First and foremost, there is an overwhelming slew of evidence to support the hypothesis that the federal ban on medical marihuana will soon be lifted. As previously mentioned, there are 12 other states where initiatives comparable to the MMMA have been passed and enacted (The twelve states include Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington.) There are also two other states, Arizona and Maryland, who have taken progressive measures towards a Compassionate Care Act; however, have not gone as far as the other 12. This means that 14 states have demonstrated that they believe the use of medical marihuana for qualifying patients should be permitted (or at very least, have taken a significant step in that direction). Also, there are several movements in the majority of the states who still hold the restriction, to pass Compassionate Care Acts. If one has devoted any time to observing the behavior of various state legislators, it becomes clear that they tend to "follow-the-leaders" when it comes to creating or accepting new legislation. With 14 states already embracing

acts comparable to the MMMA, it is only a matter of time before the vast majority of states catch up. Once this happens, it will put the federal government in quite the predicament: remain firm in its ban and blatantly ignore the sentiment of the people or grant the people the choice of medical marihuana as a treatment. If the outcomes of the past situations hold any relevance here, which this article contends they do, then the federal government will remove the ban. When one looks at the history of medical marihuana, s/he will find that this brief, approximately 35 year ban on using marihuana for medical purposes is destined to dissolve soon.

Second, regardless as to whether one accepts this premise, it can be agreed that pharmacists first role is the responsibility of protecting their patients. Though, it seems that many pharmacists might believe that smoking medical marihuana is beyond the scope of their profession. However, I would claim that their assertion is flawed. Pharmacists swear to protect their patients. A patient is *not* determined by the medication that s/he receives; rather s/he is considered a patient because s/he suffers from some sort of ailment. In the case of “qualified patients,” it would be hard to argue, given the severity of the ailments that warrant the drug’s use, that qualified patients are indeed not patients at all. In addition, regardless as to whether one believes medical marihuana *ought* to be illegal in the State; the fact is, medical marihuana *is* a legal treatment within the State. Therefore, the patients who are attempting to acquire medical marihuana are seeking remedies that are not only legal, but recommended by a physician. Another reason medical marihuana is within the scope of the profession is that in almost every case, the qualified patient seeking medical marihuana was at once a patient of a pharmacist receiving a different medication for the same ailment and other conditions. Pharmacists play a critical role in helping to improve the well-being of their patients. Patients depend on their pharmacists to ensure their different medications work well together. Pharmacists need to ensure that patients who are using medical marihuana continue to take their other medications correctly. Given this premise, it would seem that pharmacists should support medical marihuana efforts and begin advocating for a method of dispensing through pharmacies.

The nation’s pharmacists should likely step into the vanguard of the medical marihuana movement. If pharmacists do not strategically position themselves in anticipation of a lifting of the federal sanction for medical marihuana, consequently being left out of the process, it could result in a slippery slope on which the profession of pharmacy could begin to lose its importance. In addition, as many of us have seen through the media, this could potentially happen in California. Similar to the MMMA, the CCUA does not provide qualified patients with a source of medical marihuana. As a result, Californians have developed “pot shops” where qualified patients go to

obtain their medical marihuana. This has two negative consequences for the profession. First, by not trying to initiate some kind of system of dispensing medical marihuana, pharmacists miss out on potential revenue sources. And in a capitalistic society, it is common knowledge that the professions that augment the gross domestic product the most are the professions that receive the most respect from the government. Any legitimate source of revenue should be capitalized upon, to ensure the profession of pharmacy a seat at the federal government's budget table. Second, by not being involved in the process, it gives the general public the notion that pharmacists are not the only people that can dispense medications. This would have detrimental effects on the prestige and importance that the profession currently enjoys. Conversely, it is possible that citizens might despise "pot shops" and the prestige and importance of the profession would not be fettered. However, again this should be seen as affecting pharmacists. Many Michiganders that oppose the MMMA share the concern that these "pot shops" or some establishments analogous to them are going to begin being erected throughout the State. Pharmacists should see this public distain for "pot shops" as an opportunity to secure more prestige and importance in the public eye. By leading the charge to dispense medical marihuana, pharmacists would demonstrate to the public that they care about the community and are trying to ensure that these "eye sores" do not disseminate throughout Michigan. It should also be taken into account that situations that benefit the profession indirectly benefit the patients of the pharmacies.

However, there is a claim that can be made to justify pharmacists not joining the vanguard in favor of medical marihuana. A pharmacist could claim, "Marihuana is not a valid treatment option. Therefore, considering that the patient's safety is my primary concern, I cannot justify advocating for medical marihuana movements or for pharmacies dispensing the marihuana. I have to wait, at least until more research is completed about its effects on the patient or effects on other medications." This position takes into account the fact that medical marihuana could, or will, eventually find federal asylum; however, it contends that the self-interests found in advocating in favor of medical marihuana would prove to capitulate a moral sense of self. Therefore, it seems that this "moral contention that marihuana is not a valid treatment method" is the only justifiable reason that pharmacists should not advocate that pharmacies dispense marihuana or advocate for medical marihuana movements. However, a pharmacist holding this contention should not infer that s/he should not advocate at all.

What Should Pharmacists Do?

This article contends the self-interests of the pharmacists and the interests of the patients the patients that they serve would benefit from advocating that pharmacies should dispense medical marihuana, and pharmacists should advocate on behalf of medical marihuana movements. If this position is taken by pharmacists, it will create a future pharmacy environment that will prove to increase prestige, importance, revenues and the moral character of the profession by providing a safe method of medical marihuana obtainment (given that the pharmacist believes medical marihuana is a valid treatment), in turn significantly decreasing the danger that patients face when finding non-medical sources of the treatment.

However, this article also concedes that there are justifiable and legitimate merits to the moral contention that pharmacists should not advocate that pharmacies dispense marihuana or advocate on behalf of medical marihuana movements, because marihuana is not a valid treatment. It is a paramount interest then for these pharmacists to do everything in their power to ensure that medical marihuana does not receive federal asylum. If it does, the profession of pharmacy would lend itself to the negative consequences that would result from pharmacist refusing to be in the vanguard of the pro-medical marihuana movement.

Conclusion

Now that we have thoroughly analyzed the ballot proposal system; the Michigan Medical Marihuana Proposal 08-1; the MMMA, with its shortcomings and contradictions; and the philosophical reasoning behind supporting or opposing the MMMA; where do we stand? The opinion of this article is that regardless of the position that a pharmacist holds on the issue of medical marihuana and the MMMA, his/her primary objective should be to protect the patient. How does a pharmacist protect a qualified patient? This could be done, depending on the pharmacist's position, by advocating either for or against pharmacies dispensing medical marihuana. The only unjustifiable action that a pharmacist can make is not taking any action at all; which is a blatant disregard for the patient and the duty to protect the patient. The next step for pharmacy professionals on both sides is to consume as much material as possible about pharmacy advocacy. This will provide them with the ability to fully and completely protect their patients.

Continuing Education Posttest Questions

1. The Michigan Medical Marihuana Proposal was an initiative brought forward by which coalition?
 - a. Michigan Marihuana Growers Association
 - b. Michigan Coalition for Compassionate Care
 - c. People for Medical Marihuana

2. A ballot proposal initiative must contain what percent of the total votes cast for the office of governor's last gubernatorial election to sign a petition?
 - a. 8
 - b. 10
 - c. 15
 - d. 40

3. The Governor has the right to veto a passed ballot proposal. True or false?
 - a. True
 - b. False

4. A patient who is qualified to consume medical marihuana in Michigan has done which of the following?
 - a. Been seen by a physician with whom they have a sufficient patient-physician relationship
 - b. Been determined by the physician to meet the criteria for use of medical marihuana
 - c. Obtained a valid registry identification card from the Michigan Medical Marihuana Program
 - d. All of the above

5. A medical marihuana qualifying patient must pay a fee of how much to the Michigan Medical Marihuana Program to obtain a valid registry ID card?
 - a. \$25 if patient can demonstrate they are eligible for Medicaid or receiving SSI benefits
 - b. \$50
 - c. \$100
 - d. A and C

6. Which debilitating conditions warrant qualified patients to use medical marihuana?
 - a. Cancer
 - b. Glaucoma
 - c. HIV or AIDS
 - d. All of the above

7. Who can be classified as a primary caregiver who has agreed to assist with a patient's medical use of marihuana?
 - a. Any individual 16 years of age or older
 - b. Individuals previously convicted of a felony involving illegal drugs
 - c. Any individual 21 years of age or older who has not been convicted of a felony involving illegal drugs

8. Qualified medical marihuana patients can possess how much marijuana?
 - a. 2.5 ounces
 - b. 20 plants
 - c. 25 ounces
 - d. 25 plants

9. The Michigan Medical Marihuana Act requires insurance companies to cover the costs of medical marihuana. True or false?
 - a. True
 - b. False

10. The following problems exist with the current status of the Michigan Medical Marihuana Act:

- a. Only established “pot shops” are able to dispense medical marihuana
- b. Possession of marihuana is illegal under current federal law
- c. There is no legitimate source for medical marihuana authorized by the Michigan Medical Marihuana Program
- d. B and C