Proposition 203
Arizona Medical Marijuana Act

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Proposition 203

An Initiative Measure

Effective December 15, 2010

Introduction

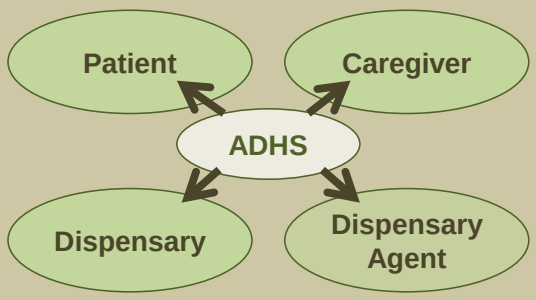
- **Proposition 203 amended Title 36, A.R.S.,by adding Chapter 28.1: §§ 36-2801, et. seq.**

"Arizona Medical Marijuana Act"

Rulemaking

- ADHS required to adopt rules to implement Act
- Rules must be adopted within 120 days (April 16, 2011) after effective date of Act
- If ADHS fails to adopt rules within 120 days any citizen may bring mandamus action

Overview of Parties



Statutory Definitions

See A.R.S. § 36-2801

There are eighteen defined terms in this section of the Arizona Medical Marijuana Act.

Medical Use

"Acquisition, possession, cultivation, manufacture, use, administration, delivery transfer, transportation of marijuana or paraphernalia."

Qualifying Patient

"Person diagnosed by a physician as having a debilitating medical condition."

Visiting Qualifying Patient

- **Not a resident of Arizona, or a resident less than thirty days**
- **Diagnosed with a debilitating medical condition by a Physician**

Physician

- M.D.
- D.O.
- Naturopathic Medicine
- Homeopathic Medicine

Debilitating Medical Condition

§ 36-2801(3) lists a series of diseases and conditions.

Public may petition ADHS to add debilitating medical conditions or treatments to the list of debilitating medical conditions.

Written Certification

A physician signed and dated document stating patient is likely to receive therapeutic or palliative benefit from medical marijuana use to treat or alleviate debilitating medical condition or symptoms

Written Certification

- Specifies the qualifying patient's debilitating medical condition after assessment of patient's medical history
- Signed and dated in the course of a physician patient relationship

Written Certification

Not a prescription

Physician – Patient Relationship

Draft DHS Rule R-17-101 (17)

- Physician has ongoing responsibility for assessment, care, and treatment of patient's debilitating medical condition

Ongoing

Draft DHS Rule R-17-101 (16)

- **Relationship for at least one year**
- **Four visits to physician for condition**

-OR-

Ongoing

Draft DHS Rule R-17-101 (16)

- **Physician assumes primary responsibility for care of patient's condition after a physical, including a chart review that may include response to conventional medical therapies**

Designated Caregiver

- **At least 21 years of age**
- **Agrees to assist with patient's medical marijuana**
- **Not been convicted of an excluded felony**
- **Assists no more than five patients**

Nonprofit Medical Marijuana Dispensary

A nonprofit entity that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to cardholders

Nonprofit Medical Marijuana Dispensary Agent

A principal officer, board member, employee or volunteer of a nonprofit medical marijuana dispensary

Cardholder

- **Qualifying patient**
- **Designated caregiver**
- **Nonprofit medical marijuana dispensary agent**
- **Issued a card, good for 1 year**

Dispensing Marijuana

A dispensary must:

- **Access verification system**
- **Confirm registry ID card is valid**
- **Not exceed the allowable amount of marijuana**

Allowable Amount of Marijuana

Two-and-one-half ounces of usable marijuana

- OR -

If authorized to cultivate marijuana, twelve marijuana plants contained in an enclosed, locked facility

Cultivate

§ 36-2804.02. Person may cultivate marijuana plants for a qualifying patient if a dispensary is not operating within twenty-five miles of the qualifying patient's home.

Labeling Requirements

Draft DHS Rule R9-17-314

Product labeling and analysis

Labels required to include variety of information, including registration numbers of both dispensary and qualifying patient

Presumption of Medical Use (§ 36-2811A)

Presumption: qualifying patient or caregiver is engaged in the medical use of marijuana if patient or caregiver:

- **Possesses a registry ID card**

and

- **Possesses allowable amount**

Presumption of Medical Use (§ 36-2811A)

Presumption may be rebutted by evidence that conduct related to marijuana was not for purpose of treating or alleviating debilitating medical condition or symptoms

Protections (§ 36-2811B)

A registered patient or caregiver is not subject to arrest, prosecution, or penalty, or denial of any right or privilege:

- For registered patient's medical use when in possession of allowed amount
- For registered caregiver assisting patient's medical use when in possession of allowed amount

Protections (§ 36-2811B)

Also not subject to arrest, prosecution, or penalty, or denial of any right or privilege:

- For providing allowable amount of marijuana to registered patient, caregiver or dispensary if nothing of value transferred.

Protections (§ 36-2811C,E and F)

Also not subject to arrest, prosecution, or penalty:

- physician providing written certification to a patient
- registered non-profit medical marijuana dispensary or dispensary agent

Protections (§ 36-2811D)

Also not subject to arrest, prosecution, or penalty:

- **Any person who provides paraphernalia; is in presence of medical marijuana; or assists with administering marijuana**

Protections (§ 36-2811H)

Possession of, or an application for, a registry ID card may not:

- **Constitute probable cause or reasonable suspicion**
- **Be used to support search of person or property of person who possesses or has applied for a registration card**

Limitations of the Act (§ 36-2802)

Does not authorize any person to engage in, and does not prevent imposition of civil, criminal, or other penalties for:

A. Undertaking any task under the influence of marijuana that would constitute negligence or professional malpractice

Limitations of the Act (§ 36-2802)

B. Possessing or engaging in medical marijuana:

1. **On a school bus**
2. **On grounds of any preschool or secondary school**
3. **In any correctional facility**

Limitations of the Act (§ 36-2802)

C. Smoking marijuana

1. **On any form of public transportation**
2. **In any public place**

Limitations of the Act (§ 36-2802)

D. DUI, except that registered, qualifying patient shall not be considered to be under the influence of marijuana solely because metabolites or components of marijuana appear in insufficient concentration to cause impairment

E. Using marijuana except as authorized under the Act

Limitations of the Act (§ 36-2802)

Consider § 28-1381(A)

1. Driving while Under the Influence

…

3. Per se Drugs

Limitations of the Act (§ 36-2802)

Consider § 28-1381

B. "It is not a defense to a charge of a violation of subsection A, paragraph 1 of this section that the person is or has been entitled to use the drug under the laws of this state."

Limitations of the Act (§ 36-2802)

What about § 28-1381(D)?

A person using a drug, as *prescribed* by a medical practitioner licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating subsection A, paragraph 3 of this section.

Medical marijuana is not prescribed.

Limitations of the Act (§ 36-2802)

How do § 36-2802 and § 28-1381 interact?

- **Does the Act provide a defense to DUI (driving while impaired)?**
- **Does the Act provide a defense to DUI (per se drugs)?**

§ 36-2812, a statute entitled "affirmative defense" is repealed as of the date ADHS begins to issue registry ID cards

Affirmative Defense (§ 36-2812A)

Except as provided in § 36-2802, a qualified patient and designated caregiver may assert medical purpose defense to any offense involving marijuana intended for qualifying medical use. Defense shall be presumed valid when evidence shows that:

Affirmative Defense (§ 36-2812A)

1. A physician who has conducted a full assessment of patient states that patient is likely to receive benefit from medical marijuana use
2. Qualifying patient/caregiver did not possess more than reasonably necessary

Affirmative Defense (§ 36-2812A)

3. All marijuana plants were in an enclosed, locked facility
4. Patient/caregiver had marijuana solely for patient's qualifying medical condition

Affirmative Defense (§ 36-2812B)

- A defendant may assert medical purpose defense in a motion to dismiss
- Charges shall be dismissed following an evidentiary hearing if defendant shows required elements

Affirmative Defense (§ 36-2812C)

If elements of 2812A are met, a qualifying patient and caregiver shall not be subject to:

- **Disciplinary action by a court or licensing board, or**
- **Forfeiture of an interest in property**

Probation & Pretrial Release Conditions

Because possession of marijuana is a federal crime, some state courts with similar medical marijuana laws have found conditions of probation or release that prohibit the use of marijuana by qualifying patients to be appropriate.

Probation & Pretrial Release Conditions

Other courts have found conditions of probation or release that prohibit use of marijuana by qualifying patient to be in violation of the medical marijuana law and inappropriate.

This is an area of uncertainty.

New Criminal Offenses

Section 36-2816(C):

A registered nonprofit medical marijuana dispensary may not acquire usable marijuana or mature marijuana plants from any person other than another registered dispensary, registered qualified patient or registered designated caregiver.

Violation is a class 2 felony.

New Criminal Offenses

Section 36-2816(D):

It is unlawful for any person, including an employee or official of ADHS or another state agency or local government, to breach confidentiality of information obtained pursuant to this Act.

A violation is a class 1 misdemeanor.

Judicial Review

Denial of an application or renewal of a registration ID card

- **Is final decision of ADHS subject to judicial review pursuant to A.R.S. Title 12, Ch 7, Art 6**
- **Jurisdiction and venue are vested in Superior Court (A.R.S. §36-2815)**

Judicial Review

Revocation of registration certificate of a dispensary, or registration ID card

- Is final decision of ADHS subject to judicial review pursuant to A.R.S. Title 12, Ch 7, Art 6
- Jurisdiction and venue are vested in Superior Court (A.R.S. §36-2815)

Confidentiality

Section 36-2810: the following are confidential:

- Applications and renewals of patients and caregivers
- Individual names and other identifying information of people issued registry ID cards

Tax Law

- Adds a tax exemption for medical marijuana dispensaries
- See § 43-1201(B)