

**Analysis of the Michigan Medical Marijuana Program and HB 4271 (2013)  
in Light of the August 2013 US Department of Justice Memo  
“Guidance on Marijuana Enforcement”**

**INTRODUCTION:**

The Michigan Medical Marijuana Program (MMMP) was created by Initiated Law 1 of 2008 and was later amended by 4 legislative acts in 2012.<sup>1</sup> Additionally, the case of *Michigan vs. McQueen* held that the MMMP does not “explicitly provide for businesses that dispense marijuana to patients.”<sup>2</sup> Under current consideration by the Michigan House of Representatives is HB 4271, which would create a system to “regulate medical marijuana provisioning centers and other related entities.” Provisioning centers would enable the state’s medical marijuana patients to purchase their medicine from licensed and regulated businesses.

On August 29, 2013, the Department of Justice’s (DOJ) U.S. Deputy Attorney General James M. Cole issued a memo entitled Guidance on Marijuana Enforcement, which outlines 8 areas of priority for federal marijuana enforcement. Commonly referred to as the “2013 Cole Memo,” it states,

*“The Department’s guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.”*

The implication of the non-binding 2013 Cole Memo and the subsequent U.S. Senate Committee on the Judiciary hearing with DAG Cole is that activity in conformity with the 8 priority areas will avoid federal interference, and therefore may be regulated and enforced by the state. This memo will assess the MMMP and HB 4271 with respect to those each of 8 areas.

**ANALYSIS:**

1. *Preventing the distribution of marijuana to minors*

**MMMP**

The MMMP contains language to prevent the distribution of marijuana to minors, as distribution (obtaining) and control of the medicine is handled by the parent or legal guardian. According to the law, the Department of Licensing and Regulatory Affairs shall not issue patient ID cards to anyone under the age of 18 unless three criteria are fulfilled;

<sup>1</sup> 2012 Mich. Pub. Acts 460 and 512-514.

<sup>2</sup> *Michigan v. McQueen*, No. 143824 at 10, (Mich. Feb. 8, 2013), available at <http://courts.mi.gov/courts/michigansupremecourt/clerks/Recent%20Opinions/12-13-Term-Opinions/143824%20Opinion.pdf> (last accessed Sept. 25, 2013).

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1) the recommending physicians must explain the potential risks and benefits to both the patient and their parent or legal guardian; 2) the qualifying patient's parent or legal guardian obtains two written certifications from physicians; and 3) the parent or legal guardian must consent in writing that they consent to their child's medical use, they will serve as the minor-patient's caregiver, and will acquire and administer the medicine for the patient.<sup>3</sup>

#### HB 4271

According to the introduced version of HB 4271, "provisioning centers" are prohibited from employing anyone under the age of 21, meaning only adults age 21 and older would be allowed to distribute medical marijuana.<sup>4</sup> Additionally, based on the MMMP, only the parent or legal guardian of a patient under the age of 18 would be allowed to purchase medicine from provisioning centers.

2. *Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels*

#### MMMP

The MMMP takes steps to prevent the sale of marijuana from going to criminals and gangs by prohibiting anyone who has been convicted of a felony within the last 10 years from becoming a caregiver.<sup>5</sup> Additionally the MMMP makes it a felony for any patient or caregiver to sell their medical marijuana to a person who anyone not authorized to possess medical marijuana. This felony is on top of already existing penalties for the sale and distribution of marijuana.<sup>6</sup>

#### HB 4271

HB 4271 prevents criminal enterprises in at least two notable ways. On the micro level, HB 4271 prevents criminal profiteering by not allowing anyone with a felony conviction in the past 10 years to become an agent (employee or owner) or a provisioning center. In a broader sense, by authorizing and licensing provisioning centers, the bill only allows non-criminal enterprises to engage in the practice of selling medical marijuana to authorized patients and caregivers.

Without HB 4271, the view of the DOJ is that the only groups selling marijuana are criminal enterprises because *McQueen* held that such entities are not permitted by state law; therefore, HB 4271 is necessary in order to for patients to be able to buy medical marijuana under the parameters of the 2012 Cole Memo.

3. *Preventing the diversion of marijuana from states where it is legal under state law in some form to other states*

#### MMMP

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3 Mich. Comp. Laws § 333.26426(b) (2008).

4 <http://www.legislature.mi.gov/documents/2013-2014/billintroduced/House/pdf/2013-HIB-4271.pdf>

5 § 333.26423(h).

6 § 333.26424(k).

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The existing law allows patients and caregivers to grow up to 12 marijuana plants. To prevent the illicit diversion of medicine, patients and caregivers are only allowed to possess up to 2.5 ounces of usable medicine outside of the “enclosed, locked facility” that contains their plants.<sup>7</sup> The laws defining an “enclosed locked facility” and where usable medicine may be stored in a vehicle during transportation were both tightened in 2012.<sup>8</sup> Vehicles used by a patient or caregiver to transport medicine are considered to be enclosed, locked facilities only if the plants are being moved somewhere else within the state to be grown and only the patient or caregiver can be inside the vehicle during the transportation.<sup>9</sup> Additionally, proof of Michigan residence is required to become a patient, which prevents non-Michigan residents from coming into contact with medical marijuana legally produced in the state.<sup>10</sup>

### HB 4271

Transportation of medicine under HB 4271 must take place between the provisioning center and the residence of a patient or caregiver living in the state. Nothing in HB 4271 authorizes or encourages patients, caregivers, or provisioning center agents to transport medical marijuana grown in Michigan to another state. Moreover, a locality can revoke the business license of a provisioning center if the center is knowingly or negligently distributing medical marijuana to non-authorized persons.

4. *Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity*

### MMMP

Nothing in the MMMP authorizes conduct for activity concerning substances beyond medical marijuana. Moreover, state laws on illicit substances and other illegal activity still apply to anyone, including patients and caregivers. The MMMP cannot be used as a shield to protect conduct involving substances other than marijuana for medical purposes as set forth in the law.

### HB 4271

In addition HB 4271’s language prohibiting anyone with a felony conviction within the past 10 years from becoming a dispensary agent, the state’s laws pertaining to controlled substances would still be applicable. Like the MMMP, HB 4271 could not be used as a shield by those engaging in conduct with other illegal drugs or other illegal activity.

5. *Preventing violence and the use of firearms in the cultivation and distribution of marijuana*

### MMMP and HB 4271

Individuals with a history of serious violence and illegal gun use are prohibited by the MMMP from becoming caregivers. Anyone with a felony conviction within the past 10

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<sup>7</sup> § 333.26424(a).

<sup>8</sup> 2012 Mich. Pub. Acts 460, 512.

<sup>9</sup> § 333.26423(d).

<sup>10</sup> § 333.26426(a)(6).

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years may not become a caregiver, and therefore, such individuals are not allowed to cultivate or distribute medical marijuana in Michigan.<sup>11</sup> Similarly, those with a felony conviction within the past 10 years may not become provisioning center agents under HB 4271.

6. *Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use*

#### MMMP and HB 4271

The MMMP explicitly forbids anyone from driving a car or operating any other sort of motor vehicle while under the influence of medical marijuana.<sup>12</sup> This provision would apply to marijuana purchased under HB 4271.

7. *Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands*

#### MMMP and HB 4271

The MMMP prevents environmental damage and safety to public lands by only permitting medical marijuana to be grown in enclosed, locked facilities. These facilities must be on property owned or leased by the patient or caregiver who is cultivating the medicine.<sup>13</sup> Nothing in HB 4271 authorized the cultivation of medical marijuana on public lands.

8. *Preventing marijuana possession or use on federal property*

#### MMMP and HB 4271

Neither the MMMP, nor HB 4271 authorize possession or use on federal property.

### **CONCLUSION:**

On a prima facie level, the MMMP meets each of the DOJ's 8 guidelines concerning marijuana; however, due to the ruling in *McQueen*, there is no legal means for patients to purchase medicine. While several cities in Michigan have adopted city ordinances permitting medical marijuana dispensaries in their municipalities, these ordinances are insufficient, as the DOJ memo only applies to state law.

Therefore, absent a statewide law creating a regulated dispensary system, Michigan patients have no legal means to obtain medicine, and as far as the DOJ is concerned, only criminal enterprises would be selling medical marijuana, even in municipalities that have affirmatively approved the conduct.

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11 § 333.26423(h).

12 § 333.26427(b)(4).

13 § 333.26423(d).

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