

Pennsylvania's SB 3 Provides a Good Framework for Safe Access to Medical Cannabis, but Improvements and for Safe and Legal Access Still Sought After

Summary

Americans for Safe Access (ASA) is the nation's largest organization devoted to advancing therapeutic access to cannabis for patients and researchers. The proposed medical cannabis program that Pennsylvania is considering, SB 3 provides the basic framework necessary to create a viable medical cannabis program for patients in the Commonwealth to obtain and use the therapeutic substance under the recommendation of a physician. There are several components of the bill that ASA thinks are very good for patients, such as having physicians having the power to determine appropriate qualifying conditions based upon the individual needs particular patients and requiring that compassion care centers maintain a "professional setting." However, there are areas for which the bill fails to address some crucial components of truly comprehensive medical cannabis legislation. Below are suggested areas to help clarify and improve the bill for medical cannabis patients in Pennsylvania.

Civil Discrimination Protection

In states that have adopted medical cannabis legislation, patients have faced discrimination from landlords, employers, educational institutions, hospitals, and in child custody proceedings. Medical cannabis patients deserve the same protection from civil discrimination that all other patients have, yet without specific provisions to protect patients in these areas, patients are often adversely affected in their day-to-day lives and cannot receive relief in court.

We suggest the following discrimination protection that is found in Arizona's medical cannabis law.

A. No school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for his status as a cardholder, unless failing to do so would cause the school or landlord to lose a monetary or licensing related benefit under federal law or regulations.

B. Unless a failure to do so would cause an employer to lose a monetary or licensing related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either:

- 1. The person's status as a cardholder.*

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2. A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

C. For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of marijuana must be considered the equivalent of the use of any other medication under the direction of a physician and does not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.

D. No person may be denied custody of or visitation or parenting time with a minor, and there is no presumption of neglect or child endangerment for conduct allowed under this chapter, unless the person's behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

1 ARS § 36-2813.

Inhalation of Medicine

SB 3 currently denies patients the right to inhale their medicine. Studies have shown that the inhalation of medicine is a safe and proper way to administer medical cannabis, especially when done through vaporization. Inhalation of medicine allows patients the dual advantage of rapid onset and easy titration, so patients get both quick relief while not having to worry about taking too much medicine through edible or concentrate form. Conversely, some patients will only get relief through concentrates and edible forms, as they provide relief in a way that is different from inhaled medicine. The bottom line is that patients should have an array of safe and legal ways to consume their medicine, including the inhalation of dried flowers.

Testing of Medicine and Mandatory Staff Training

ASA strongly believes that medical cannabis business should adhere to the best standards available in the industry. Based on the inclusion of a "Professional setting," in Section 10(d), it appears that the sponsors of the bill agree. While the Professional setting provision is a good basis, we think it can be improved. ASA would like request the inclusion of a provision that requires mandatory employee training at compassion centers, and that requires cannabis grown to be sold in compassion centers be tested. The specific requirements of such testing and training are best determined through a rulemaking administrative body, so we believe it would be prudent to include these facets as requirements for the Pennsylvania Medical Cannabis Board to develop. ASA recommends using the American Herbal Products Association guidelines for regulators and the American Herbal Pharmacopeia's cannabis monograph for lab testing calibration.

Patient Cultivation

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Just as it is important to consider patient's ability to maintain a steady supply of cannabis when setting possession limits, patient cultivation also helps safeguard patients in this regard. Patients who require particular, hard to come by strains of cannabis may be better served growing their own cannabis. Additionally, this helps low income patients because patients who must purchase their cannabis from a dispensary are not going to have to costs reimbursed by any health insurance company. Allowing patients or their caregivers to cultivate their own supply of medical cannabis has been effective in a number of states.

DUID

Due to the fact the cannabis stays in a patient's blood stream at detectable levels long after the intoxicating effects of cannabis have worn off, patients could be at risk for violation 75 Pa.C.S. § 1547, Chemical testing to determine amount of alcohol or controlled substance, without actually being impaired. In order to convict a patient suspected of driving while impaired, there should be actual evidence of impairment, not merely a per se amount of non-active metabolites the remain in the bloodstream for prolonged periods of time, often several days after a patient last consumes their medicine.

ASA suggests the following provision from Rhode Island's medical cannabis law that requires evidence of actual impairment in order to convict.

(a) This chapter shall not permit: (3) Any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana. However, a registered qualifying patient shall not be considered to be under the influence solely for having marijuana metabolites in his or her system.²

2 R.I. Gen. Laws § 21-28.6-7(3).

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