



## Potential Problems of Terminating Patients Who Use Medical Marihuana

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The Michigan Medical Marihuana Act ("Act") became effective on January 1, 2009. The Act permits the use of marihuana for patients with "debilitating medical conditions." While there has been lengthy discussion on a physician's role in the medical marihuana process, an issue that has received significantly less attention is whether a physician may terminate a patient relationship solely for the patient's use of medical marihuana. This article briefly describes some of the potential problems with terminating patients who use medical marihuana.

Generally, when a physician terminates a relationship with a patient, he or she must be careful to avoid patient abandonment and discriminatory termination claims. While some states have a physician conscientious objector statute that could potentially allow a physician to stop treating patients that use medical marihuana and avoid these claims, Michigan does not. Therefore, a Michigan physician is not statutorily protected when he or she terminates a patient relationship based on medical marihuana use.

In order to avoid patient abandonment claims, physicians usually only have to provide the patient reasonable notice so that the patient may obtain other medical services. *Tierney v. University of Michigan*, 257 Mich. App. 681, 684 (2003). Thus, a physician can likely avoid a patient abandonment claim when terminating a medical marihuana-using patient by providing sufficient notice.

More problematic are the Michigan and federal government anti-discrimination statutes that apply to health care providers. One statute of particular importance is the Americans with Disabilities Act ("ADA"). The ADA requires that "an individual shall not be denied health services . . . on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services." 42 USC § 12210 (c). While some may argue that marihuana is legal in Michigan, the ADA defines "illegal use of drugs" as the use of "one or more drugs, the



possession or distribution of which is unlawful under the Controlled Substances Act . . . [and which are not taken] under supervision by a licensed health care professional." *42 USC § 12210(d)(1)* and *28 CFR § 36.104 (5)*. Marihuana is a Schedule I substance under the Controlled Substances Act and classified as having no medical use. (See the Department of Drug Enforcement Administration's webpage). Therefore, the ADA defines marihuana as an illegal drug for purposes of disability discrimination claims.

Also problematic for physicians wanting to terminate medical marihuana patients is the Act itself. Specifically, the Act states that a qualified patient who uses medical marihuana shall not be "denied any right or privilege." *MCL § 333.26424 (a)*. Given the relative newness of the Act and that the Act was passed by voter referendum (thus, there is no legislative history), there is little guidance as to what the term "any right or privilege" means. "Any right or privilege" could potentially include physician services.

Thus, because of the newness and uncertainty surrounding the Act, we strongly recommend that physicians consult legal counsel before terminating patients based on use of medical marihuana.