

Medical Marijuana in Tualatin: Facts & Future

BY ROBERT KELLOGG

The Origin of Medical Marijuana Laws in Oregon

Ballot Measure 67, approved in November 1998 by Oregon voters, approved the use of medical marijuana through a State-controlled permit system. The language of the ballot measure was codified by the Oregon Legislature as the Oregon Medical Marijuana Act, which requires (among other things) that an individual obtain a written statement from an MD or DO that the individual has a qualifying medical condition and that the individual's "use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition." As of January 1, the Oregon Health Authority reports over 60,000 registered Oregon Medical Marijuana cardholders, with nearly 4,300 cardholders in Washington County. Oregon law also allows for a cardholder to nominate a caregiver to provide assistance to the cardholder, as well as the registration of a personal grower for the cardholder's marijuana. The law does not provide seeds or plants to the grower, but does exempt patients, caregivers and growers from state (but not federal) criminal prosecution for the possession of marijuana. At the same time, the federal Controlled Substances Act ("CSA") absolutely prohibits the use, possession, manufacture or distribution of marijuana in the United States. Under the CSA, marijuana is classified as a Schedule I controlled substance, which is defined as a drug with no currently accepted medical use, a high potential for abuse and with potentially severe psychological or physical dependence.

An Expanding Paradox: Federal Versus State Laws

Since 1998, numerous states have passed medical marijuana laws similar to the one in

Oregon. Over the years, medical marijuana patients, caregivers and growers have operated in an expanding grey area between state laws and the Controlled Substances Act. Federal agencies, asserting the primacy of federal law, have conducted numerous raids of state-regulated facilities in California and other states. The federal policy changed, however, in October 2009 when the United States Department of Justice issued a memorandum to provide clarification and guidance to federal prosecutors in states that have authorized the medical use of marijuana. This guidance makes it clear that USDOJ is committed to prosecuting enforcement of the Controlled Substances Act, but that, as a general matter, federal resources in states with medical marijuana laws should not be focused on individuals who are "in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana." While this shift in policy alters federal law enforcement priorities, it does nothing to resolve the conflict between federal and state laws governing the use, possession or distribution of medical marijuana.

Expansion of Medical and Recreational Marijuana Laws

Recently, both Colorado and Washington have enacted laws to expand the use of marijuana to recreational users. In Oregon, there is an initiative effort underway to legalize the recreational use of marijuana on the November ballot, with the required petition due in July. With respect to medical marijuana, in 2013 Oregon enacted a law allowing medical marijuana dispensaries to be established after March 1, 2014. The purpose of the law establishing dispensaries is twofold: to formalize the distribution channel of medical marijuana, and to expand the availability of medical marijuana to patients that have had difficulty

finding a caregiver or grower. The dispensaries are intended to act as well-controlled point of distribution, as evidenced by the numerous administrative rules governing the place and manner for distribution of medical marijuana. Under the current law, dispensaries are not allowed within 1,000 feet of another dispensary or any primary, secondary or career school primarily attended by minors, and cannot be located in areas zoned for residential use. Since March 1, the Oregon Health Authority has received 288 applications for dispensaries. As of March 21, the OHA has processed 50 of those applications and issued registrations for eight locations, including three in Portland and one each in Eugene, Salem, Bend and Hermiston (an eighth approved dispensary has elected not to make its location public). The OHA has also issued 22 provisional licenses (pending demonstration of compliance with administrative rules) and rejected 20 applications.

Dispensaries in Tualatin?

In February of this year, one month prior to the effective date of the law allowing medical marijuana dispensaries in Oregon, the Tualatin City Council approved a moratorium that prohibits any dispensary from operating in Tualatin before December 31, 2014. Shortly thereafter, Oregon enacted a law that allows counties and municipalities to ban dispensaries until May 1, 2015. It seems likely that the City Council will soon extend Tualatin's moratorium on dispensaries to the May 1, 2015, date now allowed by state law. After May 1, 2015, however, dispensaries will be allowed everywhere in Oregon absent a change in law or judicial intervention.



Between now and May 1, 2015, the City will conduct a public outreach process to gauge citizen opinion, and then Council will conduct hearings to ultimately determine whether Tualatin will allow dispensaries at all, and, if so, whether to regulate those dispensaries under the minimum requirements in state law (noted above) or to place stricter regulations on the time, place and manner of the operation of dispensaries. If you have an opinion on how the City ought to proceed on this matter, please email the Council (council@ci.tualatin.or.us) or contact the leadership of your Citizen Involvement Organization (contact information available at www.tualationcio.org). To learn more about Oregon's Medical Marijuana Program, search "OHA OMMP" and click on the "public.health.oregon.gov" links.



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