



Medical marijuana at work

As Hawaii prepares to open its first dispensaries, federal law zero-tolerance policies by employers could limit the use of the drug

By Vicki Vlotti
vlottii@staradvertiser.com

Most new business sectors have a rough startup period, but medical marijuana is rocky like none other. The others aren't selling a product that could draw down a federal charge. And even if the risk is small, given the small amounts purchased and used, that fact complicates life for the current customer base, let alone one that industry advocates hope to build.

Hawaii legalized using marijuana for medical purposes in 2000, one of the first states to do so. But there's been little practical support for the law, which essentially provided only that patients authorized for marijuana use would be able to grow their own supply. They could have seven plants and up to four ounces of usable product.

Now the advent of the marijuana dispensary signals a broad change in the availability of the drug. However, those who've been watching all this closely say the landscape won't be

Please see **MEDICAL MARIJUANA, E4**





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changing very fast. Drug testing and drug-free policies in workplaces are likely to continue.

"To the extent that marijuana is illegal under federal law," said attorney John Knorek, "employers who want to prohibit employees from reporting to work with detectable levels in their system could do so, and basically not hire someone or terminate someone."

Knorek, like other attorneys specializing in employment law here, agree that employers may choose to moderate their stance on marijuana, based on new state laws seeking to regulate it.

But they don't have to: There's been no test case in Hawaii yet, but in jurisdictions around the country, courts have backed up employers who mete out consequences for those who don't produce a clean drug test.

The federal Drug Enforcement Administration (DEA) is reviewing a petition to remove the "Schedule I" classification of marijuana, but unless and until it's granted, nothing really changes.

Schedule I is defined as being among the federally "controlled substances," which, according to the federal regulation, "have no currently accepted medical use in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse." This category also includes heroin, LSD, "Ecstasy," peyote and the drug known by the brand name Quaalude.

Some physicians issue patient and caregiver credentials for the drug in treatment for pain, nausea and other symptoms of disease and injury. And some of them are concerned about the disconnect between the federal and state laws.

A state's acceptance of the drug for medical use is one of the criteria on which to base a challenge of the federal classification, said Dr. Clifton Otto, one of those doctors. Otto said the state of Hawaii could challenge the classification on the basis that it has recognized medical use for marijuana. But the state hasn't done so.

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or parenting time, allowing no presumption of neglect or child endangerment.

And on July 11, Gov. David Ige signed Act 230. Its provisions include allowing the University of Hawaii to establish medical marijuana testing and research programs, which, Berquist said, have been sorely lacking to this point.

The most pressing issue raised by the murky legal status of marijuana seems to be the impact on employment, most agree, although even that may not be universally felt.

Garrett Halydier is an attorney and vice president of the Hawaii Dispensary Alliance, a trade association and advocacy nonprofit for the fledgling industry. He acknowledged the perceived risk among job seekers and current employees where drug testing is an established practice, but said the sector of affected workers is only a subset.

Halydier said that roughly 1 percent of the population has a medical marijuana card, and that fully half of those may have left or soon will leave the workforce due to retirement or illness.

He added that most employment sectors don't test — it's often industries such as transportation that have licensure requirements — and that if the company doesn't test, workers are advised not to bring up the issue.

Additionally, the component at issue in marijuana is tetrahydrocannabinol (THC), and only dispensary medications with THC are affected. Some contain only the cannabidiol (CBD), he said, which is not psychoactive.

Still, employers are concerned, said Clayton Kamida, president and chief executive officer of the Hawaii Employers Council. Most of the legal advice he's heard errs on the side of caution.

Even lawyers who represent the worker tend not to be too cavalier about the issue. Attorney Dennis Chang, for example, said he tells his employee clients that they are in "uncharted ground" when contemplating using marijuana as medicine.

"It's potentially devastating," he said. "I advise them in the case that 'Don't do it. It's too

These considerations aren't taken lightly, even by physicians who enable the use of the drug by issuing the required certification to patients. Dr. David Barton is one. He is contacted only through a somewhat labyrinthine website interface that requires an extensive application process.

Part of that is due to the fact that he has no secretary to help manage all the applications, so he relies on the automated system, Barton said in an email response to the Honolulu Star-Advertiser.

But neither does he want to make this too casual.

"My website is purposefully geared to keep the recreational and college-age kids from entering my practice," Barton said. "As I state on my website, I only want real patients.

"I don't do this for the money. In fact, I make very little doing this. It is a part-time medical practice and I personally handle most of the issues, since I am disabled myself and have lived this life that my patients are enduring."

DRUG TESTING ONLY measures the presence of the drug in the system, and advocates agree that there is insufficient research on the subject to gauge the level at which an employee's job performance may suffer.

"The other thing to keep in mind is there are no tests available that can determine when the medicine was consumed, what state of consciousness the person was at that moment, whether it impacts their job," Berquist said. "So it's extremely political.

"The law already provides a penalty for someone who is not able to perform their job," he added. "To do it on the basis of a drug test, that is not scientifically sound."

Regardless, many employers are unwilling to take a risk, given the general understanding that there is a physical effect at some point.

Attorney Knorek remembered a conference where he spoke about the issue and an audience member stood up.

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"That's the one criteria for which states, for some reason, are not willing to stand up," he said.

"The DEA is a federal administrative agency. They do not have the authority to deny a standard of medical care that states have accepted, especially when it directly impacts federal controlled-substances scheduling," he added.

Further, Otto said, the state itself still has marijuana classified as a Schedule I in its own statute, which could invite consumer safety complaints once dispensaries start operating.

THE STATE HAS attempted to carve out some legal protections for participants in the medical marijuana program now that the dispensaries have been authorized, said Carl Berquist, director of the Drug Policy Forum of Hawaii.

Act 242, signed just over a year ago, prohibits discrimination by schools and landlords targeting patients and caregivers credentialed to use medical marijuana. It also bars discrimination in medical care, including organ transplants: and in custody, visitation

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"There is an awareness of safety hazards," he said.

