
STATE OF MICHIGAN

BILL SCHUETTE, ATTORNEY GENERAL

MICHIGAN MEDICAL MARIHUANA ACT:

Medical Marihuana Act prohibits the collective growing or sharing of marihuana plants.

COOPERATIVES:

The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq*, prohibits the joint cooperative cultivation or sharing of marihuana plants because each patient's plants must be grown and maintained in a separate enclosed, locked facility that is only accessible to the registered patient or the patient's registered primary caregiver.

Opinion No. 7259

June 28, 2011

Honorable Rick Jones
State Senator
The Capitol
Lansing, Michigan 48909

Honorable Jim Marleau
State Senator
The Capitol
Lansing, Michigan 48909

Honorable John Walsh
State Representative
The Capitol
Lansing, Michigan 48909

Honorable Gail Haines
State Representative
The Capitol
Lansing, Michigan 48909

You have asked whether the Michigan Medical Marihuana Act (MMMA or Act), Initiated Law 1 of 2008, MCL 333.26421 *et seq*, authorizes patients and primary caregivers to form cooperatives to jointly cultivate, store, and share medical marihuana, or whether the marihuana must be separately cultivated for and provided to a specific patient. [1]

The MMMA was adopted by a majority of Michigan voters on November 4, 2008, and became effective December 4, 2008. Under the MMMA, "[t]he medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act." MCL 333.26427(a), 333.26424(d)(1) and (2). It is important to note that in enacting the MMMA, the people did not repeal any statutory prohibitions regarding marihuana. The possession, use, sale, delivery, or manufacture of marihuana remain crimes in Michigan. [2] Instead, the Act protects specific categories of persons from arrest, prosecution, or other penalty under those laws if they comply with the requirements of the Act:

The MMMA does not codify a *right* to use marijuana; instead, it merely provides a procedure through which seriously ill individuals using marijuana for its palliative effects can be identified and protected from prosecution under state law. Although these individuals are still violating the Public Health Code by using marijuana, the MMMA sets forth particular circumstances under which they will not be arrested or otherwise prosecuted for their lawbreaking....

Accordingly, the MMMA functions as an affirmative defense to prosecutions under the Public Health Code, allowing an individual to use marijuana by freeing him or her from the threat of arrest and prosecution if that user meets *all* the requirements of the MMMA, while permitting prosecution under the Public Health Code if the individual fails to meet any of the requirements set forth by the MMMA. [*People v Redden*, ___ Mich App ___; ___ NW2d ___; 2010 Mich App Lexis 1671 (September 14, 2010) (O'Connell, J., concurring) (citations omitted) (footnotes omitted).]

The MMMA protects four categories of individuals: (1) qualifying patients, MCL 333.26424(a); (2) registered primary caregivers, MCL 333.26424(b); (3) physicians, MCL 333.26424(f); and (4) other specified persons, MCL 333.26424(g) and (i).

Of these categories, qualifying patients and primary caregivers are expressly afforded the broadest protections because they may engage in the "medical use" of marihuana. MCL 333.26424(a) provides, in part: "A qualifying patient . . . shall not be subject to arrest, prosecution, or penalty in any manner . . . for the *medical use* of marihuana in accordance with this act . . . ." (Emphasis added). MCL 333.26424(b) states, in pertinent part: "A primary caregiver . . . shall not be subject to arrest, prosecution, or penalty in any manner . . . for *assisting* a qualifying patient to whom he or she is connected through the department's registration process with the *medical use* of marihuana in accordance with this act . . . ." (Emphasis added). The term "medical use" is broadly defined and includes the "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition." MCL 333.26423(e). In order to qualify for these legal protections, patients and caregivers must apply for and receive a registry identification card. MCL 333.26424(a) and (b).

Under the Act, a "qualifying patient" is defined as a "person who has been diagnosed by a physician as having a debilitating medical condition." MCL 333.26423(h).[3] A "primary caregiver" is a "person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs." MCL 333.26423(g). A qualifying patient who has been issued a registry identification card may possess up to 2.5 ounces of usable marihuana, and cultivate up to 12 marihuana plants, unless the patient has specified that his or her primary caregiver will cultivate marihuana for the patient. MCL 333.26424(a). A primary caregiver who has been issued a registration card may assist up to 5 patients to whom he or she is connected through the registration process, may possess up to 2.5 ounces of usable marihuana[4] per patient, and may also cultivate 12 marihuana plants per patient if the patients have so specified. MCL 333.26424(b), 333.26426(d). A patient may have only one primary caregiver. MCL 333.26426(d). Patients who are cultivating their own marihuana, or primary caregivers who are cultivating marihuana for their patients, must keep the plants in "an enclosed, locked facility." MCL 333.26424(a) and (b)(2).

You ask whether the MMMA authorizes patients and primary caregivers to form cooperatives to jointly cultivate, store, and share medical marihuana, or whether the marihuana must be separately cultivated for and provided to a specific patient.

Because the Act was a citizen initiative under Const 1963, art 2, § 9, it must be interpreted in light of the rules governing the construction of initiatives. *Redden*, ___ Mich App at ___. Initiatives should be construed to "effectuate their purposes" and to "facilitate rather than hamper the exercise of reserved rights by the people." *Welch Foods v Attorney General*, 213 Mich App 459, 461; 540 NW2d 693 (1995). See also OAG, 1985-1986, No. 6370, p 310, 313-314 (June 10, 1986). In addition, the words of an initiated law should be given their "ordinary and customary meaning as would have been understood by the voters." *Welch Foods*, 213 Mich App at 461.

The purpose and intent of the people must be gleaned from the language of the MMMA itself. The Michigan Supreme Court observed in interpreting Const 1963, art 1, § 25, a voter-approved initiative amending the Constitution that:

The object of construction, as applied to a written constitution, is to give effect to the intent of the people in adopting it. *In the case of all written laws, it is the intent of the lawgiver that is to be enforced.* But this intent is to be found in

the instrument itself. . . . "*Where a law is plain and unambiguous, whether it be expressed in general or limited terms, the [lawgiver] should be intended to mean what they have plainly expressed, and consequently no room is left for construction.*" [*Nat'l Pride at Work, Inc v Governor*, 481 Mich 56, 80; 748 NW2d 524 (2008), quoting Cooley, Constitutional Limitations (1st ed), p 55 (emphasis in original omitted) (emphasis added).][5]

The same principle may be applied here to this voter-approved legislative initiative.

The Act does not provide for the operation of cooperatives. Nothing may be read into a statute that is not within its intent, which is derived from the language of the statute itself. *Booker v Shannon*, 285 Mich App 573, 578; 776 NW2d 411 (2009). "[A]n ambiguity exists only where the words of the statute can be viewed with more than one accepted meaning." *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 229; 779 NW2d 304 (2009). A statute's silence cannot, by definition, create more than one accepted meaning and, thus, an ambiguity. Nothing in the language of the MMMA suggests that the majority of voters, in adopting the Act, intended that patients, primary caregivers, or any other individuals could form and operate cooperatives to jointly cultivate, store and share medical marihuana. Rather, the express terms of the Act contemplate that permitted activities, including the cultivation of marihuana, will occur on an individual basis, and in one of two ways.

First, for a patient who does not designate a primary caregiver, the Act assumes that a patient will initially acquire marihuana, and then he or she may cultivate up to twelve marihuana plants for personal medical use. MCL 333.26424(a). The MMMA does not address how the initial acquisition of seeds or plants may be accomplished. But the Act's specific authorization of cultivation and its provision for a certain number of allowable marihuana plants indicates that the intent is for patients to become self-sufficient through their personal cultivation of marihuana for medical use.

A patient who cultivates marihuana must keep his or her plants in an "[e]nclosed, locked facility," which is defined as "a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient." MCL 333.26423(c).[6] The use of the indefinite article "a" before the noun phrase "registered primary caregiver or registered qualifying patient," indicates that the nouns are singular. See The *American Heritage College Dictionary, Third Edition* (1997) (Indefinite article "a" is "[u]sed before nouns and noun phrases that denote a single but unspecified person or thing.") In other words, access to an enclosed locked facility is limited to a single, or one, registered primary caregiver or registered qualifying patient. Thus, a patient cultivating marihuana plants must keep the plants in a facility that is only accessible to the patient.

Second, for a patient who designates a registered primary caregiver, the patient acquires his or her marihuana from that primary caregiver. Once a patient designates that single primary caregiver, the Act does not authorize the patient to acquire marihuana from anyone else. MCL 333.26426(d). Further, if the patient specifies that the caregiver shall cultivate the patient's marihuana plants, the patient relinquishes any right to possess and cultivate marihuana plants for medical use. This is evident from the language of MCL 333.26424(a) and (b) that authorizes the primary caregiver to possess his or her patients' marihuana in the statutorily prescribed amount, and provides that patients may not possess marihuana plants if they have designated a primary caregiver.[7]

A primary caregiver is expressly limited to assisting no more than five patients, MCL 333.26426(d), and the primary caregiver must also keep each patient's plants in an "enclosed, locked facility." MCL 333.26424(b)(2). Further, because the MMMA only authorizes a patient to have 12 marihuana plants at any given time, primary caregivers assisting more than one patient must keep each patient's plants segregated and in a separate enclosed, locked facility. Looking again at the definition of "enclosed, locked facility," given the use of the singular "a" as discussed above, and the disjunctive term "or" between "registered primary caregiver" and "qualifying patient," confirms that only the registered primary caregiver may have access to the facility containing the individual patient's plants. MCL 333.26423(c). See *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 148; 783 NW2d 133 (2010) ("In general, 'or' is a disjunctive term, indicating a choice between two alternatives, i.e., a unit or a portion of the common elements."); *Yankee Springs Twp v Fox*, 264 Mich App 604, 608; 692 NW2d 728 (2004). Thus, a registered primary caregiver's patients may not have access to their caregiver's enclosed, locked facility.

This interpretation is consistent with the plain language of the MMMA, and accords with basic principles of statutory construction that require this office to discern the intent of a statute from its language, and to forgo reading anything into a statute that is not within the intent of its drafters.[8] Moreover, this construction ensures that the twelve-plant-per patient maximum is followed. It also protects against unauthorized access to marihuana plants because, at any given time, there is only one person responsible and accountable for a patient's plants. The plain language of the MMMA thus prohibits the joint cooperative cultivating or sharing of marihuana plants because only the individual authorized to cultivate the marihuana plants, either the registered patient or the patient's registered primary caregiver, may have access to the enclosed, locked facility housing the marihuana plants intended for the individual patient's use.

It is my opinion, therefore, that the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq*, prohibits the joint cooperative cultivation or sharing of marihuana plants because each patient's plants must be grown and maintained in a separate enclosed, locked facility that is only accessible to the registered patient or the patient's registered primary caregiver.

BILL SCHUETTE
Attorney General

[1] Your request raised two additional questions concerning the operation of commercial enterprises to sell or transfer medical marihuana, and whether government officials may conduct warrantless administrative searches of the persons or property of registered patients or primary caregivers. These questions are still under review by the office.

[2] Marihuana remains a Schedule 1 substance under the Public Health Code, MCL 333.7212(1)(c), meaning that "the substance has a high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision," MCL 333.7211. Similarly, the manufacture, delivery, or possession with intent to deliver marihuana remains a felony, MCL 333.7401(1) and (2)(d), and possession of marihuana remains a misdemeanor offense, MCL 333.7403(2)(d). The federal Controlled Substances Act, 21 USC 801 *et seq*, also classifies marihuana as a Schedule 1 substance and prohibits its possession and manufacture. 21 USC 812(c), 823(f), and 844(a).

[3] The Act defines "[d]ebilitating medical condition" as "1 or more" of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.
(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.
(3) Any other medical condition or its treatment approved by the department, as provided for in section 5(a). [MCL 333.26423(a).]

[4] "Usable marihuana" means "the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant." MCL 333.26423(j).

[5] See also *People v Waterman*, 137 Mich App 429, 433; 358 NW2d 602 (1984) (interpreting "Proposal B" a legislative initiative that revised parole standards for certain crimes).

[6] The term "enclosed, locked facility" has been interpreted to require a facility that is enclosed on all sides, meaning a floor, walls, and a ceiling or roof. See *People v King*, ___ Mich App ___; ___ NW2d ___; 2011 Mich App Lexis 224 (February 3, 2011).

[7] See MCL 333.26424(a) ("[I]f the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked

facility."); MCL 333.26424(b)(1)-(2) (Authorizing a caregiver to possess "2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the department's registration process," and "for each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility . . . .")

[8] This conclusion is also consistent with the interpretation accorded other State's medical marihuana laws, like California. See *People v Urziceanu*, 132 Cal App 4th 747, 773 (2005) ("A cooperative where two people grow, stockpile, and distribute marijuana to hundreds of qualified patients or their primary caregivers, while receiving reimbursement for these expenses, does not fall within the scope of the language of the Compassionate Use Act [Cal Health & Safety Code, section 11362.5] or the cases that construe it.").
