



for the **RECORD**

NEWS FOR THE OHIO COURTS

Small Steps and Giant Leaps

On June 20, 1969 Ohio native astronaut Neil Armstrong stepped onto the surface of the moon and uttered these memorable words: “That’s one small step for man, one giant leap for mankind.” At years end, as you celebrate religious holidays and look forward to laying down fresh tracks, value your small steps, over time becoming a giant leap.

The COVID pandemic forced operational changes for every court. Some of the efficiencies and conveniences for attorneys, parties, and court staff born of the COVID experience will remain – small steps. Has the experience helped make you a better judge – a giant leap? It undoubtedly has, even if you have not considered that possibility. You are more efficient, prioritize what is important, better understand when direct in-person face-to-face contact is essential to judging and when it is not, and have a much greater appreciation of family, court staff, friends, and community. All small steps leading to a giant leap in personal growth as a judge and as a human being. Be well! Exciting and challenging times are directly ahead.

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THERE ARE NO “GET OUT OF JAIL FREE” CARDS: NAVIGATING MEDICAL MARIJUANA LAWS

By Judge Mary Katherine Huffman, Montgomery County Common Pleas

In 2016, the Ohio legislature authorized the development of a medical marijuana program and granted control over the implementation and regulation to three governmental entities: the responsibility to control cultivation, processing, and testing laboratories lies with the Ohio Department of Commerce (ODC); the Ohio Board of Pharmacy (OBP) regulates dispensaries, patients and caregivers, and methods of use of medical marijuana; and the Ohio State Medical Board (OSMB) certifies physicians and determines qualifying conditions for the use of medical marijuana. Despite robust efforts to control medical marijuana in Ohio, the legislature left significant questions for the judiciary, particularly related to the court’s role in monitoring and evaluating the use of medical marijuana. The use of medical marijuana creates potential implications for parental rights and responsibilities, probation supervision and revocation, tenants’ rights, and employment. Unlike some states, such as Michigan, where statute prohibits any legal consequence for the use of medical marijuana, Ohio continues to authorize courts to consider the use of medical marijuana in constructing judicial decisions.

Distinguishing Between Medical Marijuana and Marijuana

“Medical marijuana” and “marijuana” represent legally distinct substances. The Ohio Revised Code defines “medical marijuana” as “marijuana that is cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.” *RC §3706.01(A)(2)*. “‘Marijuana’ means all parts of a plant of the genus *cannabis* ...; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin.” *RC §3719.01 (O)*. “Marijuana” remains a prohibited Schedule I controlled substance. “Medical marijuana” has the same high potential for abuse, but includes a medical use. As a Schedule II Controlled Substance, Ohio law limits the cultivation or processing of “medical marijuana” to entities licensed by the ODC, and dispensing of medical marijuana to dispensaries licensed by the ODP. *RC 3796.09(A)* and *3796.10(A)*. The cultivation, sale or possession of “marijuana” remain prohibited by Ohio law. CBD (cannabidiol) naturally occurs in the resinous flower of the cannabis plant and contains significantly less THC than marijuana. (THC) represents a psychoactive component of marijuana responsible for producing a “high.” While the average cannabis strain today contains approximately $\geq 20\%$ THC, federal regulations limit CBD products to $\leq 0.03\%$ THC. Note that use of CBD products *will not* generate a positive drug test result for THC. Delta-9-tetrahydrocannabinol

Obtaining a Registry Identification Card (commonly referred to as a medical marijuana card).

Ohio’s medical marijuana law and federal prohibitions continue to preclude a physician from *prescribing* marijuana. Instead, Ohio law permits a CTR physician to *recommend* that the patient utilize medical marijuana in a specific amount to address a qualified condition. Through

December 31, 2021, a patient may visit a CTR physician via telemedicine. Ohio law requires a patient to establish and maintain a relationship with a physician with an active “certificate to recommend” (CTR) issued by the OSMB.

While the CTR physician must confirm the patient has a qualifying condition before recommending the use of medical marijuana, nothing requires the CTR physician to obtain past medical records or consult with a diagnosing physician. No requirement exists for the CTR physician or the OBP to investigate the patient’s criminal or substance abuse history, nor to consider available alternative medical interventions for the treatment of the qualifying condition.

The ODP issues registry identification cards, which identify individuals as registered patients or caregivers. *Ohio Adm. 3796:7-1-01(E)*. Following a determination of a qualifying condition, the CTR physician utilizes the Ohio Automated Rx Reporting System (OARRS) and begins the registration process. The patient then completes the registration process, after which the patient receives a registry identification card. A valid registry identification card authorizes a patient or caregiver to purchase medical marijuana pursuant to a valid recommendation issued by a CTR physician. The burden lies on a patient or caregiver to notify the OBP within 14 days if a physician determines the patient no longer maintains a diagnosis of a qualifying condition. *Ohio Adm. 3796:7-2-06*. After obtaining a registry identification card, the holder must report to the OBP any subsequent conviction for any drug offense, and thereafter the OBP reviews the information to determine whether the continued dispensing of medical marijuana to the convicted registry identification card holder may present immediate and serious harm to the card holder or others; upon notification of a conviction, the OBP may or may not administer discipline or summarily suspend the registration.

Purchasing Medical Marijuana

Regulations limit sale of medical marijuana to licensed dispensaries and requires the presentation of photographic identification and a valid registry identification card before entry into the dispensary. Caregivers may only purchase medical marijuana for an associated patient who has an active registration. *Ohio Adm. 3796:7-2-06*. The Ohio Administrative Code limits the purchase of medical marijuana to a rolling 90-day supply, divided into two 45-day fill periods starting on the date of the physician’s recommendation. *Ohio Adm. 3796:7-2-04*. If the card holder exhausts the recommended supply during the 45-day period, the patient must wait until the next 45-day period begins before additional medical marijuana may be purchased. If the registered card holder fails to purchase the entire recommended supply in a 45-day period, the balance of the recommended supply does not roll over to the subsequent 45-day period. Authorized forms of ingestion of medical marijuana include only oils, tinctures, plant material, edibles, lotions, creams and patches. While dispensaries may sell plant material, ingestion by smoking or vaping remains prohibited.

Marijuana Research

The National Association of Drug Court Professionals (NADCP) released a 2021 position statement on cannabis, supporting reasonable prohibitions against the use of smoked or raw cannabis by participants in substance abuse recovery, including suitable consequences for positive drug tests. Treatment models recognize the persistence of substance abuse and the concomitant propensity to relapse, and these models utilize initial and sustained abstinence from the use of any substance of abuse, including marijuana, to advance recovery.¹

The route of THC ingestion matters; oral ingestion of THC produces a lower blood concentration than that obtained through inhalation. Smoking THC products results in more immediate effects on the brain.² The short and long-term effects of marijuana use are highly dependent on the duration and amount of use. Once the “high” associated with marijuana use dissipates, resulting experiences can include severe anxiety, panic, depression, and paranoia. Marijuana use is linked to executive and cognitive functioning impairment, as well as motivational syndrome, characterized by apathy, dullness, lethargy and impaired judgment.³ Because of its effects on cognitive functioning, marijuana use inhibits the goal of learning from substance abuse treatment.⁴ Despite attitudes to the contrary, research concludes that marijuana is the “ultimate gateway drug,” leading to increased chances of using other illicit substances.⁵ Acute intoxication may occur from chronic use, and can result in cannabinoid-induced psychosis. Symptoms of acute intoxication include: impaired coordination, decreased muscle strength, decreased hand steadiness, lethargy, decreased concentration, slowed reaction time, slurred speech, and cognitive decline.⁶ The higher potency marijuana available today may produce other adverse effects not identified in studies evaluating the adverse consequences of lower THC-level marijuana.⁷

Medical Marijuana Facts

- Patient/caregiver registry identification cards valid for one year.
- Patient/caregiver must carry valid registry card while in possession of medical marijuana.
- Medical marijuana must be packaged in an approved container provided by a dispensary.

¹ Kenneth Silverman, Dace Svikis, Conrad Wong, Jacqueline Hampton, Maxine Stitzer, and George Bigelow, A Reinforcement-Based Therapeutic Workplace for the Treatment of Drug Abuse: Three-Year Abstinence Outcomes, 10 *Experimental and Clinical Psychopharmacology* 228 (2002).

² Edward Wadieh, Lisa Adams, and Tony L. Brown, Neuropsychiatric Effects of Marijuana, 3 *J. Addiction Medicine & Therapy* 61 (2017).

³ R.D. Crean, N.A. Crane, and B.J. Mason, An Evidence Based Review of Acute and Long-Term Effects of Cannabis Use on Executive Cognitive Function, 5 *J. Addiction Med.* 1 (2011).

⁴ Jenny Williamson, Helen Buckland, and Susanna Cunningham, How Does Marijuana Work in the Brain? 75 *Amer Biology Teacher* 299 (2013)

⁵ Wayne D. Hall, Cannabis Use and The Mental Health of Young People, 40 *Australian & New Zealand J. Psych* 105 (2006).

⁶ National Institute of Health, Marijuana Intoxication (2017).

⁷ See Stacy Steigerwald, Peggy Wong, Beth Cohen, Julie Ishida, Marzieh Vali, Erin Madden and Salomeh Keyhani, Smoking, Vaping, and Use of Edibles and Other Forms of Marijuana Among U.S. Adults, 169 *Ann Intern Med* 890 (2018).

- The operation of a vehicle while under the influence of medical marijuana is a violation of Ohio’s motor vehicle operation regulations. Ohio Adm. 3796:7-2-05.
- Ohio law does not recognize medical marijuana registry cards issued in other states.
- Employers can regulate and/or prohibit the use of medical marijuana by employees.
- Qualifying Medical Conditions: AIDS and HIV, Amyotrophic lateral sclerosis (ALS), Alzheimer’s disease, Cachexia, Cancer, Chronic traumatic encephalopathy, Crohn’s disease, Epilepsy or another seizure disorder, Fibromyalgia, Glaucoma, Hepatitis C, Huntington’s disease, Inflammatory bowel disease, Multiple sclerosis, Pain: chronic/severe or intractable (including chronic migraines and complex region pain syndrome), Parkinson’s disease, PTSD, Sickle cell anemia, Spasticity, Spinal cord disease or injury, Terminal illness (6 months of life expectancy), Tourette syndrome, Traumatic brain injury, Ulcerative colitis

Ohio Automated Rx Reporting System (OARRS)

The OBP maintains a prescription monitoring program, designed as a tool for prescribers and pharmacists to identify and prevent prescription drug abuse, and as a means for law enforcement to investigate prescription drug abuse. *See O.R.C. §§4729.75, 4729.80 and 4729.86.* Intended as a vehicle to provide patient-specific prescription data, OBP limits access to OARRS to medical and some law enforcement personnel. Regulations authorize probation officers to request information from OARRS related to an individual the officer is currently investigating pre-sentence or monitoring in relation to a drug abuse offense. Thus, if the monitored offense falls outside a drug abuse offense, but nonetheless bears a relation to substance abuse requiring intervention and monitoring, probation staff remains unable to access the database for potentially critical information on the probationer’s prescription drug use, including medical marijuana. *See Ohio Board of Pharmacy, OARRS Acceptable Use Policy.* The availability of OARRS information for specialized docket participants is not limited to crimes involving the possession of drugs. Instead, the judge or probation officer associated with the program may receive information from OARRS related to a current or prospective program participant, and the offense for which the individual obtained specialized docket intervention may be *any* criminal offense. *See O.R.C. § 4729.80(A)(16)l.* The OARRS regulations prohibit the court from requiring an offender to provide a copy of his/her report as a term or condition of supervision or sentencing or in relation to any civil proceeding.

Judicial Involvement in the Use of Medical Marijuana

Ohio judges possess the authority to prohibit, limit or restrict the use of medical marijuana by individuals involved in legal actions including criminal court supervision and cases related to parenting rights and responsibilities, provided the court engages in an individualized determination of the appropriateness of use under the circumstances.

Parenting Time

Unless there is clear and convincing evidence that a child is unsafe, the use of medical marijuana may not be the primary basis for an adjudication that a child is abused, neglected, or dependent, for allocation of parental rights and responsibilities, or for a parenting time order. *RC §3796.24*. Numerous Ohio courts have considered the alleged use of medical marijuana by a parent, and notably the failure of a parent to either obtain a valid registry identification card and/or failure/refusal to provide verification of purchasing medical marijuana from a dispensary, as a factor in making decisions related to permanent custody requests. *See In Re R.D.*, 2020-Ohio-145; *In Re L.H.*, 2021-Ohio-2849 and 2021-Ohio-2850.

Probation Supervision

RC §2929.15 provides that if the court imposes a sentence that includes community control sanctions, the “court shall impose as a condition of the nonresidential sanctions, the offender must abide by the law...” The court may also impose any other conditions the court considers appropriate, including that the defendant not use drugs and submit to random drug testing. *RC §2929.17* sets forth a non-exhaustive list of non-residential sanctions which the court may impose on a defendant. Thus, given that federal law continues to classify all marijuana as a prohibited Schedule I controlled substance and the court may impose a requirement that the offender abide by the law and may prohibit the use of any drug of abuse, courts possess inherent authority to prohibit medical marijuana use while on supervision.⁸ Courts generally prohibit the use of many drugs, including alcohol and certain prescription medications, by individuals while on supervision; courts must carefully consider the use of medical marijuana for supervised offenders. Courts may also prohibit an offender from using medical marijuana as use interferes with the courts ability to reliably interpret test results; there is no distinction in test results between “medical marijuana” and “marijuana,” and use hampers the courts efforts to monitor abstinence.

Ohio Decisions Related to Medical Marijuana:

In Re L.H., 2021-Ohio-2849 and 2021-Ohio-2850 – in a permanent custody proceeding, the trial court did not improperly consider father’s marijuana use because, even though he suffered from a qualifying condition, and case worker suggested to father that he obtain a medical marijuana card, he failed to do so but continued to use marijuana. See also *In Re Z.D.*, 2020-Ohio-234, *In Re R.D.*, 2020-Ohio-145 and *In Re Kail. K.*, 2018-Ohio-1548.

State v. Sanchez, 2021-Ohio-1585 - the use of medical marijuana may result in a violation of a community control sanction prohibiting the use of alcohol or illicit drugs.

⁸ Judge Frederic B. Rodgers, On Prohibiting the Use of Medical Marijuana By Persons Granted Probation, 49 Judges J. 29 (2010).

State v. Hobden, 2020-Ohio-2877 - a trial court retains broad discretion to determine appropriate restrictions for an offender on community control sanctions and may prohibit an offender from using medical marijuana while on supervision. See also *State v. Ryan*, 2021-Ohio-4059.

OJC TIPS AND TRICKS

This is a fluid list that will constantly change. We will always be adding items as they become frequent questions, but if you have anything to add, please feel free to contact [Justin Long](#).

- Feel free to submit any articles you would like to have added to the quarterly For the Record in the future.
- The [Judicial Advisory Group \(JAG\)](#) is available for judges who need need a group to extend its ability to provide confidential assistance to judges.
- Please fill out a "[Who Do You Know](#)" form to let the OJC know who you know in the legislature or the administration.
- For help signing into the Ohio Judicial Conference's website, www.ohiojudges.org, please see this [document](#).
- Annually, the OJC hosts a Judicial-Legislative Exchange program, which allows a day for judges to come to Columbus to shadow legislators, hopefully from their districts. The idea is for the legislators to then shadow the judges in their court for the day.
- Did you know that if you log in to the Judicial Conference website and go to [associations](#), you can choose your judicial association and see the summer and winter meeting dates?
- The Judicial Conference Jury Instructions Committee posts [recently revised jury instructions](#) on the Judicial Conference website.
- The website was recently updated with a few notable changes. One of those changes was the addition of a [calendar](#) which is matched up with our list of events.
- Another addition is the "[Outreach that Works](#)" link, which allows judges to submit any recommendations that help them to reach out to the public, whether it be publications, websites, suggestions on events, etc.
- A notable connection to help all judges is the [National Center for State Courts](#), or the NCSC. This site helps to promote the rule of law and improves the administration of justice in state courts and courts around the world.
- [Judicial Diversity: A Resources Page](#)

Judicial College Offerings

The Judicial College CLE schedule has been upgraded starting this year. To view the calendar and sign up for courses, please visit this [site](#).

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WEEKLY FYI:

NATIONAL NEWS:

- Arkansas's Cruel and Unusual Killing Spree
- I Went to a Town Hall Meeting in a County Ravaged by Opioids. What I Saw Broke My Heart.
- OxyContin Maker Asks Judge to Toss Case Brought by City
- Gorsuch Might Be Tough to Predict on Criminal Justice Cases

STATE NEWS:

- Justice Insider: Murderer's Attorney Tries Punctuation Defense in Sentencing
- Summit Prosecutor Campaign Reaches out to Victims in Different Languages
- Drunken Driver Gets 180 Days After Coroner's Office Says Crash Victim Died of Cancer
- Retired Stark County Family Court Judge Michael Howard to Speak at 2017 LEAD Conference at Georgetown University



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