



Missouri Department of Health and Senior Services

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Michael L. Parson
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To Whom It May Concern:

At the request of several law enforcement entities and legislators, we are writing to express the Department of Health and Senior Services' understanding of the law and regulations applicable to the question of whether medical marijuana patients may be in possession of medical marijuana before licensed dispensaries are operating. We have always been aware that the interpretation of possession provisions of Article XIV and how those provisions should interact with existing possession laws will ultimately be determined through the decisions of law enforcement, prosecutors, and finally, Missouri courts. Because of this, we have been careful to express our opinions regarding these matters as only opinions. However, many stakeholders have suggested our opinion could be helpful on this topic, and so we offer the below thoughts for consideration to the extent you may find them useful.

Article XIV mandated that DHSS must begin accepting, no later than 210 days after the effective date of that law, applications by qualifying patients for the medical use of marijuana, by caregivers to possess medical marijuana on behalf of a patient, and by patients and caregivers to cultivate medical marijuana for patient use. Pursuant to this, DHSS began accepting these applications on June 28, 2019. DHSS is obligated to approve such applications if the individual meets the constitutional standard for approval. The first individuals approved for the medical use of marijuana received medical marijuana identification cards on June 28, 2019. As of January 27, 2020, 30,261 patients, 840 caregivers, and 9,709 patient/caregiver cultivators have received a medical marijuana identification card.

Article XIV also mandated that DHSS must begin accepting, no later than 240 days after the effective date of the law, applications from entities wishing to be licensed as medical marijuana facilities. Pursuant to this, DHSS began accepting facility license applications on August 3. By operation of the mandated timelines outlined in Article XIV, there is no question it was inevitable that individuals would be authorized for the medical use of marijuana before any business would be licensed to operate as a dispensary. Furthermore, the realities of preparing medical marijuana for sale, which necessarily includes several months of cultivation and testing, guaranteed that medical marijuana would not be ready for sale in dispensaries until well after the first facilities were licensed.

Naturally, these circumstances have given rise to the question of whether medical marijuana patients may possess medical marijuana in the months between when they were authorized and when dispensaries begin operating. Article XIV does not directly address this question. However, what does appear throughout Article XIV are rights and protections for authorized medical marijuana patients that are not activated by circumstances other than possession of a valid medical marijuana identification card. In other words, Article XIV establishes a right to possess and use medical marijuana once approved by DHSS, mandates that DHSS approve qualifying patients well before DHSS is required to license dispensaries, and never specifies that these patient rights are only applicable after dispensaries are operating.

Of course, a related question is, if medical marijuana patients are currently authorized to possess medical marijuana despite the lack of licensed dispensaries, then from where may a patient acquire medical marijuana? Article XIV does not address this question, either. As has been the case in every state that has legalized the possession of marijuana, it is a difficult reality that there is no legal method of initially acquiring marijuana, unless that marijuana is somehow discovered in the wild. This is true both for licensed facilities and for authorized patients. However, for both facilities and patients, once in possession of marijuana, all of the rights and protections outlined in Article XIV apply without caveat.

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In summary, it is the opinion of DHSS that, pursuant to Article XIV, individuals who hold a valid medical marijuana identification card are currently authorized to possess and use medical marijuana, and the lack of a mechanism by which those individuals may legally come into possession of medical marijuana does not change their right to possess it. Of course, the right to possess and use is not unlimited. For instance, patients may not consume medical marijuana in public and may not operate a vehicle if impaired. While Article XIV does not cover all possession-related issues, there are many details on this topic worth studying in the law.

We realize this letter may not provide as much guidance as many have hoped to receive regarding how to proceed in this new legal environment. As always with this area of the law, we strongly encourage entities who must navigate the many complex circumstances that will arise regarding possession of medical marijuana to seek legal counsel who can provide guidance tailored to specific circumstances.

If you would like to discuss these issues further, please feel free to reach out to us. We have been working with various law enforcement entities from the earliest days of implementing this law and are very open to connecting with additional groups as needed.

Thank you,

A handwritten signature in blue ink, appearing to read "Lyndall Fraker", is written over the typed name. The signature is fluid and cursive.

Lyndall Fraker