



Medical Marijuana

What is medical marijuana?

The term “medical marijuana” refers to the use of the marijuana (or cannabis) plant and products made from this plant to treat illnesses and symptoms, such as chronic pain. The United States Food and Drug Administration (FDA) has not recognized or approved any marijuana products as medicine, and under Federal law, it is illegal and part of the most tightly restricted classes of drugs. However, with the nationwide move toward legalizing marijuana use for medical purposes at the state level, a growing body of scientific research has suggested that marijuana may effectively treat conditions such as nausea, chronic pain, muscle inflammation, and even epilepsy. Many people who are chronically ill use medical marijuana to improve their quality of life with results that are comparable to or better than those they experienced from conventional medicines.

How does medical marijuana work?

Marijuana works as an effective treatment for some conditions because of chemicals, called cannabinoids, which are produced by the plant’s flowers, stalks, and leaves. When consumed, these cannabinoids interact with neurotransmitters in your brain and receptors in your nerve system to produce a variety of effects on your body.

There are more than 100 different types of cannabinoids, but most people are familiar with just two: tetrahydrocannabinol (THC), and cannabidiol (CBD). THC is what produces the psychoactive reaction, or “high,” that is often associated with marijuana use. CBD, on the other hand, is responsible for most of marijuana’s medicinal affects, and has been linked with relief from inflammation, pain, anxiety, seizures, spasms, and other conditions without negative side effects like lethargy or confusion. Most medical marijuana dispensaries offer varieties of medical marijuana that are specifically formulated to be low in THC but high in CBD to maximize the plant’s medicinal benefits and minimize any psychoactive impact.

Is it legal to use medical marijuana?

As of July 2017, 29 states and the District of Columbia have passed laws legalizing to some degree the use of medical marijuana. Several well-known national organizations, such as the National Comprehensive Cancer Network, the American Academy of Family Physicians, and the American Public Health Association have advocated for the use of marijuana to treat serious medical conditions.

However, on a federal level, both recreational and medicinal use of cannabis remain prohibited under the Controlled Substances Act (CSA) of 1970. Under this law, marijuana is classified by the Drug Enforcement Agency (DEA) as a Schedule I drug. This means that the federal government considers marijuana to have a high potential for abuse and no recognized medical use. The DEA



has enforced the CSA's prohibition against marijuana use through criminal prosecutions, civil asset forfeiture, and other legal procedures.

When state laws conflict with federal laws, federal law prevails. In constitutional law, this is known as the doctrine of preemption. In states which permit marijuana use, this means that while agencies controlled by the state (such as police forces) would permit people to use marijuana in the manner allowed under state law, federal agencies might not be so accommodating. There are numerous examples of individuals who were acting in complete compliance with state marijuana laws when they were prosecuted under the CSA.¹

How can I obtain medical marijuana?

Medical marijuana laws vary substantially by state. In some states, marijuana is legal for recreational use, in others you must have a doctor's recommendation to legally purchase marijuana, and in other states only certain types of marijuana and marijuana products are legal. Many states only permit doctors to recommend medical marijuana to patients with specific medical conditions.

A recommendation for medical marijuana is not the same as a prescription. Since doctors are licensed to practice by federal and state organizations, they are regulated by federal law. Since marijuana is illegal under federal law, doctors may not prescribe medical marijuana to patients as a medicine. However, doctors' "recommendations" are protected by their first amendment right to free speech and the laws of individual states. Because medical marijuana cannot be prescribed like other medicines, you are not entitled to protections and privileges for your medical marijuana that you might be entitled to with other medications, such as insurance coverage and the right to transport your medication with you while travelling.

In many states, you must follow several steps to obtain medical marijuana products. Generally, you must first establish that you have a medical condition (such as pain resulting from cancer) that cannot be managed effectively by traditional medicines and treatments. Then, you must obtain a recommendation for medical marijuana from a doctor. Not all doctors make medical marijuana recommendations, so you may need to ask for a referral. In some states, you must then register with your state and pay a fee to receive a medical marijuana card, which will allow you to buy medical marijuana products from your local dispensaries. In some states, this card will also allow you to grow a small number of plants in your own home.

Since medical marijuana laws are different in each state, you may have to follow a different procedure to obtain medical marijuana depending on where you live. If you are interested in obtaining medical marijuana, you must research what the law is in your state. You can do that by visiting your state's web page dedicated to medical marijuana, or through the resources listed at the end of this handout.

Can I take medical marijuana with me when I travel?

¹ For example, see USA v. Gerald Duval, JR., 12-2338, where a terminally ill man growing marijuana legally under state law was convicted in federal court to five years in prison. http://blogs.findlaw.com/sixth_circuit/2014/01/the-curious-marijuana-case-of-usa-v-gerald-and-jeremy-duval.html

Flying with marijuana is illegal on any domestic or international flight because all airports, airplanes, and air spaces fall under the jurisdiction of federal law. Transportation Security Administration (TSA) agents do not search for marijuana or other drugs during the screening process; however, if they observe that you have marijuana or other controlled substances in your possession, they will refer the matter to law enforcement. If the matter is referred to local (state) law enforcement after you are caught trying to travel with medical marijuana, you are unlikely to be prosecuted unless your state has passed additional laws prohibiting marijuana in airports. If the matter is referred to federal law enforcement after you are caught with medical marijuana in an airport, then you may face legal consequences. Additionally, when travelling internationally, consider that other countries' law enforcement and legal systems may treat marijuana possession very differently, and in some cases much more severely, than the United States.

Similarly, you should also be cautious traveling with marijuana from state to state by other means of transportation. In states where marijuana is illegal, you may be subject to criminal prosecution if you are observed to have marijuana in your possession, regardless of whether you possess any kind of medical marijuana recommendation or card. If you are considering bringing medical marijuana with you when traveling, keep in mind that under the CSA, it is a felony to transport marijuana across state lines. Furthermore, not all states allow dispensaries to honor medical marijuana cards from other states, so you may not be able to purchase more medical marijuana when travelling outside your home state.

If you are travelling within your own state, consider the limits that your state law places on how much marijuana you can carry at one time and where, should the need arise, you can purchase more. In some states, like Massachusetts, you may possess up to a 60-day supply (10 ounces) of marijuana at any one time, but in other states the possession limit is as small as one ounce. In some states, you may only register with and purchase marijuana from a single dispensary, whereas in other states purchasing requirements are more flexible. You should carefully plan your travel to ensure that you comply with state law while maintaining a consistent pain or symptom management regiment.

Can I lose my job for using medical marijuana?

The Americans with Disabilities Act (ADA) protects employees with disabilities from discrimination by their employers based on their disability. Under the ADA, employees with disabilities (like cancer) are also entitled to reasonable accommodations to help them perform their job more comfortably. These accommodations are usually negotiated with employers on a case by case basis. Examples of reasonable accommodations can include time off from work, working from home, temporary job reassignment, or possibly making exceptions to employer policies, if these things would not cause the employer undue hardship.

To be considered "disabled" under the ADA, you must have a physical or mental impairment that "substantially limits one or more major life activities," have a history of a disability, or be a person who is regarded by others as having a disability. Since the ADA is a federal law, it treats marijuana as an illegal drug, not a medication. Under the ADA, current "illegal" drug use is not protected as a disability, so medical marijuana use alone is not enough to entitle you to a reasonable accommodation in the work place. Under the ADA, employers are not required to alter their drug-free workplace policies in order to accommodate a worker who uses medical marijuana.

No state or federal court has ever ruled that an employer must grant an employee's request to use medical marijuana during work as a reasonable accommodation. It is unlikely that a court would ever rule in favor of this accommodation because of marijuana's potential to impair an employee and due to marijuana's classification as a Schedule I drug under federal law.

Under state law, it is less clear whether employees with disabilities have a right to use medical marijuana outside of work hours. In most states, employers may terminate or refuse to hire medical marijuana users who fail drug tests. However, in three states (Arizona, Delaware, and Minnesota), laws have been passed which explicitly protect medical marijuana users from being fired or otherwise disciplined for testing positive for marijuana use. Other states have also passed laws which indicate that medical marijuana users may be entitled to some degree of accommodation, though it is unclear what responsibilities employers would have in these circumstances. As a rule, while employees may enjoy some degree of protection for their actions outside of work, employers may always terminate employees for performance-related reasons such as impairment while in the workplace. If you believe that medical marijuana use would impact your job performance or if you work at a job with a strict illegal drug use policy, you should consider whether other treatment options may be available to you.

What if medical marijuana has not been legalized in my state?

If you live in a state that has not legalized medical marijuana, do not attempt to obtain medical marijuana from an illegal source. Even if you are attempting to improve your quality of life by using marijuana instead of other prescription drugs, you may face severe criminal penalties. Instead, explore other treatment options with your doctor. There may be other medicines or therapies which may treat your condition or symptoms just as effectively. Alternatively, you may consider relocating to a state where it has been legalized if you and your doctor agree that medical marijuana would help provide you with the highest quality of life.

Resources

- For more information about the science behind medical marijuana:
<https://www.scientificamerican.com/article/medical-marijuana-how-the-evidence-stacks-up/>
- For a state-by-state breakdown of medical marijuana legislation:
<http://norml.org/legal/medical-marijuana-2>
- For links to your state's medical marijuana laws: <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
- For suggestions about talking with your doctor about medical marijuana:
http://www.safeaccessnow.org/talking_to_your_doctor_about_medical_marijuana
- For information about various types of medical marijuana:
http://www.safeaccessnow.org/using_medical_cannabis

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