



COMMUNIQUÉ

for the Health Industry

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MEDICINAL MARIHUANA AND THE HEALTH FACILITY

*Catharine Schiller
Toronto
Tel. 416.595.8638
cschiller@millerthomson.ca*

*Kathryn Frelick
Toronto
Tel. 416.595.2979
kfrelick@millerthomson.ca*

The law surrounding the legal possession of marihuana has been changing rapidly. The federal *Controlled Drugs and Substances Act* ("CDSA") now sets out an exemption to allow for the possession of less than 30 grams of marihuana. However, the only existing exemption to allow for use of marihuana is associated with medicinal marihuana under the *Marihuana Medical Access Regulations*.

MARIHUANA MEDICAL ACCESS REGULATIONS

The Marihuana Medical Access Regulations under the CDSA create three categories of patients who can apply to use medicinal marihuana:

1. those with a terminal illness and an expected life span of under 12 months;
2. those who have serious medical conditions such as Multiple Sclerosis, AIDS/HIV, severe arthritis and epilepsy. Eligible conditions are set out in the Schedule to the Regulations; and
3. those with other serious medical conditions who have declarations from two medical specialists that marihuana would help them. All conventional therapies should have been tried or at least considered and found not medically appropriate for the reasons outlined in the Regulations.

ACCESS TO MEDICINAL MARIHUANA

The Government of Canada recently announced the adoption of an interim policy on the provision of marihuana for medicinal purposes. The interim policy is designed to:

- make marihuana seeds available to persons authorized to produce marihuana for medicinal purposes and who do not currently have plants at any stage of production; and

- provide a legal source and supply of dried marihuana to persons authorized to use marihuana for medicinal purposes who are unable to produce it themselves or find a person who can produce on their behalf under the Marihuana Medical Access Regulations.

If this policy is successfully and consistently implemented, it could go a long way toward assisting those users of medicinal marihuana in overcoming problems of access to a controlled supply of this drug. The interim policy can be amended or suspended at any time by the Government of Canada but it is expected that it will remain in effect at least until the courts have an opportunity to clarify the government's roles and responsibilities regarding the supply of medicinal marihuana for patients.

HOSPITAL PATIENTS

It is important for hospitals to note that the Narcotic Control Regulations under the CDSA require that "no person in charge of a hospital shall permit a narcotic [including marihuana] to be supplied or administered", except on receipt of a prescription or written order of a physician. From a risk management perspective, an order should be required from a physician with privileges at the hospital. If the patient does not have an authorization to possess and use medicinal marihuana, hospital staff should not be participating in either supplying or administering this drug to the patient.

A patient who requires medicinal marihuana may not be in a condition to move outside the hospital building in order to smoke. The provisions in the *Tobacco Control Act* which prohibit smoking in a hospital only apply to tobacco. There are no similar statutory provisions which would prohibit a patient from smoking medicinal marihuana in the hospital. Having said this, the *Regulatory Impact Analysis Statement*, published with the *Marihuana Medical Access Regulations* (but not forming part of them), states that "the decision to allow a patient to possess and/or grow marihuana within the institution remains the decision of that institution". There is no obligation on a hospital to allow its patients to either possess or use medicinal marihuana on its premises and some hospitals in the province have made a policy decision to restrict its use. The right of hospitals to refuse to allow patients to possess or use medicinal marihuana in the facility has also been supported by the Ontario Hospital Association.

Permitting a patient to smoke and/or use medicinal marihuana could potentially impact other patients of the institution. It may not only affect them directly if they are exposed to the marihuana smoke but it may also pose a fire hazard within the building. For hospitals with a "no smoking" policy, such activities will also be contrary to this corporate direction. In a hospital setting, the institution and its health professionals are responsible to take reasonable steps to protect the safety of other patients.

Where a hospital confiscates marihuana from a patient, it technically takes possession of this controlled substance. Therefore, if it provides the marihuana back to anyone other than the patient, the hospital would arguably be trafficking the marihuana. When the hospital takes possession of marihuana cigarettes from a patient, it has two options:

- Keep the marihuana cigarettes safely in its possession until the patient is released from the hospital and then give it back to him or her (if it is either medicinal marihuana or is less than 30 grams); or
- Destroy the marihuana cigarettes.

Please note that the hospital is not obligated to keep marihuana taken from a patient who does not hold a licence for medicinal marihuana.

IMPLICATIONS

Each hospital must assess the risks and benefits associated with permitting medicinal marihuana to be used on its premises. Regardless of the decision that is made by the hospital on this matter, it is essential that a policy with clearly defined parameters be put in place to ensure that various situations involving medicinal marihuana will not be treated in an arbitrary manner.

Although this *Communiqué* is focussed on the hospital patient, there are similar considerations for long term care facilities as well. To the extent that an organization is involved with clients who are likely to fit within the categories where medicinal marihuana is a possible treatment modality, we suggest that the organization should address these issues in a proactive manner.

We would be pleased to assist in the development or review of your medicinal marihuana policy.

ABOUT THE AUTHORS:

Catharine Schiller and *Kathryn Frelick* are lawyers practicing in our Health Industry Practice Group and are general counsel for the Legal Retainer Program.

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REGIONAL CONTACTS

Toronto/Markham

Joshua Liswood
jliswood@millerthomson.ca

Kathryn Frelick
kfrelick@millerthomson.ca

Waterloo-Wellington

Gregory P. Hanmer
ghanmer@millerthomson.ca

Calgary

Bryan R. Ede
bede@millerthomson.ca

Edmonton

Brian J. Curial
bcurial@millerthomson.ca

Vancouver

David Martin
dmartin@millerthomson.ca

Miltom Consulting Inc.

Dr. Isser Dubinsky
idubinsky@miltomconsulting.com

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