

Public Entities Pool Of Ohio

“The Right Choice For The Right Protection”



UPDATE

Above photo courtesy of the City of Columbus, Franklin County.

A QUARTERLY NEWSLETTER

SUMMER 2019

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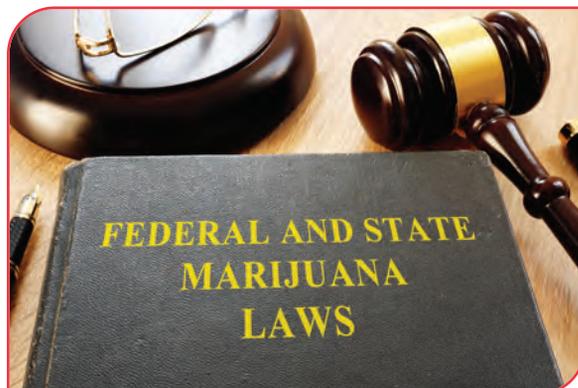
Current State of Medical Marijuana in Ohio

By Adair M. Smith, Esquire, Reminger

Ohio recently legalized medical marijuana for certain qualifying medical conditions. Starting in January 2019, medical marijuana became available for sale from licensed dispensaries in Ohio. Given this recent change, Ohio employers should familiarize themselves with the medical marijuana law and review their employment and drug-testing policies.

House Bill 523's Passage and Implementation

In June 2016, House Bill 523 was signed into law by Governor John Kasich. The bill legalized the use of medical marijuana in Ohio for the following qualifying medical conditions: HIV/AIDS, Alzheimer's disease, ALS, cancer, CTE, Crohn's disease, epilepsy, fibromyalgia, glaucoma, hepatitis C, inflammatory bowel disease,



multiple sclerosis, pain that is chronic and severe, Parkinson's disease, PTSD, sickle cell anemia, spinal cord disease or injury, Tourette's syndrome, traumatic brain injury, and ulcerative colitis. Recreational marijuana use is still illegal in Ohio. Prior to purchasing medical marijuana from an approved dispensary in Ohio, patients must visit a certified physician who can confirm they have one of the permitted medical conditions that qualify for medical marijuana and register for the medical marijuana program through the OMMCP Patient & Caregiver Registry.¹

The Ohio law allows state-run or licensed growing facilities and retail dispensaries to sell medical marijuana to qualifying individuals. There are 56 licensed dispensaries approved to sell medical marijuana, most of which are located in northeast and central Ohio. Of these licensed dispensaries, nine currently have Certificates of

Every effort has been made to ensure the accuracy of the information in this newsletter. Professional counsel should be sought before any action is taken or decision is made based on this material.

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Operation and are selling cannabis products.² House Bill 523 only permits medical marijuana in “edible, oil, vapor, patch, tincture, and plant matter form;” smoking marijuana and home cultivation of cannabis is illegal.

Licensed growing facilities and retail dispensaries in Ohio have been in operation since September. Due to construction and legal delays, however, sales of medical marijuana in Ohio did not begin until January 2019. Approximately 5,500 Ohioans have purchased medical marijuana to date,³ and sales from January 16, 2019 - March 18, 2019 total \$2,173,990.⁴

Tensions Between State and Federal Law

Notably, while medical marijuana usage is legal in Ohio, marijuana remains a Schedule I substance under the Controlled Substances Act. Therefore, its use, possession, or cultivation is a federal crime. 21 U.S.C. § 812(c)(10). Despite the fact that ten states and the District of Columbia have legalized recreational marijuana and 33 states have legalized medical marijuana, the Department of Justice still takes the position that marijuana is illegal, albeit not a priority for prosecution.⁵ Specifically, in 2013, the Department of Justice issued a memorandum to prosecutors indicating that state law should be the primary means of addressing marijuana-related activity in states that have legalized marijuana.⁶ As such, individual medical marijuana users are relatively unlikely to be prosecuted under the Controlled Substance Act. The Department of Justice’s approach is to target larger-scale marijuana growers that supply marijuana for recreational use.

Implications for Employers

In light of the tension between state and federal law, employers are in a delicate position concerning employees who use medical marijuana. To add to the confusion, the EEOC has not published new guidance on recreational or medical marijuana laws. The EEOC continues to allow employers to discipline or terminate employees for marijuana use since it is illegal under federal law. This presents a problem for employers



whose employees are subject to drug testing and use medical marijuana.

In Ohio, employers are not required to accommodate a job applicant or employee’s medical marijuana use. House Bill 523 states that an employer may prohibit any drug usage, including medical marijuana, under its workplace drug policy. As such, Ohio employers can discipline, discharge, or take any other adverse employment action against an employee or job applicant because of use, possession, or distribution of medical marijuana. Similarly, employers can make an exception in their drug policies for lawful use of medical marijuana. It is important to note that while there have been several lawsuits concerning whether the Americans with Disabilities Act (ADA) requires

employers to accommodate employees’ use of medical marijuana, there has been no published federal case law holding that this is protected activity under the ADA.

As legal medical marijuana use becomes more prevalent in Ohio, employers should create and implement drug policies that address medical marijuana. Having a clear drug policy in place will set expectations for employees and may deter unwanted and costly litigation.

Drug policies should explicitly define what drugs are considered illegal and specify whether exceptions are made for off-premises use of legal drugs, like medical marijuana. Employers should further implement policies that ensure any employee using medical marijuana is considered a qualified user in Ohio and indicate whether qualified users can be fired or disciplined if they fail a drug test. Having a clear policy in place will remove any “gray area” as to whether lawful medical marijuana use is appropriate for employees.

Employers that have a zero-tolerance drug policy should review their policies in light of the recent changes in Ohio law under House Bill 523. Any zero-tolerance policy should clearly state that marijuana is prohibited in any form and for any purpose, including medicinal, and that a positive drug test will result in discipline. Such policies should extend to drug usage that occurs outside of work. While zero-tolerance drug policies are simpler administratively, they are inflexible and do not permit as much employer discretion. Moreover, low unemployment rates and the opioid

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Ohio Municipal League Endorses PEP

The Ohio Municipal League endorses PEP because it is the premier local government risk-sharing pool in the State of Ohio.

Since 1952, the Ohio Municipal League (OML) has been representing the collective interests of Ohio cities and villages before the Ohio General Assembly and state government offices. In 2016, Kent Scarrett became the Executive Director of the OML with a charge to increase programs and services to its vast membership.

“This agreement with PEP is a big step forward in our efforts to expand our ability to meet the growing needs of our members.” Kent goes on to express, “PEP and the OML share a common focus on serving members.”

PEP is a public entity group self-insurance program that prides itself on providing broad coverage, innovative risk solutions, and skilled claims handling and litigation

management, while continually offering stable rates. As a result, PEP is well established and well regarded in Ohio, making PEP the best risk management choice for the OML.

In addition to cities and villages, PEP is comprised of counties, fire and ambulance districts, health districts, water and sewer districts, agricultural societies, and parks and recreation districts. More than 535 PEP members receive programs and

benefits specifically tailored to meet the unique needs of Ohio public entities.

If you represent a city, village or other public entity in the Buckeye State, why not find out more about becoming a member of PEP? Visit PEP’s website at www.pepohio.org to learn more.



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epidemic may also narrow the pool of qualified workers in various industries and regions in Ohio. These factors should all be taken into consideration when creating a workplace drug policy.

For employers that have operations in multiple states – including those that have not legalized medical marijuana – a state-specific drug policy is crucial. Multi-state employers should stay

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updated on the state laws in which they operate. While most states, like Ohio, that have legalized medical marijuana allow employers to exclude users from employment, some states consider medical marijuana use to be protected activity. Given this complication,

employers who operate in multiple states should consult with counsel to ensure compliance.

¹ <https://www.medicalmarijuana.ohio.gov/>.

² <https://www.medicalmarijuana.ohio.gov/>.

³ <https://fox8.com/2019/03/10/1st-ohio-medical-marijuana-processor-receives-ok-to-operate/>.

⁴ <https://medicalmarijuana.ohio.gov/News?articleID=180>.

⁵ <https://www.businessinsider.com/legal-marijuana-states-2018-1>.

⁶ <https://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy>.



Adair M. Smith is an associate in Reminger’s Cincinnati office. Her practice includes general liability, insurance matters, medical and nonmedical professional liability, premises liability, and employment law. She originally joined Reminger as a law clerk in 2015, where she gained experience in a wide variety of practice groups and in all aspects of litigation. Adair graduated cum laude from the University of Cincinnati College of Law, where she served as an Articles Editor of the University of Cincinnati Law Review and competed in the L. Edward Bryant, Jr. National Health Law Transactional Moot Court Competition. Adair also published two articles with the University of Cincinnati Law Review.

Member Profile: Canton City Public Health

In Northeast Ohio on the edge of Amish country, 90 miles south of the Lake Erie shoreline in Stark County, resides Canton City, Ohio's eighth largest city. Known by many for the Pro Football Hall of Fame, Canton City is also home to the McKinley Presidential Library and Museum.

In service to the city's citizens is Canton City Public Health, whose motto is "Promoting and Protecting Health Since 1849." In fact, its logo reiterates this commitment with three impactful words – "Prevent, Promote, Protect." These are large challenges.



Health Commissioner Jim Adams has been employed by the Public Health Department for over 32 years. He began his career as the Environmental Health Director. When asked what he is most proud of, he replies, "Our collaborative role in the community. We literally have an impact on everyone, every day. From the food we eat, to the air we breathe. Public

health is everywhere." And regarding the role he plays, Jim says, "Public health has an infinite variety of responsibilities! You never know what issues may come up in a day. You always have the opportunity to affect the community in a positive way, every day."

Canton City Public Health touches nearly every aspect of the community by preventing disease through inspections, gathering data for health surveillance, and promoting health through services and education.

The work involved to accomplish this, to name some examples, includes:



Public Health
Prevent. Promote. Protect.

Canton City Public Health

- conduct food service inspections,
- monitor air quality,
- issue birth and death certificates,
- investigate smoking complaints in public businesses,
- operate a community recycling center,
- inspect private wells and septic tanks,
- test drinking water,
- obtain mold spores and pollen counts,
- operate Bureau for Children with Medical Handicaps Program,
- provide childhood immunization clinics,
- provide counseling, education and testing for HIV/AIDS,
- investigate animal bites for rabies, and
- test for potential lead exposure.

Special mention is deserved for the Women, Infants & Children (WIC) Health Program, which reaches income eligible women, infants and children with a health or nutrition risk. In Stark County, WIC services over 6,000 program participants monthly. With a similar mission is the THRIVE program, the goal of which is to improve infant mortality rate and measure results for success.

Should a health emergency erupt in the community, the skilled and dedicated employees of Canton City Public

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We Want Your PEP Calendar Photo Entries!



PEP members, you are encouraged to submit photos of your public entity for the 2020 PEP calendar. Photos depicting administration offices, citizens, parks, police and fire departments, events or any special areas of interest in your public entity are welcome. We are looking for seasonal variety in the photos – from farm fields laden with sweet, yellow corn to the vibrant colors of autumn tree-lined streets, urban centers glistening with fresh-fallen snow, and the soft hues of apple blossoms heralding new growth.

Your city, county, fire and ambulance district, village, health district, agricultural society, or park and recreation district has many reasons to be proud of the people and the work you accomplish together.

Please take a moment to share those images with us. Your public entity's name will appear with each photo that is published – it's a great opportunity to toot your horn!

For details, including submission guidelines, we invite you to visit the PEP website www.pepohio.org and select *News & Information*.

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Health maintain emergency response plans for the Health District and serve as the point of contact to the media.

Why Did Canton City Public Health Select PEP?

Jim states, "We are very happy with the comprehensive coverage provided at a very reasonable price. The staff is always willing to provide advice and support. In addition, the loss control visits are helpful and to the point. We always learn something new."

What Would Canton City Public Health Say to Another Public Entity Considering PEP?

Jim replies, "PEP should definitely be on your radar to



manage risk for your agency. The cost is reasonable, the staff is helpful, and the coverage is comprehensive."

For more information about Canton City Public Health, visit www.cantonhealth.org.

If your public entity is interested in learning more about PEP, we invite you to visit www.pepohio.org or call (800) 748-0554 and ask to speak with a PEP Representative.

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PEP Offers Valuable Programs and Services to Members

Legal Consultation Service

New this year, PEP announced the Legal Consultation Service. This membership benefit offers PEP members up to 90 minutes of free legal advice from a full-service law firm.

PEP members seeking legal consultation services (listed below) can call (877) PEP-OHIO. Once membership, authority, and an area of inquiry have been confirmed, the caller's information will be provided to a full-service law firm. Then, an attorney will contact the member directly.



The attorney will track the time utilized by each PEP member and send a notice when the 90-minute time limit has been reached. Additional time for legal consultation services may be provided at the member's expense.

Consultation can be utilized in any one, or combination of, the areas listed below:

- Employment law
- Zoning and land use
- Open records and open meeting laws
- Indemnification provision review in contracts
- Attorney-to-attorney consultation
- Law enforcement
- Governmental immunities

Property Appraisals

In order to ensure that member buildings are properly valued, PEP has partnered with a property appraisal firm, CBIZ, to conduct appraisals on qualified and scheduled buildings over a five-year period. The details of the program are as follows:

- All buildings scheduled at \$100,000 or more will be appraised.
- If a member does not have a building scheduled at \$100,000, the building with the highest value will be appraised.
- Members will receive an email advising them of their upcoming appraisal so that the appointment may be conveniently scheduled.

- Members will receive a copy of all appraisals.
- This service is being provided at no cost to members.

Law Enforcement Portal

In partnership with the Legal & Liability Risk Management Institute (LLRMI), PEP offers its members access to law enforcement policies and online training which is compliant with federal and state laws and the Ohio Collaborative Community-Police Advisory Board. The Policy Learning Library contains more than 75 sample policies and forms that are available for downloading and customization. All users will be notified in the event of a change to a policy or form so that members will always have access to current policies and forms. In addition to the policies and forms, more than 150 short, relevant online training modules are available for viewing in the Online Training Learning Library. Officers can train at their convenience on topics relevant to law enforcement, and chiefs will be able to access the data relative to officer training. Online technical support is available 24/7 through LLRMI.

PEP+ Grant

The PEP+ Grant is designed to help members reduce or prevent liability claims and property losses by encouraging all PEP members to apply for up to \$1,000 in grant money to fund, or partially fund, safety items that will aid in their loss control or risk management efforts. New in 2019, continuing education and loss control training expenses may also be eligible under the PEP+ Grant program.

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PEP Representative Andy Leitch (right) presents Captain Jake Rice of Jefferson Rescue District with a \$1,000 PEP+ Grant check.

PEP Serves a Diverse Membership with Unique Exposures

PEP currently has over 535 members who represent a wide variety of public entities throughout the state of Ohio. A key strength of PEP is understanding that public entities are diverse, each with their own unique exposures, thereby requiring specialized coverage to meet their needs.

PEP's membership ranges from cities to villages, health and water departments to parks, and fairs to fire departments. It is this diversity that contributes to a strong and vibrant program.

Cities & Villages

Competitive pricing and broad coverage, including cyber liability coverage, offers cities and villages quality coverage, services and value. PEP has won the endorsement of the Ohio Municipal League (OML),

representing the collective interests of Ohio cities and villages since 1952.

Health Departments

Nearly all health departments in the state of Ohio are PEP members. PEP's cyber liability coverage is essential to protect electronic patient information. PEP is endorsed by the Association of Ohio Health Commissioners (AOHC), the leading voice of local public health in Ohio.

Water & Sewer Districts

PEP is endorsed by the Coalition of Ohio Regional Districts (CORD). Highly individualized loss control and risk management services benefit all PEP members. PEP Loss Control staff members conduct on-site visits to identify hazards and make recommendations to either reduce or

eliminate the potential for a loss. In addition to regularly scheduled visits, loss control representatives are available as needed for personal consultations or to conduct educational workshops.

Parks

PEP is endorsed by the Ohio Parks and Recreation Association (OPRA). The OPRA represents over 1,300 parks and recreation professionals and citizen board members.

County Fairs

County fairs proudly participate with PEP and often seek coverage with PEP because members are not charged for every special event hosted at the fairgrounds. This is especially significant as more fairgrounds are hosting year-round events.

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Only qualifying expenses will be considered for the PEP+ Grant funds. Qualified expenses include safety items, wherein the primary purpose of the item is the prevention or reduction of liability claims or property losses.

Grant funds are for purchases and/or expenses incurred by a PEP member during the application period, which is January 1 through December 31, 2019.

Examples of qualified expenses include, but are not limited to:

- Playground surface materials
- Safety signage
- Safety cones or other hazard warning items
- Automated External Defibrillators
- Fire extinguishers and warning sirens
- Loss control training

All PEP members are encouraged to participate and apply for a grant during the application period of January 1 through December 31, 2019.



PEP Representative Craig Hibner presents Fire Chief Vince Bee of the Village of New Richmond with a \$1,000 PEP+ Grant check.

For more information, visit the Member Programs and Services section of the PEP website at www.pepohio.org.



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PEP Welcomes New Members

South East Ambulance District

PEP is pleased to welcome the South East Ambulance District in Wood County as a PEP member. The South East Ambulance District is a new entity that will be building its fleet of vehicles very soon.

City of Mentor

PEP welcomes the City of Mentor. The City of Mentor joined PEP in January of 2019. The city is located in Lake County, Ohio, and the current population is 47,159.



Hilltop Joint Fire & Rescue District

PEP is pleased to welcome the Hilltop Joint Fire & Rescue District. The Hilltop Joint Fire & Rescue District is located in Hamilton County. This new entity will cover fire and rescue services for the City of North College Hill and the City of Mt. Healthy.



Welcome!

The South East Ambulance District, City of Mentor, and Hilltop Joint Fire & Rescue District join over 500 Ohio public entities benefitting from PEP's coverage, educational programs, and risk management services. PEP members include cities,

counties, fire and ambulance districts, villages, health districts, agricultural societies, and parks and recreation districts. Programs and benefits are specifically tailored to meet the unique needs of Ohio public entities.

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Fire and EMT Departments

Guaranteed replacement cost coverage for fire vehicles makes PEP the number one choice for fire departments. PEP is the only program

in Ohio that provides this extensive coverage.

If you would like to learn more about how PEP can benefit your public entity, please contact a PEP

Representative at (800) 748-0554. We also invite you to visit the PEP website at www.pepohio.org.