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Medicinal marijuana and parenting: How to thread the needle

With more states legalizing both recreational and medicinal marijuana, marijuana use and parenting will likely intersect more frequently. Therefore, it is important to understand the current law as well as some basic guidelines to advise clients that may legally use marijuana.

While marijuana is still illegal on the federal level, attitudes toward marijuana use are clearly changing. Many states have legalized it in some form or another over the last several years (26 states and the District of Columbia have some form of legalized marijuana).

Perhaps the most dramatic was Colorado's legalization of recreational marijuana back in January 2014, followed by the state of Washington, Alaska and Oregon shortly thereafter. Most recently, last fall, ballot measures to legalize recreational marijuana use in California, Massachusetts, Maine and Nevada all passed.

In Illinois, the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/1 et seq.) took effect on Jan. 1, 2014. The law is designed to help those who suffer from a "debilitating medical condition" (Section 130/10(h)). Cancer, multiple sclerosis, ALS, HIV/AIDS, lupus, rheumatoid arthritis and Crohn's disease, are all considered debilitating medical conditions.

Originally intended to be a four-year pilot program, the law was extended last to be in effect at least until July 1, 2020. Furthermore, what constitutes a "debilitating medical condition" was expanded last year to include 40 specific conditions, up from 30. It now includes patients that are terminally ill. (Section 130/10(h)).

While the federal government still prohibits the use of marijuana, as the Illinois law points out, data from the FBI shows "approximately 99 out of 100 cannabis arrests in the U.S. are made under state law, rather than federal law. Consequently, changing the

state law has the practical effect of protecting from arrest the vast majority of seriously ill patients who have a medical need to use cannabis." (States are not required to enforce federal law). (Section 130/5(d)).

The law distinguishes between medical and nonmedical uses of marijuana with the clear goal of protecting people with debilitating medical conditions, as well as their physicians and care providers, from arrest and prosecution.

As long as you take the appropriate steps to be certified under the law, you are allowed to possess and use up to 2.5 ounces every 14 days (literally deemed an "adequate supply"). (Section 130/10(a)).

The law does, however, provide certain immunities to those that apply for or possess a certificate that allows them to use medicinal marijuana. Specifically, the fact that an individual has, or has applied for certification, does not constitute probable cause or reasonable suspicion and cannot be the sole basis to search a person or their property. (Section 130/25(l)). It also prohibits discrimination by a school, employer or landlord for a person who is a certified patient. (Section 130/40(a)(1)).

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Certain protections are even provided for parents under this law. Specifically:

"A person otherwise entitled to custody of or visitation or parenting time with a minor may not be denied that right, and there is no presumption of neglect or child endangerment, for conduct allowed under this [a]ct, unless the person's actions in relation to cannabis were such that they created an unreasonable danger to the safety of the minor



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as established by clear and convincing evidence." (Section 130/40(b)).

While this is a powerful provision of the code that every family law practitioner needs to be aware of, this provision is hardly a blanket grant of immunity to use marijuana.

What creates "an unreasonable danger to the safety of a minor child" is open for debate and the burden of establishing it by clear and convincing evidence is a high bar.

So where do we draw the line?

130/30(a)(2) and (a)(3))

- Use marijuana in motor vehicles; (Section 130/30(a)(3)(D))
- Operate, navigate or be in physical control of any motor vehicle, aircraft or motorboat; (Section 130/30(a)(5))

- "Knowingly" use marijuana in close proximity to anyone under the age of 18. (Section 130/30(a)(3)(G))

Other steps that can and should be taken into consideration by any parent exercising parenting time or decision-making authority that also qualifies to use medicinal marijuana.

- Abide by the law itself. No driving under the influence and no using marijuana in the presence of your children;

- Keep your "adequate supply" in a location that is not accessible by your children and ideally under lock;

- Keep close tabs on the amount as well as when and how much you use;

- Keep any food items that are infused with marijuana away from children and clearly label it as medicinal; Use discretion when using. Try not to use it immediately prior to exercising your parenting time, or while you are actively watching your kids; and

- If your children are old enough, explaining to them that this is medicine, and not for recreational use, just like you would for other prescription medications.

While lawyers must learn to not pass judgment on their clients who use medical marijuana properly, they should at all times encourage their clients to be upfront about their use and be prepared to address the issue when it comes up before the court.

As long as a client uses marijuana legally, under the treatment and supervision of a licensed physician, and applies common sense to how they use it, they should be treated no differently than a parent who is under the care of a licensed physician that is taking psychotropic medication for the treatment of their mental health.