

**[PART IX.] MEDICAL USE OF MARIJUANA****Note**

Legislative oversight working group; improvement of the medical marijuana dispensary system (ceases to exist June 30, 2018); reports to 2017-2018 legislature. L 2016, c 230, §23.

**Cross References**

Medical marijuana; economic and other data; collection, see §201-13.9.

Medical marijuana; tenant use; eviction, see §521-39.

Medical marijuana testing and research programs, see §304A-1865.

**Law Journals and Reviews**

Gonzales v. Raich: How the Medical Marijuana Debate Invoked Commerce Clause Confusion. 28 UH L. Rev. 261.

**Case Notes**

District court erred in re-determining the fact of medical use in contrast to the parties' stipulation that petitioner possessed and transported medical marijuana under a valid Medical Marijuana Registry Patient Identification Certificate, thus preempting consideration of petitioner's affirmative defense; given that the State presented no evidence showing that the marijuana was for any other use other than a medical use, petitioner proved that petitioner was authorized to possess marijuana for medical purposes pursuant to this part for purposes of an affirmative defense under §712-1240.1(2). 129 H. 397, 301 P.3d 607 (2013).

**§329-121 Definitions.** As used in this part:

"Adequate supply" means an amount of marijuana jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an "adequate supply" shall not exceed: seven marijuana plants, whether immature or mature, and four ounces of usable marijuana at any given time. The four ounces of usable marijuana shall include any combination of usable marijuana and manufactured marijuana products, as provided in chapter 329D, with the marijuana in the manufactured marijuana products being calculated using information provided pursuant to section 329D-9(c).

"Advanced practice registered nurse" means an advanced practice registered nurse with prescriptive authority as described in section 457-8.6 and registered under section 329-32.

"Debilitating medical condition" means:

- (1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;
- (2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
  - (A) Cachexia or wasting syndrome;
  - (B) Severe pain;
  - (C) Severe nausea;
  - (D) Seizures, including those characteristic of epilepsy;
  - (E) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or
  - (F) Post-traumatic stress disorder; or
- (3) Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or advanced practice registered nurse or potentially qualifying patient.

"Marijuana" shall have the same meaning as "marijuana" and "marijuana concentrate" as provided in sections 329-1 and 712-1240.

"Medical use" means the acquisition, possession, cultivation, use, distribution, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use", the term distribution is limited to the transfer of marijuana and paraphernalia.

"Physician" means a person who is licensed to practice under chapter 453 and is licensed with authority to prescribe drugs and is registered under section 329-32. "Physician" does not include a physician assistant as described in section 453-5.3.

"Primary caregiver" means a person eighteen years of age or older, other than the qualifying patient and the qualifying patient's physician or advanced practice registered nurse, who has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana. In the case of a minor or an adult lacking legal capacity, the primary caregiver shall be a parent, guardian, or person having legal custody.

"Qualifying patient" means a person who has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition.

"Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana. "Usable marijuana" does not include the seeds, stalks, and roots of the plant.

"Written certification" means the qualifying patient's medical records or a statement signed by a qualifying patient's physician or

advanced practice registered nurse, stating that in the physician's or advanced practice registered nurse's professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. The department of health may require, through its rulemaking authority, that all written certifications comply with a designated form. "Written certifications" are valid for only one year from the time of signing. [L 2000, c 228, pt of §2; am L 2009, c 11, §43 and c 169, §7; am L 2010, c 57, §4; am L 2013, c 178, §2; am L 2015, c 241, §6; am L 2016, c 230, §7]

### Case Notes

Rule of lenity required the construction, under the specific facts of the case, of §§329-122 and 329-125 and this section against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under this section, and the prohibition on transport of medical marijuana through "any ... place open to the public" under [§329-122(c)(2)(E)]; thus, under §701-115(2)(b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution evidence proved by a preponderance of the evidence the specified fact or facts with negatived penal liability. 129 H. 397, 301 P.3d 607 (2013).

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**§329-122 Medical use of marijuana; conditions of use. (a)**

Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if:

(1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition;

(2) The qualifying patient's physician or advanced practice registered nurse has certified in writing that, in the physician's or advanced practice registered nurse's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient; and

(3) The amount of marijuana possessed by the qualifying patient does not exceed an adequate supply.

(b) Subsection (a) shall not apply to a qualifying patient under the age of eighteen years, unless:

(1) The qualifying patient's physician or advanced practice registered nurse has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

(2) A parent, guardian, or person having legal custody consents in writing to:

- (A) Allow the qualifying patient's medical use of marijuana;
- (B) Serve as the qualifying patient's primary caregiver; and
- (C) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

(c) The authorization for the medical use of marijuana in this section shall not apply to:

(1) The medical use of marijuana that endangers the health or well-being of another person;

(2) The medical use of marijuana:

- (A) In a school bus, public bus, or any moving vehicle;
- (B) In the workplace of one's employment;
- (C) On any school grounds;
- (D) At any public park, public beach, public recreation center, recreation or youth center; or
- (E) At any other place open to the public; provided that a qualifying patient, primary caregiver, or an owner or employee of a medical marijuana dispensary licensed under chapter 329D shall not be prohibited from transporting marijuana or any manufactured marijuana product, as that term is defined in section 329D-1, in any public place; provided further that the marijuana or manufactured marijuana product shall be transported



in a sealed container, not be visible to the public, and shall not be removed from its sealed container or consumed or used in any way while it is in the public place; and

(3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this part.

(d) For the purposes of this section, "transport" means the transportation of marijuana, usable marijuana, or any manufactured marijuana product between:

(1) A qualifying patient and the qualifying patient's primary caregiver;

(2) The production centers and the retail dispensing locations under a dispensary licensee's license; or

(3) A production center or retail dispensing location and a certified laboratory for the purpose of laboratory testing;

provided that "transport" does not include the interisland transportation of marijuana, usable marijuana, or any manufactured marijuana product, except when the transportation is performed for the sole purpose of laboratory testing pursuant to section 329D-8, as permitted under section 329D-6(m) and subject to section 329D-6(j), and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State. [L 2000, c 228, pt of §2; am L 2001, c 55, §15; am L 2013, c 178, §3; am L 2015, c 241, §7; am L 2016, c 230, §8]

### **Law Journals and Reviews**

Gonzales v. Raich: How the Medical Marijuana Debate Invoked Commerce Clause Confusion. 28 UH L. Rev. 261.

### **Case Notes**

Rule of lenity required the construction, under the specific facts of the case, of §§329-121 and 329-125 and this section against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under §329-121, and the prohibition on transport of medical marijuana through "any ... place open to the public" under subsection [(c)(2)(E)]; thus, under §701-115(2)(b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution evidence proved by a preponderance of the evidence the specified fact or facts with negatived penal liability. 129 H. 397, 301 P.3d 607 (2013).

**§329-123 Registration requirements.** (a) Physicians or advanced practice registered nurses who issue written certifications shall provide, in each written certification, the name, address, patient identification number, and other identifying information of the qualifying patient. The department of health shall require, in rules adopted pursuant to chapter 91, that all written certifications comply with a designated form completed by or on behalf of a qualifying patient. The form shall require information from the applicant, primary caregiver, and physician or advanced practice registered nurse as specifically required or permitted by this chapter. The form shall require the address of the location where the marijuana is grown and shall appear on the registry card issued by the department of health. The certifying physician or advanced practice registered nurse shall be required to have a bona fide physician-patient relationship or bona fide advanced practice registered nurse-patient relationship, as applicable, with the qualifying patient. All current active medical marijuana permits shall be honored through their expiration date.

(b) Qualifying patients shall register with the department of health. The registration shall be effective until the expiration of the certificate issued by the department of health and signed by the physician or advanced practice registered nurse. Every qualifying patient shall provide sufficient identifying information to establish the personal identities of the qualifying patient and the primary caregiver. Qualifying patients shall report changes in information within ten working days. Every qualifying patient shall have only one primary caregiver at any given time. The department of health shall issue to the qualifying patient a registration certificate, and shall charge \$35 per year.

(c) Primary caregivers shall register with the department of health. Every primary caregiver shall be responsible for the care of only one qualifying patient at any given time.

(d) Upon inquiry by a law enforcement agency, which inquiry may be made twenty-four hours a day, seven days a week, the department of health shall immediately verify whether the subject of the inquiry has registered with the department of health and may provide reasonable access to the registry information for official law enforcement purposes. [L 2000, c 228, pt of §2; am L 2011, c 73, §6; am L 2013, c 178, §4; am L 2015, c 241, §8; am L 2016, c 230, §9]

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**[§329-124] Insurance not applicable.** This part shall not be construed to require insurance coverage for the medical use of marijuana. [L 2000, c 228, pt of §2]

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**§329-125 Protections afforded to a qualifying patient or primary caregiver.** (a) A qualifying patient or the primary caregiver may assert the medical use of marijuana authorized under this part as an affirmative defense to any prosecution involving marijuana under this part or part IV; or part IV of chapter 712; provided that the qualifying patient or the primary caregiver strictly complied with the requirements of this part.

(b) Any qualifying patient or primary caregiver not complying with the permitted scope of the medical use of marijuana shall not be afforded the protections against searches and seizures pertaining to the misapplication of the medical use of marijuana.

(c) No person shall be subject to arrest or prosecution for simply being in the presence or vicinity of the medical use of marijuana as permitted under this part. [L 2000, c 228, pt of §2; am L 2016, c 230, §10]

### Case Notes

Rule of lenity required the construction, under the specific facts of the case, of §§329-121 and 329-122 and this section against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under §329-121, and the prohibition on transport of medical marijuana through "any ... place open to the public" under [§329-122(c)(2)(E)]; thus, under §701-115(2)(b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution evidence proved by a preponderance of the evidence the specified fact or facts with negatived penal liability. 129 H. 397, 301 P.3d 607 (2013).

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**[§329-125.5] Medical marijuana patient and caregiver protections.** (a) No school shall refuse to enroll or otherwise penalize, and no landlord shall refuse to lease property to or otherwise penalize, a person solely for the person's status as a qualifying patient or primary caregiver in the medical marijuana program under this part, unless failing to do so would cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulation; provided that the qualifying patient or primary caregiver strictly complied with the requirements of this part; provided further that the qualifying patient or primary caregiver shall present a medical marijuana registry card or certificate and photo identification, to ensure that the qualifying patient or primary caregiver is validly registered with the department of health pursuant to section 329-123.

(b) For the purposes of medical care, including organ transplants, a registered qualifying patient's use of marijuana in compliance with this part shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.

(c) No qualifying patient or primary caregiver under this part shall be denied custody of, visitation with, or parenting time with a minor, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this part; provided that this subsection shall not apply if the qualifying patient's or primary caregiver's conduct created a danger to the safety of the minor, as established by a preponderance of the evidence. [L 2015, c 242, §2]

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**§329-125.6 Protections afforded to an owner or qualified employee of a licensed medical marijuana dispensary.** (a) An owner or employee of a medical marijuana dispensary that is licensed under chapter 329D may assert the production or distribution of medical marijuana as an affirmative defense to any prosecution involving marijuana under this part or part IV; chapter 329D; or part IV of chapter 712; provided that the owner or employee strictly complied with the requirements of chapter 329D and any administrative rules adopted thereunder.

(b) An owner or employee of a licensed medical marijuana dispensary not strictly complying with the requirements of chapter 329D, and any administrative rules adopted thereunder, shall not be afforded the protections provided by subsection (a). [L 2015, c 241, pt of §5; am L 2016, c 230, §11]

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**§329-126 Protections afforded to a treating physician or advanced practice registered nurse.** No physician or advanced practice registered nurse shall be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for providing written certification for the medical use of marijuana for a qualifying patient; provided that:

(1) The physician or advanced practice registered nurse has diagnosed the patient as having a debilitating medical condition, as defined in section 329-121;

(2) The physician or advanced practice registered nurse has explained the potential risks and benefits of the medical use of marijuana, as required under section 329-122;

(3) The written certification is based upon the physician's or advanced practice registered nurse's professional opinion after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship or bona fide advanced practice registered nurse-patient relationship, as applicable; and

(4) The physician or advanced practice registered nurse has complied with the registration requirements of section 329-123. [L 2000, c 228, pt of §2; am L 2016, c 230, §12]

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**[§329-127] Protection of marijuana and other seized property.**

Marijuana, paraphernalia, or other property seized from a qualifying patient or primary caregiver in connection with a claimed medical use of marijuana under this part shall be returned immediately upon the determination by a court that the qualifying patient or primary caregiver is entitled to the protections of this part, as evidenced by a decision not to prosecute, dismissal of charges, or an acquittal; provided that law enforcement agencies seizing live plants as evidence shall not be responsible for the care and maintenance of such plants.

[L 2000, c 228, pt of §2]

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**§329-128 Fraudulent misrepresentation; penalty. (a)**

Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution under this part or chapter 712 shall be a petty misdemeanor and subject to a fine of \$500.

(b) Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the issuance of a written certificate by a physician or advanced practice registered nurse not covered under section 329-126 for the medical use of marijuana shall be a misdemeanor. This penalty shall be in addition to any other penalties that may apply for the non-medical use of marijuana. Nothing in this section is intended to preclude the conviction of any person under section 710-1060 or for any other offense under part V of chapter 710. [L 2000, c 228, pt of §2; am L 2016, c 230, §13]

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**[§329-129] Prohibited acts; flammable solvents.** (a) No qualifying patient or primary caregiver shall use butane to extract tetrahydrocannabinol from marijuana plants.

(b) Any person who violates this section shall be guilty of a class C felony. [L 2015, c 241, pt of §5]

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**[§329-130] Authorized sources of medical marijuana.** (a) After December 31, 2018, a qualifying patient shall obtain medical marijuana or manufactured marijuana products only:

(1) From a dispensary licensed pursuant to chapter 329D; provided that the marijuana shall be purchased and paid for at the time of purchase; or

(2) By cultivating marijuana in an amount that does not exceed an adequate supply for the qualifying patient, pursuant to section 329-122.

After December 31, 2018, no primary caregiver shall be authorized to cultivate marijuana for any qualifying patient.

(b) This section shall not apply to:

(1) A qualifying patient who is a minor or an adult lacking legal capacity and the primary caregiver is the parent, guardian, or person having legal custody of a qualifying patient described in this paragraph; or

(2) A qualifying patient on any island on which there is no medical marijuana dispensary licensed pursuant to chapter 329D. [L 2015, c 241, pt of §5]

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**[§329-131] Prescription and pharmacy requirements not applicable.** Notwithstanding any other law to the contrary, the prescription requirements of section 329-38 and the board of pharmacy licensure or regulatory requirements under chapter 461 shall not apply to the medical use of marijuana under this part. [L 2015, c 241, pt of §5]

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