

## **SB 423 Monitoring: Montana Marijuana Act Developments through August 2015**

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### Background

The 2011 Legislature passed Senate Bill 423, which repealed the voter-passed Medical Marijuana Act on July 1, 2011, and replaced it with new requirements for cultivation, manufacture, and possession of marijuana for use by people with debilitating medical conditions. SB 423 also required the Children, Families, Health, and Human Services Interim Committee to monitor the new law and draft legislation if members decide changes are needed.

This briefing paper summarizes developments related to SB 423 since May 2015.

### Montana Cannabis Industry Association v. State of Montana

Both parties to a legal challenge to SB 423 have filed their final briefs in the Montana Supreme Court, where the fate of several provisions of the law will be decided. The original challenge to the law was filed more than four years ago. In January 2015, Helena District Judge James Reynolds permanently enjoined parts of the law that:

- ban providers from receiving compensation for marijuana;
- limit the number of patients for whom a provider may grow or manufacture marijuana or marijuana-infused products;
- prohibit advertising of marijuana and related products by providers or cardholders; and
- require the Department of Public Health and Human Services (DPHHS) to report to the Board of Medical Examiners the names of doctors who provide written certification for more than 25 patients in a 12-month period, so the board may review their practices.

Reynolds said the four provisions weren't rationally related to the legislative goal of limiting the scope of the medical marijuana program. He also said the limit on the number of patients and ban on payment violated the equal protection provisions of the state and federal constitutions because some patients may not be able to grow their own marijuana.

At the same time, Reynolds upheld two other parts of the law that were also challenged — the ban on use of marijuana by probationers and parolees and the ability of DPHHS and law enforcement to conduct unannounced inspections of provider premises. The plaintiffs in the original lawsuit have filed a cross-appeal on those issues.

The state has asked the Supreme Court to reverse the lower court's injunction, saying it went beyond the standard for a “rational basis” review of the law. The Legislature's decision to create strict limits was rationally related to its interest in curbing abuses under the former law and balancing Montana's law against the fact that marijuana is illegal under federal law, the state said. The state also said the plaintiffs wrongly argued that the Montana Marijuana Act was designed to ensure access to marijuana to seriously ill individuals.

The plaintiffs in the lawsuit — the Montana Cannabis Industry Association, several individuals, and a doctor — maintain that Reynolds correctly found that Montana's rational basis test still requires “meaningful judicial scrutiny” to make sure that the new law is rationally related to the objective of providing access to marijuana for people with certain medical conditions. The plaintiffs also say that the blanket ban on marijuana use by probationers violates constitutional equal protection provisions by classifying probationers for different treatment under the law. And the unannounced inspections violate constitutional protections against unreasonable search and seizure, they said.

### Ballot Measures

This summer, several proposed initiatives related to marijuana have been filed with the Secretary of State's Office. The initiatives would:

- legalize marijuana use for people 21 years of age or older;
- make numerous changes to the current law, including allowing sales to unlimited numbers of patients, increasing the amount of marijuana that providers can possess, authorizing testing laboratories, and increasing fees for providers and labs; and
- ban possession, cultivation, transfer, or use of any drug that is illegal under federal law, including marijuana. This measure also would repeal the existing the medical marijuana law to conform with the ban on federally illegal drugs.

The initiatives are in various stages of review and revision. Backers have until June 17, 2016, to gather the required number of signatures. But they may not begin gathering signatures until the Attorney General's Office has determined that the measures comply with the initiative requirements in state law and the Montana Constitution.

In its current form, the proposal to legalize marijuana use would change the Montana Constitution. Supporters would need signatures from 48,349 registered voters to put the measure on the ballot, including signatures from at least 10 percent of the voters in each of 40 House districts. The other initiatives would only change state law. They need 24,175 signatures, including signatures from at least 5 percent of the voters in each of 34 House districts.

### Board of Medical Examiners Action

The Board of Medical Examiners in July reprimanded a Whitefish doctor for continued failure to follow the standard of care when providing written certification of debilitating medical conditions.

The board originally found in May 2010 that Dr. Patricia Cole of Whitefish had violated the medical standard of care when seeing medical marijuana patients. At that time, the board ordered her to improve practices related to record gathering, physical examinations, patient counseling, and other aspects of care. The board also agreed to conduct a followup review of her practices in a year.

The board found deficiencies found in 2011 and two subsequent reviews, with the most recent problems involving recordkeeping practices. The board issued a public reprimand in July. The board also required Cole to undergo remedial education on recordkeeping and to pay \$500 to reimburse board costs.