



ADHS Unofficial Rules for Proposition 203

On Monday, the Arizona Department of Health Services (“ADHS”) released the final, [unofficial version of the Medical Marijuana Program rules](#) (“Unofficial Rules”), which will be used to implement the Arizona Medical Marijuana Act. The final, official version of these rules, with minor revisions, will be posted on the Arizona Secretary of State website at a later date.

This brings to a close the rulemaking process that began on December 17, 2010, when ADHS released its initial draft rules (“Initial Draft Rules”) on the Medical Marijuana Program. After several weeks of public comment, ADHS released its final draft rules (“Final Draft Rules”) on the Medical Marijuana Program on January 31, 2011.

Revisions to the Final Draft Rules

The most drastic revisions to the rules took place between the Initial Draft Rules and the Final Draft Rules that were released on January 31, 2011. Many of these changes remain in the Unofficial Rules. For example, the Unofficial Rules continue to prohibit any individual from smoking in many public places, including educational facilities, office buildings, parking lots, sidewalks, and sports facilities. See Unofficial Rules § R9-17-101 (24).

The Unofficial Rules do feature a few notable changes and additions with respect to dispensaries and registry identification cards; in particular, these changes are related to the fees associated with dispensaries and registry identification cards, and to the process by which ADHS will award dispensary registration certificates. This Client Alert does not provide any insight on designated caregivers and dispensaries, except to say that the Act and the Unofficial Rules address both these areas.

Like the Final Draft Rules before them, the Unofficial Rules have not provided any additional guidance as to when an individual can be said to be under the influence of marijuana. Thus, the standard under the Unofficial Rules remains what was set forth in the Act: Individuals cannot use marijuana in public or at work, and cannot be under the influence of marijuana at work. However, the House has passed, and the Senate is currently reviewing, a bill that defines “impairment” by listing examples of symptoms “that may decrease or lessen the employee’s performance of the duties or tasks of the employee’s job position,” including physical dexterity, appearance, odor, and negligence or carelessness in operating equipment. See [H.R. 2531, 50th Leg., 1st Sess.](#) (Ariz. 2011).

The Act generally prohibits employers from discriminating against an employee or potential employee solely because that employee has tested positive for marijuana components or metabolites. However, if House Bill 2541 is passed, employers who want to keep the workplace safe by disciplining individuals who are found to be under the influence of marijuana at work will not have to rely on the results of a drug test. Rather, under such circumstances, employers would be able to discipline the employee by pointing to a specific behavior or characteristics that demonstrate that the employee is believed to have been under the influence of marijuana at work.

Conclusion

Now that the Unofficial Rules have been released, ADHS will begin to accept applications for qualified patients and caregivers on April 14, 2011, and applications for initial dispensary registration certificates between June 1 and June 30, 2011. ADHS expects to select and award dispensary registration certificates in August 2011. It is important that employers take this time to review and revise its current drug testing and other policies now, before the medical marijuana program officially begins.

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QUESTIONS?

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As you begin to consider what the Arizona Medical Marijuana Act and the rules mean for you, please join us on April 12 in Tucson for the [SHRM 2011 Employment Law Update](#) annual seminar. This substance-packed, day-long seminar will include a detailed discussion about what the Act and rules mean and how they will affect drug and other policies for employers, as well as a presentation by Tucson Police Department Officer Scott Sullivan regarding "reasonable suspicion" and other considerations for employers' drug testing policies.

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