

# Arizona Cannabis Law Updates

Arizona Paralegal Annual Convention  
April 20, 2018  
Speaker: Sonia Martinez, Esq.



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## Guide to Presentation

- Nuts of Bolts of Arizona's Medical Marijuana Act
- Related Federal regulations and policies
- Arizona Status Update
- CBD and Hemp
- Ethics Opinion
- Law & Legal Issues
- Cannabis in Indian Country

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## NUTS AND BOLTS

- December 2010: Arizona voters passed the Arizona Medical Marijuana Act (AMMA), A.R.S. §36-2801 et seq.
- Adoption of Rules & Regulations
- Safe Harbor
- OP 2.5 Outlets
- Annual fee \$150 + Physician fee
- No public smoking
- Purchase from Dispensary
- Dispensary as Non Profits/Board of Directors
- Management Companies & Reasonable Compensation
- Zoning:
  - No patient to patient sales
  - 25 mile rule
  - Caregivers 7 1/2 plant/5 patients rule
  - Dispensary Agents & fingerprint clearance
  - Cultivation: Enclosed locked facility
- Cancer
- Glaucoma
- Human Immunodeficiency Virus (HIV)
- Acquired Immune Deficiency Syndrome (AIDS)
- Hepatitis C
- Amyotrophic Lateral Sclerosis (ALS)
- Crohn's Disease
- Agitation of Alzheimer's disease
- A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that causes:
  - Cachexia or wasting syndrome;
  - Severe and chronic pain;
  - Severe nausea;
  - Seizures, including those characteristic of epilepsy;
  - Severe or persistent muscle spasms, including those characteristic of multiple sclerosis
- PTSD added Jan 2015
- Autism Hearing May 2018

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### AZ DHS FEBRUARY 2018 REPORT

- 158, 488 Patients
- 954 CG
- 4,923 DAs
- 61% male vs 38% female
- 18-30 25% most typical patient
- 38% patients over age 50
- 85% Chronic Pain OC
- 8,194 pounds sold (7,497 flower)

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**Hemp: Perhaps the most useful untapped resource of the modern era.**

4/16/2018 Arizona Bar Convention 2017 5

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### Recent Laws, Rules & Regulations

Federal Patent: 113 active cannabinoids  
 The patent (US6630507) is titled "Cannabinoids as antioxidants and neuroprotectants" and was awarded to the Department of Health and Human Services (HHS) in October 2003. It was filed four years earlier, in 1999, by a group of scientists from the National Institute of Mental Health (NIMH), which is part of the National Institutes of Health (NIH)



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### Cole Memo (August 2013) \*RESCINDED AS OF 1/2018\*

- \* This policy statement provides guidance on the enforcement of federal law in Indian Country by the United States Attorneys' Offices.
- \* Marijuana possession and distribution remain illegal under federal law, the policy statement does not and cannot authorize or provide for Department of Justice assistance in the establishment of a marijuana regulatory structure.
- \* The Cole Memorandum provides guidance to United States Attorneys on the proper prioritization of marijuana enforcement in their districts given the number of states that have moved to legalize marijuana for medicinal, agricultural, or recreational use.
- \* Nothing in the Cole Memorandum alters the authority or jurisdiction of the United States to enforce federal law in Indian Country.
- \* Consistent with the Attorney General's 2010 Indian Country Initiative, in evaluating marijuana enforcement activities in Indian Country, each United States Attorney should consult with the affected tribes on a government-to-government basis.

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#### Eight priorities:

- \* Preventing the distribution of marijuana to minors;
  - \* Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
  - \* Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
  - \* Preventing state-authorized marijuana activity from being used as cover or pretext for the trafficking of other illegal drugs or illegal activity;
  - \* Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
  - \* Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
  - \* Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
  - \* Preventing marijuana possession or use on federal property
- WILKINSON MEMO 2014

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### 2014 Agricultural Act

#### Farm Bill

- \* Amendment that Legalized Industrial Hemp for Limited Research Purposes
- The amendment allows State Agriculture Departments, colleges and universities to grow hemp, defined as the non-drug oilseed and fiber varieties of Cannabis, for academic or agricultural research purposes,
- BUT it applies only to states where industrial hemp farming is already legal under state law.
- Several Tribes have used this law to grow hemp successfully and unsuccessfully (mostly unsuccessfully via slash and raid burns)
- 2018: Winnemucca Shoshoni, Stockton California sued DEA over seizure of 26 acres of hemp

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### Controlled Substances Act

- Marijuana as a schedule 1 drug, with no medical value
- 21 USC 841
  
- \* Veterans : December 2017 New regulations allowing for discussions regarding how medical marijuana fits into treatment plan

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### Recreational v Medical Marijuana

Recreational



Medical



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### Arizona Ethics Opinion & Lawyer Tips EO: 11-01

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### Tips

- Guided by Ethics opinion
- Federally illegal
- Must be client's idea
- Don't be a gangapreneur
- Communications may not be confidential
- Forfeiture is possible without criminal prosecutions
- Can't deduct business expenses
- Bankruptcy will not protect you




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## MARIJUANA DUI LAWS IN ARIZONA




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### LAWS

Under Arizona Revised Statute § 28-1381(A)(3) it is unlawful for a person to drive or be in actual physical control of a vehicle in this state while there is any drug defined in § 13-3401, or its metabolite in the persons body." A.R.S. § 28-1381(A)(3).

The only drug defined in A.R.S. § 13-3401 that relates to Marijuana is "tetrahydrocannabinol" which is more commonly known as THC. See A.R.S. § 13-3401(4)(b)

Defense: Prescription

Marijuana Certification is not a "prescription"

3 Metabolites Tested: Carboxy-THC, THC, Hydroxy THC




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### LAWS

- Impairment to the Slightest Degree (A)(1)
- Under Arizona Law A.R.S. § 28-1381 a person may be guilty of DUI with drugs if they are found to be driving or in actual physical control of a vehicle, "impaired to the slightest degree" due to drugs, controlled substances or alcohol.

• § 36-2802(D), which provides as follows:

This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal or other penalties for engaging in, the following conduct:

D. Operating, navigating or being in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana, except that a registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.




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### Case Law

- 2014: Darrah v McClellan
- The narrow question: whether Arizona's Medical Marijuana Act ("AMMA") prohibits the State from prosecuting an authorized marijuana user for driving under the influence ("DUI") pursuant to Arizona Revised Statutes ("A.R.S.") section 28-1381(A)(3), which criminalizes driving while there is any prohibited drug or its metabolite in a person's body
- AMMA does not give an authorized medical marijuana user immunity from prosecution.




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### Case Law

- 2014 State Ex Rel Montgomery v Harris
- Arizona Revised Statutes § 28-1381(A)(3) makes it unlawful for a driver to be in actual physical control of a vehicle if there is "any drug defined in [A.R.S.] § 13-3401 or its metabolite in the person's body."
- Q: whether the phrase "its metabolite" includes Carboxy-Tetrahydrocannabinol ("Carboxy-THC"), a non-impairing metabolite of Cannabis, a proscribed drug listed in § 13-3401.
- Decision: legislature intended to prevent impaired driving;
- the "metabolite" reference in § 28-1381(A)(3) is limited to any of a proscribed substance's metabolites that are capable of causing impairment.
- Marijuana users violate § 28-1381(A)(1) if they drive while "impaired to the slightest degree," and, regardless of impairment, violate (A)(3) if they are discovered with any amount of THC or an impairing metabolite in their body. Drivers cannot be convicted of the (A)(3) offense based merely on the presence of a non-impairing metabolite that may reflect the prior usage of marijuana.




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### Case Law

- 2015 Dobson v McClellan
- Q: how the AMMA affects (A)(3) prosecutions
- The AMMA affords an affirmative defense for those patients who can show, by a preponderance of the evidence, that the concentration of marijuana or its impairing metabolite in their bodies was insufficient to cause impairment.
- Focus of the affirmative defense must be on the effect of the THC concentration on the defendant cardholder (vs average person)
- Per se limits: None in AZ, Colorado: 5ng/ml, Nevada 2ng/ml, Ohio 2ng/ml
- National Highway Safety Study, July 2017

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### MMJ DUI Today

- There is no presumptive impairment limit established by law
- There is no scientific consensus about the concentration of THC that generally is sufficient to impair a human being
- Totality of Circumstances: Smells like marijuana in car, signs of impairment: smell, blood shot eyes, slurred speech, admissions, presence of pipes, joints etc
- Reckless driving plea deals

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### 36-2813 Discrimination Prohibited

- A. No school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for his status as a cardholder, unless failing to do so would cause the school or landlord to lose a monetary or licensing related benefit under federal law or regulations

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### Criminal Case Issues

- Use of MMJ while on probation
  - Patient to Patient sales not allowed
  - Marijuana Extracts
  - Criminal definitions: Marijuana v Cannabis v AMMA Definition (“usable marijuana”)
  - Zander Case in Maricopa County
  - Yavapai County Ct Appeals Case Pending-Rodney C Jones
  - Navajo County: Motion to Strike AMMA Defense; Motion to Reconsider Granted after Expert Affidavit
- “I admit I knew nothing about marijuana”

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### Civil Case Issues

- Receivership
- Breach of Contract: Illegality
- Zoning
- Employment: Discrimination in hiring & firing
- Federal Tax; 280E: Disallows deductions for business associated with a Controlled substance

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### Dispensary Fights

- COMPASSIONATE CARE DISPENSARY, INC., Plaintiff/Appellant-Cross Appellee v. ARIZONA DEPARTMENT OF HEALTH SERVICES, et al., Defendants/Appellees-Cross Appellants. No. 1 CA-CV 16-0470
- Conditional Use Permit
- A prospective dispensary’s application for a registration certificate must contain, among other things, documentation that the proposed dispensary location complies with local zoning restrictions. See A.R.S. § 36-2804(B)(1)(d); Ariz. Admin. Code (A.A.C.) R9-17-304(C)(5)-(6).
- Appeal from the Superior Court in Maricopa County No. CV2012-057041 The Honorable Aimee L. Anderson, Judge FILED 1-16-2018
- “neither the statutes and regulations, nor the applicable municipal code, require applicants to obtain a CUP before applying for a dispensary registration certificate”

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State Bar of Arizona: It's Not Easy Being Green



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### Family case/Dependency Case Issues

- Family Cases: Substance Abuse/TASC Testing
- Dependency Cases: Substance Abuse allegations
- Safe and Responsible Use

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### 36-2813 Discrimination Prohibited

- B. Unless a failure to do so would cause an employer to lose a monetary or licensing related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either:
  1. The person's status as a cardholder.
  2. A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

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### 36-2813 Discrimination prohibited

- C. For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of marijuana must be considered the equivalent of the use of any other medication under the direction of a physician and does not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.

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### 36-2813. Discrimination prohibited

- D. No person may be denied custody of or visitation or parenting time with a minor, and there is no presumption of neglect or child endangerment for conduct allowed under this chapter, unless the person's behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence.




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### 36-2814. Acts not required; acts not prohibited

- A. Nothing in this chapter requires:
  1. A government medical assistance program, a private health insurer or a workers' compensation carrier or self-insured employer providing workers' compensation benefits to reimburse a person for costs associated with the medical use of marijuana.
  2. Any person or establishment in lawful possession of property to allow a guest, client, customer or other visitor to use marijuana on or in that property.
  3. An employer to allow the ingestion of marijuana in any workplace or any employee to work while under the influence of marijuana, except that a registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.
- B. Nothing in this chapter prohibits an employer from disciplining an employee for ingesting marijuana in the workplace or working while under the influence of marijuana.




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### 36-2815. Revocation

- A. The department shall immediately revoke the registry identification card of a nonprofit medical marijuana dispensary agent who violates section 36-2804.01, subsection D, or section 36-2816, subsection B. The department shall suspend or revoke the registry identification card of a nonprofit medical marijuana dispensary agent for other violations of this chapter.
- B. The department shall immediately revoke the registration certificate of a registered nonprofit medical marijuana dispensary that violates section 2816, subsections B or C, and its board members and principal officers may not serve as the board members or principal officers for any other registered nonprofit medical marijuana dispensary.
- C. Any cardholder who sells marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter shall have his registry identification card revoked, and shall be subject to other penalties for the unauthorized sale of marijuana and other applicable offenses.
- D. The department may revoke the registry identification card of any cardholder who knowingly violates this chapter, and the cardholder shall be subject to other penalties for the applicable offense.
- E. Revocation is a final decision of the department subject to judicial review pursuant to title 12, chapter 7, article 6. Jurisdiction and venue are vested in the superior court.




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## CANNABIS IN INDIAN COUNTRY

### Issues to Consider

- Recent Laws, Rules and Regulations regarding Cannabis in Indian Country
- Historical Use of Herbs & Weeds & Natural Substances in Indian Country
- Sovereign Immunity, Traditional Customary Values
- Medical vs Recreational Cannabis
- Industrial Hemp & Other Uses
- State, Federal, Private (Research) & Tribal Partnerships

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