

CANTAFIO LAW, P.C.

House Bill 1267

CONCERNING CONDITIONS OF PROBATION RELATING TO MEDICAL 102 MARIJUANA

A Legal Analysis

Written by Claire M. Dawson, Esq.

June 16, 2015

House Bill 1267 passed by a unanimous vote on April 9, 2015 and is now law in Colorado. The language of the new law is broad and seemingly an open invitation for medical marijuana patients to continue to use medical marijuana while under the supervision of the probation department. However, there are several details that make this bill, although a step in the right direction, not at all as marijuana friendly as probation clients may hope.

The argument in the general assembly on behalf of the passage of this bill, and thus the legislative intent, is to limit the power of probation to dictate which medication a probationary client can or should be allowed to use. Many medical marijuana patients utilize this form of medication in lieu of powerful prescription medications such as opiates and narcotics. These prescription medications are approved on probation and the circumstance has arisen where probation officers are telling probationers that they must utilize these powerful narcotics or opiates rather than medical marijuana. The passage of House Bill 1267 allows medical marijuana patients to continue to utilize medical marijuana while on probation in order to avoid this inappropriate probation dictation of medication for a probationer.

So what's the catch? The catch is that this new law allows the court *discretion* to permit medical marijuana after an *assessment* is complete. Not all medical marijuana patients will be permitted to use medical marijuana on probation. And the true problem arises when you realize that the *assessment* is completed by the probation department. Probation evaluates the underlying offense and various other factors to determine if a candidate is allowed to utilize medical marijuana on probation. This means an underlying offense related to medical marijuana will prohibit utilization of medical marijuana on probation. This also means, probation, with its long standing history of outlawing medical marijuana on probation, has a loop hole to continue to disallow its use for probationers. A probation officer can disallow medical marijuana based upon its own assessment of the underlying offense and based upon the level of therapy the probationary candidate is ordered to complete. This means it will be difficult for DUI probationers to be permitted usage of medical marijuana on probation, especially if they are on probation for a DUI-D (Driving under the influence of drugs). Furthermore, although the law does not speak directly to this issue, if a probationer does not have a medical marijuana license when they begin probation, it is highly unlikely they will be permitted usage of medical marijuana if they attempt to obtain a license during their probationary sentence.

In conclusion, House Bill 1267 is absolutely a positive change for the rights of probationers. However, it is not an absolute guarantee to utilize medical marijuana during probation. Only time will tell how strict probation is with the assessment and how many probationers will be permitted to utilize medical marijuana. If you are a medical marijuana patient facing a probationary sentence, contact a Colorado Criminal Defense attorney today to discuss your rights.