

# AZ's Medical Marijuana Law Overview and Considerations



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# Overview and Disclaimer

- National Background
- AZ's Proposition 203 and DHS Rules
- Legal Liabilities and Employment Issues
- A Look Towards the MMJ Future

## ***DISCLAIMER!***

***THIS PRESENTATION IS NOT LEGAL ADVICE  
AND DO NOT RELY ON IT AS SUCH.  
SELLING AND POSSESSING MARIJUANA IS  
AGAINST FEDERAL LAW!***

# National MMJ Background

- California started the modern MMJ movement with Proposition 215 in 1996. Now there are 22 States and D.C.
- MMJ and it's benefits are REAL and the evidence increasingly supports this
  - ▣ Effectively manages many symptoms with far fewer (and more pleasant 😊) side effects.
  - ▣ You don't have to smoke it: edibles, tinctures, sublingual, vaporizing, topical
- Growing body of evidence to suggest components of the cannabis plant kill cancer cells! (Google cannabinoids and cancer)

# National MMJ Background

- Federal Government restrictions prevent research into this important medicine (Catch-22)
  - ▣ The only reason research on the benefits of cannabis has taken place is because of State programs or other countries.
    - CA, CO, Israel
  - ▣ NIDA monopoly on study drug.
    - Possibly starting to open up
- Feds claim no medical benefit yet HHS holds a patent on cannabinoids as a neuro-protectant

# National MMJ Background

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- The conflict between State MMJ laws and the Federal Controlled Substances Act remains.
- In 2013 DOJ issued the Cole memo which states that DOJ will not interfere in State programs so long as they are well regulated and don't implicate other Federal priorities (e.g. selling to minors, connections to cartels etc.)
- Still not a legal defense if DOJ changes their minds

# Proposition 203

- 2010 - Arizona's Medical Marijuana Program approved by only 4,000 votes; it was the 3<sup>rd</sup> time over 2 decades that AZ has voted for MMJ
  - ▣ AZ legislature overturned the first one leading to the Voter Protection Act (now requires  $\frac{3}{4}$  majority and furthering the purpose for legislature to touch a citizen's initiative)
- Federal lawsuit filed by Governor and AG delayed implementation of the Dispensary program--thrown out on procedural grounds for lack of jurisdiction
- Lawsuit then filed in State court by County Attorney the court upheld the MMJ Act and Dispensary program.  
(bottom line MMJ laws NOT Federally preempted)

# Proposition 203

- Allows patients to qualify for legal protection if they have a "DEBILITATING MEDICAL CONDITION" Which means one or more of the following:
- CANCER, GLAUCOMA, HIV, AIDS, HEPATITIS C, ALS, CROHN'S DISEASE, AGITATION OF ALZHEIMER'S DISEASE OR THE TREATMENT OF THESE CONDITIONS.
- or, A CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION OR ITS TREATMENT THAT PRODUCES ONE OR MORE OF THE FOLLOWING:
  - CACHEXIA, WASTING SYNDROME; **SEVERE AND CHRONIC PAIN**; SEVERE NAUSEA; SEIZURES, INCLUDING THOSE CHARACTERISTIC OF EPILEPSY; OR SEVERE AND PERSISTENT MUSCLE SPASMS, INCLUDING THOSE CHARACTERISTIC OF MULTIPLE SCLEROSIS.
- or ANY OTHER MEDICAL CONDITION OR IT'S TREATMENT ADDED BY THE DEPARTMENT
  - PTSD recently added

# Proposition 203

- In order to qualify for legal protection the patient must:
  - ▣ Get a doctors recommendation (MD,NMD, DO)
  - ▣ Obtain and maintain a patient card from DHS
  - ▣ Possess only the allowable amount (2.5 ounces every 2 weeks) (12 plants if growing) (allowable amount of concentrates?)
  - ▣ Swear not provide the MMJ to a non-patient nor sell to another patient (what is a “transfer for value”?)



# Proposition 203

- Caregivers (*as defined under AZ MMJ law*) qualify for the same protections if:
  - ▣ They have a caregiver card
  - ▣ Have been designated by patient(s) as their caregiver
  - ▣ Do not possess more than 2.5 ounces per patient they are caregiving for
  - ▣ Only are reimbursed for their ACTUAL costs; cannot be compensated for time
  - ▣ Can be a caregiver for up to 5 patients
- The only place to legally purchase MMJ is from a state licensed dispensary (approx. 80 operating in AZ, DHS provides lists to patients/caregivers)

# Proposition 203

- Nursing Care Intuitions, Assisted Living Facilities, Residential Care *MAY* adopt *REASONABLE* restrictions on resident/patient use:
  - ▣ Facility does not have to store, maintain, or provide the MMJ
  - ▣ May restrict smoking
  - ▣ May designate a specific space for consumption
- May *NOT* unreasonably limit patient access to or use of MMJ unless it would result in loss of Federal benefits

# Proposition 203

## Medical Caregiver Concerns

- Do I have to help someone with their MMJ?
  - ▣ NO
- Do I have any legal concerns if my patient uses MMJ?
  - ▣ Unless you physically possess it or obtain it for them, NO (Federal risk technically still remains but in reality is zero)
  - ▣ If you do plan on touching the medicine get a DHS Caregiver card
- Can I establish reasonable boundaries and restrictions on my patient's use while I am with them?
  - ▣ Yes (e.g. do not use in your presence, use a designated area, have a family member or friend become MMJ caregiver to provide assistance).
- Should I help my patient with MMJ?
  - ▣ Yes! It might make them happier and help with their symptoms

# Proposition 203

- ❑ Dispensaries are Safe and Regulated
- ❑ Must comply with numerous security and inventory control regulations
- ❑ Employees must pass criminal background checks
- ❑ Dispensaries must employ or contract with a Medical Director (MD NMD or DO) who is available to help answer your questions.
- ❑ Most reputable dispensaries test their medicine for potency and purity (i.e. no pesticides, mold, fungus)

# Proposition 203--Dispensaries



# Proposition 203--Dispensaries





# MMJ and Employment Issues

- AZ law specifically protects employees from adverse action due to their status as a cardholder:
  - “...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.*
- Exemptions for loss of Federal benefit or safety sensitive positions or Impairment on the job
- None of these yet tested in AZ Courts

# MMJ and Employment Issues

- Outside of AZ, MMJ laws have mostly *not* included specific protections for employees
- Thus most courts have sided with employers in wrongful termination cases
- CO Supreme Court is currently hearing a case on this issue and it appears it might go in favor of employee
- Bottom line is that employers **SHOULD** treat this just like any other doctor prescribed medication.
- If/when legalized for all adults, employers **SHOULD** treat this just like alcohol.



# Cannabis and the Future

- MMJ consistently polls at over 70% approval
- Adult-use (aka recreational polls at 53% nationwide)—  
Likely 5-7 more states by 2016 (AZ is one of them)
- The barriers to research are starting to weaken
- MMJ may be a integral part of a new “wellness”  
approach to medicine!
  - ▣ Inhibiting or reversing cancer/tumor growth
  - ▣ Preventing Alzheimer's
- Increasingly finding new ways to get some benefits  
without the “high” if desired
  - ▣ Juicing raw plant
  - ▣ CBD

# Proposition 203

- **Important takeaways:**
  - *MMJ is real and beneficial and provides relief for a multitude of symptoms. Particularly for Seniors*
  - **Employers *should* treat this like any other medicine and in AZ they *must* do so under the law**
  - **Caregivers and Facilities can place reasonable restrictions but cannot prevent or prohibit resident/patient use**

# Proposition 203

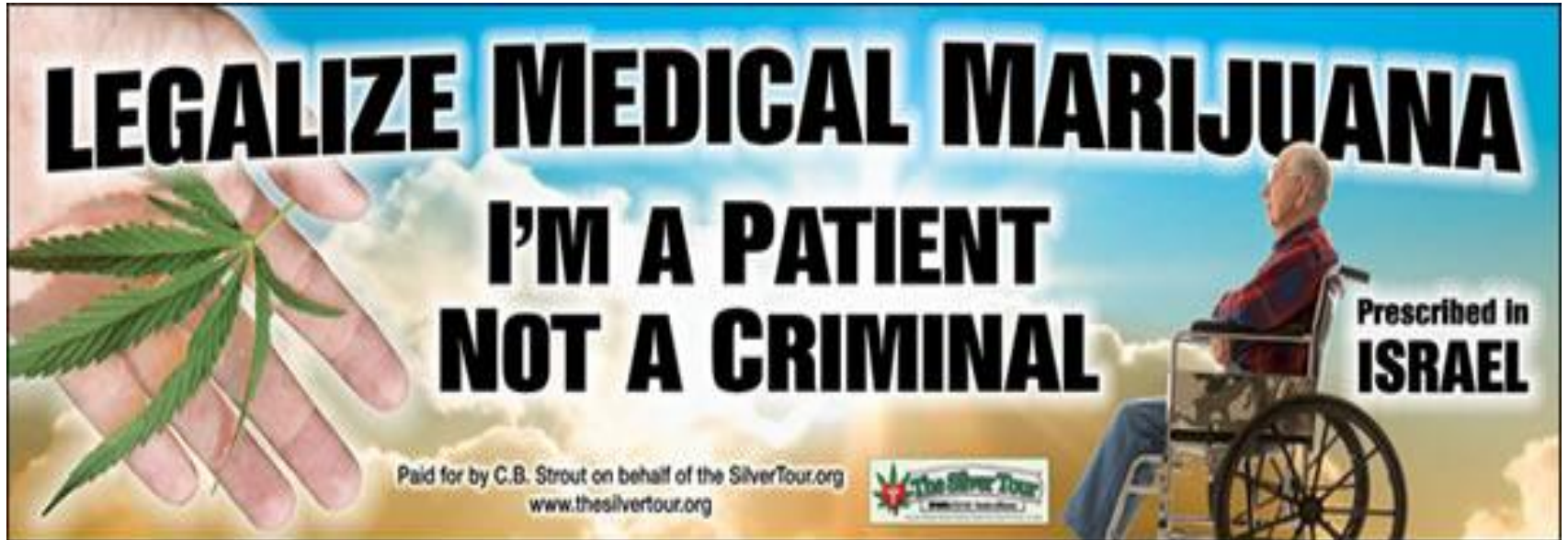
## □ Important takeaways:

- *If you are an individual patient or individual caregiver that is strictly compliant with State MMJ laws, your risk at the State level is zero and your risk at the Federal level is practically non-existent (but theoretically Federal arrest still possible)*
- *The only legal place to purchase MMJ is at a State AZDHS Licensed and Regulated Dispensary*

# Proposition 203

- Important takeaways:
  - *If you have any questions at all consult an expert (legal, medical, MMJ)*
    - *AZMMC.com for doctor recommendations*
    - *[www.patientsoutoftime.com](http://www.patientsoutoftime.com)*
  - *Cannabis has never in over 5000 years of recorded use directly caused a single death. Ever. You CANNOT overdose on Cannabis, you can overdose on water.*

# Questions?



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