

Smoking Gun?

By Reg P. Wydeven

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Some of the most heated legal issues in our world today involve the legalization of medicinal marijuana and gun control. And while they may seem unrelated, in some states, they can become a joint problem.

Last month, Oklahoma became the 30th state to legalize medicinal marijuana. Marijuana has been proven to be helpful in treating glaucoma, muscle spasms caused by multiple sclerosis, Crohn's disease and seizure disorders. It is also useful for treating pain, nausea, poor appetite and weight loss, which can be extremely beneficial for cancer patients who suffer these ailments as a result of the disease or its treatment.

So now Oklahomans suffering from these conditions can seek out a prescription from their doctor. If the doctor agrees, the patients will be given a "marijuana card" and will be put on a list that allows them to buy marijuana from an authorized seller, called a dispensary.

But while individual states may decide to decriminalize marijuana or legalize its use medicinally, marijuana is still illegal under federal law. So, Oklahomans, or residents of other states where medical marijuana is legal, will have to think long and hard before running out to ask for a prescription. If they do, they may have to turn over their guns.

In an open letter from 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (the "ATF") spelled out the federal law regarding the possession of firearms. The letter states that federal law prohibits anyone who is an "unlawful user of or addicted to any controlled substance" from "possessing firearms or ammunition." And it's not just possessing. Federal law addresses everything from owning, shipping, transporting or receiving firearms or ammunition.

According to Meredith Davis, a public information officer for the Dallas regional office of the ATF, "using a controlled substance is a prohibitor, similar to being convicted of a felony offense." She explained, "If you hold a license to use marijuana for medical use, there's no exception for that prohibition under federal law."

"If you possess a medical marijuana card, it's presumed that you're a user," she said. You might even say it would constitute a smoking gun. "So you cannot possess, you can't transfer, you can't ship firearms or ammunition if you hold that license," she said. In fact, Davis indicated that it would be a felony for a person trying to make a private sale of a firearm to sell to a person they know to be a medical marijuana license holder. The ATF doesn't want anyone to be surprised by the situation. The forms that are completed for firearms transactions contain a series of questions for which firearms ownership will be denied. One of the questions is: "Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant narcotic drug, or any other controlled substance?" The form also contains a bold warning: "The use or possession of marijuana remains unlawful under federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside."

Davis encouraged anyone thinking about becoming a medical license holder to contact legal counsel or their local ATF office "if they need guidance how to legally transfer, sell or dispose of the firearms legally before taking possession of the medical marijuana license."

It is possible, however, for one spouse to have a medical marijuana card and the other to possess a firearm. But, the ATF would require that the spouse with the card has no access to the weapon.

I would hope the spouse with the gun has no access to the marijuana either.

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