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Only A Matter Of Time: Some States' Laws May Protect Medical Marijuana Users

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As most readers will know, more and more states are adopting statutes legalizing medical marijuana (and in some cases, recreational marijuana use). From our observations, both institutions of higher education and Greek organizations generally prohibit marijuana use, often specifying "even for medical marijuana users" in their prohibitions, on the basis that federal law prohibits marijuana use. Which, in fact, it does.

But the tide is clearly turning on this issue in the employment arena and, while not all of the reasons for that apply to a fraternity or sorority, some might. It seems to be just a matter of time before a court rules that a Greek organization cannot flatly prohibit medical marijuana usage by a disabled individual. Organizations should consider working with counsel on members' requests to use medical marijuana so they are fully aware of possible state law protections for marijuana users and can assess whether they are at risk.

Here are some points you should know:

1. **State Laws on Marijuana Use and/or Disability Discrimination Vary Dramatically.** No two state laws protecting medical marijuana usage are the same. State laws on disability discrimination also can be quite different, both in terms of who they protect and also in the scope of protections. Certainly this makes life challenging for organizations doing business in many (and often all 50) states.

2. **Some of Those Laws May Apply to Fraternities and Sororities.** Some of the employment-based court decisions referenced

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above arise from employment-specific protections that will not apply to fraternity and sorority members (but might apply to employees such as house directors). But some states' laws will apply to individuals as members and/or tenants.

For example, a Delaware law that was recently held to provide a private right of action to an employee also applies to landlords, and states that the organization may not "refuse to … lease to, or otherwise penalize, a person based solely for his or her status as a cardholder" under the state's medical marijuana law. This could very well be read to apply to a Greek organization. Other current and future such laws might be read similarly.

3. **A Court May Hold That the Federal Law Does Not Override the State Law.** Until recently, courts tended to give precedence to the federal law even in the face of a more permissive state law. That is no longer always the case. Some courts have rejected arguments by employers that the federal law prohibiting all marijuana usage should simply take precedence over state laws.

In short, medical marijuana usage is quickly becoming an area where organizations may be damned if they do and damned if they don't. If you allow a member to use medical marijuana on the organization's premises or be under the influence at an event, you arguably are allowing the violation of federal law. If you don't, you might face liability under a state law.

So, what do you do? A policy that reiterates compliance with federal law remains advisable for many organizations. But you should scrutinize with your counsel an absolute statement that there are no exceptions for medical marijuana. Language along the lines of "requests for the use of medical marijuana will be reviewed individually in light of all applicable laws" may be advisable. Then it will likely be prudent to evaluate the issue on a state-by-state basis, and of course to work with legal counsel to stay abreast of this fast developing area. You might even conclude that it is prudent to ask a requesting member to provide medical documentation of the asserted need as part of your evaluation.

We will watch carefully and keep you posted.