STATE OF MICHIGAN

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MICHIGAN MEDICAL MARIHUANA ACT:	Application of Michigan Medical Marihuana Act to child-protective proceedings
MICHIGAN JUVENILE CODE:	
CUSTODY:	

A properly registered patient or primary caregiver, who engages in the "medical use" of marihuana "in accordance with" the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, may invoke the protections provided in sections 4(a) and (b) of the Act in a child-protective proceeding under the Michigan Juvenile Code, MCL 712A.1 *et seq*. MCL 333.26424(a) and (b). But the protections are subject to the exception in section 4(c) of the MMMA for behavior that creates an unreasonable danger to a minor that can be clearly articulated and substantiated. MCL 333.26424(c).

Whether a person's actions associated with the medical use of marihuana present an "unreasonable danger" to a child under section 4(c) of the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26424(c), is a fact-specific inquiry dependent upon the circumstances of each case. Any assertion that a person's behavior associated with the medical use of marihuana presents an unreasonable danger to a child must be clearly expressed and supported by evidence.

To invoke the protections provided for in sections 4(a) and (b) of the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26424(a) and (b), in a child-protective proceeding under the Michigan Juvenile Code, MCL 712A.1 *et seq*., a patient or primary caregiver must have been issued and possess a valid registry identification card. The affirmative defense provided for in section 8(a) of the MMMA only applies in a criminal prosecution, and thus is not available in a child-protective proceeding under the Juvenile Code. MCL 333.264248(a).

The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, does not permit a court in a child-protective proceeding under the Michigan Juvenile Code, MCL 712A.1 *et seq*., to independently determine whether a person is a qualifying patient. But the court may review evidence to determine whether a person's conduct related to marihuana is for the purpose of treating or alleviating the person's debilitating medical condition or symptoms associated with the condition. MCL 333.26424(d)(2). If the person's use or possession of marihuana is not for that purpose, and thus not "in accordance with" the MMMA, the person is not entitled to invoke the protections offered in section 4(a) in a child-protective proceeding. MCL 333.26424(a), MCL 333.26427(a).

Opinion No. 7271 May 10, 2013

Honorable Rick Jones
State Senator
The Capitol
Lansing, MI 48909

You ask several questions concerning the application of the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, in child-protective proceedings brought under the Michigan Juvenile Code (Juvenile Code), MCL 712A.1 *et seq*.[1]

I.

You first ask whether an individual in a child-protective proceeding brought under the Juvenile Code may invoke the protections provided under the MMMA relating to the medical use of marihuana.

The purpose of the Juvenile Code is to serve a child's welfare. MCL 712A.1(3); MCR 3.902(B)(1); *In re Jagers*, 224 Mich App 359, 362; 568 NW2d 837 (1997). And consistent with that purpose, child-protective proceedings protect children from unfit homes and possible injury or mistreatment, and thus safeguard their physical, mental, and emotional well-being. *In re Brock*, 442 Mich 101, 107-108; 499 NW2d 752 (1993); *In re Baby X*, 97 Mich App 111, 116; 293 NW2d 736 (1980). A child-protective proceeding is initiated by filing a petition that sets forth "[t]he essential facts that constitute an offense against the child under the Juvenile Code." MCR 3.961(B)(3). The court acquires subject-matter jurisdiction when the allegations in the petition are not frivolous, and the court may thereafter exercise jurisdiction upon finding probable cause to believe the allegations within the petition are true. *In re Hatcher,* 443 Mich

[1] In addition to the Juvenile Code, there are a number of other public acts that involve the care or custody of minors. Many of these acts are included in Chapter 722, Children, of the Probate Code of 1939. This opinion, however, addresses only child-protective proceedings under the Juvenile Code.

426, 437-438; 505 NW2d 834 (1993). Subsequently, as explained in *In re Brock,* 442 Mich at 108, "[c]hild protective proceedings are generally divided into two phases: the adjudicative and the dispositional. The adjudicative phase determines whether the [ ] court may exercise jurisdiction over the child. If the court acquires jurisdiction, the dispositional phase determines what action, if any, will be taken on behalf of the child."

To exercise continuing jurisdiction, the circuit court "must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2." *Id.* MCL 712A.2(b)(1) provides that a circuit court has jurisdiction over a child under the age of 18, whose parent or custodian "neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship." In addition, jurisdiction may be established under MCL 712A.2(b)(2) for those minors "[w]hose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in." If continuing jurisdiction is established, "the [ ] court has several options, one of which is to return the children to their parents. Not every adjudicative hearing results in removal of custody." *In re Brock*, 442 Mich at 111 (citation omitted). In order to permanently terminate parental rights, the statutory grounds for termination must be proven by clear and convincing evidence. MCL 712A.19b(3).

The MMMA permits the medical use of marihuana "to the extent that it is carried out in accordance with the provisions of [the] act." MCL 333.26427(a), 333.26424(d)(1) and (2). Pursuant to section 7(e), "[a]ll other acts and parts of acts inconsistent with [the MMMA] do not apply to the medical use of marihuana as provided for by this act." MCL 333.26427(e). The Michigan Supreme Court has explained that the purpose of the MMMA is to "allow a limited class of individuals the medical use of marijuana . . . . To meet this end, the MMMA defines the parameters of legal medical-marijuana use, promulgates a scheme for regulating registered patient use and administering the act, and provides for an affirmative defense, as well as penalties for violating the MMMA." *People v Kolanek*, 491 Mich 382, 393-394; 817 NW2d 528 (2012) (footnotes omitted). But the "MMMA does *not* create a general right for individuals to use and possess marijuana in Michigan." *Id.* (emphasis in original).[2]

The MMMA provides that a qualifying patient or primary caregiver who has been issued and possesses a registry identification card "shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act." MCL 333.26424(a) and (b). See also 333.26424(d)(1) and (2), MCL 333.26427(a). The term "medical use" is broadly defined and includes the "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana." MCL 333.26423(e).[3]

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[2] All marijuana-related activity in Michigan remains prohibited by the federal Controlled Substances Act, 21 USC 812(c), 823(f), and 844(a), regardless of whether the individual is registered under the MMMA.

[3] A qualifying patient with a valid registry identification card may possess up to 2.5 ounces of usable marihuana, and cultivate up to 12 marihuana plants, unless the patient has designated a primary caregiver and specified that the caregiver will cultivate marihuana for the patient. MCL 333.26424(a). A primary caregiver who has a valid

In addition to the general protection from arrest, prosecution, or other penalty provided for in sections 4(a) and (b), MCL 333.26424(a) and (b), the MMMA also provides an affirmative defense. Section 8(a), MCL 333.26428(a), states that "a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana *as a defense to any prosecution involving marihuana.*" (Emphasis added.) And relevant to your question, the MMMA includes a specific provision concerning child custody and visitation:

> A person *shall not be denied* custody or visitation of a minor for *acting in accordance with* this act, *unless* the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated. [MCL 333.26424(c); emphasis added.] [4]

You ask whether an individual may invoke section 4(c), MCL 333.26424(c), in a child-protective proceeding under the Juvenile Code.

"[B]ecause the MMMA was the result of a voter initiative, [the] goal is to ascertain and give effect to the intent of the electorate, rather than the Legislature, as reflected in the language of the law itself. We must give the words of the MMMA their ordinary and plain meaning as would have been understood by the electorate." *Kolanek,* 491 Mich at 397. See also *Welch Foods, Inc v Attorney General*, 213 Mich App 459, 461; 540 NW2d 693 (1995). And when construing a statute, the provision must be read in context with the entire statute, and any construction that would render any part of a statute surplusage or nugatory should be avoided. *Robinson v City of Lansing,* 486 Mich 1, 21; 782 NW2d 171 (2010).

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registration card may assist up to 5 patients and possess up to 2.5 ounces of usable marihuana per patient to whom the caregiver is connected by registration, and may also cultivate 12 marihuana plants per patient if the patient has so specified. MCL 333.26424(b) and 333.26426(d).

[4] The medical marihuana laws of Arizona, Delaware, and Maine include a provision similar to Michigan's section 4(c). See Ariz Rev Stat Ann, section 36-2813(D); Del Code Ann tit 16, section 4905A(b); Me Rev Stat Ann tit 22, section 2423-E(3).

While your question suggests that section 4(c) provides an independent source of immunity or protection that is not the function of the provision. Rather, as explained below, section 4(c) creates an exception to the immunity or protection provided in sections 4(a) and (b) that would otherwise apply in a child-protective proceeding.

As noted above, sections 4(a) and (b) provide that registered patients and primary caregivers shall not be subject to "*penalty in any manner*, or [be] *denied any right or privilege*, including but not limited to civil penalty . . . for the medical use of marihuana *in accordance with this act*." MCL 333.26424(a) and (b) (emphasis added). The broad language of these provisions must reasonably be understood to encompass proceedings involving child custody or visitation issues. The United States Supreme Court has held that parents have a right to the "companionship, care, custody, and management" of their children. *Stanley v Illinois*, 405 US 645, 651; 92 S Ct 1208; 31 L Ed 2d 551 (1972). And the Michigan Supreme Court has stated that "[i]t is well established that parents have a significant interest in the companionship, care, custody, and management of their children. This interest has been characterized as an element of 'liberty' to be protected by due process." *In re Brock*, 442 Mich at 109.

An order or judgment in a child-protective proceeding under the Juvenile Code that imposes restrictions on custody or visitation, requires the removal of a child from a home, or results in the termination of parental rights, plainly results in the "denial" of a "right or privilege" for purposes of sections 4(a) and (b) of the MMMA. Thus, registered patients and primary caregivers may invoke the protection or immunity provided for in sections 4(a) and (b) in a child-protective proceeding under the Juvenile Code. But they may do so *only* if they are

properly registered as patients or primary caregivers, possess a registration card, and their "medical use" of marihuana was "in accordance with the act." MCL 333.26424(a) and (b).

But this immunity is not absolute. Again, section 4(c) provides: "[1] A person shall not be denied custody or visitation of a minor for acting in accordance with this act, [2] *unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.*" (Emphasis added.) The first clause of this provision simply echoes the protection or immunity afforded registered patients and primary caregivers under sections 4(a) and (b). But the second clause creates an exception or limitation to that protection where the patient's or primary caregiver's medical use of marihuana "creates an unreasonable danger to the minor that can be clearly articulated and substantiated."[5] In other words, a registered patient or primary caregiver will lose the immunity accorded their medical use of marihuana, thereby allowing the marihuana use to be used as a basis to restrict or deny custody or visitation with a child, if the use creates an unreasonable danger to the child. This result is no different than what would occur where participation in any other lawful activity by a parent or caregiver creates an unreasonable risk of harm to a child.

It is my opinion, therefore, that a properly registered patient or primary caregiver, who engages in the "medical use" of marihuana "in accordance with" the MMMA, may invoke the protections provided in sections 4(a) and (b) of the Act in a child-protection proceeding under

[5] Section 4(c) applies to a "person" "acting in accordance with" the MMMA, MCL 333.26424(c), and is not limited to patients or primary caregivers. Thus, a "person" acting in accordance with sections 4(g), MCL 333.26424(g), relating to "marihuana paraphernalia," and 4(i), MCL 333.26424(i), relating to a person assisting in the administration of marihuana, would also be subject to the exception or limitation set forth in section 4(c). Presumably, however, most situations will involve patients or primary caregivers, and for purposes of this question, it is assumed that the person in question is a patient or primary caregiver.

the Juvenile Code. MCL 333.26424(a) and (b). But the protections are subject to the exception in section 4(c) of the MMMA for behavior that creates an unreasonable danger to a minor that can be clearly articulated and substantiated. MCL 333.26424(c).

II.

In relation to your first question, you express concern with the lack of guidance as to "what would constitute an unreasonable danger to the minor that can be clearly articulated and substantiated" for purposes of the exception created by section 4(c), MCL 333.26424(c).

Again, section 4(c) creates an exception to the protection available under sections 4(a) and (b) where the patient's or primary caregiver's "behavior is such that it creates an *unreasonable danger* to the minor that can be clearly *articulated and substantiated*." MCL 333.26424(c) (emphasis added). The MMMA does not define the terms "unreasonable danger" or "articulated and substantiated," nor has any court issued a decision expressly interpreting the application of section 4(c).[6]

Turning first to the term "unreasonable danger," no other Michigan statute defines or uses this same phrasing in a sufficiently similar context to be helpful. Moreover, it is reasonable to assume that the term was left undefined because what will constitute an "unreasonable danger" to a child will require a fact-specific inquiry based on the particular circumstances of each case.

[6] The Michigan Court of Appeals has issued several decisions in parental termination of rights cases that note the medical use of marihuana by a parent, but none specifically address or interpret section 4(c). See *In re Niblock*, unpublished opinion per curiam of the Court of Appeals, decided May 8, 2012 (Docket Nos. 306612, 306954); *In re Homister*, unpublished opinion per curiam of the Court of Appeals, decided February 16, 2012 (Docket No. 305448); *In re Amormino*, unpublished opinion per curiam of the Court of Appeals, decided November 15, 2011 (Docket Nos. 303172, 303216); *In re McEachern*, unpublished opinion per curiam of the Court of Appeals, decided September 1, 2011 (Docket Nos. 300601, 303176); *In re MJM*, unpublished opinion per curiam of the Court of Appeals, decided June 7, 2011 (Docket Nos. 299893, 299894).

The courts already conduct a similar inquiry under the Child Protection Law (CPL), 1975 PA 238, MCL 722.621 *et seq*.[7] Under section 18(1) of the CPL, the Department of Human Services must file a petition under the Juvenile Code if it determines that someone residing in a child's home is abusing a child or a sibling of the child. MCL 722.638(1)(a). And under section 18(2), "if a parent is a suspected perpetrator or is suspected of placing the child at an *unreasonable risk of harm* due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing as authorized under" the Juvenile Code. MCL 722.638(2). Like the MMMA, the CPL does not define "unreasonable risk of harm"; rather, the Department and any reviewing court must make an assessment based on the circumstances of the case.

In making such an assessment, the Department of Human Services has issued guidance regarding drug or controlled substance use by a parent or caregiver, which includes medical marihuana. The Department's policy provides that:

> Substance abuse, or the addiction of the parent-caretaker or adult living in the home to alcohol or drugs, does not in and of itself constitute evidence of abuse or neglect of the child. Parents use drugs (including, but not limited to, legally or illegally obtained controlled drugs such as *medically prescribed marijuana*, methadone, pain-killers and anti-depressants) and/or alcohol to varying degrees and many remain able to care for their child without harming the child. A careful evaluation must be made to determine whether a child is at risk. [Children Protective Services Manual, PSM 716-7; p 1; PSB 2012-004 (7-1-2012); emphasis added.]

[7] The broad purpose of the CPL is to prevent child abuse and neglect. *Becker-Witt v Bd of Examiners of Social Workers*, 256 Mich App 359, 364; 663 NW2d 514 (2003), citing *Williams v Coleman*, 194 Mich App 606, 614-615; 488 NW2d 464 (1992). To effectuate that purpose, the act defines conduct that is abusive or neglectful, and establishes methods for the reporting to, and the investigation of, instances of abuse and neglect by the Department of Human Services. See, e.g., *Michigan Ass'n of Intermediate Special Educ Administrators v Dep't of Social Services*, 207 Mich App 491; 526 NW2d 36 (1994).

This policy is consistent with the MMMA, and may be applied where a parent or caregiver, who is also a registered patient, invokes the protection provided by sections 4(a) or (b). In other words, under the terms of the MMMA, the medical use of marihuana alone does not create an unreasonable danger to a child. But if the marihuana use affects the parent or caregiver's ability to adequately care for a child, or if the marihuana use presents a particular danger, say to an asthmatic child, such circumstances could create an unreasonable danger to the child. See, e.g. *In re Alexis E.*, 90 Cal Rptr 3d 44, 54 (2009) ("While it is true that the mere use of marijuana by a parent will not support a finding of risk to minors, the risk to the minors here is not speculative. There is a risk to the children of the negative effects of secondhand marijuana smoke.") (citations omitted). See also David Malleis, Note, *The High Price of Parenting High: Medical Marijuana and its Effects on Child Custody Matters*, 33 U La Verne L Rev 357 (2012). A careful evaluation of the facts and circumstances of each case must be made to determine whether the parent's or caregiver's behavior poses an unreasonable danger to the child in question. This conclusion is consistent with how a parent's or caregiver's use of other drugs or controlled substances is to be treated.

The MMMA also requires that the unreasonable danger be "articulated and substantiated." MCL 333.26424(c). Again, these terms are not defined within the MMMA.[8] When a term is not defined in the statute it should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. MCL 8.3a; *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). In this context, the term

[8] Unlike Michigan, two of the other three states that have provisions similar to section 4(c), see footnote 4, *supra*, incorporate a "clear and convincing evidence" standard. See Ariz Rev Stat Ann, section 36-2813(D) and Del Code Ann tit 16, section 4905A(b).

"articulated" means "[t]o express in coherent verbal [or written] form; give words to." *The American Heritage College Dictionary, Third Edition* (1997). The term "substantiated" means "[t]o support with proof or evidence; verify." *Id.*[9] Applying these definitions to section 4(c), the bases for asserting that a parent's medical use of marihuana presents an unreasonable danger to the child must (1) be clearly expressed, and (2) supported with evidence. With respect to a child-protective proceeding under the Juvenile Code, depending upon whether the proceeding is in the adjudicative or dispositional phase, the unreasonable danger must be "substantiated" or supported by either a preponderance of the evidence (adjudicative phase), or by clear and convincing evidence (dispositional phase). See *In re Brock*, 442 Mich at 108, 111-112; MCR 3.972(C)(1); MCR 3.977(E)(3), (F)(1)(b), and (H)(3)(a).[10]

It is my opinion, therefore, that whether a person's actions associated with the medical use of marihuana present an "unreasonable danger" to a child under section 4(c) of the MMMA is a fact-specific inquiry dependent upon the circumstances of each case. MCL 333.26424(c). Any assertion that a person's behavior associated with the medical use of marihuana presents an unreasonable danger to a child must be clearly expressed and supported by evidence.

III.

You next ask whether an individual must be issued and possess a registry identification card under the MMMA in order to raise an affirmative defense under MCL 333.26428(a) or

[9] The CPL includes an express definition of the term "substantiated" for purposes of child abuse and neglect cases. See MCL 722.622(d) and (aa), and MCL 722.628d(1)(d) and (e). This opinion's definition of the term "substantiated" for purposes of applying section 4(c) of the MMMA does not otherwise replace the definition set forth in the CPL.

[10] However, for Native American children, the burden of proof is beyond a reasonable doubt. MCR 3.977(G)(2).

invoke statutory immunity under MCL 333.26424(a) and (b) in a child-protective proceeding under the Juvenile Code.

With respect to section 8's affirmative defense,[11] by its own terms the provision only applies to a criminal "*prosecution* involving marihuana." MCL 333.26428(a) (emphasis added); *State v McQueen*, 493 Mich 135, 159; 828 NW2d 644 (2013). Child-protective proceedings are civil actions, not criminal prosecutions. MCL 712A.1(2); *In re Stricklin*, 148 Mich App 659, 666; 384 NW2d 833, lv den 425 Mich 856 (1986). Thus, section 8(a) may not be invoked in child-protective proceedings brought under the Juvenile Code.

Sections 4(a) and (b) each expressly require that a patient or primary caregiver be registered and possess a registry identification card in order to invoke the immunity or protections provided therein. A patient or primary caregiver "who has been *issued and possesses a registry identification card* shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau," for the medical use of marihuana or for assisting a patient in the medical use of marihuana. MCL 333.26424(a) and (b) (emphasis added).[12]

[11] An affirmative defense "'admits the doing of the act charged, but seeks to justify, excuse, or mitigate it. . . .' It does not 'negate selected elements or facts of the crime.'" *People v Lemons,* 454 Mich 234, 246 n 15; 562 NW2d 447 (1997) (citations omitted); see also *Kolanek*, 491 Mich 382, *supra*.

[12] Under section 9(b), MCL 333.26429(b), a valid application for a registry identification card will be "deemed" a "registry identification card" if a card is not issued within 20 days of submission of the application.

It is my opinion, therefore, that to invoke the protections provided for in sections 4(a) and (b) of the MMMA in a child-protective proceeding under the Juvenile Code, a patient or primary caregiver must have been issued and possess a valid registry identification card. MCL 333.26424(a) and (b). The affirmative defense provided for in section 8(a) of the MMMA only applies in a criminal prosecution, and thus is not available in a child-protective proceeding under the Juvenile Code. MCL 333.264248(a).

IV.

Finally, you ask whether a trial court has authority within the context of a child-protective proceeding under the Juvenile Code, to independently determine whether a person is a "qualifying patient" with a "debilitating condition" under the MMMA, by either ordering the person to release his or her medical records to the court or to participate in an independent medical assessment.

Under MCL 712A.6, a court has jurisdiction over an adult and may make orders affecting the adult that, in the opinion of the court, are necessary for the physical, mental, or moral well-being of a child under the court's jurisdiction. See also MCL 712A.6b (orders regarding nonparent adults). A court may compel adults to participate in services necessary for a child's welfare as set forth in an initial service plan. MCR 3.973(F)(2). And, specific to your question, the "[t]he court may order that a minor or a parent, guardian, or legal custodian be examined or evaluated by a physician, dentist, psychologist, or psychiatrist." MCR 3.923(B); *In re Johnson*, 142 Mich App 764, 766; 371 NW2d 446 (1985). Consistent with state and federal law, medical records for a parent, guardian, or legal custodian may be obtained through execution of a

voluntary release, 42 USC 290dd-2(b)(1), or by subpoena, 42 USC 290dd-2(b)(2)(C). See also MCL 722.631, MCR 3.973(E)(1), and 45 CFR 164.512(e)(1)(i) - (ii)(A) or (B).

Although a court may order these evaluations and receive into evidence any medical records pertaining to members of a child's household, nevertheless the MMMA does not permit the court to independently determine whether a person is a qualifying patient.

The MMMA defines a "qualifying patient" as "a person who has been diagnosed by a physician as having a debilitating medical condition." MCL 333.26423(h).[13] The MMMA defines the term "debilitating medical condition" to include a number of conditions and their symptoms. MCL 333.26423(a).[14] To enjoy full protection under the MMMA, as discussed above, a patient must apply for and obtain a "registry identification card." MCL 333.26424(a).[15]

[13] A "physician" must be licensed "under Part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or an osteopathic physician under Part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556." MCL 333.26423(f).

[14] The MMMA defines "[d]ebilitating medical condition" to mean "1 or more of the following":

> (1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.
>
> (2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.
>
> (3) Any other medical condition or its treatment approved by the department, as provided for in section 5(a). [MCL 333.26423(a)(1) – (3).]

[15] "Registry identification card" means "a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver." MCL 333.26423(i). As enacted, the reference to "department" meant the Department of Community Health. MCL 333.26423(b). However, the duties and functions relating to the medical marihuana program were transferred from that department to the Department of Licensing and Regulatory Affairs.

To receive a registry identification card, a patient must obtain a "written certification" from a physician, which is defined as:

> [A] document signed by a physician, stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. [MCL 333.26423(*l*).]

The patient must then complete and file an application with the Michigan Department of Licensing and Regulatory Affairs (Department). MCL 333.26426(a). The Department must verify the information contained in the application and must approve the application if the patient's submission is complete. MCL 333.26426(a) and (c). The Department may only deny an application if it is incomplete, "or if the department determines that the information provided was falsified." MCL 333.26426(c). The Department's denial of an application is subject to judicial review in the Ingham County Circuit Court. MCL 333.26426(c).

A patient who completes this process, receives a registry identification card, and is otherwise in compliance with the MMMA is entitled to a rebuttable presumption that the patient's use and possession of marihuana is for a medical purpose:

> (d) There shall be a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver:
>
> (1) is in possession of a registry identification card; and
>
> (2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. *The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act*. [MCL 333.26424(d)(1) and (2); (emphasis added).]

Under this process, a licensed physician diagnoses a patient with a qualifying debilitating medical condition and certifies that the patient will benefit from the medical use of marihuana. If the patient obtains this certification and properly submits an application to the Department, the patient is entitled to a registry identification card. The MMMA does not authorize or otherwise provide an opportunity for the courts to decide whether someone is qualified for registration as a patient under the MMMA.

Rather, what a court may do is entertain "evidence" that a patient's use of marihuana "was not for the purpose of alleviating" the patient's "debilitating medical condition or symptoms associated with the debilitating medical condition." MCL 333.26424(d). Thus, the court could order the person to undergo a medical examination, procure the patient's medical records,[16] and review any other evidence, including testimony, regarding the person's use of marihuana to determine whether the person's conduct relating to marihuana is for the purpose of treating or alleviating the person's debilitating condition or associated symptoms. If the evidence supports a contrary conclusion, then the court can determine that the person's use or possession of marihuana is not "in accordance with" the MMMA and the person is not entitled to the Act's protections in the context of a child-protective proceeding under the Juvenile Code. MCL 333.26424(a) and MCL 333.26427(a).

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[16] Notably, the MMMA imposes confidentiality rules regarding information relating to patients and primary caregiver:

> (1) *Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential*.
>
> (2) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. [MCL 333.26426(h)(1) and (2); emphasis added.]

It is my opinion, therefore, that the MMMA does not permit a court in a child-protective proceeding under the Juvenile Code, to independently determine whether a person is a qualifying patient. But the court may review evidence to determine whether a person's conduct related to marihuana is for the purpose of treating or alleviating the person's debilitating medical condition or symptoms associated with the condition. MCL 333.26424(d)(2). If the person's use or possession of marihuana is not for that purpose, and thus not "in accordance with" the Act, the person is not entitled to invoke the protections offered in section 4(a) in a child-protective proceeding. MCL 333.26424(a), MCL 333.26427(a)

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