

# WEED



# BETWEEN THE LINES

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**W**ith the widespread legalization of medical marijuana comes the question, “Can you take prescribed medication across state lines?” The short answer is “No”. Unlike other prescribed medications, a patient cannot take it with them when traveling without fear of running afoul of the law. In order to have an understanding of why this is, let’s review how state laws conflict with federal laws.

The use of marijuana to treat certain medical conditions is not new. As early as 2737 B.C., China’s emperor prescribed marijuana tea for the treatment of gout, malaria, and (ironically) poor memory. Certain Hindu sects in India used marijuana for religious purposes and stress relief. Ancient physicians prescribed marijuana for everything from pain relief to childbirth. American awareness of cannabis came in the late 1800s at a time when many people were unknowingly addicted to morphine, an ingredient in so-called medical elixirs. With the passage of the Harrison Act in 1907, the Federal Government defined drug use as a crime and imposed a tax on nonmedical uses of drugs to discourage their use. By 1937, 23 states had outlawed marijuana in order to stop morphine addicts from taking up a new drug. In 1937, the Federal Government enacted the Marijuana Tax Act, which made nonmedical use of

marijuana illegal. In the 1950s, Congress passed the Boggs Act and Narcotic Control Act, which provided mandatory sentences for marijuana distributors and possessors. More recently, however, the trend has gone the other way. The legalization of medical marijuana and marijuana legislation, in general, are spreading across the country like wildfire. While the history of marijuana regulation in this country goes back decades, the modern movement is more recent. It started with a spark in 1996 when California voters approved Proposition 215. This was the first legislation of its type legalizing medical marijuana in the state of California. In 2012, Colorado and Washington became the first states to legalize marijuana for recreational purposes. The incubation of this explosion began in 1973 when Oregon decriminalized marijuana reducing the penalty to a \$100 fine for amounts up to one ounce of cannabis. Between 1973 and 1990, states such as Texas, Alaska, Maine, Colorado, California, Ohio, Minnesota, Mississippi, New York, North Carolina, South Dakota (temporarily), Nebraska, and Virginia all passed some form of legislation decriminalizing cannabis use. In 1978 New Mexico passed the Controlled Substances Therapeutic Research Act and became the first state to recognize the benefits of medical marijuana. Between 1996 and 2012, in addition to California, states such as Oregon, Alaska, Washington, Maine, Hawaii, Nevada, Colorado, Vermont, Montana, Rhode Island, New Mexico, Michigan, Massachusetts, New Jersey, Arizona, Delaware, and Connecticut legalized medical marijuana either through a state ballot or the state legislature. In 2014 and 2015, many states passed legislation legalizing »

low tetrahydrocannabinol (“THC”), high cannabidiol (“CBD”) cannabis oil to treat certain enumerated medical conditions such as epilepsy. These include Alabama, Kentucky, Wisconsin, Mississippi, Tennessee, Iowa, South Carolina, Florida, North Carolina, Missouri, Virginia, Georgia, Oklahoma, Texas, Delaware, and Wyoming.

In 2017, the state of Arkansas passed a state referendum allowing for the growth, processing, and sale of medical marijuana and issued its first cultivation licenses in March 2018. In Oklahoma, SQ 788 is on the ballot in June 2018 to pass a law permitting the growing and sale of medical marijuana, if prescribed by a licensed physician. Polls indicate it stands a good chance of passing. Between 62-65% of registered Republicans indicated they would vote for passage of a medical marijuana referendum. Throughout the United States, including the District of Columbia, states have allowed producers to grow, and for consumers to buy, medical or recreational marijuana and/or have decriminalized the possession and use of cannabis.

In the United States, there are over 140,000 patients presently using medical marijuana in states where it is legal and over 2,500 physicians who have recommended medical marijuana to treat a medical condition. For the possession and use of medical marijuana, a patient—in most states—must be prescribed cannabis in order to treat a variety of medical conditions. In Arkansas, for example, a “Qualifying Medical Condition” includes cancer, glaucoma, HIV, hepatitis C, Tourette’s Syndrome, Crohn’s disease, PTSD, severe arthritis, or Alzheimer’s. The list also includes a chronic or debilitating disease or medical condition that produces pain that does not respond to ordinary medications, such as severe nausea, seizures, or severe muscle spasms.

Once diagnosed, the physician will issue the patient a medical marijuana card to take to a dispensary to purchase a relatively small amount of cannabis to treat their particular condition. There is still a great deal of debate about what levels of THC and/or CBD treat which conditions. However, before he left office, President Obama lifted the prohibition against cannabis research to allow more universities and research centers to participate in these studies. Prior to that, only the University of Mississippi was permitted to conduct such research. It was then legal for that patient to possess marijuana on his or her person. What happens, however, when the patient travels out of the state where the possession of cannabis is legal?

Some states -- where possession of medical marijuana is legal -- allow medical cardholders from a different

state to possess medical marijuana legally when they travel to that state. Those states include Arizona, Michigan, New Hampshire, Pennsylvania, Rhode Island, California, Colorado, Massachusetts, Nevada, Oregon, and Washington. Arkansas is considering a similar regulation. Be wary, however, as most—if not all of these states—have limitations on the amount, types, and extent to which one can legally possess medical marijuana when visiting those states. Looming over all of this, however, is the Federal Government.

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All states that have legalized either medical or recreational marijuana have a common restriction—the cannabis grown and sold within that state cannot be taken across state lines. The reason? Marijuana is illegal under federal law. In 1970, Congress passed the Controlled Substances Act (“CSA”). The CSA created five schedules of drugs. Schedule 1 consists of drugs that have a high potential for abuse, for which there is no currently accepted medical use, and there is a lack of accepted safety for use of the drug. Drugs on this list include heroin, LSD, ecstasy, mescaline, Quaaludes, peyote, and marijuana. By way of an absurd contrast, cocaine, amphetamines, morphine, OxyContin, and methamphetamines are Schedule 2 drugs because the U.S. Government has determined that these drugs have some medical “value.”

As a result of marijuana being a Schedule 1 drug, it is illegal to transport cannabis across state lines. No exceptions. »





There have been repeated efforts to remove cannabis from Schedule 1 under the CSA. In 1972 the Drug Enforcement Agency (“DEA”) first reviewed an administrative petition to remove marijuana from its Schedule. This petition was denied in 1992, even after numerous lawsuits encouraged the granting of the petition. With the recent surge in the legalization of marijuana by the states, the DEA is working with the Federal Drug Administration to determine whether marijuana should be downgraded. In 2016, the DEA reaffirmed its position that marijuana should not be downgraded from Schedule 1. Despite the DEA’s refusal to downgrade marijuana from Schedule 1, it is worth noting that the Obama administration (at least initially) took a relatively hands-off approach to the enforcement of marijuana laws, often refusing to prosecute marijuana violators in states that have legalized marijuana and allowing states to dictate their own marijuana policies. The Trump administration, on the other hand, has publicly announced its intent to ramp up enforcement again. This uncertainty in policy and enforcement is raising concerns among those in the cannabis industry.



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In spite of the fact that advocates of decriminalizing marijuana have pointed to the billions of dollars it could save the criminal justice system and the billions that could be raised in tax revenues (never mind the potential medical benefits), the Federal Government continues to take a hard line when it comes to marijuana. As a result, you do not transport cannabis across state lines. Until Congress or the Executive Branch change the approach to marijuana—it’s illegal and still constitutes a federal crime.

