

BOARD ADOPTS MEDICAL MARIJUANA ADVICE POLICY

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 Regular News

Board adopts medical marijuana advice policy

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It may soon be legal to operate a medical marijuana business and to use marijuana for medical reasons in Florida under state law, but it remains illegal under federal law. Can a lawyer advise a client about using the drug or operating such a business without running afoul of the Bar?

Yes, according to the Bar Board of Governors, which adopted a policy not to prosecute Bar members for misconduct if they advise clients about the new state law — as long as they also remind clients about federal law. The board at its St. Augustine meeting last month approved the recommendation of the Disciplinary Procedure Committee.

With the enactment of the state law — and the possible passage this fall of a broader constitutional amendment allowing medical marijuana — “We’ll have government lawyers who are going to be asked to draft regulations implementing these laws. We’ll have private law firms

asked to assist businesses who want to set up to distribute medical marijuana,” DPC Chair Jay Manuel told the board. “There is still a federal law that is against distribution and use of marijuana, although the Department of Justice has not been actively involved in prosecuting those involved in the distribution and use of medical marijuana.

“Bar Rule 4-1.2 says the lawyer shall not counsel the client to engage or assist the client in conduct the lawyer knows or reasonably knows is criminal.”

Manuel said the committee considered a rule amendment or an ethics opinion but decided a board policy was best.

The policy reads: “The Florida Bar will not prosecute a Florida Bar member solely for advising a client regarding the validity, scope, and meaning of Florida statutes regarding medical marijuana or for assisting a client in conduct the lawyer reasonably believes is permitted by Florida statutes, regulations, orders, and other state or local provisions implementing them, as long as the lawyer also advises the client regarding related federal law and policy.”

In response to a question, Manuel said the policy does not address a lawyer who personally runs a medical marijuana business, an option, he said, the committee did not consider.

The board approved the proposed policy, with board member John Stewart casting the only dissenting vote.

“I didn’t feel like the board needed to make a special policy for this one new statute,” he said. “I believe there are other applications in other arenas that are similar and we don’t make policies for those.”

The new policy is effective immediately.