

## **PRESCRIBED MEDICATIONS, MEDICAL MARIJUANA AND TREATMENT COURTS IN MICHIGAN**

### **History**

In 2008, Michigan voters approved the Michigan Medical Marijuana Act (MMMA)<sup>1</sup> that allowed the medical use of marijuana. In 2021, the Michigan Court of Appeals ruled that if a probationer has a valid Medical Marijuana Registration Card pursuant to the MMMA, prohibiting a probationer from using medical marijuana constitutes a penalty under the MMMA which the MMMA prohibits. Since the MMMA supersedes any conflicting statutes, a court did not have the authority to stop a probationer's use of medical marijuana pursuant to the MMMA.<sup>2</sup>

In 2022, the Michigan Legislature modified Section 7 of the MMMA.<sup>3</sup> The modification created an exception that if the MMMA is inconsistent with the statutes that address Drug Treatment Courts, Mental Health Courts, Juvenile Mental Health Courts, or Veterans Treatment Courts,<sup>4</sup> the MMMA does not control.

What does this mean for Treatment Courts in Michigan?

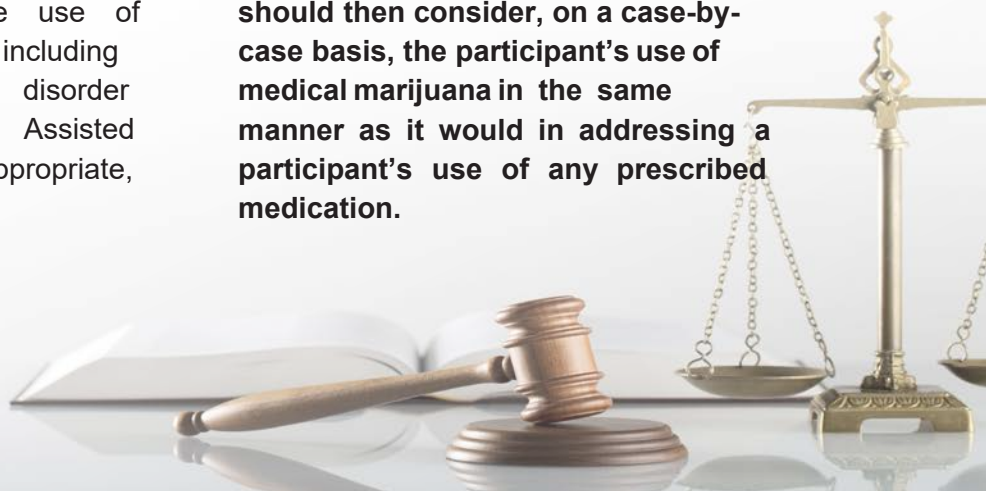
### **Practice Tips for Treatment Courts and a Participant's Use of Medications**

**First and foremost, a Treatment Court should not prohibit the use of any prescribed medications unless it finds that the use of the medication(s) interferes with the participant's recovery (e.g., no blanket bans on medical marijuana).**

Treatment Courts allow the use of prescription medication, including medication for opioid use disorder (MOUD) (a/k/a Medication Assisted Treatment (MAT)), when appropriate, based on a case-by-case determination.

**However, a Treatment Court should never determine the type, dosage and/or duration of MOUD/MAT. That is a medical decision.**

If a participant complied with the statutory requirements for possessing a medical marijuana card, **Treatment Courts should then consider, on a case-by-case basis, the participant's use of medical marijuana in the same manner as it would in addressing a participant's use of any prescribed medication.**





The Court should hold a hearing, consider the relevant factors of the case, and then make a finding on the record. Some of the relevant factors could include:

- The circumstances of the offense;
- The participant's substance use disorder (SUD);
- The extent that marijuana may have played a role in the SUD;
- The nature and severity of the medical condition, and;
- Other options for treating the underlying condition(s).

When considering compliance with the MMMA, Treatment Courts may also want to examine if the person who possess the Medical Marijuana Card has a “bona fide physician-patient relationship” with the particular physician. As defined by statute,<sup>5</sup>

that means the physician has reviewed the patient's medical records, completed a full assessment of the patient's medical history, created and maintained records of the patient's condition in accordance with medically accepted standards, and there is a reasonable expectation that the physician will do follow-up with the patient.

The bottom line is that under Michigan Law, a physician may authorize a person to use marijuana as a medicine.

**Therefore, Michigan Treatment Courts must treat it similar to any prescribed medication a participant may possess, on a case-by-case basis with a thorough consideration of all of the surrounding circumstances.**

For a further discussion on this issue, check out the newly released NADCP publication: *Frequently Asked Questions: Medical Marijuana and Treatment Courts*.<sup>6</sup>

1. (MMMA), MCL 333.26421-333.26430.
2. *People v Thue*, 336 Mich App 35 (2021)
3. Public Act 186 of 2022; MCL 333.26427
4. MCL 600.1060 to 600.1088, 600.1090 to 600.1099a, 600.1099b to 600.1099m, and 600.1200 to 600.1212
5. MCL Section 333.26423
6. [www.NDCI.org/resource/publications/](http://www.NDCI.org/resource/publications/)



## ABOUT THE MICHIGAN ASSOCIATION OF TREATMENT COURT PROFESSIONALS (MATCP)

MATCP provides training through its annual conference, Upper Peninsula training, and other educational events; serves as a voice for treatment courts in the state and federal legislature; and, works with the public and private sectors on educating and advancing treatment courts and other criminal justice and substance use/healthcare reforms. Learn more at [www.MATCP.org](http://www.MATCP.org).