



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

January 22, 2016

Representative Peter Buckley
900 Court Street NE H272
Salem OR 97301

Re: Provisions of the Oregon Medical Marijuana Act that Apply to Small Marijuana Grow Sites

Dear Representative Buckley:

You asked this office (1) whether the Oregon Health Authority may inspect a small marijuana grow site located at the address where a medical marijuana cardholder resides¹ and (2) whether a small marijuana grow site located at the address where a medical marijuana cardholder resides must submit information related to the production of marijuana to the authority. The answer to both questions is no. The authority may not inspect a marijuana grow site if 12 or fewer mature marijuana plants are produced at the site and the site is located at an address where a medical marijuana cardholder resides. Similarly, a marijuana grow site is not required to submit information related to the production of marijuana to the authority if 12 or fewer mature marijuana plants are produced at the site and the site is located at an address where a medical marijuana cardholder resides.

The key to our answer is the defined phrase “person designated to produce marijuana by a [medical marijuana] cardholder.” Under ORS 475B.410, that phrase means:

[A] person designated to produce marijuana by a [medical marijuana] cardholder under ORS 475B.420 who produces marijuana for a [medical marijuana] cardholder at an address other than the address where the [medical marijuana] cardholder resides or at an address where more than 12 mature marijuana plants are produced.

In other words, a “person designated to produce marijuana by a [medical marijuana] cardholder” is not producing marijuana at a marijuana grow site that is located at an address where a medical marijuana cardholder resides and where 12 or fewer mature marijuana plants are produced.

Under ORS 475B.420 (9), the authority may inspect:

(a) The marijuana grow site of a person designated to produce marijuana by a [medical marijuana] cardholder to ensure compliance with

¹ The statutory term for medical marijuana cardholder is “registry identification cardholder.” See ORS 475B.410 (22). For purposes of this opinion, we use the term more commonly used by the public, “medical marijuana cardholder.”

this section and ORS 475B.423 and 475B.428 and any rule adopted under this section and ORS 475B.423 and 475B.428; and

(b) The records of the marijuana grow site of a person designated to produce marijuana by a [medical marijuana] cardholder to ensure compliance with this section and ORS 475B.423 and any rule adopted under this section and ORS 475B.423.

In contrast, the authority is not expressly permitted to inspect a marijuana grow site that is located at an address where a medical marijuana cardholder resides and where 12 or fewer mature marijuana plants are produced.² Absent that express permission, the authority may not inspect a marijuana grow site that meets those qualifications.³

Under ORS 475B.423, a person designated to produce marijuana by a medical marijuana cardholder must submit certain information to the authority related to the production of marijuana, including the amount of usable marijuana harvested from mature marijuana plants. The person must submit the information once per month,⁴ and the person must keep a record of the information submitted.⁵ The authority must keep that information in a database for the purpose of tracking the transference of marijuana and marijuana-derived products between persons designated to produce marijuana by a medical marijuana cardholder and marijuana processing sites or medical marijuana dispensaries.⁶ These provisions do not apply to a marijuana grow site that is located at an address where a medical marijuana cardholder resides and that produces 12 or fewer mature marijuana plants. A marijuana grow site that meets those qualifications is not required to submit any information to the authority.

We do want to point out that several provisions related to the regulation of marijuana grow sites apply to all persons responsible for a marijuana grow site no matter the location or size of the marijuana grow site. These provisions include:

- That a medical marijuana cardholder must provide certain information related to a person responsible for a marijuana grow site if the medical marijuana cardholder chooses to designate a person to produce marijuana for him or her.⁷

² We further note that even if the authority had express permission to inspect a marijuana grow site that is located at an address where a medical marijuana cardholder resides, that permission would be subject to judicial scrutiny under Article I, section 9, of the Oregon Constitution, which guarantees a right against unreasonable search and seizure. An administrative search is reasonable if (1) the search is properly authorized by a politically accountable lawmaking body, (2) the search is designed and systematically administered so that it does not involve the exercise of discretion by the law enforcement person directing the search and (3) the scope of the search is reasonable in relation to its purpose. *Weber v. Oakridge School Dist.* 76, 184 Or. App. 415, 435-437 (2002). A law that authorized an agency to search a person's private residence when the amount of mature marijuana plants grown at the private residence is sufficient only for the purpose of personal consumption would be subject to judicial scrutiny under the third criterion listed above.

³ For an administrative search to be reasonable, the search must be properly authorized by a politically accountable lawmaking body. *Weber* at 435.

⁴ ORS 475B.423 (2).

⁵ ORS 475B.423 (3).

⁶ ORS 475B.458.

⁷ ORS 475B.415 (6)(a)(C).

- That a person responsible for a marijuana grow site is subject to a criminal records check, the disciplinary powers of the authority and the imposition of registration fees.⁸
- That a person responsible for a marijuana grow site may enter into personal agreements with the medical marijuana cardholder for whom they are producing marijuana for the purpose of transferring ownership of usable marijuana to the person responsible for the marijuana grow site.⁹
- That a person responsible for a marijuana grow site may only grow a certain amount of mature marijuana plants on the person's property.¹⁰

Feel free to contact us with any other concerns you have related to the powers of the Oregon Health Authority with respect to marijuana grow sites and persons responsible for marijuana grow sties.

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Very truly yours,

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⁸ ORS 475B.420 (3), (9), (10) and (11).

⁹ ORS 475B.425.

¹⁰ ORS 475B.428.