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## ***First DCA Permits Law Enforcement Agencies to Prohibit Sworn Officers from Using Medical Marijuana***

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The First District Court of Appeal has upheld the termination of a certified correctional officer who tested positive for marijuana metabolites, but who possessed a medical marijuana card.<sup>1</sup> The ruling clarifies the Florida right to use medical marijuana and the limitations on the right for Florida's certified corrections officers. The Court's rationale applies equally to Florida's law enforcement officers. Employers of sworn corrections and law enforcement personnel may prohibit the use of medical marijuana by sworn personnel, and may take adverse employment action for the use of medical marijuana, even if the employee possesses a valid medical marijuana card.

This case arises from a random drug test which resulted in a positive test for marijuana. The employee presented his Florida issued qualifying patient identification card. Because the agency had a strict policy against all marijuana use, including medical marijuana, the agency terminated the employee. The Employee requested a hearing and argued he could not be terminated because he had a Florida constitutional right to use medical marijuana when he was not working and that he had never come to work while impaired. PERC upheld the termination, and the appeal to the DCA followed. The Florida Police Chief's Association filed an amicus brief in support of the right to prohibit use of medical marijuana by sworn employees.

In affirming the employee's dismissal, and therefore, the agency's ability to prohibit the use of medical marijuana by sworn personnel, the Court recognized that Florida law requires all correctional officers to possess good moral character. The moral character requirement includes a prohibition on engaging in any conduct that could give rise to a felony conviction, even if the officer was never charged with the offense. The Court acknowledged that corrections officers were required to train and qualify with, and may be required to use firearms during the course and scope of

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<sup>1</sup> *Ortiz v. Fla. Dep't of Corr.*, Case No. 1D22-375, (Fla. 1st DCA June 21, 2023).

their duties. Although not before the Court, Florida's law enforcement officers have the same requirements.

Despite the Florida medical marijuana amendment, federal law classifies marijuana as a schedule I drug under the Controlled Substances Act. Because the Act defines schedule I drugs as having "no medicinal purpose," a high potential for abuse," and "lack acceptable safety measures even when used under proper medical supervision," there are no valid prescriptions for marijuana. Because it cannot be validly prescribed under federal law, the possession of marijuana is a federal crime.

Federal law also prohibits unlawful users of controlled substances from possessing firearms, and the law does not require the use to be contemporaneous to the possession. Instead, the law required only that the unlawful use to have occurred recently enough to indicate that the individual is actively engaged in such conduct or that the person has used the drug for an extended period. Because possession of a firearm, an essential term and condition of employment for correctional officers – and by extension law enforcement officers, would constitute a felony offense by one using marijuana, the officer would violate Florida's good moral character requirement. The Court recognized that each time a user of medical marijuana possessed a firearm, he or she would be committing a felony in violation of the moral character requirement, which is necessary to maintain certification. Because a sworn employee cannot perform the important requirements of the job, which includes qualification, training, and use of firearms, without being in violation of federal law, termination of employment was lawful.

Although this decision addressed the specific issue involving certified employees, the larger issue of the interaction between Florida's medical marijuana amendment, the Federal Drug Free Workplace Act, and the federal Controlled Substances Act remain unclear. It is clear, however, that under the Supremacy Clause of the United States Constitution, Florida constitutional and statutory requirements must yield to federal law. The specific application and interaction of the provisions by Florida courts will have to be resolved in future cases.

This case is important to law enforcement agencies because it provides clear guidance on the ability to enforce an outright ban on the use of medical marijuana by sworn personnel. Law enforcement administrators should enact clear policy language prohibiting the use of medical marijuana by sworn staff to avoid any confusion or ambiguity over the issue. Agency heads, their general counsel, litigation attorneys, and claims managers should familiarize themselves with this recent holding and recalibrate their understanding of a sworn employee's purported right to use medical marijuana pursuant to Florida law..

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