

Duff on Hospitality Law

## **Washington's Medical Use of Marijuana Act NOT a Blanket Protection Against Issues Arising From Medical Marijuana Use**

By Diana Shukis on 6.17.11 | Posted in Employment Law, Hotels

In this week's post, Employment Law guru, [Diana Shukis](#), offers insight into the complex and fascinating conflicts arising from Washington state's Medical Use of Marijuana Act.

On June 9, 2011 in the case of [Jane Roe v. TeleTech Customer Care Management \(Colorado\) LLC](#), the Washington Supreme Court ruled that Washington employers may fire employees for failing mandated drug tests even if the reason for the drug test failure is authorized medical marijuana use.

Washington's Medical Use of Marijuana Act (MUMA) was adopted in 1998. MUMA provides a defense against state criminal prosecution of physicians who prescribe medical marijuana and of qualified patients and their designated primary caregivers for engaging in the medical use of marijuana. MUMA's provisions essentially stop there. MUMA does not explicitly cover the many other issues that may arise with medical marijuana use, such as, what if your hotel is 100% non-smoking but a guest brings his doctor's authorization for medical marijuana use to you and requests an exemption to the blanket non-smoking rule so he can smoke marijuana to relieve severe symptoms from chemotherapy (a situation faced by one of our clients not long ago)? Or, the question raised by the *Roe v. TeleTech* case, can a Washington employer fire an employee who fails a uniformly applied drug test because she uses medical marijuana as authorized by her doctor to treat debilitating migraine headaches?

In June 2006, Jane Roe (a pseudonym to protect the plaintiff's identity because medical marijuana use is illegal under federal law) received written authorization from her doctor to use medical marijuana in Washington. Medical marijuana alleviated Roe's severe headache pain with no side effects and allowed her to care for her children and to work. Roe only ingested medical marijuana in her home.

In October 2006, Roe was offered a job as a customer service representative at TeleTech's Bremerton facility. The job offer was contingent on Roe passing a drug screening. TeleTech's drug testing policy emphasized that a positive drug screening result (i.e., one that indicated drug use) would disqualify the individual for employment with TeleTech. Prior to taking the drug

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test, Roe informed TeleTech of her medical marijuana use and offered to provide a copy of the authorization from her doctor. Upon learning of Roe's positive drug test results shortly after Roe began work, TeleTech confirmed that its drug policy does not make an exception for medical marijuana use. TeleTech terminated Roe's employment.

Roe sued TeleTech claiming that TeleTech terminated her in violation of MUMA and in violation of Washington's clear public policy in favor of allowing medical marijuana use in compliance with MUMA. The Kitsap County Superior Court, which first heard the case, the Washington Court of Appeals, and now the Washington Supreme Court have all decided that MUMA does not entitle authorized medical marijuana users to protection in employment as argued by Roe. Rather, MUMA provides only the protection explicitly stated in its provisions – a defense against state criminal prosecution. At least for now, Washington employers can safely apply their drug policies even if an employee brings in an authorization for medical marijuana use to try and explain why she will not pass a required drug test. However, keep in mind that this decision covers a very narrow issue and Washington employers still must be careful in dealing with employee medical issues given employers' obligations under federal and state laws in addition to MUMA.

I bet some of you are anxious to know the answer to the other question I mentioned above – what if your hotel is 100% non-smoking but a guest brings to you his doctor's authorization for medical marijuana use under MUMA and requests an exemption to the blanket non-smoking rule so he can smoke marijuana in his room to relieve severe symptoms from chemotherapy? MUMA does not answer the question and neither does *Roe v. TeleTech*. Based on current law covering this area, a hotel is not required to make the requested exemption to its non-smoking policy and I do not see the law changing that answer any time soon. From a practical perspective, making the exception would undoubtedly disturb other guests and, as I understand it, there are other ways to ingest marijuana that would not do so.

If you have questions, or would like more information about how MUMA impacts your business or about how best to deal with employee medical issues, please [let us know](#).

**Tags:** Act, drug, drug testing, Legal, Marijuana, Medical, Medical Use of Marijuana Act, TeleTech, testing, Use