

BOARD OF REGENTS BRIEFING PAPER

Agenda Item Title: Proposed Amendments Regarding Medical Marijuana to Title 4, Chapter 1, new Section 32 (for action), and Title 2, Chapter 6, Section 6.2.1(ee) (for information only) and Chapter 10, Section 10.2.1(t) (for information only) Regarding Medical Marijuana

Meeting Date: September 4-5, 2014

1. BACKGROUND & POLICY CONTEXT OF ISSUE:

Many questions have arisen recently about the possession or use of marijuana at NSHE campuses and facilities in light of the amendments to the medical marijuana laws passed by the 2013 Nevada Legislature. State and local governments have begun the process of licensing medical marijuana dispensaries, cultivation facilities and testing laboratories pursuant to the 2013 statutory amendments. The use, possession or cultivation of marijuana is prohibited by federal law at institutions which receive Title IV funding.

2. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

The proposed amendments would expressly prohibit the use, possession or cultivation of medical marijuana at NSHE facilities or at NSHE sponsored activities. The proposal also addresses federally approved research and the release of students, who are permitted to use medical marijuana under state law, from housing contract obligations. The Board is requested to approve the adoption of the proposed Title 4, Chapter 1, Section 32 Policy on Possession and Use of Medical Marijuana. Two accompanying Code clarifications (Title 2, Ch. 6, Sec. 6.2.1(ee) and Title 2, Ch. 10, Sec. 10.2.1(t)), are presented for information and first read. These Code amendments clarify that "medical marijuana" is included in the list of prohibitions in the employee and student disciplinary procedures, and will be presented for approval at the December Board meeting. The Title 4, Ch. 3, new Sec. 32 Policy on Use or Possession of Medical Marijuana may be adopted separately.

3. WHY NOW?

In light of the ongoing licensing process and the federal prohibition, NSHE policy needs to be clarified regarding medical marijuana.

4. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The use or possession of marijuana by employees or students at NSHE campuses and facilities is illegal under federal law and is prohibited under Board of Regents' policies.
- There is no exception for use or possession of medical marijuana under federal law or Board policy.
- Violation of the federal laws which prohibit use or possession of marijuana by NSHE employees or students could result in the loss of federal funds and financial aid, and possible criminal prosecution.
- Users of illegal substances are not entitled to the protections of federal disability or rehabilitation laws.
- State law does not require accommodation of medical marijuana use in the workplace, but employers must consider modifying job or working conditions under certain circumstances.

Revised: June 2010

- An amendment to the Board of Regents' Handbook, Title 4 and Title 2 are needed to clarify NSHE policy with regard to the possession, use and cultivation of medical marijuana.
- The proposed amendments provide the following:
 - Prohibition on the use, possession or cultivation of medical marijuana on NSHE property or at NSHE sponsored events.
 - Recognition of the healthcare purpose of Nevada's medical marijuana laws.
 - Recognition of the federal prohibition on the use or possession of medical marijuana on university and college campuses.
 - Recognition of the Nevada's statutory commitment to a program for the evaluation of medical use and distribution of medical marijuana at the University of Nevada School of Medicine.
 - Authorization for any NSHE institution to engage in medical marijuana research if legal authorization from appropriate federal authorities is obtained, and with the permission of the institution president.
 - Requires each institution to publish the policy on its website and in its course catalog.
 - Requires each institution to waive the requirements to live on campus for students who have complied with state law, *i.e.*, who have obtained valid medical marijuana registration cards, and who request such waiver.
 - Students who are in compliance with state law may be released from housing contracts and may receive a pro-rata refund.

5. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- State law should control on the issue of medical marijuana.
- The federal government is not taking enforcement action with regard to medical marijuana so there is little threat of withdrawal of Title IV funding.
- NSHE institutions should be permitted to teach and do research regarding medical marijuana.

6. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

Do not adopt the proposed amendments.

7. COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy: Title #_ Chapter #_ Section #____
 Amends Current Board Policy: Title # 4 , Ch. 1 , new Sec. 32, Title 2, Ch. 6,
 new Sec. 6.2.1(ee), and Title 2, Ch. 10, Sec. 10.2.t.
 Current Procedures & Guidelines Manual: Chapter #____ Section #____
 Other:
 Fiscal Impact: Yes____ No X
 Explain: _

POLICY PROPOSAL
TITLE 4, CHAPTER 1, *new* SECTION 32
Possession and Use of Medical Marijuana

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 32. Possession and Use of Medical Marijuana

The Nevada System of Higher Education is sympathetic to the medical needs of our students, employees and visitors. A growing number of states, including Nevada, are enacting laws decriminalizing or legalizing the use, possession, delivery, manufacture, growth, distribution, production, and/or cultivation (hereinafter “use”) of medical marijuana. Federal law prohibits the use of medical marijuana on college and university campuses that receive federal funding. The following provisions shall govern the possession and use of medical marijuana on NSHE property.

- 1. The use, possession, or cultivation of marijuana, including for medical purposes, on any NSHE or NSHE foundation owned or leased property, or at any NSHE sponsored or authorized activity, is expressly prohibited.*
- 2. Students, employees, faculty, guests, and/or visitors who violate this policy are subject to applicable disciplinary, legal and/or administrative action..*
- 3. Each institution shall permit students who live on-campus or in housing that is owned or operated by the institution, to petition (“request”) for a release from the housing contract if they assert legal compliance with Nevada state law to use medical marijuana. Such students, who prove their compliance with state law, may, in accordance with the applicable institution refund policy, be released from their housing contracts and may receive a pro-rata refund of housing fees or rent paid.*
- 4. Each institution shall publish on its website and in its course catalog notice of the prohibited use, possession or cultivation of medical marijuana on NSHE or institution property in accordance with the provisions of this Section and as prohibited student conduct defined in Title 2, Chapter 10.*
- 5. The Board of Regents recognizes the Nevada Legislature’s stated commitment to a program evaluating the medical use and distribution of medical marijuana to be conducted by the University of Nevada School of Medicine. Any NSHE institution may engage in medical marijuana research that is conducted in accordance with state and federal laws and regulations, provided that the following are obtained: (a) the prior written consent of the President of the institution, after consultation with the institution’s General Counsel; and (b) legal authorization from the proper federal authorities for approved research purposes.*

POLICY PROPOSAL
TITLE 2, CHAPTER 10, SECTION 10.2
Prohibited Student Conduct – Medical Marijuana Use

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

10.2.1 Prohibited Conduct.

The following conduct is prohibited:

...

- (t) Use, possession, manufacturing or distribution (*hereinafter “use”*) of marijuana, heroin, narcotics, or other controlled substances, use or possession of any illegal and/or unauthorized drugs, prescription drugs, and drug paraphernalia or being under the influence of illegal drugs except as expressly permitted by law. *Use, possession or cultivation of medical marijuana on any NSHE or NSHE foundation owned or leased property, or at any NSHE sponsored or authorized activity, is expressly prohibited.*

...

This Code change was presented
for information and first read
at the Board of Regents meeting
on September 4, 2014. This Code
change will be presented for
approval at the Board of Regents'
December 4-5, 2014, meeting.

POLICY PROPOSAL
TITLE 2, CHAPTER 6, new SECTION 6.2.1(ee)
Prohibited Employee Conduct – Controlled Substances and Medical Marijuana
Use

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

6.2.1 Prohibited Activity – Faculty Only.

...

(ee) Use, possession, manufacturing or distribution (hereinafter “use”) of marijuana, heroin, narcotics, or other controlled substances, use or possession of any illegal and/or unauthorized drugs, prescription drugs, and drug paraphernalia or being under the influence of illegal drugs except as expressly permitted by law. Use, possession or cultivation of medical marijuana on any NSHE or NSHE foundation owned or leased property, or at any NSHE sponsored or authorized activity, is expressly prohibited.

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