



## Front Office

by Todd Seiders, CLSD

# Medical marijuana and incense burning in non-smoking hotels. . . What to do?

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I recently had one of my clients call about a guest who was burning incense in his guestroom while he was staying at the hotel. After the guest checked out and Housekeeping discovered the evidence, the hotel charged the guest's credit card a \$250 fee for violating the hotel's non-smoking policy, as the hotel was a smoke-free property. What happened next reveals a story all hoteliers can learn from.

The guest immediately challenged the assessed fee and stated he was burning the incense for "medical" reasons, claiming it was "aromatherapy". The hotel asked the guest for a note from his doctor prescribing the "aromatherapy". And guess what? The guest produced a doctor's note. It was a valid prescription from a legitimate physician.

So, that begs the questions: Does the Americans with Disabilities Act (ADA) apply in such a situation? Under what conditions can Management prevent a guest from burning incense or lighting up a controlled substance in the privacy of an individual guestroom? And most significantly, does every hotel have to allow aromatherapy, incense burning, or medical marijuana use on its property, even if it is designated a smoke-free property?



### The answer is: We're not sure yet...

I took this question to the annual Hospitality Law Conference, which is held in Houston every February. The Hospitality Law Conference is attended by approximately 400 hospitality attorneys, including in-house counsel from all the major hotel brands and largest hotel management companies, independent counsel that practice hospitality law, and even hospitality educators from several prominent universities. I searched out the best legal minds within the hospitality industry to discuss this issue with them.

Not surprisingly, there was no general consensus on how to handle medical marijuana/aromatherapy and the ADA at hotels. This is mostly because there is no known "case law" on this issue yet, and partially because the issue has not presented itself to hoteliers on a wide scale. But as most can imagine, it is only a matter of time before innovative guests push the envelope and bring the issue to the forefront of every hotel manager's attention in much the same way many pet owners have accomplished this by certifying their travel pets as "assistive animals" so the pets must be permitted on property, even if the hotel has a strict No Pet policy.

## Fourteen states have enacted laws that legalized medical marijuana

State	Year Passed	How Passed	Possession Limit	Accepts other states' registry ID cards?
Alaska	1998	Ballot Measure 8	1 oz usable; 6 plants (3 mature, 3 immature)	Unknown
California	1996	Proposition 215	8 oz usable; 18 plants (6 mature, 12 immature)**	No
Colorado	2000	Ballot Amendment 20	2 oz usable; 6 plants (3 mature, 3 immature)	No
Hawaii	2000	Senate Bill 862	3 oz usable; 7 plants (3 mature, 4 immature)	No
Maine	1999	Ballot Question 2	2.5 oz usable; 6 plants	Yes
Michigan	2008	Proposal 1	2.5 oz usable; 12 plants	Yes
Montana	2004	Initiative 148	1 oz usable; 6 plants	Yes
Nevada	2000	Ballot Question 9	1 oz usable; 7 plants (3 mature, 4 immature)	No
New Jersey	2010	Senate Bill 119	2 oz usable	Unknown
New Mexico	2007	Senate Bill 523	6 oz usable; 16 plants (4 mature, 12 immature)	No
Oregon	1998	Ballot Measure 67	24 oz usable; 24 plants (6 mature, 18 immature)	No
Rhode Island	2006	Senate Bill 0710	2.5 oz usable; 12 plants	Yes
Vermont	2004	Senate Bill 76	2 oz usable; 9 plants (2 mature, 7 immature)	No
		House Bill 645		
Washington	1998	Initiative 692	24 oz usable; 15 plants	No

Note: As of March 18, 2010, Alabama, Delaware, Illinois, Iowa, Kansas, Maryland, Massachusetts, Missouri, New York, North Carolina, Pennsylvania, South Dakota, Tennessee, and Wisconsin have pending legislation or current ballot measures to legalize medical marijuana.

### Recommendation for dealing with these situations

Despite the lack of case law that pertains to this matter, I received a wide variety of legal opinions on how to handle the medical marijuana dilemma. Summarized below are the “best practices” for handling medical marijuana/aromatherapy situations at your hotel, based on discussions I had with the hospitality legal experts:

1. Place marijuana smokers in “smoking rooms” when available. If you receive a guest complaint of marijuana use in the hotel, you should investigate. If you find the marijuana smoker, ask them for their medical prescription or State ID card authorizing legal medical marijuana use. If they have the proper paperwork, allow them to continue in the smoking room. If they don’t have proof of the legal use of marijuana, ask them to stop, call the Police, or handle it according to your property’s guidelines and policies.
2. If you are a completely “no-smoking” hotel, then guests using medical marijuana should be handled the same as cigarette smokers. They must leave the building and may only smoke in designated areas. They should be treated no differently than cigarette smokers. If they smoke in their guestroom and you have the proper “no smoking” notifications and signage, then charge them the hotel’s normal smoking fee. I would recommend if you have “no smoking” signage in the rooms, that you add the words “this includes medical marijuana” on the signs at your next convenience.

It should be noted that the aforementioned information applies to guests who are “mobile” and who can easily walk around, use the stairs and elevators, and have no physical restrictions. Most of the legal experts I spoke to agreed that if a guest has limited mobility due to a disability then hotels should handle this situation differently. If the guest cannot easily exit and enter the hotel to smoke their medical marijuana, and they insist that the marijuana is part of their treatment for their disability, then you should allow them to smoke in their non-smoking room, as long as they can furnish the necessary documentation attesting to their medical need. Under these circumstances, the legal experts felt the disabled guest could likely fall within the ADA laws, due to their limited mobility. In this situation, the hotel should not charge them a “smoking fee”.

These suggestions are based on the opinions of the “best of the best” hospitality legal experts. As many are aware, the medical marijuana issue is being debated, legalized, and defended throughout the United States. It can be difficult to stay apprised of recent changes that pertain to medical marijuana use. When in doubt, call your local Police or Sheriff departments and find out what the local and state laws are regarding medical marijuana. You should manage the guests at your hotels according to the laws that apply to your specific state or municipality.

## Conclusion

Remember, every hotel has the right to ask a guest who is smoking marijuana to stop, unless they have a *legitimate* prescription, from a *licensed* physician, to be using the medical marijuana. If the guest does not have the legal paperwork to smoke marijuana, you can prevent them from doing so within the boundaries of the hotel's premises. Call the Police or Sheriff for assistance if necessary. You can use the Internet to "Google" a doctor's name or clinic, if you want to independently verify the validity of a guest's medical marijuana use.

No doubt that somewhere in the United States in the near future, we will see some "case law" on the use of medical marijuana and its role as within the scope of the ADA, and its application in no-smoking businesses and related venues. ✧

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