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October 12, 2010

Honorable Loretta Weinberg
545 Cedar Lane
Teaneck, NJ 07666

Dear Senator Weinberg:

This letter concerns your inquiry regarding the "New Jersey Smoke-Free Air Act" (N.J.S.A. 26:3D-55 et seq.), which was enacted in 2005, and the "New Jersey Compassionate Use Medical Marijuana Act" (N.J.S.A. 24:6I-1 et seq.), which was enacted earlier this year, and whether the Medical Marijuana Act supersedes the Smoke-Free Air Act. New Jersey GASP had contacted your office and requested clarification as to where medical marijuana patients are prohibited from smoking marijuana. This letter is a follow-up to my letter in response to the inquiry by New Jersey GASP about whether medical marijuana patients could smoke in workplaces if employers allowed it.

The Smoke-Free Air Act defines the term "smoking" broadly to include not only cigarette, cigar, and pipe tobacco, but also "any other matter that can be smoked." Therefore, whatever prohibitions exist under the Smoke-Free Air Act apply to smoking marijuana, since marijuana can be "matter that can be smoked." Additionally, the Medical Marijuana Act contains provisions that prohibit smoking marijuana in various settings beyond those set forth in the Smoke-Free Air Act. What follows are the relevant provisions of both laws.

**PLACES WHERE SMOKING IS PROHIBITED UNDER
THE SMOKE FREE AIR ACT**

Under the Smoke Free Air Act ,smoking is prohibited in an "indoor public place" and in "workplaces." Those terms are defined in N.J.S.A. 26:3D-57:

"Indoor public place" means a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public, including, but not limited to: a commercial or other office building; office or building owned, leased or rented by the State or by a county or municipal government; public and nonpublic elementary or secondary school building; board of education building; theater or concert hall; public library; museum or art gallery; bar; restaurant or other establishment where the principal business is the sale of food for consumption on the premises, including the bar area of the establishment; garage or parking facility; any public conveyance operated on land or water, or in the air, and passenger waiting rooms and platform areas in any stations or terminals thereof; health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.); patient waiting room of the office of a health care provider licensed pursuant to Title 45 of the Revised Statutes; child care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.); race track facility; facility used for the holding of sporting events; ambulatory recreational facility; shopping mall or retail store; hotel, motel or other lodging establishment; apartment building lobby or other public area in an otherwise private building; or a passenger elevator in a building other than a single-family dwelling.

"Workplace" means a structurally enclosed location or portion thereof at which a person performs any type of service or labor.

As you are aware, some indoor public places and workplaces are not subject to the smoking ban. N.J.S.A.26:3D-59 lists those places in which individuals are allowed to smoke.¹

¹ N.J.S.A. 26:3D-59 of the Smoke-Free Air Act permits smoking in cigar bars and lounges that generated at least 15% of their annual income from the sale of tobacco products in 2004, tobacco retail establishments that allow smoking, tobacco businesses where testing by smoking is integral to manufacturing cigars or pipe tobacco, private residences, private automobiles, and certain areas in casinos and casino simulcasting facilities. In addition, N.J.S.A.26:3D-60 allows persons having control of a hotel, motel or other lodging establishment to permit smoking in up to 20% of guest rooms, though the law does not require these establishment to provide nonsmoking rooms to guest if all the designated nonsmoking rooms are occupied.

PLACES WHERE SMOKING IS PROHIBITED
UNDER THE MEDICAL MARIJUANA ACT

In addition to the above restrictions under the Smoke Free Air Act, N.J.S.A. 24:6I-8 of the Medical Marijuana Act states that the law is not to be construed to permit an individual to:

- a. operate, navigate, or be in actual physical control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana; or
- b. smoke marijuana in a school bus or other form of public transportation, in a private vehicle unless the vehicle is not in operation, on any school grounds, in any correctional facility, at any public park or beach, at any recreation center, or in any place where smoking is prohibited pursuant to N.J.S.2C:33-13. . .²

To summarize, because the Smoke Free Air Act defines the term "smoking" broadly such that the act also applies to smoked marijuana, medical marijuana patients would be prohibited from smoking marijuana in any indoor public place or workplace where individuals would be prohibited from smoking cigarettes, pipes, or cigars under the Smoke-Free Air Act. Additionally, medical marijuana patients are subject to further restrictions under the Medical Marijuana Act.

I hope that this information is responsive to your request. If you have any questions, please contact me.

Sincerely,



Elizabeth Boyd
Senior Counsel

² N.J.S. 2C:33-13 a. prohibits smoking "in or upon any bus or other public conveyance, except group charter buses, specially marked railroad smoking cars, limousines or livery services, and, when the driver is the only person in the vehicle, autocabs. . . ." N.J.S. 2C:33-13 b. prohibits smoking "in any public place, including but not limited to places of public accommodation, where such smoking is prohibited by municipal ordinance . . . or by the owner or person responsible for the operation of the public place, and when adequate notice of such prohibition has been conspicuously posted"