

MEMORANDUM

To: NARR Directors

From: Jeffery Van Treese, Esq.

Date: April 12, 2020

Re: Request for opinion from CARR regarding medical marijuana use in a recovery residence

Question Presented I:

May a recovery residence operator (Operator) refuse to accept individuals who use marijuana from residing in the recovery residence located in a state (e.g. Colorado) that allows for the medical and/or recreational use of marijuana?

Answer: Yes. Currently, medical marijuana users are not protected by the ADA.

Question Presented II:

May a NARR state affiliate, in a state that allows for the medical use of marijuana, certify an Operator who allows the use of marijuana within the residence?

Answer: There is no clear answer at this time. From a state law perspective the answer would be yes. From a NARR perspective the answer would be maybe, depending upon whether the use of legally prescribed marijuana would violate any applicable NARR standard (see e.g. NARR Standard 2-F-16-a.) From a federal law perspective the answer is yes with a huge caveat ...see Question Presented III below:

Question Presented III:

If a recovery residence allows residents to possess or use medical marijuana, is the recovery residence still afforded the protections of the ADA and the Federal Fair Housing laws?

Answer: Currently the answer is probably not.

LAW AND DISCUSSION

Court's considering the issue have decided that the Americans with Disabilities Act (ADA) does not cover medical marijuana use recommended by a healthcare provider. See James v. City of Costa Mesa, 700 F.3d 394, (9th Cir.)(2012).

In the James's case, the plaintiffs were all severely disabled California residents who had obtained a recommendation from a physician to use marijuana to treat pain, which was permissible under California state law, but prohibited by the federal Controlled Substances Act, see 21 USC sections 812 (b)(1)(B).

The plaintiffs obtained their medical marijuana through collectives located within the city of Costa Mesa. Costa Mesa adopted an ordinance completely excluding medical marijuana dispensaries. The District Court judge sympathized with plaintiffs but denied their application for preliminary injunctive relief on the grounds that the ADA does not protect against discrimination on the basis of marijuana use, even medical marijuana use supervised by a doctor in accordance with state law (unless that use is authorized by federal law).

The Ninth Circuit affirmed and held that the plaintiffs were gravely ill, that their request for ADA relief implicated their basic human dignity and right to live comfortably, and that the state of California had embraced marijuana as an effective treatment for individuals suffering from debilitating pain. Nevertheless, the Ninth Circuit Found that Congress had made clear that the ADA defines illegal drug use by reference to federal, not state law, and that federal law does not authorize the plaintiffs medical marijuana use. The court found that the plaintiffs' medical marijuana use was therefore not protected by the ADA.

The only case negatively construing the James case is Noffsinger v. SSC Niantic Operating Co. LLC, 273 F. Supp 3d 326 (2017) , which found that the particular provisions of the Connecticut statute prohibiting employers from firing or refusing to hire an employee who uses medical marijuana from filing an action for discrimination in hiring, based on a finding that the ADA does not preempt a private state law right of action under the Connecticut state statute for discrimination on the basis of marijuana use.

Accordingly, it appears under current law that :

1. ADA protections would not apply to persons using medical marijuana legally under state law.
2. If a recovery residence allows residents to possess or use medical marijuana the recovery residence would no longer be afforded the protection of the ADA and the federal fair housing laws.
3. In the event a NARR state affiliate desires to certify an operator who allows the use of state law approved medical marijuana by residents, I would recommend that the state affiliate present the question to the NARR National Standards Board as to whether the use of legally prescribed marijuana would violate any applicable NARR standards (see e.g. NARR standard 2-F-16-a).

