



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

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The Committee on Model Criminal Jury Instructions has adopted the following new model criminal jury instruction, effective May 2018.

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ADOPTED

The Committee has adopted M Crim 12.9 (§8 defense instruction), a new instruction for use where a defendant asserts an affirmative defense to marijuana charges under MCL 333.26428(a) in cases where a question of fact remains for jury determination per *People v Hartwick/Tuttle*, 498 Mich 192 (2015).

[NEW] M Crim JI 12.9 Medical Marijuana Affirmative Defense

(1) The defendant says that [he / she] is not guilty since [his / her] [acquisition / possession / cultivation / manufacture / use / delivery / transfer / transportation] of marijuana was legal because it was permitted for medical purposes. The burden is on the defendant to prove that [he / she] [acquired / possessed / cultivated / manufactured / used / delivered / transferred / transported] marijuana for medical purposes.

(2) Before considering the medical marijuana defense, you must be convinced beyond a reasonable doubt that the defendant committed the [crime / crimes] charged by the prosecutor. If you are not, your verdict should simply be not guilty of [that / those] offense[s]. If you are convinced that the defendant committed an offense, you should consider the defendant's defense that [he / she] [acquired / possessed / cultivated / manufactured / used / delivered / transferred / transported] the marijuana for medical purposes.

(3) In order to establish that [his / her] [acquisition / possession / cultivation / manufacture / use / delivery / transfer / transportation] of marijuana was legal, the defendant must prove three elements by a preponderance of the evidence. A preponderance of the evidence means that [he / she] must prove that it is more likely than not that each of the elements is true.

(4) First, that a physician provided a professional opinion stating that the [defendant / defendant's patient] is likely to receive therapeutic

or palliative benefit from the medical use of marijuana to treat or alleviate a serious or debilitating medical condition or the symptoms of a serious or debilitating medical condition.

The term “therapeutic benefit” means tending to cure or restore to health.

The term “palliative benefit” means moderating pain or symptoms by making them easier to bear, without necessarily curing the underlying medical condition.

In order to prove that a physician provided a professional opinion, the defendant must establish both of the following conditions:

- (a) that [(he / she) / (his / her) patient] had a bona fide physician-patient relationship with the physician who provided the professional opinion; and
- (b) that the opinion was made after a full assessment of the [defendant’s / defendant’s patient’s] medical history and current medical condition.

A bona fide relationship means that there was an actual and ongoing relationship between [defendant / defendant’s patient] and the physician when the opinion was provided.¹

(5) Second, that the defendant [and (his / her) primary caregiver] [acquired / possessed / cultivated / manufactured / used / delivered / transferred / transported] no more marijuana than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the [defendant’s / defendant’s patient’s] medical condition or symptoms.

(6) Third, that the defendant [and (his / her) primary caregiver] [was / were] engaged in the [acquisition / possession / cultivation / manufacture / use / delivery / transfer / transportation] of marijuana to treat or alleviate the [defendant’s / patient’s] medical condition.

(7) You should consider these elements separately. If you find that the defendant has proved all three of these elements by a preponderance of the evidence, then you must find [him / her] not guilty because [his / her] [acquisition / possession / cultivation / manufacture / use / delivery / transfer / transportation] of marijuana was permitted for medical purposes. If the defendant has failed to prove any or all of these elements, [he / she] was not legally permitted to [acquire / possess / cultivate / manufacture / use / deliver / transfer / transport] marijuana.

Use Note

1. If there is a question regarding the existence of a bona-fide physician-patient relationship, see *People v Hartwick*, 498 Mich 192, 231, 870 NW2d 37 (2015), and MCL 333.26423(a) for further guidance. The statute provides:

(a) “Bona fide physician-patient relationship” means a treatment or counseling relationship between a physician and patient in which all of the following are present:

(1) The physician has reviewed the patient’s relevant medical records and completed a full assessment of the patient’s medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.

(2) The physician has created and maintained records of the patient’s condition in accord with medically accepted standards.

(3) The physician has a reasonable expectation that he or she will provide follow-up care to the patient to monitor the efficacy of the use of medical marihuana as a treatment of the patient’s debilitating medical condition.

(4) If the patient has given permission, the physician has notified the patient’s primary care physician of the patient’s debilitating medical condition and certification for the medical use of marihuana to treat that condition.