

Things are about to get interesting in South Dakota. As most South Dakota readers already know the medical marijuana bill, Initiated Measure 26, passed in the 2020 General election. What that means is that after July 1, many individuals will have some serious decisions to make; do I get a medical marijuana card, or do I keep my guns. Scoff if you will, but I am serious! Here is what you need to know. The Federal Gun Control Act of 1968 and the Federal Omnibus Consolidated Appropriations Act of 1997 make it illegal for any person who is an unlawful user of controlled substances to *ship, transport, receive or possess* firearms or ammunition.”

If you have purchased a firearm from any dealer in the recent past, you had to complete a 4473 form before the dealer could transfer the firearm to you. This includes all handguns and long guns. The 4473 is the required firearms transaction record every gun dealer must have you fill out, sign and keep in their records – forever, or until discontinuing their business. If they discontinue business they must surrender those records to the ATF to be archived, indefinitely.

There was a recent change to a question on the ATF 4473 form that you must take seriously. Question 21 (e) asks; “*Are you an unlawful user of, or addicted to marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? **Warning:** The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medical or recreational purposes in the state where you reside.*” There are only 2 correct answers, YES or NO.

Here is where the most critical choice of your future with regards to firearms must be made. If you answer “YES” because you have a medical marijuana card, the dealer cannot proceed with the sale, and you leave without the gun. If you have a medical card and answer “NO” you have just committed perjury on a Federal form. The penalty for this offense is 5 years in a federal prison and a \$10,000 fine. So you’re still not sure if this is accurate information? There have been many cases in a number of states where people have been charged and convicted of perjury and illegal firearms possession. The 9th Circuit Court of Appeals, the most liberal court in the US, upheld a lower court conviction in one such case. Until a future congress makes marijuana legal you have to make a choice, own guns or use marijuana. Once you become a Federally convicted felon you can no longer own the guns you currently have, and never buy one in the future. An exception exists for those who had their records expunged or had their rights restored through the court system.

This next scenario should be obvious but I will explain what can easily happen. Right now the state of South Dakota is accepting RFPs (requests for funding proposals) for a third party agency to create a registry of medical marijuana card holders and distribute the cards to those who qualify with medical conditions appropriate for the use of marijuana. The state will not maintain the registry. The registry is NOT considered part of your medical record and is not protected by HIPPA. This is a controversial subject at this time but since HIPPA is a federal requirement and medical marijuana is still illegal under federal law HIPPA does not protect certain data. However, for the distributor who collects your ‘other’ health information for their records, there is a growing concern about whether they must

be HIPPA compliant with your 'other medical history.' Many of these dispensaries will likely treat your record as a HIPPA protected record but the fact that you have a card will likely be open for law enforcement to inspect. It will get complicated going forward.

If the medical card data is available to Law Enforcement you could possibly someday answer a knock on your door and be served with a search warrant to collect your guns, all of them. You're still not buying it? Go to your computer and search "guns and marijuana" and you can get information from every state with medical or recreational marijuana and the answer will always be the same - you must choose one or the other, guns or pot.

If you have a concealed carry permit issued to you, law enforcement could cross reference the medical marijuana card database with the concealed carry list. If you are like me, my first thought was that only the Secretary of State of South Dakota has access to that list. Unless the law is changed in the future the permit list is accessible to law enforcement for the purposes of investigating a crime, which in this case it could be justified. Until we see this actually tested and someone files a lawsuit, I am not sure which way the courts would lean. In Florida and a number of other states, those lists were compared and there were warrants issued and arrests made.

It is not just the Federal authorities that are telling us we can't have it both ways; the cannabis industry also recognizes the fact that you cannot have both marijuana and guns. This is a quote from CannabisRxHealth.com; "While many states have voted to legalize medical cannabis, many voters might not know that legalization comes with some limitations. The law states that you cannot have both a concealed carry license and a medical marijuana card. So, can medical cannabis patients own guns? No. Even though medical marijuana has been voted into legality in most states, it's still viewed as a Schedule 1 drug by the Federal government. Thus, since Federal laws override state laws, you cannot own a gun if you have a medical marijuana card."

So the choice is clear - guns or pot. Until the Federal Government eases the law, there is nothing the state can do to change this, so do not expect the legislature to do anything. The best the legislature could hope to do is forbid any state resources being used to enforce the federal law.

Medical Marijuana laws and rules start July 1, 2021 for South Dakota so you will have to wrestle with this decision. Readers of this publication in other states that have medical or recreational marijuana also need to heed this warning. If you are considering medical marijuana as an alternate form of self-medication, the choice here is a reality, and it is not likely to change soon. There are some who see the medical marijuana card as a way to simply circumvent the law and smoke recreationally. For those people, the risk is all yours! For me the choice is clear, there are plenty of other forms of medicine to use, my right to self-defense is more important to me. If you have any questions you can always reach me at kevinj605@gmail.com.

(Kevin Jensen is a 3 term current legislator in South Dakota serving as Majority Whip and Chair of the House Health and Human Services Committee and is a strong Second Amendment supporter.)