

CONSIDERATIONS REGARDING REQUESTS TO RUN ADS RELATING TO THE MMMA

In commercial speech cases a four-part analysis has developed:

1. Whether the expression is protected by the First Amendment.
2. Whether the asserted governmental interest is substantial.
3. If 1 and 2 are both yes, whether the regulation at issue directly advances the governmental interest asserted, and
4. Whether the regulation it is not more extensive than is necessary to serve that interest.

Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980); *City of Rochester Hills v. Schultz*, 459 Mich. 486 (1980).

The crux of the issue here is # 1 - for commercial speech to come within the protections of the First Amendment it must ***concern lawful activity and not be misleading***.

The decision in *McQueen* can help you decide which ads you should accept.

It is important to note that there is no way for you to verify that a person placing an ad has registered with the State of Michigan.

DECLINE any ads that purport to “legally” offer marihuana for sale or that ask to “legally” purchase medical marijuana – ***including ads for dispensaries or cooperatives***. This includes ads that offer products for consumption containing marihuana.

DECLINE any ads that purport to offer career opportunities as medical marihuana “caregivers” or growers of medical marihuana.

DECLINE any ads that purport to offer valid (i.e., legal) “certification,” “registration,” or “licenses,” to obtain medical marihuana. Scrutinize the doctor ads – footnote 30 in *Kolanek* indicates that patients need to be seen by a doctor with whom they have a “pre-existing and ongoing relationship...as a treating physician”.

You can **ACCEPT** ads that relate to medical marihuana while not offering to purchase or buy it or certify its use. For example, you can accept ads that give contact information to find out about legal medical marihuana or about “comfort and care” societies that provide information on legal medical marihuana. If you get an ad and have questions, please contact the hotline: hotline@michiganpress.org or 800-334-5390.

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