



Medical Marijuana: To Prescribe or Not to Prescribe?

That is the question.

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The complex maze of state and federal laws on marijuana usage coupled with a more tolerant public attitude has left physicians, employers, and human resources professionals in a haze about what to do on several pot-related questions. According to federal law, marijuana use or possession is still illegal. The federal government's stance is that marijuana is an illegal substance in all cases and has no currently accepted medical use. Cannabis is a Schedule I controlled substance; and under the Controlled Substances Act of 1970,¹ physicians cannot legally prescribe a Schedule I controlled substance.

But the smokescreen comes from a jumble of state laws. As of this writing, 30 states make marijuana legal for medical purposes, and recreational usage is legal in 9 states. Both of these numbers are expected to grow.

Employers in states that allow medical or recreational marijuana usage, including physicians and hospitals, must review their policies regarding marijuana usage. For instance:

- Can you (and should you) still test for marijuana?
- Is it legal to prohibit off-duty usage by employees? What about medical marijuana card holders?

- Can you have a zero tolerance policy?
- How does the Americans with Disabilities Act (or state disability laws) require you to accommodate marijuana usage?
- How do you juggle disability laws, the Family and Medical Leave Act, safety, and even Workers' Comp issues?
- How does your state law interact with federal law, and which do you need to follow?

dition that a patient be allowed to use medical marijuana. Some states require continuing education or other criteria for a physician to be registered. Many states have limited medical conditions for which a physician may recommend the use of cannabis.

Technically, physicians don't "prescribe" medical marijuana; rather, they "recommend" it for certain patients. A federal court decision found that while a prescription for cannabis is unlawful, a recommen-

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These questions and more need to be presented to an employment attorney familiar with the laws in your state.

Recommending Medical Marijuana

As a physician, what are the guidelines for prescribing medical marijuana?

First, and most important, is to determine whether medical marijuana is legal in your state and to review the laws and regulations for your state, because they vary from state to state. In some states, physicians or other healthcare providers must be registered to make a recommen-

dition is allowed. A recommendation is not considered an order, but a communication between doctor and patient on benefits and harms. As such, states can step in to establish protections for patients who receive recommendations (also referred to as certifications), along with a regulatory framework for the production and distribution of cannabis.

Once registered, a physician must establish a doctor-patient relationship with any patient requesting a medical marijuana recommendation to avoid being labeled as a "marijuana mill."

If the patient is new, the physician should perform an adequate physical

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examination and record an adequate history, including the condition potentially being treated by medical marijuana, and any conditions that may present contraindications to medical marijuana use, such as liver disease, psychiatric disorders, and addiction. The history should also include past and current treatment history; addiction history, including family history; the patient’s psychosocial circumstances and supports; and pregnancy, menstrual, and contraception data if the patient is female.

For an established patient, there should be a complete medical history in the record.

Patients requesting medical marijuana should be educated about alternative treatments and risks associated with medical marijuana use, and safety precautions regarding the supply of medical marijuana to protect others, such as children and pets, who may have access to their supply. Physicians or other healthcare providers should educate the patient about the pros and cons of the various routes of administration available for medical marijuana. Last but not least, providers should, in all cases in which medical marijuana is permitted, formulate a treatment and follow-up plan.

Documentation of follow-up visits might include recording progress toward treatment goals, use of quantitative urinary/blood drug screening and monitoring, and validated quality-of-life measurements. Many physicians have the patient keep a log of each use and a dosing journal that the physician copies and keeps in the patient chart.

Writing the Recommendation

A medical marijuana recommendation is written on a different form, specifically not on a prescription form, and cannot be filled at a pharmacy.

Depending on the state, the certification is taken to a dispensary, commercial shop, or state-approved facility, where a patient can purchase a variety of quantities of medical marijuana of differing chemical makeup for varying lengths of time. The product they receive may or may not be regulated and inspected for its chemical contents and purity. The

product’s labeling may or may not tell the patient much about what they are receiving, or how to use it to best advantage. This is almost always left up to the patient to determine.

Unlike a registered pharmacist, the person behind the counter at the dispensary may or may not be trained in educating the patient about the medical marijuana product, which is paid for entirely out of pocket by the patient and is not covered by insurance.

prescribe or dispense the drug. Physicians can insulate themselves further by speaking with their medical liability insurance carrier to ensure coverage for issues stemming from medical marijuana recommendations, and by ruling out conventional medical therapies for patients who seek a marijuana recommendation.

Most states that have legalized medical marijuana have laws providing for limited legal protections from

Providers should in all cases formulate a treatment and follow-up plan.

Pros and Cons

The biggest “pro” is that the legalization of medical marijuana has given physicians an alternate remedy in the war against pain for patients suffering from seizure disorders, nerve damage, glaucoma, and cancer treatment.

The most obvious “con” is that cannabis is an addictive substance, particularly during adolescence, that can also increase the risks of developing psychosis, and can cause falls, driving accidents, cognitive losses, cardiopulmonary complications, and reproductive dangers, including very negative effects on the developing fetus, as well other potential adverse effects.

Many physicians are uneasy about their role as gatekeepers of a federally controlled substance for which clinical research is limited. Some worry about legal liability. Others fear for their license, even in states where cannabis is approved for medicinal use. However, doctors who are unsure about the efficacy of marijuana as a clinical remedy need not issue certifications at all.

With federal and state laws in conflict, healthcare providers have sought protection for years. In 2013, the Justice Department declared U.S. attorneys would no longer pursue actions against physicians for recommending medical marijuana in states where it has been made legal, a ruling supported by the American College of Physicians.² The legal risk to doctors of certifying patients for medical marijuana is minimal, primarily because they do not directly

arrest for authorized patients who use cannabis with a doctor’s recommendation, according to the National Organization for the Reform of Marijuana Laws (NORML).³

Recommendation (Certification) Guidelines

The Federation of State Medical Boards appointed the Workgroup on Marijuana and Medical Regulation to develop model policy guidelines regarding the recommendation of marijuana in patient care, including conditions, diseases, or indications for which marijuana may be recommended. The Workgroup was further tasked with the development of a position statement or white paper regarding the regulation of licensees who use marijuana, which will be addressed in a separate document.

Following are the Workgroup’s suggested guidelines for the recommendation of marijuana in patient care.

Physician–Patient Relationship

The health and well-being of patients depend on a collaborative effort between the physician and the patient. The relationship between a patient and a physician is complex and is based on the mutual understanding of the shared responsibility for the patient’s healthcare. The physician–patient relationship is fundamental to the provision of acceptable medical care. Therefore, physicians must have documented that an appropriate physician–patient relation-

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ship has been established, prior to providing a recommendation, attestation, or authorization for marijuana to the patient. Consistent with the prevailing standard of care, physicians should not recommend, attest, or otherwise authorize marijuana for themselves or a family member.

Patient Evaluation

A documented in-person medical evaluation and collection of relevant clinical history commensurate with the presentation of the patient must be obtained before a decision is made as to whether to recommend marijuana for medical use. At minimum, the evaluation should include the following information about the patient:

- History of present illness;
- Social history;
- Medical and surgical history;
- Alcohol and substance use history;
- Family history, with emphasis on addiction or mental illness and psychotic disorders;
- Physical examination;
- Documentation of therapies with inadequate response; and
- Diagnosis requiring the marijuana recommendation.

Informed and Shared Decision-Making

The decision to recommend marijuana should be a shared decision between the physician and the patient. The physician should discuss the risks and benefits of the use of marijuana with the patient. Patients should be advised of the variability and lack of standardization of marijuana preparations and the effect of marijuana. Patients should be reminded not to drive or operate heavy machinery while under the influence of marijuana. If the patient is a minor or without decision-making capacity, the physician should ensure that the patient’s parent, guardian, or surrogate is involved in the treatment plan and consents to the patient’s use of marijuana.

Treatment Agreement

A healthcare professional should document a written treatment plan that includes:

- Review of other measures at-

tempted to ease the suffering caused by the terminal or debilitating medical condition that do not involve the recommendation of marijuana;

- Advice about other options for managing the terminal or debilitating medical condition;
- Determination that the patient with a terminal or debilitating medical condition may benefit from the recommendation of marijuana;
- Advice about the potential risks of the medical use of marijuana to include:
 - The variability of quality and concentration of marijuana;

cian. The indication, appropriateness, and safety of the recommendation should be evaluated in accordance with current standards of practice and in compliance with state laws, rules, and regulations that specify qualifying conditions for which a patient may qualify for marijuana.

Ongoing Monitoring and Adapting the Treatment Plan

Where available, the physician recommending marijuana should register with the appropriate oversight agency and provide the registry with information each time a recommen-

At this time, there is a paucity of evidence for the efficacy of marijuana in treating certain medical conditions. Recommending marijuana for certain medical conditions is at the professional discretion of the physician.

- The risk of cannabis use disorder;
- Exacerbation of psychotic disorders and adverse cognitive effects for children and young adults;
- Adverse events and other risks, including falls or fractures;
- Use of marijuana during pregnancy or breast-feeding;
- The need to safeguard all marijuana and marijuana-infused products from children and pets or domestic animals; and
- The need to notify the patient that the marijuana is for the patient’s use only and the marijuana should not be donated or otherwise supplied to another individual.

- Additional diagnostic evaluations or other planned treatments;
- A specific duration for the marijuana authorization for a period no longer than 12 months; and
- A specific ongoing treatment plan as medically appropriate.

Qualifying Conditions

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dation, attestation, authorization, or re-authorization is issued. Where available, the physician recommending marijuana should check the state Prescription Drug Monitoring Program each time a recommendation, attestation, authorization, or re-authorization is issued.

The physician should regularly assess the patient’s response to the use of marijuana and overall health and level of function. This assessment should include the efficacy of the treatment to the patient, the goals of the treatment, and the progress toward those goals.

Consultation and Referral

A patient who has a history of substance use disorder or a co-occurring mental health disorder may require specialized assessment and treatment. The physician should seek a consultation with, or refer the patient to, a pain management, psychiatric, addiction, or mental health specialist, as needed.

Medical Records

The physician should keep accurate and complete medical records. Information that should appear in the

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medical record includes, but is not necessarily limited to the following:

- The patient's medical history, including a review of prior medical records as appropriate;
- Results of the physical examination; patient evaluation; and diagnostic, therapeutic, and laboratory results;
- Other treatments and prescribed medications;
- Authorization, attestation, or recommendation for marijuana, to include date, expiration, and any additional information required by state statute;
- Instructions to the patient, including discussions of risks and benefits, side effects, and variable effects;
- Results of ongoing assessment and monitoring of the patient's response to the use of marijuana;
- A copy of the signed treatment agreement, including instructions on safekeeping and instructions on not sharing.

Physician Conflicts of Interest

A physician who recommends marijuana should not have a professional office located at a dispensary or cultivation center or receive financial compensation from or hold a financial interest in a dispensary or cultivation center. Nor should the physician be a director, officer, member, incorporator, agent, employee, or retailer of a dispensary or cultivation center.⁴

Should You Register to Recommend Medical Marijuana in a State in Which It Is Legal?

Before deciding whether to register to recommend medical marijuana, it is important that physicians take courses on medical marijuana given by the various specialty organizations and other entities, as well as the online courses available through most health departments in states that allow medical marijuana certification. It is then up to the physician whether or not to provide recommendations of

medical marijuana to patients. Even if it is available in their state, physicians are not required to provide medical marijuana certification. **PM**

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