Cannabis and the Clinician

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Objectives:

• Understand the rules for certifying patients to use medical marijuana
• Learn about liability protections and new risks to physicians under the law
• Consider the clinical implications of recommending marijuana to patients
• Understand the interplay between state and federal law
Amendment 2 Overview

Medical marijuana was legalized by Missouri voters in the form of a constitutional amendment. “Amendment 2” is now found in Article XIV of the Missouri constitution.

- Establishes the right of physicians and patients to freely discuss the possible benefits of medical marijuana and allows physicians to recommend medical marijuana without [much] legal recourse.
Amendment 2 Overview

Medical marijuana is legal in 33 states, largely enacted by initiative petitions, as in Missouri. While the laws contain similarities, there are key differences that make predicting how courts will interpret Missouri’s law difficult.

- Decriminalization approach (Missouri) versus protection from discrimination in employment and housing
- Constitutional versus statutory initiatives
Amendment 2 Overview

Marijuana is defined as *Cannabis indica, Cannabis sativa, and Cannabis ruderalis*, along with hybrids and other common strains.

- Includes resin extracted from the plant and marijuana-infused products - edibles, ointments, tinctures, oils and concentrates
- CBD Oil not included; hemp-derived cannabidiol is no longer a controlled substance.
- Different strains have different effects, but not an exact science – different batches of the same strain can have different effects.
- Edibles may take effect at different rates, depending on whether they are absorbed through the gastro tract or sublingually.
The Physician’s Role

- Physicians do not prescribe medical marijuana. Prescribing a Schedule 1 drug is illegal under the federal Controlled Substances Act. Physicians certify that the patient has a qualifying condition as defined by the law:
  - Cancer
  - Epilepsy
  - Glaucoma
  - Intractable migraines unresponsive to other treatment
The Physician’s Role

Qualifying conditions (cont.)

- Chronic medical condition causing severe, persistent pain or muscle spasms
- Debilitating psychiatric disorders (diagnosed by a psychiatrist)
- HIV or AIDS
- Chronic medical condition normally treated with prescription that could lead to addiction, when a physician determines that marijuana could be effective in treating the condition and is a safer alternative
- Terminal illness
The Physician’s Role

Qualifying conditions (cont.)

- Any other chronic, debilitating or other medical condition based on judgment of physician – examples include:
  - Hepatitis C
  - ALS
  - IBD
  - Crohn’s
  - Huntington’s
  - Autism
  - Sickle Cell
Patient Certification

Only a Missouri-licensed physician in good standing can certify a patient as having a qualifying condition. Certification requirements are found in 19 CSR 30-95.110:

• Physician must verify he or she:
  ➤ Met with and examined the patient
  ➤ Reviewed the patient’s medical records or medical history
  ➤ Reviewed current medications and medication allergies
  ➤ Discussed the patient’s current symptoms
  ➤ Created a medical record for the patient regarding the meeting
Patient Certification

- Physician must verify he or she discussed with the patient:
  - Risks associated with medical marijuana, including known contraindications applicable to the patient
  - Risks of medical marijuana use to fetuses
  - Risks of medical marijuana use to breastfeeding infants
- Certification form must be submitted electronically
Physician Certification

• A physician can certify a non-emancipated minor as having a qualifying condition.
  ➢ Requires written consent of parent or legal guardian
  ➢ Card issued to patient/guardian
  ➢ Only parent or guardian can serve as caregiver and purchase or possess marijuana for minor qualifying patient
Physician Certification

• By law, patients may purchase up to four ounces of dried marijuana in a 30-day period and possess between eight and twelve ounces (high limit for patients who cultivate their own marijuana).

• Limits may be exceeded with written certification from two independent physicians, but requires physicians to provide recommended dose on certification form.

➢ Does dosage equal a prescription?

• Note: Recommended dose only required if recommending above the lawful possession limits.
Marijuana and the Doctor/Patient Relationship

• Physicians may decline to recommend medical marijuana/certify patients
  ➢ Based on belief it has no therapeutic benefit for any condition
  ➢ Based on contraindications for patient’s specific condition

• Due to regulatory restrictions under federal law, some hospitals have adopted policies that restrict employed physicians’ ability to certify patients
  ➢ DHSS stance on potential sanctions
  ➢ Cases asserting that certification is aiding and abetting violation of the Controlled Substances Act
Liability Concerns

- Physicians may recommend medical marijuana (and engage in marijuana-related business activities) without fear of criminal or civil liability or sanction by licensing board, so long as he or she is acting within the parameters of Amendment 2 and standards of professional conduct.
  - Physician could be disciplined for conduct that violates professional licensing statute – e.g., representing that marijuana can cure a particular condition or failing to follow the certification requirements (establishing doctor/patient relationship, reviewing records, medications, etc.).
Liability Concerns

No protection for individuals who “undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice”

- Anticipate discovery regarding status as qualifying patient in malpractice litigation
- Contraindications/interactions with other drugs
- Coverage exclusions

Physician could also be subject to licensure action for medical marijuana use that impairs ability to perform his or her job.
Discussion/Questions
Contact Information

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