Medical Marijuana: A Prescription for Confusion

Vermont's medical marijuana law was passed over ten years ago, but the Board continues to receive inquiries about it. Accordingly, we're taking this opportunity to summarize the role of the medical professional in the medical marijuana process. In general, the law allows a patient whose condition meets the definition of a "debilitating medical condition" to become a registered medical marijuana user.

The law on medical marijuana does not in any way call for a medical professional to prescribe marijuana. The health care professional (M.D., D.O., P.A., or A.P.R.N.) may be asked by a patient to fill out the Health Care Professional Verification form about the patient-physician relationship and the patient's condition. The provider is asked to indicate if there has been a bona fide patient-physician relationship for at least six months, or if the patient's condition is of recent or sudden onset. The provider is also asked to choose from among stated options that characterize the patient's condition. The provider must also attest if reasonable medical efforts have been made over a reasonable amount of time without successfully relieving the symptoms. Each section of the form includes the option of indicating the patient does not meet the criterion. At no point in the form is the provider asked to provide a recommendation of whether the patient should be granted status as a registered medical marijuana user, nor is there a prescription written. The forms are available at: **http://vcic.vermont.gov/marijuana_registry/MMR%20Forms**.

What results from being designated a registered user? Patients designated as registered medical marijuana users are exempted from Vermont civil and criminal penalties so long as they do not possess in excess of the allowable amount and are not violating any of the limits on the exemption – e.g., being under the influence while operating a motor vehicle or boat, in a workplace, in a public place, on school grounds or in a correctional facility, etc. Of course, marijuana remains a Schedule I Controlled Substance and is illegal under federal law regardless of the limited exemption from prosecution under Vermont law.

The much-discussed bill of the 2013 legislative session that largely decriminalized possession of small amounts of marijuana does not make the medical marijuana law moot. Marijuana possession is still illegal in Vermont; the new law simply redefined certain marijuana violations so that they are civil violations, not misdemeanor criminal offenses.

Resources:

The medical marijuana law is available online at: **http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=18&Chapter=086**.

The Rules are online at: **http://vcic.vermont.gov/sites/vcic/files/Vermont%20Rules%202012%20v13%20Final%2005172012%20untracked.pdf**.

A list of FAQs from the program at the Department of Public Safety can be found at: **http://vcic.vermont.gov/marijuana_registry/faq**.

The Board has received a number of good questions about the provider's role and some potential dilemmas that may arise in the course of treating patients who may or may not be using medical marijuana. **The following Q&A (p. 3 & 4) are based on questions posed to the Board.**

Frequently Asked Questions

1. Could completion of the Health Care Professional Verification form endanger my DEA license?

The DEA is a federal agency and the Board cannot comment on what a federal agency would do. However, the physician's role in completing the form is only to certify facts about the relationship with the patient, the patient's health, and treatment that the patient has received. The Board is unaware of any statutes or regulations that would identify those actions as the basis for action by the DEA, but licensees may want to consult with their own legal advisors for an opinion on this issue.

2. Could completion of the Health Care Professional Verification form open me up to investigation or allegations of unprofessional conduct by the Board?

Vermont law assigns the Board the duty to investigate all complaints of unprofessional conduct against licensees. 26 V.S.A. § 1353(2). Accordingly, the Board cannot say that it would not investigate a complaint based upon a physician having completed the Health Care Professional Verification form. However, the Board would be barred by the law from disciplining a physician based only on truthful completion of the form because the medical marijuana statute provides: "(b) A health care professional who has participated in a patient's application process under subdivision 4473(b)(2) of this title shall not be subject to arrest, prosecution, or disciplinary action under 26 V.S.A. Chapter 23, penalized in any manner, or denied any right or privilege under state law, except for giving false information, pursuant to subsection 4474c(f) of this title." 18 V.S.A. § 4474b.

3. Other than what is on the form, in the statue, or the rules, is there any guidance about providers certifying a debilitating medical condition?

The Board has not issued specific guidance on this point. Licensees need to look to the statute and the rules issued by the Department of Public Safety. Links to those resources are provided on the preceding page. The definition of a debilitating condition in 18 V.S.A. § 4472 is:

> (4) "Debilitating medical condition," provided that, in the context of the specific disease or condition described in subdivision (A) or (B) of this subdivision (4), reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms, means:
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> (A) cancer, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or
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> (B) a disease, medical condition, or its treatment that is chronic, debilitating, and produces severe, persistent, and one or more of the following intractable symptoms: cachexia or wasting syndrome; severe pain; severe nausea; or seizures.

4. Part of the definition of "debilitating medical condition" under the statute is that "reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms." Is there guidance about what would constitute reasonable medical efforts over a reasonable period of time?

There is no more specific guidance about what would constitute a reasonable medical effort or a reasonable period of time. However, in general, Board investigations very frequently include consideration of the standard of care, and it is likely that the standard of care would be relevant to this issue. It should be expected that the Board would look to the record of care to confirm the existence of the physician-patient relationship, the documentation of the debilitating condition, and documentation of the unsuccessful treatment efforts. In any matter concerning the completion of the Health Care Professional Verification form, the physician's truthfulness in completing the form may be in issue. As discussed at Question 2, above, the statute states that a physician is not subject to discipline for completing the form, except for providing false information.

5. May a physician who does not believe in medical marijuana refuse to complete the form?

We are not aware of any statute that speaks to this issue, nor has the Board established a rule that would answer the question. In addition, there are no Board cases that provide guidance. In the absence of a decision, statute, or a rule, the Board cannot say more about how this question would be resolved. Licensees may want to consult with their own legal advisors if confronted with the issue.

6. Will physicians be able to learn if patients they are treating are registered marijuana users, in the way that they can check VPMS to obtain information about whether a patient is obtaining controlled substances from other providers?

There is no provision in law for making the names of registered marijuana users available to providers so that they could independently check to determine that.

7. Is it acceptable to prescribe opioid pain medication for a patient who uses medical marijuana?

There is no specific law or rule on point, so if the Board has a case raising the question, it will likely be an issue of whether the provider met the standard of care. The new July 2013 Federation of State Medical Boards Model Policy for the Use of Opioid Analgesics in the Treatment of Chronic Pain ("Opioid Policy") reflects the standard of care and will, in the future, influence the standard of care, so that Model Policy should be considered. The Opioid Policy does not explicitly address the issue, but use of marijuana is clearly something that must be considered by the physician who is prescribing a patient an opioid analgesic. The Opioid Policy calls for the provider to conduct a risk assessment (p. 8 – p.10), and the risk assessment includes consideration of whether the patient misuses alcohol or uses any illicit substances (while possession of small amounts of marijuana has been decriminalized under Vermont law, marijuana is still illegal under state law and marijuana is a Schedule I banned substance under federal law). The Opioid Policy also calls for the physician to have an agreement with the patient that covers the patient's responsibility to not use the opioid in combination with alcohol or other substances (p. 11). Finally, the Opioid Policy calls for the physician to make use of periodic drug testing and to address test results that reflect use of drugs that were not prescribed (p. 12 - 13). Although the medical marijuana statute offers a limited exception to the state laws making marijuana possession and use illegal, marijuana is not a prescribed drug. In sum, while there presently is no rule making it *per se* improper to prescribe opioids to a patient known to be using marijuana, at a minimum it can be said that a provider is expected to consider that a patient uses marijuana when making clinical judgments about prescribing controlled substances, to address the issue in patient agreements, and to document the clinical response to that information.

8. Is it acceptable to prescribe buprenorphine for addiction to a patient who uses medical marijuana?

The answer to this question is similar to the last answer. In the absence of any specific guideline in law or regulation, the question is really whether, in the circumstances presented, it meets the standard of care to prescribe buprenorphine to a patient who uses medical marijuana. In April 2013 the Federation of State Medical Boards published a Model Policy on the Drug Abuse Treatment Act of 2000 and Treatment of Opioid Addiction in the Medical Office ("DATA 2000 Policy"). As with the Opioid Policy, use of marijuana would be relevant to patient assessment (p. 8), establishment of a treatment agreement that addresses non-prescribed substances and drug testing for compliance (p.10), and monitoring for/ response to use of other substances (p. 11 – p. 12). As with prescribing opioids, while there presently is no rule making it per se improper to prescribe buprenorphine to a patient known to be using marijuana, at a minimum it can be said that a provider is expected to consider that a patient uses marijuana when making clinical judgments about prescribing buprenorphine, to address the issue in patient agreements, and to document the clinical response to that information.

The above is not intended to be legal advice. The Board has not taken an official position or offered official guidance on this new and evolving area of medicine. This article and the questions and answers are intended for general informational purposes only.