

“When Your Patient Asks for Medical Marijuana” in Physician’s Practice

The year is 2016 and, unlike 10-20 years ago, it is becoming more commonplace for patients to seek and receive a “recommendation” for medicinal marijuana at the doctor’s office. Currently, over 24 states have implemented a legalized medical marijuana program, allowing doctors to “recommend” medical marijuana to patients who may benefit from its therapeutic effects.

However, unlike many new drugs on the market today, marijuana remains illegal under federal law and unapproved by the Food & Drug Administration. Moreover, marijuana’s illicit status under federal law has hampered medical research and education. As more and more patients seek and obtain medical marijuana to treat their various conditions, doctors remain unaware of the medicine and legal implications of incorporating medical marijuana into their practices.

What is the Biggest Barrier for Physicians?

The lack of medical and legal knowledge surrounding medical marijuana is the biggest barrier for physicians to participate in a state sanctioned program. Most physicians have not studied medical marijuana in medical school, during residency or in a continuing medical education (“CME”) course.

Unlike FDA approved pharmaceuticals, physicians cannot learn about marijuana’s side effects or contraindications in the Physicians’ Desk Reference or other popular medical resources.

While proponents tout the safety and benefits of medical marijuana, there are undeniable risks of adverse events, such as a harmful interaction between marijuana’s cannabinoids and other prescription drugs taken by a patient. The risk of such an adverse event can be mitigated if the physician is properly educated and has adequate resources available.

Expertise in medical marijuana is important for most doctors, pharmacists, and nurses, if they wish to continue to be that respected guide for their patients’ healthcare. Some states have recognized and addressed these education gaps by requiring a mandatory medical marijuana CME course.

What do Physicians and Pharmacists Need to Work with Medical Marijuana?

In New York, physicians seeking to register with the NYSDOH to certify patients for medical marijuana and pharmacists working in dispensing facilities must successfully complete, the “New York State Practitioner Education – Medical Use of Marijuana Course” at TheAnswerPage.com. According to the NYSDOH, pharmacists working in dispensing facilities must take this same course before they may counsel, or supervise another employee who may counsel, certified patients and designated caregivers on the use, administration, and risks associated with approved medical marijuana products. More states are considering adopting similar requirements to help address the risks caused by the lack of education

and resources regarding marijuana in the medical community.

Physicians also need a basic legal understanding regarding the confusing and conflicting laws related to medical marijuana.

Many physicians fear criminal prosecution for assisting a patient in obtaining marijuana. Notwithstanding state law to the contrary, marijuana generally remains illegal under federal law. Like heroin and LSD, the federal government has designated marijuana as a Schedule I controlled substance (i.e., no currently accepted medical use, high potential for abuse, and a lack of a safe use for the drug). Effectively, physicians are prohibited from “prescribing” medical marijuana.

Interestingly, this prohibition does not preclude a physician from “recommending” medical marijuana to patients. The distinction between “recommending” and “prescribing” was highlighted in the seminal judicial decision rendered in *Conant v. Walters*, where the court held that the federal government could not punish or threaten to punish a physician for “recommending” marijuana to a patient, based on the physician’s “sincere medical judgment” that marijuana would help such a patient. Unlike a prescription, a recommendation is merely an expression of a physician’s professional opinion, which is protected under the 1st Amendment to the United State Constitution. This decision paved the way for physicians to legally participate in a state marijuana program, without violating federal law.

However, the *Conant v. Walters* decision does not absolve all liability. Physicians can still face criminal liability if the recommendation is not based on “sincere medical judgment” or is otherwise not compliant with state law. In addition, the *Conant v. Walters* decision is not applicable in non-criminal contexts, such as medical malpractice liability. Physicians should be familiar with all legal issues associated with medical marijuana before incorporating it into their practices.

The need for robust medical and legal education concerning marijuana will proliferate as the demand for medical marijuana continues at its current trends.

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The authors will be discussing the need for medical and legal education pertaining to medical marijuana at the 2016 CWCBE, which will be held at the Jacob Javits Center in New York City on June 16 and 17.