

## **The Medical Use of Cannabis**

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The relationship between humans and cannabis dates back to before recorded history, thus qualifying as an act of nature rather than a learned dysfunctional behavior. Since ancient times, civilizations have cultivated cannabis for human consumption, building components, or fuel. The use of cannabis in spiritual and healing rituals and as medicine has paralleled human progression.

Physicians are at the intersection of society and cannabis. Initially, state laws introduced cannabis products through “medicinal” channels and, ultimately, legalization. Maryland is attempting to develop a “medical cannabis” distribution network. Those following the process more closely have seen a very turbulent roll out.

Today the cannabis is “in the ground,” and soon the dispensaries will be open for business. The news has spread, and patients are asking their physicians “medical cannabis” questions. What do we do?

In Maryland, a physician must register with the Maryland Medical Cannabis Commission (MMCC) to validate a patient’s sixteen-digit registration number, which provides access to a “medical cannabis dispensary.”

If a physician chooses not to register with the MMCC, patients interested in medical cannabis can be referred by a physician to a reputable certifying physician, or guided by things such as “word on the street” or social media platforms. All clinical physicians should familiarize themselves with at least one MMCC certifying physician, just as they would familiarize themselves with specialists for patients who require other resources and recommendations.

Physicians should take the time to familiarize themselves with the MMCC and the Comar Regulations to comply with the rules set forth by the MMCC. The physician certifies to the MMCC that the patient or caretaker meets the guidelines and otherwise qualifies to access a licensed dispensary in order to obtain the medical cannabis products. A key provision to consider is that dispensary staff members will ultimately be the ones who decide which products to recommend for each patient's stated symptoms. This provision is important to remember because transferring medical judgment to a non-physician impacts the physician's pledge to "do no harm."

### **Mitigating the Risk to Your Practice**

There are multiple disparities between federal and state law addressing the production, distribution, and use of cannabis. Banking, insurance, marketing, and liability are key areas influencing whether a physician participates in the MMCC as part of the primary professional tax id number (EIN) chooses to set up an alternate EIN from which to participate.

Choosing an alternative EIN from which to conduct medical cannabis related business protects the practice from potential exposure to federal banking restrictions. Banks are federally regulated and thus prohibited from doing business with an entity that participates in the commerce of a Schedule 1 "drug." Compliance officers have opined that the entity does not have to actually touch marijuana (production, distribution, storage, trade, etc.) for it to be restricted. Registration with MMCC and a willingness to recommend or certify patients for medical cannabis is sufficient grounds to have banking access restricted.

You should contact your medical malpractice insurer before making the decision to participate as a certifying physician. Ask your insurance provider whether you should

use your current EIN or create a new one for participating in the MMCC program. There are many unknowns regarding litigation resulting from any potential patient adverse event caused by the use of “medical cannabis” as offered by the MMCC.

The corporate structure chosen will affect your approach to marketing outlets. Many social media and marketing platforms restrict images and words related to cannabis.

Insurance companies follow both federal and state compliance guidelines. Many do not accept “medical cannabis” for payment, while others may have internal guidelines affecting the physician in the panel.

Physicians can either provide MMCC patient recommendations or certifications for their established internal patients or see new patients specifically seeking a recommendation for medical cannabis. Those choosing to only recommend for established patients are often more comfortable with not creating a separate EIN. Physicians marketing to new patients who are interested in “medical cannabis” are more likely to create a separate EIN. The decision to form a new EIN should be made with advice from a malpractice carrier, banker, lawyer, and accountant.

Physicians should consider alternatives to participation in the MMCC. Drugs like Marinol have been FDA approved since 1985 and available with a prescription (Schedule 3) for decades. Cannabidiol from hemp has been legally available for years without a prescription as a nutritional supplement. Using Cannabidiol and/or other FDA-approved cannabinoids allows physicians to provide access to “medical cannabis.”

Take the time to educate yourself about the risks and benefits of cannabinoids. Understand the risk to mental health, misuse, abuse, and diversion. Review the primary source literature to update your understanding of the clinical applications of various cannabinoids. Develop a bona fide physician–patient relationship. Have a process in

place to monitor your patients' responses to any "cannabis" product and to determine who is and is not a candidate for a "medical cannabis" recommendation or certification. Use of consents, treatment agreements, clinical algorithms, daily usage logs, and standardized addiction screening are encouraged.

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