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California Physicians & Medical Marijuana

Immediately following the passage of the Compassionate Use Act of 1996, the Medical Board of California published an article in the January 1997 Action Report designed to assist physicians who wished to recommend medical marijuana to their patients. At its May 7, 2004 quarterly meeting, the Medical Board unanimously adopted the following statement on California physicians and medical marijuana, incorporating and expanding upon the 1997 Action Report article. The intent of the board at this time is to reassure physicians that if they use the same proper care in recommending medical marijuana to their patients as they would any other medication or treatment, their activity will be viewed by the Medical Board just as any other appropriate medical intervention. This statement is not intended to establish any standard of practice, nor to articulate a new standard of practice. Rather, it is intended to encourage physicians that when considering whether to recommend marijuana to a patient, they should adhere to accepted standards of medical responsibility.

A Statement by the Medical Board of California — May 7, 2004

On November 5, 1996, the people of California passed Proposition 215. Through this Initiative Measure, section 11362.5 was added to the Health & Safety Code. This law is also known as the Compassionate Use Act of 1996. The purposes of the Act include, in part:

“(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or

any other illness for which marijuana provides relief; and

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.”

Furthermore, Health & Safety Code section 11362.5(c) **provides strong protection for physicians who choose to participate in the implementation of the Act.**

“Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.”

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Medical Board of California Meetings

2004

July 29-30
Sacramento

November 4-5
San Diego

2005

February 3-4
Riverside/Los Angeles

May 5-6
San Francisco

July 28-29
Sacramento

November 3-4
San Diego

*All meetings are open
to the public.*

THE MISSION OF THE MEDICAL BOARD OF CALIFORNIA

The mission of the Medical Board of California is to protect healthcare consumers through the proper licensing and regulation of physicians and surgeons and certain allied healthcare professions and through the vigorous, objective enforcement of the Medical Practice Act.

California Physicians & Medical Marijuana *(continued from page 1)*

The Medical Board of California (MBC) developed this statement because medical marijuana is an emerging treatment modality. The Medical Board wants to assure physicians who choose to recommend medical marijuana to their patients, as part of their regular practice of medicine, that they WILL NOT be subject to investigation or disciplinary action by the MBC if they arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility. The mere receipt of a complaint that the physician is recommending medical marijuana will not generate an investigation absent additional information indicating that the physician is not adhering to accepted medical standards.

These accepted standards are the same as any reasonable and prudent physician would follow when recommending or approving any other medication, or prescription drug treatment and include the following:

1. History and good faith examination of the patient.
2. Development of a treatment plan with objectives
3. Provision of informed consent including discussion of side effects
4. Periodic review of the treatment's efficacy.
5. Consultation, as necessary.
6. Proper record keeping that supports the decision to recommend the use of medical marijuana.

In other words, if physicians use the same care in recommending medical marijuana to patients as they would recommending or approving any other medication or prescription drug treatment, they have nothing to fear from the Medical Board.

Following are some important points to consider when recommending medical marijuana:

1. Although it could trigger federal action, making a recommendation in writing to the patient will not trigger action by the Medical Board of California.
2. A patient need not have failed on all standard medications, in order for a physician to recommend or approve the use of medical marijuana.
3. The physician should determine that medical marijuana use is not masking an acute or treatable progressive condition, or that such use will lead to a worsening of the patient's condition.

4. The Act names certain medical conditions for which medical marijuana may be useful, although physicians are not limited in their recommendations to those specific conditions. In all cases, the physician should base his/her determination on the results of clinical trials, if available, medical literature and reports, or on experience of that physician or other physicians, or on credible patient reports. In all cases, the physician must determine that the risk/benefit ratio of medical marijuana is as good, or better, than other medications that could be used for that individual patient.

5. A physician who is not the primary treating physician may still recommend medical marijuana for a patient's symptoms. However, it is incumbent upon that physician to consult with the patient's primary treating physician or obtain the appropriate patient records to confirm the patient's underlying diagnosis and prior treatment history.

6. The initial examination for the condition for which medical marijuana is being recommended must be in-person.

7. Recommendations should be limited to the time necessary to appropriately monitor the patient. Periodic reviews should occur and be documented at least annually or more frequently as warranted.

8. If a physician recommends or approves the use of medical marijuana for a minor, the parents or legal guardians must be fully informed of the risks and benefits of such use and must consent to that use.

“... If physicians use the same care in recommending medical marijuana to patients as they would recommending or approving any other medication or prescription drug treatment, they have nothing to fear from the Medical Board.”

Physicians may wish to refer to CMA's ON-CALL Document #1315 titled "The Compassionate Use Act of 1996," updated annually for additional information and guidance. (<http://www.emanet.org/publiedoc.cfm/4>)

Although the Compassionate Use Act allows the use of medical marijuana by a patient upon the recommendation or approval of a physician, California physicians should bear in mind that marijuana is listed in Schedule I of the federal Controlled Substances Act, which means that it has no accepted medical use under federal law.

However, in *Conant v. Walters* (9th Cir.2002) 309 F.3d 629 the United States Court of Appeals recognized that physicians have a constitutionally protected right to discuss medical marijuana as a treatment option with their patients and make oral or written recommendation for medical marijuana. However, the court cautioned that physicians could exceed the scope of this constitutional protection if they conspire with, or aid and abet, their patients in obtaining medical marijuana.