VIEWPOINT

Medical Board Expectations for Physicians Recommending Marijuana

Humayun J. Chaudhry, DO, MS
Federation of State Medical Boards, Euless, Texas.

Arthur S. Hengerer, MD
Department of Otolaryngology–Head and Neck Surgery, University of Rochester, Rochester, New York.

Gregory B. Snyder, MD
Federation of State Medical Boards, Euless, Texas.

Heightened public interest in marijuana and marijuana-infused products for medicinal and recreational purposes led the nation's state medical and osteopathic boards recently to issue recommendations about marijuana in patient care and a cautionary note advising actively licensed physicians to abstain from using marijuana while practicing medicine.[1] This is the first time that the dispensing or use of products derived from the *Cannabis sativa* plant have been highlighted in a policy recommendation of the Federation of State Medical Boards (FSMB), whose members include 70 state and territorial medical licensing boards of the United States. We examine the dilemma of physicians caught between increasingly permissive local statutes and prohibitive federal regulations and summarize 10 recommendations about marijuana for patient care from the agencies authorized by statute to protect the health and welfare of the public through the licensure and discipline of physicians and other health care professionals.

Permissive State Laws, Restrictive Federal Law

During the past 2 decades, attitudes and laws have become more tolerant toward marijuana, with the prevalence of adults reportedly using the substance increasing from 4.1% in 2001 to 9.5% in 2013.[2] Although there is little evidence for the efficacy of marijuana in treating certain medical conditions, marijuana has been variously suggested for alleviating some or all symptoms of a range of debilitating medical conditions, including but not limited to certain types of cancer, multiple sclerosis, Alzheimer disease, posttraumatic stress disorder (PTSD), epilepsy, Crohn disease, and glaucoma.[3]

The "prescribing" of marijuana, however, remains illegal under federal law, where it is classified as a Schedule I substance under the Controlled Substances Act of 1970, meaning that the federal government considers marijuana a substance with a high potential for dependency or addiction, with no accepted medical use in treatment. Therefore, under federal law, marijuana cannot be knowingly or intentionally distributed, dispensed, or possessed, and an individual who aids and abets another in violating federal law or engages in a conspiracy to purchase, cultivate, or possess marijuana may be punished to the same extent as the individual who commits the crime.

With the increasing number of jurisdictions permitting the use of marijuana in patient care, the US Department of Justice updated its marijuana enforcement policy in 2013. It reiterated marijuana's classification as an illegal substance under federal law but advised states and local governments that authorize marijuana-related conduct to implement strong and effective regulatory and enforcement systems to address any threat those laws could pose to public safety, public health, and other interests. Should these state efforts be insufficient, the policy warns, the federal government reserves the right to challenge the regulatory structure and enforce actions against individuals, such as physicians, who may be violating federal law.

In 2015, FSMB Chair J. Daniel Gifford, MD, appointed a work group to develop policy recommendations for state medical boards regarding marijuana in patient care. The work group was also tasked with the development of a position statement regarding the regulation of licensees who use marijuana, a charge that was ultimately transferred to the FSMB's board of directors, which includes representatives from more than a dozen states and territories. Both the recommendations for marijuana in patient care and the board's statement about physician use of marijuana involved a systematic review of more than 40 peer-reviewed articles from the medical literature. Commentary and feedback about draft language was received from state medical board members and staff, including physicians and public members, as well as interested stakeholders such as the American Society of Addiction Medicine, and included open testimony at a reference committee at FSMB's annual meeting before unanimously adopted by state medical boards on April 30, 2016. The 10 expectations of physicians relating to marijuana in patient care are summarized below.

Patient-Physician Relationship. Because the patient-physician relationship is fundamental to the provision of acceptable medical care, physicians must document details of the patient encounter to reflect that such a relationship was established and in place before providing a recommendation, attestation, or authorization of marijuana for the patient. Consistent with prevailing standards of care, physicians should not recommend, attest, or otherwise authorize marijuana for themselves or a family member.

Patient Evaluation. A documented, in-person medical evaluation and collection of relevant clinical history commensurate with the presentation of the patient must be obtained before a decision is made to recommend marijuana for medical use. At a minimum, the evaluation should include the patient's history of present illness, social history, past medical and surgical history, alcohol and substance use history, family history (with emphasis on addiction or mental illness and psychotic disorders), physical examination, documentation of therapies with inadequate response, and a diagnosis requiring the marijuana recommendation.

Informed and Shared Decision Making. The physician should discuss the risks and benefits of marijuana use with the patient, and patients should be advised of

Corresponding Author: Humayun J. Chaudhry, DO, MS, Federation of State Medical Boards, 400 Fuller Wiser Rd, Ste 300, Euless, TX 76039 (hchaudhry@fsmb.org).

Box. Recommended Review of Attempted Measures Without Marijuana Use to Ease the Symptoms Caused by a Debilitating Medical Condition

1. Advice about other options for managing the condition.
2. Determination that the patient may benefit from the recommendation of marijuana.
3. Advice about the potential risks of the medical use of marijuana to include
   - The variability of quality and concentration of marijuana;
   - The risk of cannabis use disorder;
   - Adverse events, exacerbation of psychotic disorder, adverse cognitive effects for children and young adults, and other risks, including falls or fractures;
   - Use of marijuana during pregnancy or breastfeeding;
   - The need to safeguard all marijuana and marijuana-infused products from children and pets or domestic animals; and
   - The need to notify the patient that the marijuana is for the patient's use only and the marijuana should not be donated or otherwise supplied to another individual.
4. Additional diagnostic evaluations or other planned treatments.
5. A specific duration for the marijuana authorization for a period no longer than 12 months.
6. A specific ongoing treatment plan as medically appropriate.

the variability and lack of standardization of marijuana preparations and the effect of marijuana. Patients should be reminded not to drive or operate heavy machinery while under the influence of marijuana. If the patient is a minor or without decision-making capacity, the physician should ensure that the patient's parent, guardian, or surrogate is involved in the treatment plan and consents to the patient's use of marijuana.

Treatment Agreement. The health care professional should document a written treatment plan that includes a review of other measures attempted to ease a patient's symptoms that do not involve the recommendation of marijuana (**Box**), and a specific duration for the authorization to obtain marijuana for a period no longer than 12 months.

Qualifying Conditions. Recommending marijuana for certain medical conditions is at the professional discretion of the physician. The indication, appropriateness, and safety of the recommendation should be evaluated in accordance with current standards of practice and in compliance with state laws, rules, and regulations, which may specify conditions for which a patient may qualify.

Ongoing Monitoring. The physician should regularly assess the patient's response to the use of marijuana and overall health and level of function. This assessment should include the efficacy of the treatment to the patient, the goals of the treatment, and the progress of those goals. Where available, the physician recommending marijuana should check the state's prescription drug monitoring program, register with the appropriate oversight agency (such as a marijuana registry, as exists in Colorado and Minnesota), and provide the registry with information each time a recommendation, attestation, authorization, or reauthorization is issued.

Consultation and Referral. A patient who has a known or suspected history of substance use disorder or a co-occurring mental health disorder may require specialized assessment and treatment. The physician should seek a consultation with, or refer the patient to, a pain management, psychiatric, addiction, or mental health specialist, as needed.

Medical Records. The physician should keep accurate and complete medical records. Information that should appear in the record includes the patient's history; results of the physical examination; patient evaluation; other treatments and prescribed medications; authorization, attestation, or recommendation for marijuana (including the date, expiration, and any additional information required by state statute); instructions to the patient (including discussions of the risk and benefits, adverse effects, and variable effects); results of ongoing assessment and monitoring; and a copy of a signed treatment agreement (including instructions on safekeeping and instructions on not sharing marijuana with others).

Physician Conflicts of Interest. A physician who recommends marijuana should not have a professional office located at a dispensary or cultivation center or receive financial compensation from, or hold a financial interest in, a dispensary or cultivation center. The physician should not be associated in any way with a dispensary or cultivation center.

Physician Use of Marijuana. State medical and osteopathic boards advise their licensees to abstain from the use of marijuana for medical or recreational purposes while actively engaged in the practice of medicine. Practicing medicine under the influence of marijuana may constitute unprofessional conduct or incompetence.

Conclusion

The primary mission of state medical boards in the United States is to protect the public and ensure that only individuals who are qualified and fit to practice medicine do so.[4] Although it is up to every state medical board to incorporate all, some, or none of the language in these marijuana recommendations, unanimous adoption of the recommendations by state board representatives at the FSMB's annual meeting suggests they may influence local deliberations relating to the determination of professional conduct. Even if these recommendations are not adopted as a state statute, rule, or policy, they represent a reasonable effort to offer best practices for clinicians to follow when considering marijuana in patient care.

ARTICLE INFORMATION

Published Online: June 16, 2016. doi:10.1001/jama.2016.7741.

Conflict of Interest Disclosures: Dr Chaudhry reports being the president and chief executive officer of the Federation of State Medical Boards (FSMB). Dr Hengerer reports being the chair of the FSMB and chair of the New York Office of Professional Medical Conduct. Dr Snyder reports being the chair-elect of the FSMB.

REFERENCES

1. Model Guidelines for the Recommendation of Marijuana in Patient Care. FSMB House of Delegates approves new policy guidelines for state medical regulators. https://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/NR_New_FSMB_Position_Statements_May2016.pdf. Accessed May 17, 2016.

2. Hasin DS, Saha TD, Kerridge BT, et al. Prevalence of marijuana use disorders in the United States between 2001-2002 and 2012-2013. *JAMA Psychiatry*. 2015;72(12):1235-1242.

3. Hill KP. Medical marijuana for treatment of chronic pain and other medical and psychiatric problems. *JAMA*. 2015;313(24):2474-2483.

4. Chaudhry HJ, Gifford JD, Hengerer AS. Ensuring competency and professionalism through state medical licensing. *JAMA*. 2015;313(18):1791-1792.