New Medical Marijuana Rules Allow Ohio Physicians to Recommend Marijuana in Patient Care

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On Sept. 8, 2017, the Ohio State Medical Board (the “Board”) issued the new administrative rules1 that will govern how Ohio physicians can now officially recommend medical marijuana for patients with certain qualifying conditions, such as amyotrophic lateral sclerosis (“ALS”), aka Lou Gehrig’s disease, and fibromyalgia. The long-anticipated new rules follow the 2016 legalization of medical marijuana under Ohio law.2

Federation of State Medical Boards Model Guidelines

Over the last two decades, beliefs, attitudes, and laws in the United States have grown more tolerant toward the use of marijuana—medical or otherwise.3 Between 2001 and 2013, the number of adults using marijuana has doubled. On the clinical front, as a patchwork of laws developed since the passage of Proposition 215 in California in 1996,4 the Federation of State Medical Boards designated the Workgroup of Marijuana and Medical Regulation to evaluate current medical and osteopathic rules and regulations dealing with marijuana and draft model guidelines to assist state medical boards in regulating physicians, who are licensed to recommend marijuana treatment options, such as marijuana or marijuana-infused products to patients.5 The new Ohio rules closely follow these nine model guidelines.6

Application and Requirements for Physicians

Under the new rules, Ohio physicians who meet certain requirements can obtain a certificate to recommend medical marijuana (the “Certificate”) by applying to the Board.7 The requirements delineated by the new rules include all the following:

1. Active and unrestricted Ohio license to practice medicine and surgery (MD or DO).
2. Access to the Ohio Automated Rx Reporting System (“OARRS”).
3. Active DEA registration.
4. Never have been denied a license to prescribe, possess, dispense, administer, supply or sell a controlled substance by the DEA due to inappropriate prescribing, furnishing, dispensing, administering, supplying or selling a controlled substance, or never have had a DEA or state prescribing license restricted for the same.
5. Never have been subject to disciplinary action by any licensing entity based on prescribing, furnishing, dispensing, diverting, administering, supplying or selling a controlled substance or other dangerous drug.
6. Completion of at least two hours of Continuing Medical Education (“CME”) in courses that assist in the diagnosing of a qualifying medical condition for medical marijuana and treating qualifying conditions with medical marijuana.
7. No ownership or investment interest in, or compensation agreement with, a medical marijuana entity licensed or seeking licensure in Ohio.

The Board will investigate all applications and may require applicants to appear in-person in Columbus to support their application. Once initially granted by the Board, the Certificate will automatically renew with the physician’s license, although an additional two hours of CME will be required prior to automatic renewal. The current rules do not permit mid-level providers such as physician assistants or nurse practitioners to apply for a certificate.

Qualifying Conditions for Patients

The new rules clearly limit the qualifying conditions for which a physician may recommend medical marijuana under Ohio law. To apply for a medical marijuana card, the patient must demonstrate that he or she suffers from one of the following conditions or diseases: AIDS, Alzheimer’s disease, ALS, cancer, chronic traumatic encephalopathy, Crohn’s disease, epilepsy or other seizure disorder, fibromyalgia, glaucoma, hepatitis C, inflammatory bowel disease, multiple sclerosis, pain that is either chronic and severe or intractable, Parkinson’s disease, positive HIV status, post-traumatic stress disorder, sickle cell anemia, spinal cord disease or injury, Tourette’s syndrome, traumatic brain injury, ulcerative colitis, or any other disease or condition added by the Board pursuant to Section 4731.302 of the Ohio Revised Code.

Forms and Routes of Administration

The new rules prohibit patients from growing medical marijuana and limit cultivation, processing, testing, and distribution to licensed growers, processors, testing laboratories, and retail dispensaries, respectively. They also define the only acceptable forms and routes of administration:9

1. Oral administration: Oil, tincture, capsule, or edible form.
2. Vaporization: Metered oil, solid preparation, or plant material (with use of vaporizing devices).
3. Transdermal: Patches.
4. Topical: Lotions, creams, or ointments.

Standard of Care for Physicians

The new rules also define a minimum standard of care Ohio physicians must adhere to in order to ensure patient and public safety:10

1. Establish and maintain bona fide physician-patient relationship, including an initial in-person visit and ongoing follow-up care.
2. Documentation in the medical records must include at least the following:
   • The patient’s name and the dates of the office visits.
   • A description of the current medical condition being treated.
   • A detailed medical, prescriptive, and substance use disorder history.
   • A review of diagnostic test results, prior treatment and current medications.
   • Drug screen at physician’s discretion if the physician unveils evidence of drug abuse.
   • A physical exam and diagnosis of the patient’s medical condition.
   • Diagnosis or confirmation of prior diagnosis of a qualifying medical condition for medical marijuana. If
the patient has already been diagnosed with a qualifying condition, the physician must verify such diagnosis with the prior provider of record that made such diagnosis and document this step in the medical records.

The physician must terminate or decline to issue a new medical marijuana recommendation under any of the following circumstances:11

1. The diagnosis or symptoms of the qualifying condition no longer exist.
2. The physician no longer holds a valid certificate to recommend medical marijuana.
3. The patient or caregiver is abusing or diverting medical marijuana based on the physician’s clinical judgment.
4. The patient is deceased.

Documentation in the Medical Records
In addition, if the physician recommends medical marijuana, he or she must document in the medical records12 compliance with all the following actions:13

2. Review of OARRS report covering at least the preceding 12 months.
3. A discussion with the patient regarding possible abuse or drug diversion of any drugs listed in the OARRS report.
5. Patient’s consent or the consent of a legal representative.
6. Whether the patient needs a caregiver to assist in the administration of medical marijuana.
7. Confirmation of the patient’s active registration with the Ohio Board of Pharmacy registry.
8. A statement from the physician certifying the following: • The patient has been diagnosed with at least one of the qualifying medical conditions.
   • A bona fide physician-patient relationship exists between the physician and the patient.
   • A description of the qualifying medical condition and whether it is a terminal illness associated with a life expectancy of six months or less.
   • The physician or authorized delegate has queried OARRS to obtain a report covering at least the past 12 months.
   • The physician has informed the patient of the risks and benefits of medical marijuana as related to the patient’s specific medical condition and history.
9. Plan for follow-up care to assess efficacy and determine whether the terminal illness, as applicable, continues to be a terminal condition.

As illustrated by the detailed requirements set forth in newly published Ohio administrative rules, the decision to recommend medical marijuana to patients with a qualifying condition is riddled with pitfalls and risks for providers and employers. Failure to comply with (and document) all the regulatory requirements can lead to disciplinary actions by the Board, including fees, fines, civil penalties, suspension of the medical marijuana certificate, practice limitations, etc.14 Physicians should therefore carefully weigh the risks and benefits for their patients and themselves alike. On the background of the opioid crisis and the battle for health care reform, the legalization of medical marijuana adds yet another layer of complexity for physicians, employers, and the court system momentarily. ■

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1. Ohio Administrative Code (“OAC”) Chapter 4731-32, Medical Marijuana.
2. Ohio Revised Code (“ORC”) Chapter 3796.01 et. seq.
5. Recreational Marijuana Ballot Initiatives: Alaska (2014); Colorado (2012); District of Columbia (2014); Oregon (2014); Washington (2012). The states that have enacted laws permitting limited use of cannabidiol oils are: Alabama, Florida, Georgia, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming.