Peering through the haze of medical marijuana laws

BY DANIEL F. SHAY, ESQ.

Every month, Dermatology World *covers legal issues in Legally Speaking. This month's author, Daniel F. Shay, Esq. is a health care attorney at Alice G. Gosfield and Associates, P.C.*

As states have taken measures to decriminalize marijuana in the medical and recreational context, many physicians are examining the potential benefits of cannabis use for their patients, including for certain skin conditions. Stepping into the medical marijuana arena comes with risks, however. Physicians who intend to prescribe must understand the nuances of federal and state laws governing medical marijuana use. Likewise, physicians should consider how their practices will address the rise in marijuana use by both patients and employees alike.

The legal landscape

Federal law regarding marijuana remains unchanged: It is still categorized as a Schedule I controlled substance, and therefore cannot be prescribed, or used personally. During the Obama presidency, the Department of Justice issued a memorandum removing marijuana enforcement as a priority for federal enforcers. This memorandum was later rescinded by then-Attorney General Jeff Sessions, JD, in early 2018. Today, a physician prescribing marijuana could risk revocation of their DEA registration, and possible prison time.

At the state level, however, the landscape has shifted dramatically. In 1996, California became the first state to allow marijuana for medical use. Since then, dozens of additional states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have passed similar laws (see map). Many of these laws share certain common features. They generally permit physicians to "recommend" the use of marijuana for medical use in treating specific, chronic conditions. The use of the term "recommend," or other similar words, is meant to distinguish the physician's act from that of "prescribing," specifically to avoid potential federal penalties. Although the specific conditions for which medical marijuana may be recommended vary from state to state, the list often includes glaucoma, HIV/AIDS, cancer, seizure disorders (usually including epilepsy), muscle spasms, ALS, multiple sclerosis, muscular dystrophy, or terminal illnesses. Physicians planning to recommend the use of medical marijuana should carefully research their state's qualifying conditions or obtain the advice of knowledgeable counsel.

Practice management resources

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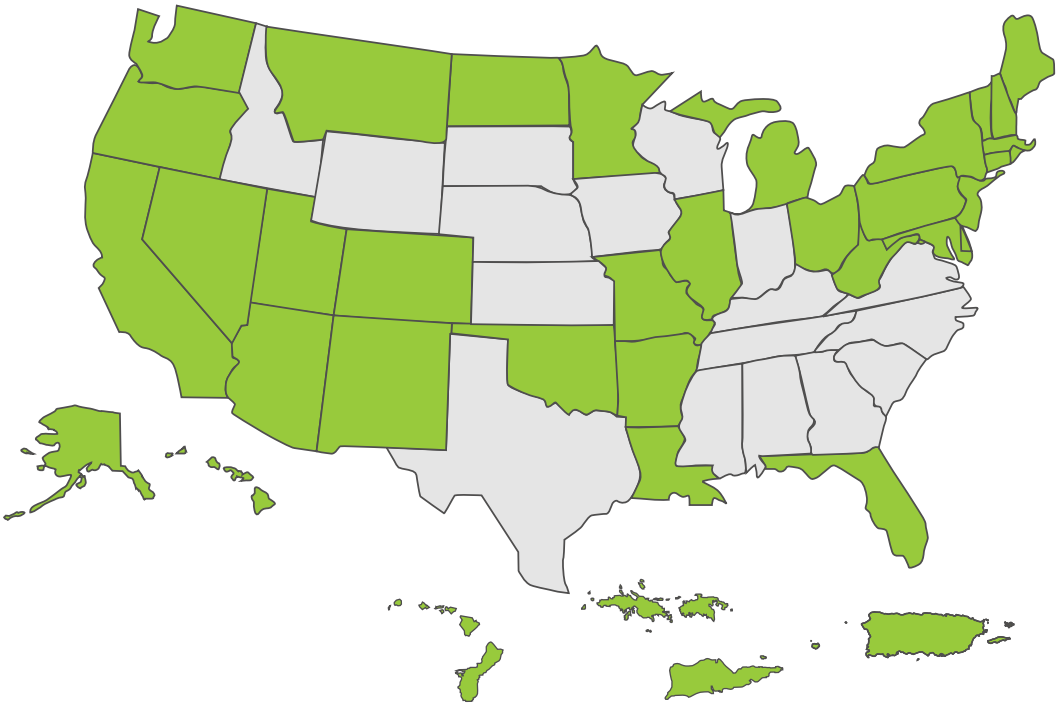
States that have passed medical marijuana legislation



Visit **www.webmd.com/a-to-z-guides/qa/what-us-states-have-legalized-medical-marijuana** *for more information. The precise number of states cited may vary, depending on how one defines "legalization." For example, Iowa and Georgia are not on the list, but permit the use of cannabidiol oils, which are derivatives of marijuana.*

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Some states also give greater leeway to physicians to recommend the use of marijuana at their own discretion, beyond the list of conditions specified in state law. For example, Maine permits a physician to recommend medical marijuana based solely on the physician's professional opinion that the patient will benefit from its use. The District of Columbia, which has also decriminalized the personal, non-medical use of marijuana, defines "qualifying medical conditions" for the recommendation of medical marijuana as "any condition for which treatment with medical marijuana would be beneficial, as determined by the patient's authorized practitioner." By contrast, Virginia permits a physician to certify a patient for the use of medical marijuana "for treatment or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use," but limits the type of marijuana that can be recommended to cannabidiol (CBD) or THC-A oils only.

Finally, several states have legalized the recreational use of marijuana, such as California, Washington, and Colorado. Other states have "decriminalized" the use and/or possession of marijuana but vary in the details of what the law permits as well as applicable penalties, if any.

Cannabis and dermatology

Dermatologic conditions rarely appear on state lists of qualifying medical conditions for medical marijuana. Many states include cancer (which could include skin cancer) as a qualifying medical condition, but do not specify skin cancers, and may further limit recommendation for only terminal or end-stage cancers, creating a potential grey area for dermatologists. Georgia permits the use of low THC oil for a variety of conditions, including epidermolysis bullosa.

Some studies suggest that medical cannabis is helpful in treating atopic dermatitis (AD) or psoriasis. State laws typically do not include either condition, however, meaning that dermatologic recommendation of medical marijuana may only be appropriate in states like Maine or in the District of Columbia, which give physicians broader latitude in recommending medical marijuana for their patients. To further complicate matters, marijuana-based treatment for AD or psoriasis usually involves a topical cream, which may conflict with some state laws that require only the use of certain oils (e.g., Virginia, Georgia). Thus, dermatologists may be prevented from recommending a more effective treatment.

Additional concerns

There are more concerns beyond simply navigating the legal risks associated with recommending the use of medical marijuana. Physicians must also consider the implications both of their own staff using medical marijuana, or even their own personal use.

Physicians considering personal use of marijuana — either for medical or recreational reasons — should carefully consider whether their employers have policies prohibiting such activity. Similarly, medical staff bylaws may require drug testing as a condition of maintaining privileges. At the very least, physicians should consult with their employers and heads of medical staffs to find out what is permitted, and whether exceptions can be made. Likewise, they may want to consult with state medical licensure boards (or knowledgeable counsel on their behalf) to determine the board's position on marijuana use by a physician.

Physicians who operate their own practices should similarly consider the risks of permitting employees — especially clinical staff — to use marijuana, either medically or recreationally. Even if the employee is not actively impaired when interacting with patients, laws permitting marijuana usage are recent enough that the standard of care in the medical community is unlikely to have changed. This, in turn, could raise potential malpractice implications if a patient is harmed by an employee who uses marijuana. In the coming years, standards may change, as malpractice cases directly address such use, but until that point, employers are operating without clear guidance, and may instead choose to err on the side of caution by prohibiting even otherwise legal marijuana use. Physicians considering such policies should also consult an attorney to determine whether state laws protect employees from discrimination based on medical marijuana use.

Conclusion

Marijuana use is likely to increase in the coming years, as more states allow for its medical and/or recreational use. Physicians considering recommending marijuana to their patients should carefully examine applicable state laws to know their own requirements. Likewise, physicians should consider how marijuana use will impact their own practices, or their work in hospital settings. Consulting with knowledgeable legal counsel will help in this regard. ***dw***

Medical reefer madness?

In 2017, Warren Heymann, MD, addressed the growing use of cannabinoids in medicine. Visit **aad.org/dw** and search "cannabinoid" to read his commentary.