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“We change laws.”

Certifying Practitioners and Medical Cannabis Laws

One of the biggest obstacles to patients being able to enroll in medical cannabis programs is that some health care practitioners are unable or unwilling to recommend medical cannabis to their patients.¹ Some doctors are concerned about federal law — though carefully crafted laws rely on doctors engaging only in First Amendment-protected activity — and potential civil liability. Others are uneducated about medical cannabis or are part of a medical practice that forbids all physicians from recommending it. For example, VA doctors are not allowed to certify a patient for medical cannabis.

To ensure a successful program that does not unnecessarily exclude patients, we recommend including prescribers in addition to physicians, such as certified registered nurse practitioners and physician assistants who are acting in collaboration with a physician. Certifying practitioners should be required to have a bona fide relationship with a patient. However, that definition should not be so restrictive that a patient would be excluded if their specialist were unable or unwilling to sign a certification.

Sample language:

(xx) “Bona fide practitioner-patient relationship” means:

- (1) a health care practitioner and patient have a treatment or consulting relationship, during the course of which the practitioner has completed an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;
- (2) the health care practitioner has consulted with the patient with respect to the patient's debilitating medical condition; and
- (3) the health care practitioner is available to or offers to provide follow-up care and treatment to the patient, including, but not limited to, patient examinations.

(xx) “Health care practitioner” means:

- (1) a medical doctor or a doctor of osteopathy, as defined under section 2 of the act of December 20, 1985 (p.l.457, no.112), known as the Medical Practice Act of 1985;
- (2) a certified registered nurse practitioner as defined in section 2(12) of the act of may 22, 1951 (p.l.317, no.69), known as the professional nursing law, when acting in collaboration with a physician as set forth in a written agreement; or
- (3) a physician assistant, when acting in collaboration with a physician as set forth in a written agreement.

¹ See: “New York doctors just say no to medical marijuana.” Crain’s New York Business, July 31, 2015; and “VA Doctors Still Can’t Recommend Medical Marijuana To Veterans,” Huffington Post, April 30, 2015.

(xx) A health care practitioner shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by the Pennsylvania Medical Board, solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, provided that nothing in this chapter shall prevent a practitioner from being sanctioned for:

(1) issuing a written certification to a patient with whom the practitioner does not have a bona fide practitioner-patient relationship; or

(2) failing to properly evaluate a patient's medical condition.