

Pennsylvania Releases Temporary Regulations for Physicians

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On April 11, the Pennsylvania Department of Health (DOH) released Practitioner Temporary Regulations for physicians and practitioners (those physicians, pharmacists, physician assistants and certified registered nurse practitioners to be employed by a licensed dispensary). In a press release issued yesterday, DOH Secretary Dr. Karen Murphy stated that “[t]he process for a patient to obtain medical marijuana will begin with the physician, so it’s vital to ensure that our regulatory process for those physicians is open and transparent.”

The press release also provides that “the Practitioner Temporary Regulations outline the process for a physician with an active Pennsylvania license to register as a practitioner in the Medical Marijuana Program. Registration allows a practitioner to certify a patient’s [with one of 17] serious medical condition[s][1] and offer his or her recommendations on a course of treatment for the patient that includes obtaining medical marijuana at a permitted commonwealth dispensary.” In order to become registered, physicians and practitioners must complete a 4-hour training course that: educates them on their responsibilities as medical professionals and marijuana laws and regulations; and, provides latest scientific research information, best practices for recommending medical marijuana and dosage based on the patient’s serious medical condition. Successful completion of the course shall be approved as CME or equivalent credits as determined by the overseeing professional boards for physicians and practitioners.

Marijuana is categorized as a Schedule I drug under the Controlled Substances Act (**CSA**) (21 U.S.C. 812(c)). Schedule I drugs are defined as drugs with no currently accepted medical use in treatment in the United States and a high potential for abuse. Because Marijuana is categorized as Schedule I, anyone convicted of trafficking offenses is subject to possible federal fines and imprisonment. In order to address this concern, Section 2103(A)(3) of the Pennsylvania Medical Marijuana Act (the Act) provides that no practitioner shall be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a Commonwealth licensing board or commission, for actions taken in accordance with the Act. Furthermore, with respect to federal concerns, the Ninth Circuit Court of Appeals ruled in *Conant v. Walters* 309 F. 3d 629 (2002) that the federal government could neither punish nor threaten to punish a physician for discussing the merits of medical marijuana with a patient and issue a recommendation to use medical marijuana within a bona fide doctor-patient relationship, as that is considered to be protected by the First Amendment right of free speech. On October 14, 2003, the Supreme Court declined to review the decision under *Conant v. Walters*, U.S. No.03-40 and has let the ruling of the Ninth Circuit stand. Doctors are not permitted to write prescriptions because the licensing for prescribing controlled substances is issued by the Drug Enforcement Administration (DEA), a federal organization. The Practitioner Temporary Regulations is drafted to comply with both the Act and **Conant**, where registered physicians will write recommendations and not prescriptions to patients. As such, Pennsylvania licensed doctors in good standing with their boards who are interested in becoming registered for the Medical Marijuana Program can at least initially rely on them for guidance.

The DOH is asking for feedback and comments to the Practitioner Temporary Regulations by April 20. They will then finalize the Practitioner Temporary Regulations and release updated temporary regulations that will be effective for a period of 2 years. Thereafter, the DOH will re-evaluate the Medical Marijuana Program and make any necessary revisions for its continued success.

For more information, contact Medical Marijuana Practice Group for updates on Pennsylvania and Federal legislation affecting the Pennsylvania medical marijuana industry.

[1] Amyotrophic Lateral Sclerosis (ALS), Autism, Cancer, Crohn's Disease, Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, Epilepsy, Glaucoma, HIV (Human Immunodeficiency Virus) / AIDS (Acquired Immune Deficiency Syndrome), Huntington's Disease, Inflammatory Bowel Disease, Intractable Seizures, Multiple Sclerosis, Neuropathies, Parkinson's Disease, Post-traumatic Stress Disorder, Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or ineffective, Sickle Cell Anemia.