

Statement of the Board of Medicine and Board of Osteopathic Medicine and Surgery Regarding Certification for Medical Use of Marihuana by Michigan Physicians

The Bureau of Health Professions (BHP) located in the Department of Licensing and Regulatory Affairs is charged with protecting the health, safety and welfare of the people of Michigan. The BHP administers boards for each licensed health profession in Michigan. The boards are charged by statute with establishing standards for education and training, issuing licenses and identifying the standard of care that is expected of those regulated by the law.

In November 2008 the majority of the voters in Michigan approved the Michigan Medical Marihuana Act (MMA) by ballot initiative to protect persons with specific medical conditions from penalties under state law so that they may use marihuana for medical purposes without fear of prosecution. Marihuana remains a Schedule I controlled substance under federal law. The Department and the Boards of Medicine and Osteopathic Medicine and Surgery in Michigan have taken no position on the suitability of marihuana in the treatment of medical disorders.

The MMA is intended to apply to patients with complex, chronic, serious and debilitating medical conditions. It is expected that such patients would require careful and complete evaluation and regular follow-up. The Boards believe that they have an obligation to ensure that members of the public receive proper medical evaluation and advice meeting generally accepted standards of care when seeking certification for use of marihuana for medical purposes.

Both the Department and the Boards are troubled by reports and advertisements of physicians scheduling patient evaluations in clinically inappropriate or inadequate settings and/or within timeframes that do not enable a full and adequate medical assessment to be done. In some instances physicians have conducted certifying evaluations solely through Internet interactions, which are clearly inadequate and inappropriate for the examination of patients for certification for marihuana use. The Boards are concerned that in such instances the public may not be receiving an adequate level of evaluation and treatment as specified by the Public Health Code.

The MMA states:

A physician 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 Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise

stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana 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 shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions. MCL 333.26424 (4)(f)

The standard of care that applies when certifying individuals as candidates for use of medical marihuana is the same as that expected in any other situation in which an individual is being evaluated for medical services. A special standard, higher or lower, is not called for in certifying patients for use of marihuana.

Experts in the field agree with this opinion. Among the advisory recommendations issued by the American Society of Addiction Medicine in September 2010 are the following statements:

Physicians... in the gatekeeping role have an obligation to help licensing authorities assure that physicians who choose to discuss the medical use of cannabis and cannabis-based products with patients:

Adhere to the established professional tenets of proper patient care including:

- History and good faith examination of the patient
- Development of a treatment plan with objectives
- Provision of informed consent, including discussion of risks, side effects and potential benefits
- Periodic review of the treatment's efficacy
- Consultation, as necessary; and
- Proper record keeping that supports the decision to recommend the use of cannabis

Have a bona fide physician-patient relationship with the patient, i.e., should have a pre-existing and ongoing relationship with the patient as a treating physician;

Ensure that the issuance of 'recommendations' is not a disproportionately large (or even exclusive) aspect of their practice;

Have adequate training in identifying substance abuse and addiction.

The Board of Medicine and the Board of Osteopathic Medicine and Surgery has adopted the following statement to clarify the standard of care applicable to the evaluation of an individual for the purpose of certification to use marihuana for any medical condition:

Generally accepted components of a full medical evaluation to determine suitability and appropriateness for recommending treatment of any kind, including certification for medical marihuana, include:

- a hands-on physician patient encounter
- full assessment and recording of patient's medical history
- relevant physical examination
- review of prior records of relevant examinations, treatments and treatment response including substance abuse history
- receipt and review of relevant diagnostic test results
- discussion of advantages, disadvantages, alternatives, potential adverse effects and expected response to treatment
- development of plan of care with state goals of therapy
- monitoring of the response to treatment and possible adverse effects
- creation and maintenance of patient records documenting the information above
- communication with patient's primary care physician when applicable

The Boards expect that these medical encounters would be completed at permanent locations that enable the patient to return for follow-up, consultation or assistance as needed.

A physician failing to meet generally accepted standards of practice when certifying a patient to use marihuana for a medical condition may be found to be practicing below the acceptable standard of care and therefore may be subject to disciplinary action.