

Gavel to Gavel: What physicians need to know

By: Andrew R. Polly Guest Columnist August 22, 2018



Andrew R. Polly

Oklahoma's Medical Marijuana Act legalizes the cultivation, processing, distribution, possession, and use of medical marijuana, provided such activities are conducted within the framework established by the OMMA and the implementing regulations adopted by the Oklahoma State Department of Health.

With so much federal and state red tape surrounding medical marijuana-related activities, physicians should be knowledgeable about the role they have been asked to play in Oklahoma's budding new industry.

Marijuana is classified as a Schedule I drug under the Controlled Substances Act. Simply put, the growth, distribution, possession and use of marijuana is illegal under federal law, regardless of conflicting state laws.

Additionally, federal law permits the prosecution of principals who help others complete drug offenses (although federal agencies are currently prohibited from using funding they receive from Congress to impede a state's medical marijuana program).

Largely due to marijuana's illicit status under federal law, there is little clinical evidence regarding the efficacy of marijuana as medicine. Despite this fact, Americans generally agree marijuana may have therapeutic benefits. To date, 31 states and the District of Columbia have approved the use of medical marijuana to relieve certain symptoms and/or treat certain underlying diseases and conditions.

Under the OMMA, individuals may possess and consume medical marijuana, provided that they hold a valid license issued by the OSDH. All applications for a license must be accompanied by a signed recommendation from a board-certified physician who holds a valid, unrestricted license to practice medicine in the state of Oklahoma.

Faced with a lack of clinical evidence (and FDA approval), coupled with an unsettled regulatory landscape in Oklahoma, the prospect of recommending marijuana may cause some physicians to fear for their medical licenses and/or certifications. As medical marijuana industries have taken root in other states, however, the legal risks for physicians have proven to be minimal because physicians merely "recommend" medical marijuana licenses, rather than prescribe or dispense the drug itself.

While issuance of a medical marijuana recommendation may have different legal implications than a prescription, Oklahoma physicians who are considering recommending the drug should, at a minimum, speak with their medical liability insurance carriers and consult with legal counsel to ensure all (ever-changing) state requirements will be satisfied through their recommendation practices.

Andrew R. Polly is an attorney with GableGotwals, a full-service law firm of more than 90 attorneys.

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