

Ask An Attorney

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I have patients who are requesting medical marijuana. What are the legal issues surrounding prescribing it?

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The New York Compassionate Care Act was enacted last year and has just become effective. The State has licensed five companies to grow and distribute medical marijuana products through 20 dispensaries. The State law has also established the framework for patients to be certified as medical marijuana patients.

A physician who wishes to issue certifications for patients to receive medical marijuana must be qualified to treat patients suffering from cachexia or wasting syndrome, severe or chronic pain, severe nausea, seizures or severe or persistent muscle spasms arising from cancer, HIV infection or AIDS, ALS, Parkinson's disease, MS, spinal cord injury with spasticity, inflammatory bowel disease, neuropathy or Huntington's disease. The qualified physician must take a four-hour CME course regarding the use of medical marijuana and then register with the New York Department of Health. More detailed information and links to the course and registration information may be found at www.health.ny.gov/regulations/medical_marijuana/practitioner.

In order for a physician to issue a patient certification for medical marijuana, the physician must be caring for a patient with a qualifying medical condition. In this regard, "caring for" means that the physician has completed a full assessment of the patient's medical history and current medical condition. The physician must also consult the prescription drug monitoring program (I-STOP) to review the patient's history of controlled substance use. If the physician believes the patient will benefit from the use of medical marijuana, he or she may certify the patient for the program.

Notwithstanding the fact that New York joins over 20 other states in legalizing medical marijuana use, marijuana remains a Schedule I substance under Federal law. However, under a Department of Justice Memorandum issued in 2013, the current Administration has taken the position that the Federal government will not interfere with a properly structured state medical marijuana program. The New York State Legislature followed those Federal structural guidelines in crafting our Compassionate Care Act. Physicians should remain watchful for changes in this Federal enforcement position that may arise in the future.

As with any new program, the physician may want to obtain confirmation from their current employer that issuance of patient certifications for medical marijuana is not prohibited by the employer's policies, and receive confirmation that these activities will be covered under the physician's malpractice liability insurance policy.

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