

The Health Care Industry Cannot Continue to Ignore Medicinal Cannabis

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Legalized medical marijuana is not new. It may be a daunting and unfamiliar subject, but the potential risks presented by the interplay between varying state and federal laws are identifiable and the legal landscape is navigable.

Background

Twenty-four U.S. states now have some form of medical marijuana legalization on the books. These states allow patients with a variety of physical conditions and/or health maladies to obtain, possess and often times cultivate cannabis lawfully as a treatment for such medical conditions. The number of states allowing medicinal cannabis is set to increase dramatically, as various additional state legislatures have bills and/or ballot measure pending on this topic.

Even the federal government recognizes the medicinal benefits of cannabis. Believe it or not, to this day, the federal government sends free, pre-rolled cannabis cigarettes to a special, albeit dwindling, group of patients on a regular basis (beginning in 1976). This is a product of the 1976 federal Investigational New Drug Program (Compassionate Access I.N.D.), which still exists, but was closed in 1992 to any new patients.

Furthermore, the U.S. Government holds a federal patent for therapeutic cannabinoid use (US6630507 B1). The patent is entitled “Cannabinoids as antioxidants and neuroprotectants.” The patent covers a method of treating diseases by applying a therapeutically effective amount of certain cannabinoids derived from marijuana. In addition, the White House website provides links to government-funded research projects involving medical marijuana. Presently, the links show 219 completed projects and 95 projects in progress.

Even the American Medical Association recognizes the validity of medicinal cannabis. On June 23, 2015, the American Medical Association adopted the formal position that marijuana is 100 percent a form of medicine. There are countless reliable scientific studies addressing the positive medical impacts of the use of medicinal cannabis for an ever-increasing range of diseases and illnesses. Medicinal cannabis is here to stay, and the health care industry needs to pay close attention.

Recent Developments

Simply put, the health care industry has been extremely resistant to even beginning the study of medical marijuana. This does not bode well for health care systems that will increasingly see patients utilizing various forms of medicinal cannabis. Moreover, this is not a sustainable health care business model. With an increased focus on alternative forms of medicine and

treatment both by practitioners and health care insurance providers, it is imperative that the health care industry study the facts.

Recent developments show that the legalization of medicinal cannabis is not uncharted territory. In fact, the State of New Mexico Workers' Compensation Administration began requiring employers and insurers to reimburse injured workers for medical marijuana when the state's health care provider fee schedule took effect January 1, 2016. Workers compensation claimants can be reimbursed up to \$12.02 per gram of marijuana for up to 226.8 grams of marijuana per year, according to the fee schedule. Such reimbursements were ordered after the New Mexico Court of Appeals had ruled three times since May, 2014 that medical marijuana should be classified as reasonable and necessary medical care for injured workers.

The same momentum is impacting Latin America. Brazil's governmental health care agency, ANVISA, recently removed a component of cannabis, cannabidiol (CBD), from the list of banned substances, meaning the marijuana molecule can now be prescribed by physicians for treating seizures, multiple sclerosis, schizophrenia and other ailments. As such, ANVISA has approved the importation of CBD from the United States. Other Latin American health care systems have taken notice and are taking similar steps.

Native American governments are following suit. On tribal lands, tribes may enact laws regarding marijuana cultivation and use. The Department of Justice issued an October, 2014 policy statement directing U.S. Attorneys to refrain from using resources to prosecute tribal members who comply with the tribal marijuana laws. Accordingly, there has been an increase in medicinal marijuana usage displacing traditional pharmaceutical products on tribal lands across the country.

The Science

As stated above, extensive science exists concerning the medical benefits of cannabis. The volume of clinical studies is immense and growing. In the National Center for Biotechnology Information database of biomedical literature, 4,516 medical abstracts reference both cannabis and cannabinoids. Nonetheless, the vast majority of medical schools do not educate students about the human endocannabinoid system.

Experts are working to further an understanding of the health benefits of cannabis. For example, Dr. Denis Petro, a prominent neurologist and pharmacologist from Virginia, researches cannabis as a treatment for multiple sclerosis. He founded Patients Out of Time, a non-profit organization dedicated to research and education on the endocannabinoid system. Dr. Petro wrote, in an article entitled *Indications for Therapeutic Use of Cannabis*, that, "at present, conventional treatments for spasticity are unsatisfactory. Based on scientific evidence, cannabis is a safe and effective alternative when compared to conventional treatments."

Similarly, California doctor David Bearman specializes in medicinal marijuana and cannabinology. Dr. Bearman helped set up the American Academy of Cannabinoid Medicine, a medical organization designed to provide education on the endocannabinoid system and the application of clinical and physiological studies of cannabinoids.

Dr. Sue Sisley is also a leading voice in the medicinal cannabis community, and her work with military veterans living with post-traumatic stress disorder (PTSD) has been recognized as groundbreaking. Dr. Sisley is a lead researcher on a team granted in excess of two million dollars to continue studying the effects of medicinal cannabis on the symptoms of PTSD.

This is not quack science. There are a large number of highly educated professional physicians and researchers making great strides concerning the use of medicinal cannabis each day.

The Federal Stance

The federal Controlled Substances Act classifies cannabis as a Schedule 1 drug, but the current federal position is not so simple. Two federal memos more accurately represent the Department of Justice's (DOJ) current position on cannabis. The 2009 Ogden Memo provides guidance to federal prosecutors in states where marijuana is legal. The memo directs prosecutors to focus resources away from individuals who are clearly in compliance with state law.

In 2013, the Cole Memo updated the DOJ's position in response to new state cannabis legislation. The memo provides that in states where marijuana is legal, the states should handle enforcement. The memo specifically characterizes the prosecution of ill individuals, or their care providers and caregivers, as an inefficient use of federal resources. A more appropriate target for federal prosecution would be a large-scale, for-profit commercial enterprise that engages in an activity involving: sales to minors, unlawful possession of firearms, violence, ties to criminal enterprises, illegal possession of different drugs or financial activities inconsistent with state law. Most states have very effective regulatory structures that strictly prevent those sorts of activities through the use of robust enforcement and seed-to-sale tracking systems.

The 2014 Rohrabacher-Farr Amendment to the federal spending bill also affects prosecutorial latitude. The amendment effectively blocks the DOJ from using federal funds to prosecute medical marijuana patients and dispensaries that are in compliance with state law. A federal court in California recently enforced the amendment's protection for medical marijuana dispensaries. In that case, the DOJ shut down a dispensary called Marin Alliance for Medical Marijuana (MAMM). The court ultimately determined that shutting down the dispensary violated the Rohrabacher-Farr Amendment. In doing so, the judge relied on a letter in which Rohrabacher and Farr clarified the Amendment's meaning. The letter stated, "...the purpose of our amendment was to prevent the Department from wasting its limited law enforcement resources on prosecutions and asset forfeiture actions against medical marijuana patients *and providers*, including businesses that operate legally under state law" (emphasis supplied).

General Liability Risks

There are indeed particular aspects of the cannabis industry that give rise to potential liability. First, pesticide levels in cannabis products present a possible source of liability for businesses and care providers. Colorado Governor John Hickenlooper recently declared marijuana grown

with unapproved pesticides to be a public health risk. Subsequently, two Colorado marijuana users sued LivWell, Inc., for using harmful pesticides on their marijuana plants. Colorado has a list of acceptable pesticides for use in marijuana cultivation, and Livwell allegedly used one absent from the list. However, the Court dismissed the case because the users failed to prove that LivWell's product injured them.

The law governing workplace liability in Colorado is now clear after a 2013 employment discrimination case. A former employee of Dish Network sued Dish after being fired for testing positive for marijuana; violating Dish's drug policy. The employee was a quadriplegic with a medical marijuana license. He argued that his termination was wrongful because he used marijuana pursuant to his license, never used marijuana at work and never brought it onto Dish's premises. The court ruled in favor of Dish. The court said that under Colorado law, employers are prohibited from firing employees for engaging in a lawful activity during off-hours and off the premises. Because medical marijuana use is not lawful under federal law, Dish was legally permitted to fire him.

Health Care Providers

Physicians who recommend marijuana are protected from liability by the Colorado Constitution (Article XVII, Section 14). The Colorado Constitution gives physicians immunity for advising a patient about the risks and benefits of medical marijuana for a debilitating medical condition, and for giving patients written documentation stating that the patient might benefit from medical marijuana.

Moreover, physicians have a duty to care for their patients, and that includes considering medical marijuana if it would help that patient. Consequently, by understanding the health benefits and the particularized sources of liability, physicians can lend clarity to the medical marijuana industry.

Conclusion

While medical marijuana policy changes may lead to uncertainty, most questions about the marijuana industry, the risks presented and its related legality, have answers. The problem is that health care providers and insurance companies do not know where to turn for this information.

It has been a pleasure to make a number of presentations concerning this topic to various provider and insurance-related entities across the country serving our health care system. Without fail, after presenting objective, factual bases concerning the state of this highly regulated industry and the risks associated therewith, it is evident that many of these health care-related entities can move forward with a better understanding of the risk implications and devise better informed strategies to incorporate medicinal cannabis into their operational plans, whether for now or in the near future.

In short, however, an understanding of the researched health benefits of medical marijuana is increasingly necessary for physicians and other members our health care system. A

conservative approach is certainly advisable, but it is more than just a good thing to learn about; it is a necessity in this day and age to remain relevant and informed. This needs to happen now. And the providers that take appropriate steps soon will be better positioned to deal with these issues as they become increasingly prevalent.