



**PHYSICIAN ASSISTANT BOARD**

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## **INFORMATION BULLETIN GUIDELINES – MEDICAL MARIJUANA**

California voters passed Proposition 215 on November 5, 1996. Through this Initiative Measure, Section 11362.5 was added to the Health & Safety Code, and is also known as the Compassionate Use Act of 1996. The purposes of the Act include, in part:

"(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction."

### **PHYSICIAN ASSISTANTS**

A physician assistant has limited responsibilities with regard to the recommendation for medical marijuana. A physician assistant may evaluate a patient consistent with the physician assistant's Delegation of Services Agreement and protocol, if applicable. However, only an attending physician is authorized to recommend medical use of marijuana pursuant to Health and Safety Code section 11362.5.

The following information is provided as a general guideline for your supervising physician. Your supervising physician should refer to and contact the Medical Board of California for complete and specific information regarding this topic.

According to Health and Safety code section 11362.7(a), some of the supervising physician's responsibilities include the following:

- Possess a license to practice medicine or osteopathy in California issued by the Medical Board of California or the Osteopathic Medical Board of California. This license must be in good standing.
- Take responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of the applicant (patient).
- Complete a medical examination of the patient. This medical examination cannot be delegated.
- As a result of the medical examination, document in the patient's medical record that the patient has a serious medical condition and that the medical use of marijuana is appropriate. The attending physician must come to these conclusions himself or herself.

## IMPORTANT POINTS TO CONSIDER:

1. We urge you and your supervising physician, if your practice is contemplating recommending the use of medical marijuana, to become familiar all applicable laws and regulations pertaining to this treatment modality. You may wish to visit the Medical Board's website at [www.mbc.ca.gov](http://www.mbc.ca.gov) and contact the Department of Public Health Medical Marijuana Program Unit at [mmpinfo@cdph.ca.gov](mailto:mmpinfo@cdph.ca.gov).
2. It is important that you and your supervising physician understand and comply with all laws concerning their recommendation of medical marijuana. You may also wish to speak with your legal counsel concerning your compliance with the laws governing this practice.
3. Remember a physician assistant may only evaluate a patient for the use of medical marijuana. The attending physician himself or herself MUST perform an examination of the patient prior to the physician making a recommendation. This medical examination may not be delegated to a physician assistant.

Although the Compassionate Use Act allows the use of medical marijuana by a patient upon the recommendation or approval of a physician, California physicians should bear in mind that marijuana is listed in Schedule I of the federal Controlled Substances Act, which means that it has no accepted medical use under federal law. However, in *Conant v. Walters* (9th Cir.2002) 309 F.3d 629 the United States Court of Appeals recognized that physicians have a constitutionally-protected right to discuss medical marijuana as a treatment option with their patients. However, the court cautioned that physicians could exceed the scope of this constitutional protection if they conspire with, or aid and abet their patients in obtaining medical marijuana (If in making the recommendation, the physician intends for the patient to use it as the means for obtaining marijuana, as a prescription is used as a means for a patient to obtain a controlled substance.) In other words, while Proposition 215 may serve as a defense to criminal prosecution under California law, medical marijuana is still illegal under federal law.

### References:

#### California Department of Public Health, Medical Marijuana Program Unit

Website: [www.cdph.ca.gov](http://www.cdph.ca.gov)

Email: [mmpinfo@cdph.ca.gov](mailto:mmpinfo@cdph.ca.gov)  
916.552.8600

#### Medical Board of California

Website [www.mbc.ca.gov](http://www.mbc.ca.gov)

You may wish to refer to CMA's ON-CALL Document #1315 titled "The Compassionate Use Act of 1996", updated annually for additional information and guidance.

[http://www.cmanet.org/bookstore/freeoncall2.cfm/CMAOnCall1315.pdf?call\\_number=1315&CFID=745764&CFTOKEN=27566287www.cma](http://www.cmanet.org/bookstore/freeoncall2.cfm/CMAOnCall1315.pdf?call_number=1315&CFID=745764&CFTOKEN=27566287www.cma)

See reverse for some of the laws related to this issue. \*Please be advised that the Sections listed here are only portions of the Compassionate Use Act and do not reflect all applicable laws on the subject.

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11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

**Health and Safety Code section 11362.7.** For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.