

New York's Medical Marijuana Law: A Practitioner's Perspective

On July 5, 2014, New York Governor Andrew Cuomo signed New York's Medical Marijuana bill into law, making New York the 23rd State to legalize the medical use of marijuana. New York's law, commonly referred to as the Compassionate Care Act, is described by commentators as one of the safest and most closely regulated medical marijuana programs in the United States. The Compassionate Care Act sets forth comprehensive guidelines for the prescription, cultivation, consumption, and dispensing of medical marijuana. These guidelines will be supplemented by regulations promulgated by the New York State Department of Health ("DOH"). Such regulations are expected to be finalized within 18 months from the enactment of the Compassionate Care Act.

The Compassionate Care Act sets forth a system whereby practitioners can issue certifications to patients who medically require marijuana. A patient certification will only be issued if the practitioner is registered with the DOH; the patient has a "serious condition"[1]; the practitioner is qualified to treat the serious condition; the patient is under the practitioner's continuing care for the serious condition; and in the practitioner's professional opinion and review, the patient is likely to receive therapeutic or palliative benefit from the primary or adjunctive treatment with medical use of marijuana.

In making a certification on behalf of a patient, a practitioner is required to consider the form of the medical marijuana the patient should consume, the method of consumption, any particular strain, variety and quantity or percentage of marijuana or a particular active ingredient, and appropriate dosage. Practitioners are also required to consult the prescription monitoring drug program registry prior to making or issuing a certification, for the purpose of reviewing the patient's controlled substance history. Generally, patient certifications will be in effect for no longer than one year after the date the certification is signed by the practitioner, unless an earlier expiration date is specified. Alternatively, the expiration date may last until a patient expires, if the practitioner states in the certification that it is his/her professional opinion that the patient is terminally ill.

Practitioners should note that the Compassionate Care Act only allows for physicians who are licensed to practice by the State of New York and who actually practice within the state to recommend medical marijuana. Such physicians must have sufficient training or experience to treat a serious condition and are required to complete a 2-4 hour training course as determined and registered by the DOH. The law also gives the DOH discretionary authority to extend such certification authority to nurse practitioners.

Practitioners should keep in mind that although New York State has enacted a system allowing for the legal use of medical marijuana, practitioners are still subject to Federal laws and regulations pertaining to controlled substances.

Practitioners who are contemplating participating in New York's Medical Marijuana program should wait for the DOH to promulgate final regulations regarding medical use of marijuana and should consult an

attorney to ensure that their activities will be compliant with State and Federal Law.

[1] The term “serious condition” is defined as:

“having one of the following severe debilitating or life-threatening conditions: cancer, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, amyotrophic lateral sclerosis, Parkinson’s disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, Huntington’s disease, or as added by the commissioner; and

any of the following conditions where it is clinically associated with, or a complication of, a condition [listed above] or its treatment: cachexia or wasting syndrome; severe or chronic pain; severe nausea; seizures; severe or persistent muscle spasms; or such conditions as are added by the commissioner” (see Public Health Law § 3360).

The Compassionate Care Act also gives the DOH commissioner discretion to include the following ailments to the definition of “serious condition”: Alzheimer’s, muscular dystrophy, dystonia, post-traumatic stress disorder and rheumatoid arthritis.