



# Understanding Maine's Medical Marijuana Law

Spring/Summer 2010





## Background

- 1999: *Maine Medical Marijuana Act* passes as "initiated bill" (I.B.)
  - Authorizes medical use of marijuana for certain qualifying conditions, but does not address access
- 11/09: *New Maine Medical Marijuana Act* approved by voters (I.B.2009, Chapter 1)
  - Repeals & replaces 1999 law
  - Governor Baldacci issues Executive Order 04 FY 10/11, *An Order Establishing the Committee on the Implementation of the Maine Medical Marijuana Act*



## Committee's Role

- Review the implementation of similar laws in other states
- Make recommendations on the implementation of the law in Maine to ensure effective implementation and ongoing monitoring, and to protect public health and safety
- Advise DHHS on rules and fees
- MMA EVP Gordon Smith represented physicians on the Committee



## AMA Policy on Medical Marijuana

- House of Delegates Resolution 95.952, *Medical Marijuana*
  - Calls for further study for " . . . patients who have serious conditions for which preclinical, anecdotal, or controlled evidence suggests possible efficacy . . . "
  - Not endorsement of state laws
  - Not supportive of legalization
  - Scientific evidence doesn't meet current standards for prescription drug products
  - " . . . effective patient care requires the free and unfettered exchange of information on treatment alternatives" and neither physicians nor patients should be subject to criminal sanctions



## Medical Marijuana Laws in 14 States

- Alaska (1998)
- California (1996)
- Colorado (2000)
- Hawaii (2000)
- Maine (1999)
- Michigan (2008)
- Montana (2004)
- Nevada (2000)
- New Jersey (2010)
- New Mexico (2007)
- Oregon (1998)
- Rhode Island (2006)
- Vermont (2004)
- Washington (1998)
- 2 states are "favorable"
  - Arizona (1996)
  - Maryland (2003)



## Finding Maine's Medical Marijuana Laws

- I.B. 2009, Chapter 1: 22 M.R.S.A., Chapter 558-C  
<http://www.mainelegislature.org/legis/statutes/22/title22c/h558-Csec0.html>
- L.D. 1811, *An Act to Amend the Maine Medical Marijuana Act* (P.L. 2009, Chapter 631)  
[http://www.mainelegislature.org/legis/bills/bills\\_124th/chap/pdfs/PUBLIC631.pdf](http://www.mainelegislature.org/legis/bills/bills_124th/chap/pdfs/PUBLIC631.pdf)
- DHHS Rule Chapter \_\_\_\_\_, *Rules Governing the Maine Medical Use of Marijuana Program* (not yet published, but will be available here:  
<http://www.maine.gov/sos/cec/rules/10/chaps10.htm>)



## Debilitating Medical Conditions

- Cancer, glaucoma, HIV/AIDS, hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, agitation of Alzheimer's disease, nail-patella syndrome or the treatment of these conditions
- A chronic or debilitating disease or medical condition or its treatment that produces intractable pain, which is pain that has not responded to ordinary medical or surgical measures for more than 6 months



## Debilitating Medical Conditions

- A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis; or
- Any other medical condition or its treatment approved by DHHS by administrative rule



# Advisory Board

- DHHS Commissioner establishes, chairs, & staffs
- Membership includes at least 11 health care practitioners from various fields of practice, including neurology, gastroenterology, pain management, medical oncology, psychiatry, infectious disease, hospice medicine, family medicine, pediatrics, treatment of addiction, & gynecology
  - Recommended by MMA/MOA
  - Board certified
  - Knowledgeable about medical marijuana
- Membership includes 2 public members, 1 must be registered patient



## Advisory Board Duties

- Accept, review, & evaluate petitions to add to list of debilitating medical conditions
- Convene at least once a year to hold hearings on petitions
- Make recommendations to Commissioner on additional conditions
- Recommend quantities of marijuana necessary to constitute an "adequate supply"



# Role of Physician Under the Statute

- Provide "written certification" to "qualifying patient"
- "Written certification" states that "in the physician's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms . . ."
- Must be made in the course of a *bona fide* physician-patient relationship after a full assessment of the medical history
- Must specify the debilitating medical condition
- Licensing boards may not sanction physician "solely for providing written certifications," but may if the physician fails to meet the applicable standard of care for evaluation & treatment



## Role of Physician Under the Rule

- Certifying physician must have Maine license & current DEA registration
- Must comply with BOLIM/BOL Rule Chapter 11, *Use of Controlled Substances in Treatment of Pain*
- Must use DHHS-approved certification form
- Must monitor or transfer the patient
- Must maintain records supporting the decision to recommend medical marijuana
- Must include non-binding estimate of length of time of use of medical marijuana



## Risks for Physicians

- Uncertain status of marijuana under federal law
  - Use of marijuana still is illegal under federal law, BUT
  - U.S. Attorney General Eric Holder's statement on 2/25/09 that he will use prosecutorial discretion not to pursue physicians or patients acting in good faith under state medical marijuana laws
- Drug regulatory concerns
  - Not FDA-approved, the standard for drug quality & basis for prescriptive authority
  - Don't use term "prescribe" & don't "dispense"
- Potential exposure to claims of negligence
  - Dealing with unregulated drug; may not know strength or impurities
  - Pay close attention to informed consent & document; frame as "patient choice"



## Options for Physicians

- Participate in the program, preparing written certifications for those patients who qualify
- Or not - nothing in the law compels you to participate
- MMA can help with compliance questions



## Protections of Medical Marijuana Law

- “[M]ay not be denied any right or privilege or be subjected to any penalty or disciplinary action” . . . including that by a business or occupational or professional licensing board or bureau
- “[S]chool, employer or landlord may not refuse to enroll, employ, or lease to” a person solely because of status as registered patient . . .
- “[M]ay not be denied parental rights and responsibilities with respect to or contact with a minor child . . . ”



# Limits of Protections

- Medical marijuana law doesn't permit person to:
  - Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice
  - Possess marijuana or use it
    - In a school bus
    - On the grounds of any preschool or primary or secondary school
    - In any correctional facility
  - Smoke marijuana
    - On any form of public transportation
    - In any public place



## Limits of Protections

- Medical marijuana law doesn't permit person to:
  - Operate, navigate or be in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana
    - OUI standard: "Under the influence of intoxicants" means being under the influence of alcohol, a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs
  - Use marijuana if that person does not have a debilitating medical condition



# Limitations of Protections

- Medical marijuana law doesn't require:
  - A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana
  - An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana



## Other Aspects of the Law

- Special provisions for minors
  - Parental consent & review by a pediatrician & psychiatrist
- Establishment of registered dispensaries
  - 1 in each of 8 public health districts in first year
  - Non-profit
  - Annual registration of \$15,000
- Registry identification cards for registered patients, registered caregivers, and officers, board members, and employees of dispensaries
  - Registered patient fee: \$100/\$75 if MaineCare
  - May possess 2.5 ounces/6 live plants
  - Registered primary caregiver fee: \$300, only if cultivating



## Issues Unresolved by L.D. 1811

- A process for deleting conditions from the list of debilitating medical conditions
- Whether to establish a centralized growing facility to better control access & quality
- Maine Bar Counsel's opinion on lawyers providing advice on the medical marijuana law
- Adequacy of physician response in meeting patient demand
- Relationship to Prescription Monitoring Program



Questions?

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