



# Understanding Maine's Medical Marijuana Law





## Medical Marijuana Laws

- Alaska (1998)
- Arizona (1996, 2010)
- California (1996)
- Colorado (2000)
- Delaware (2011)\*
- District of Columbia (2010)\*
- 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)
- "Affirmative Defense"
  - Maryland (2011)

\* programs not yet established



## 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



## Maine Law

- 1999: *Maine Medical Marijuana Act* passes as "initiated bill"
  - Authorizes medical use of marijuana for certain qualifying conditions, but does not address access
- 2009: *New Maine Medical Marijuana Act* approved by voters
  - Repeals & replaces 1999 law
  - Governor Baldacci issues Executive Order Establishing the Committee on the Implementation of the Maine Medical Marijuana Act
- 2011: *Amendments to Medical Marijuana Act*



## Finding Maine's Medical Marijuana Laws

- *Maine Medical Use of Marijuana Act*
  - Maine Statutes, Title 22, Sections 2421 to 2430-B
  - <http://www.mainelegislature.org/legis/statutes/22/title22ch558-Csec0.html>
- DHHS Rule Chapter 122, *Regulations Governing the Maine Medical Use of Marijuana Program*
  - <http://www.maine.gov/sos/cec/rules/10/144/144c122.doc>
- DHHS Medical Marijuana Program webpage
  - <http://www.maine.gov/dhhs/dlrs/mmm/index.shtml>



## Who Qualifies

### Debilitating Medical Condition

- 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



## Who Qualifies

- 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
- Conditions added after petition from the public and consideration by DHHS (added 2011)



# Patient Process

- Voluntary Registration
  - Patient submits:
    - Physician Certification
    - Basic demographic information
    - Designated caregivers
  - Department approves unless information not complete or falsified
  - Patient issued ID
- Or patient maintains physician certification & must present to law enforcement
- Must also present valid driver's license/ID





# Role of Physician

- Provide "written certification" to "qualifying patient"
  - "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 . . . "
  - certify patient has one of the debilitating medical conditions listed (but not which one)
- Must use DHHS-approved certification form, on tamper resistant paper (as of 2011)
- Must inform patient of risks & benefits of medical use of marijuana and that the patient may benefit from the use
- Must be made in the course of a *bona fide* physician-patient relationship after a full assessment of the medical history



# Role of Physician

- 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 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
- 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



## Minors

- Physician must have explained risks & benefits to the patient and parent, guardian or custodian
- Physician must seek second opinion from "consulting physician"
- Parent, guardian or custodian must consent in writing; serve as caregiver & control dosage and frequency



## Implications for Patients

- Qualifying patients can
  - Possess up to 2  $\frac{1}{2}$  oz of prepared marijuana
  - Cultivate or designate a caregiver to cultivate up to 6 mature plants
  - Possess marijuana paraphernalia
  - Provide marijuana to another qualifying patient
  - Designate a caregiver to assist with the patient's use of marijuana



## Protections of Medical Marijuana Law

- May 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
- School, employer or landlord may not refuse to enroll, employ, or lease to a person solely because of status as registered patient
- May not be denied parental rights and responsibilities



# 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
  - Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice
  - Use marijuana if that person does not have a debilitating medical condition
  - Possess or use marijuana on school bus or school grounds
  - Smoke marijuana on public transportation or in public places



# Limits 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



## Dispensaries

- Establishment of registered dispensaries
  - 1 in each of 8 public health districts in first year
  - Non-profit
  - Annual registration of \$15,000
  - The dispensary may dispense only to a qualifying patient who has designated the dispensary to cultivate for the patient or to that patient's caregiver
  - The dispensary may not cultivate, dispense or handle marijuana in any way except for the use of patients who have designated the dispensary





## Issues Unresolved

- 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



## 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



Questions?

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