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Ohio Hospitals: Are You Ready for Medical Marijuana?

The Ohio Medical Board projects the application for a Certificate to Recommend will be available in [Spring of 2018](#). Physicians have also been brushing up on how to properly recommend medical marijuana by utilizing my [Ohio Physician's Guide To Cannabis Compliance](#). Clearly, physicians are preparing themselves for this new form of treatment, but for Ohio hospitals, the question remains, are you ready?

Are you prepared to allow your physicians to [recommend medical marijuana](#) to a patient? What if an inpatient with a recommendation has medical marijuana in her pocket – will you allow her to keep it? Should she self-administer her recommendation or should a physician or mid-level provider do that? Would that violate the Controlled Substances Act? How will the medical marijuana interact with other drugs the patient has already received? Could the hospital lose its Medicare enrollment or other federal licenses? Should the hospital take the medical marijuana and store it until the patient needs another dosage? It's dizzying, I know.

These are just some of the questions that need to be addressed by an Ohio hospital's leadership before the medical marijuana program begins in September of this year. Hospitals need to understand the risks associated with medical marijuana and have clear policies addressing how the hospital will handle the new treatment. If a hospital will allow medical marijuana, it must ensure that its policies detail procedures that *strictly comply* with Ohio's medical marijuana law to firmly protect against any potential federal prosecution under the Rohrabacher-Blumenauer Amendment (the "[Amendment](#)").

The Amendment was recently extended until February 8, 2018, but is often misunderstood as a prohibition on any federal medical marijuana prosecutions in states with medical marijuana laws. Rather, the Amendment is more accurately understood as a bar to federal prosecutions only when the accused can demonstrate that their conduct was expressly authorized by state law.

“Individuals who do not *strictly comply* with all state-law conditions regarding the use, distribution, possession, and cultivation of medical marijuana have engaged in conduct that is unauthorized, and prosecuting such individuals does not violate [the Amendment].”

United States v. McIntosh, 833 F.3d 1163, 1178 (9th Cir. 2016).

Therefore, the Department of Justice may continue with medical marijuana prosecutions; to invoke the Amendment’s protections and enjoin such prosecutions, it will have to be demonstrated that all medical marijuana-related conduct was completely authorized by the State’s medical marijuana law. This demonstration is typically done through an evidentiary hearing. *See id* at 1179.

Since the Ninth Circuit’s ruling in *McIntosh*, three district courts within the Sixth Circuit — the federal court system with jurisdiction over Ohio — have applied the Ninth Circuit’s reasoning in adjudicating defendants’ motions for evidentiary hearings and to enjoin the prosecutions. *See United States v. Bally*, No. 17–20135, 2017 WL 5625896, at *4 (E.D. Mich. Nov. 22, 2017); *United States v. Samp*, No. 16–CR–20263, 2017 WL 1164453 at *1 (E.D. Mich. Mar. 29, 2017); *United States v. Ragland*, No. 15–CR–20800, 2017 WL 2728796 at *1 (E.D. Mich. June 26, 2017). These cases all stem from Michigan, which has had a medical marijuana program in place for some time, and give Ohio healthcare providers a guide as to how federal prosecutions will be handled here.

Therefore, Ohio hospitals planning to allow medical marijuana use on their premises, or to be recommended by their physicians, need to be prepared to show documentation, policies, and procedures that such medical marijuana conduct is in strict compliance with Ohio’s medical marijuana law ([O.R.C. 3796, et seq.](#)). Preparing these policies and procedures will require an in-depth understanding of Ohio’s medical marijuana program and the federal marijuana laws. This exercise should be completed by each Ohio hospital before medical marijuana in one way or another shows up on your doorstep in September of this year.

Frost Brown Todd’s health law industry team has lawyers dedicated to understanding the Ohio medical marijuana law and the federal

marijuana laws. We have helped healthcare providers and institutions prepare for the new form of treatment and have the knowledge to help hospitals with the transition as well. For more information on Ohio's medical marijuana law, please contact a member of our [Health Care Innovation Team](#). You can also visit our [Health Law Matters blog](#) for more insight into legal issues impacting the health care industry.

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