



Physician Alert: Patient Informed Consent for Medical Marijuana Treatments

Apr 23, 2019

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State laws vary considerably in terms of the professional obligations they place on physicians obtaining a [patient's](#) informed consent for the use of medical marijuana. [Ohio](#), for example, requires a physician to document in the medical record the patient's consent (or legal representative's consent if the patient is a minor) to medical marijuana treatment prior to completing a recommendation. [Ohio Administrative Code 4731-32-03](#).

Unlike other states, however, Ohio law does not instruct the physician what exactly should be disclosed to a patient before obtaining the patient's informed consent to medical marijuana. Fortunately, by looking at other states' requirements and the guidance released by professional medical associations, a physician may be able to cobble together a comprehensive informed consent form for medical marijuana treatments – **and for those who do not have the time to do so, I have already done this for you.**

This is important because statutes set the minimum benchmark of acceptable medical practices within a community, and a [physician's](#) failure to abide by these basic requirements can lead to a host of adverse consequences like professional disciplinary action, malpractice exposure, and potential criminal prosecution. Thus, the development of a robust informed consent form can help protect a physician from various forms of liability when treating patients with medical marijuana.

[Florida's statute](#) provides a physician with the following specific items that must be disclosed to a patient before the physician obtains the patient's informed consent for medical marijuana treatment:

- The Federal Government's classification of marijuana as a Schedule I controlled substance.

- The approval and oversight status of marijuana by the Food and Drug Administration.
- The current state of research on the efficacy of marijuana to treat the qualifying conditions stated in the statute.
- The potential for addiction.
- The potential effect that marijuana may have on a patient's coordination, motor skills, and cognition, including a warning against operating heavy machinery, operating a motor vehicle, or engaging in activities that require a person to be alert or respond quickly.
- The potential side effects of marijuana use, including the negative health risks associated with smoking marijuana.
- The risks, benefits, and drug interactions of marijuana.
- That the patient's de-identified health information contained in the physician certification and medical marijuana use registry may be used for research purposes.

Further, professional associations have also put forth recommendations. The [Federation of State Medical Boards](#)—an entity representing the 70 state medical and osteopathic regulatory boards (i.e., state medical boards) within the United States, its territories and the District of Columbia—suggests that a physician advise a patient of the following when recommending medical marijuana:

- The risks and benefits of the use of marijuana.
- The variability and lack of standardization of marijuana preparations.
- The effect of marijuana.
- Not to drive or operate heavy machinery while under the influence of marijuana.

Finally, from a black-letter legal perspective, it is also recommended that any informed consent form address:

- The nature and purpose of the medical marijuana treatment.

- What the medical marijuana treatment is expected to accomplish, together with the reasonably known risks.
- The risks and benefits of the medical marijuana treatment.
- Whether there are alternatives to the medical marijuana treatment (and the risks and benefits of the alternative treatment).

Although 33 states have legalized medical marijuana treatment, liability issues for physicians have not been fully fleshed out. For that reason, I recommend that physicians involved with this industry protect themselves by protecting their patients. By arming a patient with knowledge of all the associated health and legal risks related to medical marijuana treatment, a patient is better equipped to make a fully informed medical decision. This also helps minimize the likelihood the patient would ever try and hold the physician liable for an adverse consequence suffered by the patient or a third party.

Frost Brown Todd's [Health Care Innovation Team](#) has developed an informed consent form that can be readily modified depending upon state law requirements, and it is available for purchase.

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