


TREATMENT COURTS AND MEDICAL MARIJUANA

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Legal Issues

- Criminal liability
- Professional disciplinary action
- Professional malpractice
- Product liability
- Conditions of correctional supervision

Unaffected by state marijuana statutes

Supervision Conditions

- NADCP Best Practice Standards and BJA/CSAT Discretionary Grant Attestation are inapplicable
- Rational Basis Test, at most * (decriminalized states only)
- Particularized facts based, in part, on expert evidence
- Reviewable record for appeal
- Findings of reasonably anticipated harms and benefits
- Evidence sufficient to support the findings (light burden of proof)

* *People v. Beaty* (Cal. App. 2010)

National Position Statements

NOT Medicinal (as of Dec. 2016):

1. U.S. Food & Drug Administration
2. U.S. Dept. of Health & Human Services
3. National Academy of Sciences Institute of Medicine
4. American Academy of Addiction Psychiatry
5. American Academy of Family Physicians
6. American Academy of Neurology
7. American Academy of Pediatrics
8. American College of Obstetricians & Gynecologists
9. American College of Physicians
10. American Epilepsy Society
11. American Medical Association (also Canadian and Australian Medical Associations)
12. American Osteopathic Academy of Addiction Psychiatry
13. American Psychiatric Association
14. American Society of Addiction Medicine
15. American Society for Pain Management Nursing
16. National Association of Alcohol & Drug Abuse Counselors
17. National Association of Drug Court Professionals
18. National Association of School Nurses
19. National Center on Addiction & Substance Abuse
20. National Council on Alcoholism & Drug Dependence
21. Tuberous Sclerosis Alliance



Source: Marlowe (2016)
ABA Health Lawyer, 29(2)

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National Position Statements

IS Medicinal (as of Dec. 2016):

1. American Nurses Association
2. U.S. Pain Foundation



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Medical Marijuana Research

Probably Beneficial

1. Appetite stimulant ← Likely attributable to THC
2. Reduction of nausea

Proof of Concept

1. Neuropathic or cancer pain ← Likely attributable to CBD
2. Spasticity associated with multiple sclerosis



Probably Harmful

1. Substance use disorders
2. Anxiety, depression, or PTSD
3. Psychotic disorders including schizophrenia
4. Sleep disorders and insomnia
5. Immune suppression disorders
6. Male infertility or sperm immotility

Insufficient or No Evidence

1. Epilepsy
2. Glaucoma
3. Alzheimer's, Parkinson's, or Tourette's syndromes
4. Autism
5. Urinary tract or gastrointestinal disorders
6. Any other illness or disorder . . .

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Foreseeable Harms

- Impaired driving skills for up to three weeks
- Relapse to other drugs of abuse
- Treatment attrition and termination from drug court
- Worsening of psychiatric symptoms
- Mixed evidence of association with crime and violence

Physician Responsibilities

- Continuing education on marijuana and participant's specific condition(s)
- Personally examine the participant and provide ongoing treatment or formal consultation
- Diagnosis, prognosis, planned course of treatment, and milestones for progress
- Risks, benefits, and likelihood of success compared to other treatments for same condition
- Prior response to approved treatments or reason for forgoing approved treatments
- Informed consent akin to experimental treatments
- Maintain adequate medical records to permit peer review and regulatory oversight

<h2>Malpractice Liability?</h2>	
<ul style="list-style-type: none">• Medical marijuana statutes are not a shield• Statutory requirements are a floor, not a ceiling• Marijuana recommendation or certification almost certainly creates a doctor/patient relationship and concomitant duty of care• Standard of care (local custom OR reasonable physician standard)• Professional practice guidelines, position statements, and scientific studies (hearsay?)• Two schools of thought doctrine• Informed consent (material information)• Causality (the back door for scientific consensus)• Generally known information and common misconceptions	

<h2>Summary</h2>	
<ul style="list-style-type: none">• Medical marijuana statutes are <u>not</u> dispositive of treatment court practices• Reasonable to assume a Rational Basis Test applies (in decriminalized states)• Listen to the medical and scientific facts, and balance the reasonably foreseeable risks and benefits• Leave your political and social beliefs at home!• Explain your decisions• Develop working relationships with competent and informed physicians in your community	
