

 Council on Licensure,
Enforcement and Regulation



2012 Annual Educational Conference - September 6-8
San Francisco, California

**Medical Marijuana:
Challenges of the
Investigative Process**

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Promoting Regulatory Excellence


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**Medical Marijuana
Challenges of the
Investigative
Process**


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 **Evolution of medical marijuana in
Colorado**

- Use approved by Colorado voters on
November 7, 2000
- Law took effect June 1, 2001
- Law designed to allow individuals suffering
from a "debilitating medical condition" to
use MMJ


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Evolution -- continued


- Debilitating medical condition defined as:
 - Cancer, glaucoma, positive status for HIV/AIDS; cachexia (clinical wasting syndrome); severe pain; severe nausea; seizures; including those characteristic of epilepsy; and, persistent muscle spasms (i.e., MS).

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- Patient definition
 - Person who has a debilitating medical condition
- Physician definition
 - **Doctor of medicine** who maintains, in good standing, a license to practice medicine issued by the State of Colorado


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2010 legislative additions to MMJ

- In 2010, bill introduced in legislature that addressed what a bona fide physician-patient relationship was. It included:
 - Having a treatment or counseling relationship; during which physician has completed a full assessment of patient's medical history and current medical condition, including an appropriate personal physical examination.


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2010 legislative additions -- continued

- Physician has consulted with the patient with respect to patient's debilitating medical condition before patient applies for registry identification card; and
- Physician is available to or offers to provide follow-up care and treatment to the patient, to determine the efficacy of the use of MMJ for the patient's debilitating medical condition.


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2010 legislative additions -- continued

- State statute also outlines what requirements a physician, who certifies a debilitating medical condition to the MMJ program, shall comply with. They include:
 - Physician shall have a valid, unrestricted CO license to practice medicine, which license is in good standing.


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2010 legislative additions -- continued

- In addition:
 - Physician shall maintain a record-keeping system for all patients to whom he has recommended MMJ.
 - Pursuant to an investigation, shall produce such medical records to the Board of Medical Examiners **after redacting any patient or primary caregiver identifying information.**


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Other MMJ Facts

- Patients prohibited from using MMJ in public, in the workplace, while driving, or in any way that endangers the health or well-being of others.
- Class 1 misdemeanor to fraudulently represent a medical condition; to fraudulently use or steal a card; to fraudulently produce or tamper with a card, or to breach the confidentiality of the Registry.


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A Law Enforcement MMJ Fact

- Patients and designated caregivers (combined) are allowed to possess up to 2 ounces of usable marijuana, and grow up to 6 plants, with no more than 3 of those being flowering, mature plants. A patient or caregiver may raise an affirmative defense that more marijuana was medically necessary if they are in possession of more than the amounts listed above.


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Other MMJ Facts -- continued

- Minors can apply for a certification, but two physicians must certify that they have a qualifying disability, and the minor must designate a parent or legal guardian who resides in Colorado as their caregiver.
- Law Enforcement can only use the Registry as a verification tool.


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Statistics for MMJ Registry Program

- January 31, 2009:
 - **6,369** new patient applications received since the registry began operating in June 2001.
- July 31, 2009:
 - **13,102** new patient applications received since registry began operating.


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Statistics for MMJ Registry Program

- November 2009:
 - **33,614** new patient applications received since registry began operating.
- December 2009:
 - **43,769** new patient applications received since registry began operating.


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Statistics - continued

- **Why the sudden jump?**
 - **October 19, 2009**
 - Attorney General Eric Holder Jr. directed federal prosecutors to back away from pursuing cases against medical marijuana patients.


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Statistics -- continued

- May 31, 2012:
 - **180,925** new patient applications received since the registry began operating in Colorado.
 - **98,910** is total number of patients who have current, valid Registry ID cards.


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Statistics -- continued

- **Statistical breakdown**
 - **68%** are male
 - **42** is the average age
 - **56%** reside in the greater Denver metro area


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Statistics -- continued

- **94%** of all reported conditions are for "severe pain"
 - **17%** are for "muscle spasms"
 - **12%** are for severe nausea
 - **3%** are for cancer
 - **2%** are for seizures
 - **1%** are for cachexia
 - **1%** are for glaucoma
 - **1%** are for HIV/AIDS


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Types of MMJ cases investigated

- Junior has the GERD?
- 28 week pregnant female with “severe pain” from a broken nose, years prior, and “non-specific back pain” ?
- Snowboarders driving up to snowboard, but diagnosed with “severe pain”?
- 20 year old on probation for selling drugs. However diagnosed with severe pain and given MMJ recommendation, which was against probation requirements to be drug free?


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Types of MMJ cases investigated

- Undercover officers who went in and asked for certification, just to have a “get out of jail free card”?
- Physicians signing blank certification forms, but allowing nurses and nurse practitioners to do the “exams”?


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Types of MMJ cases investigated

- How many plants? Although statute says 6 plants, physicians writing for 60-90 plants?
- You certified my husband, an individual with life long addiction problems and for a knee injury sustained 30 years ago?


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Other MMJ cases investigated

- Department of Health sent names of top five physicians who made the greatest number of MMJ recommendations between July 1, 2010 and January 28, 2011.
- Together, these physicians were responsible for over 22% of all active MMJ recommendations in Colorado, while representing less than 0.05% of all physicians making medical marijuana referrals.


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Other MMJ cases investigated -- continued

- Dr. A = 2,278 or 6.54% of total recommendations during that period.
- Dr. B = 1,502 or 4.31% of total recommendations during that period.
- Dr. C = 1,501 or 4.31% of total recommendations during that period.


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Other MMJ cases investigated -- continued

- Dr. D = 1,347 or 3.87% of total recommendations during that period.
- Dr. E = 1,257 or 3.61% of total recommendations during that period.
- Total applicants during that time frame = 34,817
- Total physicians recommending during that time frame = 732


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What is Medical Board's approach to these cases?

- Look at cases by standard of care and unprofessional conduct. Unprofessional conduct defined as:
 - Any act or omission which fails to meet generally accepted standard of medical practice.
 - Failure to comply with requirements of the state constitution as it relates to MMJ
 - Failure to comply with the state health agency rules

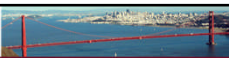
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Medical Board's approach -- continued

- So what have been some of the outcomes?
 - So far, 3 physicians have permanently surrendered their medical licenses.
 - Two because of substandard practice in relation to MMJ
 - One because he was a MMJ card holder himself, and he decided he'd rather smoke MMJ than be a doctor


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Challenges faced in investigations

- Patient confidentiality requirement interferes in our ability to follow-up with patient to ascertain if they received a complete exam.
- Patients don't want to lose their certification, so will not cooperate in investigation.
- Exams are conducted in motel rooms and travel trailers.


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Challenges -- continued

- Physician names not always known to the patient.
- Staying away from the political issues and concentrating on whether an appropriate physician-patient relationship was established or maintained.


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Challenges -- continued

- Working with law enforcement on ways to best support each other's efforts.
- Working with a MMJ Division that is responsible for licensing growers and dispensaries. Have seen friction occurring between law enforcement and this new Division.


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Challenges -- continued

- Hesitancy on the part of both law enforcement and the medical marijuana division in recognizing that the beginning point in all of this is the initial physician-patient relationship.
- This is a big money making business on all sides and people protect their interests.


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Challenges -- continued

- No specific standards as to:
 - How many MMJ recommendations are acceptable/normal for one physician to make within a specific period of time.
 - No specified amount for “edible” plant possession.

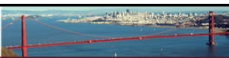
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Challenges -- continued

- Even though statute states 6 --
It also says “a patient or caregiver may raise an affirmative defense that more marijuana was medically necessary if they are in possession of more than the amounts listed above.”


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Challenges - continued

- District Attorneys who don't want to push on the issue of plant numbers. Reasoning:
 - Physicians can't/don't tell us how to practice law
 - We can't/don't tell them how to practice medicine
- Appointment books are maintained by the MMJ clinics, not the physician.


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Places to look during investigation

- The web - have found interesting interviews with our physicians out on web
- Face Book
- Newspaper advertisements
- Gathering records from subsequent treating providers to dispute the “diagnosis” rendered by the MMJ physician


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Places to look -- continued

- Family members- they have often been the complaining party
- Past criminal histories
- Law enforcement


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Sample questions to ask physicians:

- Nature and extent of your medical practice (i.e., specialties, areas of practice)?
- Current location or locations of your medical practice?
- What type [area of practice] is conducted at each location?
- What dates and during what times do you normally see patients at each location or locations?


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Sample questions for physicians -- continued

- Approximately size of your current patient population?
- What percentage of your practice is in MMJ certification?
- Do you routinely ask for medical records for assistance in diagnosing patient? If not, why not?
- Percentage of certifications which are renewals only?


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Sample questions to ask patients

- How many months/years have you possessed a medical marijuana registry card?
- Who did you obtain your most recent registry certification form from (what business or physician did they go to)?
- What was the name of the doctor you saw?
- What is your qualifying "debilitating" condition?
- How long ago did the injury occur and/or how long have you suffered from the diagnosed condition (i.e., AIDS; migraines; multiple sclerosis, etc.)?


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Sample patient questions -- continued

- Who is the name of your primary care physician, or the physician who first diagnosed you with the debilitating condition, or has treated you for this condition?
- Did the physician who filled out the certification form ask you to provide medical records regarding your debilitating condition? If so, did you supply the physician with the requested records?


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Sample patient questions -- continued

- Have you followed up with the physician, who gave you the certification, within the last six months, or seen any other physician or healthcare provider for this condition in the last six months? If not, why not?

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Challenges of the Investigative Process

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