

Pharmacists' Role Under Pennsylvania's New Medical Marijuana Law

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Pennsylvania's new medical marijuana law, while controversial, offers the mitigation of pain and suffering which could enhance the quality of life of many Pennsylvanians with serious medical issues. Important for pharmacists is that the new law will allow employment opportunities and potential business development. This article will address opportunities for pharmacists under Pennsylvania's new medical marijuana law.

1. The Pharmacists' Role at a Dispensary

The most direct involvement of a pharmacist will be at the "Dispensaries" which will dispense the medical marijuana. The law requires that a physician or pharmacist be on site at all times during the hours when a registered Dispensary is open (the only exception being that where a Dispensary has multiple locations, a physician assistant or certified nurse practitioner may be at the other sites).¹ Pharmacists will need to take a course, which will be developed by the Pennsylvania Department of Health, and which will focus on the latest scientific research on medical marijuana, including its risks and benefits, prior to working at a Dispensary. Under the new law, the Board of Pharmacy is to approve the course developed by the Department of Health for continuing education credits for pharmacists.²

2. Can a Pharmacy be a Medical Marijuana Dispensary?

The Department of Health has been tasked with regulating medical marijuana and the institutions which dispense it, and more specific guidelines are forthcoming (there is a six-month

¹ Section 801(b)

² Section 301(a)(6)

deadline according to the law). But, where the law requires a pharmacist to be at the Dispensary at all times during its operation, might a pharmacist be a logical operator of a Dispensary?

Dispensaries will be located at indoor, enclosed, secure facilities located within the Commonwealth.³ Dispensaries cannot operate on the same site as a facility used to grow or process medical marijuana. A Dispensary cannot be within 1,000 feet of the property line of a public, private or parochial school or daycare center, although the Department of Health can amend this provision if necessary to provide adequate access to patients.⁴

Most pharmacies are “indoors” and “enclosed.” Whether they would be considered “secure” will depend on the regulations. Security is one of the areas the legislature has specifically instructed the Department of Health to regulate. The primary security goal appears to be the prevention of diversion of the medical marijuana outside of its intended purpose, and security against theft is also likely to be a heavy consideration.⁵ Existing pharmacies likely already have security in place to prevent diversion of prescription drugs to unintended recipients. Additional security measures for medical marijuana are likely, but it may not be a stretch for pharmacies to upgrade or modify current security measures to meet the security requirements of the Department of Health. An added business opportunity is that the Dispensary may also sell medical devices and instruments needed to administer medical marijuana.⁶

As can be predicted, those applying for Dispensary registrations will be closely vetted. Not only is the applicant required to disclose certain information and submit to federal and state background checks, but so must “Financial Backers” (defined as investors, mortgagees, bondholders, noteholders or those who have been the source of equity, capital or other assets to

³ Section 802(a)(1)

⁴ Section 802(a)(2), (3)

⁵ Section 301

⁶ Section 802(a)(4)

an applicant, with the exclusion of financial institutions) and “Principals” (defined as officers, directors, persons with beneficial interests in or ownership of the securities of the applicant, those having a controlling interest, or who can elect a majority of the board of directors or otherwise control the applicant, other than financial institutions).⁷ There is a flat prohibition against involvement in a Dispensary by Financial Backers, Principals and employees who have been convicted of any criminal offense related to the sale or possession of illegal drugs, narcotics or controlled substances.⁸

Geographical regions will be considered in the allotment of Dispensary licenses,⁹ and there will be diversity goals that the Department of Health will enforce to promote participation by diverse groups in the activities authorized under the law.¹⁰

Perhaps the most challenging aspect in obtaining a Dispensary license are the fees. There is a non-refundable \$5,000 fee which must accompany the registration application.¹¹ Pharmacists will also need to submit a \$30,000 fee with the application for each location for which they seek a permit. The \$30,000 fee is refundable if the Dispensary application is rejected by the Department of Health. Every year there will be a \$5,000 renewal fee which is returned if the renewal is not granted.¹² The Dispensary applicant will also have to demonstrate that it possesses \$150,000 in capital on deposit with a financial institution. At first blush, established, financially-secure pharmacists may be likely applicants for a license, but the ability for applicants to secure support from qualified “Financial Backers” opens the door to pharmacists to create partnerships with those willing to invest in a Dispensary.

⁷ Section 103

⁸ Section 614

⁹ Section 603(D)

¹⁰ Section 615

¹¹ Section 708(G)2)

¹² Section 607(2)(I)-(III)

3. Pharmacies Participating in a Medical Marijuana Research Program

Pharmacists outside of the Dispensary setting may also have involvement with medical marijuana. Pharmacies may dispense medical marijuana if they are involved with a “Healthcare Medical Marijuana Organization.” This is defined as a “vertically integrated healthcare system approved by the Department of Health to dispense medical marijuana in accordance with a research study set up under the new law.” A “vertically integrated health system” is a “health delivery system licensed under the Healthcare Facilities Act in which the complete spectrum of care, including primary and specialty care, hospitalization and pharmaceutical care, is provided within a single organization.”

Under the new law, there will be the opportunity for research studies for serious medical conditions, as defined under the new law. These research study opportunities will be made available to universities in the Commonwealth and will involve Healthcare Medical Marijuana Organizations in support of these research programs.¹³

A pharmacy involved in a Healthcare Medical Marijuana Organization, in conjunction with a research study, even though not a licensed Dispensary, may come into contact with medical marijuana in the research context.¹⁴

4. The Elephant in the Room

While the medical marijuana law comes with a great deal of excitement, there is an underlying uneasiness. Marijuana, regardless of whether it is legalized for medicinal purposes, is still an illegal substance under federal law. Thus, in the eyes of the federal government, the

¹³ Section 1903

¹⁴ Section 1905

dispensing of medical marijuana remains illegal. Many pharmacists may ask whether it is ethical to dispense a substance the federal government deems illegal; whether their license will be placed at risk for dispensing a federally prohibited drug; or whether the federal government will prosecute a pharmacist involved with a Dispensary and seize the medical marijuana.

Absent a change to federal law, this uneasiness is likely to continue. The United States Department of Justice (“DOJ”) has adopted a policy which does not identify prosecution of those growing or distributing medical marijuana in accordance with state law as a priority and appears content with allowing states with strong regulatory schemes to monitor and enforce state laws at the state level. However, the DOJ has cautioned that the federal government will not tolerate lax enforcement of state regulations and that it reserves the right to challenge state regulations that it deems insufficient in controlling the distribution of medical marijuana.¹⁵

In 2015, Congress prohibited the DOJ from expending taxpayer funds "to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."¹⁶ Since the language was contained in a spending bill, it expired at the close of the 2015 fiscal year, but was, again, included in the Consolidated Appropriations Act of 2016.¹⁷ Thus, there appears to be Congressional support for federal law enforcement to stay out of properly administered state medical marijuana programs.

The above, however, are policy statements and temporary restrictions on governmental spending that need to be renewed every year. Absent something more permanent, these policies and restrictions will likely ebb and flow based on the President and/or party in control.

Pharmacists will have to closely monitor policy developments in Washington.

¹⁵See <https://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy>

¹⁶ See Public Law 113-235, Section 538.

¹⁷ See Section 542.

As for pharmacists struggling with the ethics and the risk to their licenses, the law contains strong language prohibiting discipline, prosecution or penalty against Pennsylvania pharmacists legally dispensing medical marijuana.¹⁸ Additionally, the legislature has granted pharmacists a large roll in the overall medical marijuana program in Pennsylvania. In addition to what has been described above, the chair of the State Board of Pharmacy will occupy a slot on the newly-created Medical Marijuana Advisory Board which will have an important part in the future development of the law and regulations pertaining to medical marijuana.¹⁹ Finally, the American Pharmacists' Association also adopted the following policy statement at its 2015 House of Delegates: "APhA supports pharmacist participation in furnishing cannabis and its various components when scientific data support the legitimate medical use of the products and delivery mechanisms, and federal, state, or territory laws or regulations permit pharmacists to furnish them." There is certainly support for pharmacist participation in the medical marijuana program at the state level.

Federal government uneasiness, however, enters here as well. The Drug Enforcement Administration (DEA) plays a large role in a pharmacist's dispensing habits through its issuance of licenses to dispense controlled substances. Might the DEA crack down on those pharmacists dispensing medical marijuana legalized in Pennsylvania by yanking DEA licenses? Since the DEA is under the supervision of the DOJ, one would expect, at this time, for a pharmacist's DEA license to be safe, particularly considering the DOJ's spending limitations. But, the same caveats described above as to sudden shifts in federal government policies apply here as well.

5. Conclusions

¹⁸ See Section 2103(a).

¹⁹ Section 1201.

Federal law enforcement against those who dispense medical marijuana will need to be monitored by pharmacists. While law-abiding pharmacists appear safe for now, policy changes could result in different challenges. Aside from that serious concern, Pennsylvania's new medical marijuana law will provide job opportunities for pharmacists and considering a pharmacist's training and the requirements of the law, it would appear that pharmacists might make logical owners of Dispensaries. Rigorous application procedures and financial requirements will be required and the application process is likely to be highly competitive. Further information on the requirements to apply for a Dispensary license are forthcoming in the next several months. Finally, those pharmacists in designated healthcare systems that participate in research studies may also come into contact with medical marijuana.