



Governor Brian Schweitzer

Montana

Department of Labor and Industry

Business Standards Division

MONTANA BOARD OF MEDICAL EXAMINERS

Medical Marijuana: Physician's Written Certification for Medical Marijuana and the Bona Fide Physician-Patient Relationship

In 2004 Montana voters approved the use of medical marijuana through the passage of Initiative 148 which was codified as The Medical Marijuana Act ("The Act") in Title 50, Chapter 46. The Act permits individuals to grow, possess and use marijuana to treat certain chronic medical conditions, and permits other individuals, called caregivers, to grow, possess and transfer marijuana to designated clients who are certified to use marijuana for medical conditions. According to the Act, in order for a person to be permitted to use marijuana for a medical condition, a Montana-licensed doctor of medicine or osteopathy must conduct a proper medical evaluation and certify that the person has one of the conditions specified or the patient must present his or her medical record to the Department of Public Health and Human Services which enforces the Act.

The mission of the Board of Medical Examiners is to protect the public by ensuring that physicians are properly trained and provide medical services within their scope of competence. *The Board of Medical Examiners takes no position on the general suitability of marijuana in the treatment of medical disorders*, but does have an obligation to protect the public by ensuring that physicians provide medical services via a bona fide physician-patient relationship that meet the generally accepted standards of care.

The Board of Medical Examiners is concerned about reports of physicians who are certifying patients to use marijuana for medical conditions in a mass screening format and physicians who are conducting certifying evaluations exclusively through Internet consultations.

It is the Board of Medical Examiners' position that the certification of an individual to use marijuana for a medical condition requires the same standard of care as required when any conventional medication is prescribed. The Medical Marijuana Act requires the physician to conduct a "full assessment" as part of "a bona fide physician-patient relationship." (MCA 50-46-2101(11)). Therefore, a physician who certifies a patient for medical marijuana is held to the same generally accepted standards of care as apply to every other medical practice.

Generally accepted standards of care in any treatment process require the following in an amount adequate and appropriate to the patient, condition and treatment under consideration:

- Taking a medical history
- Performing a relevant physical examination
- Reviewing prior treatment and treatment response
- Obtaining and reviewing relevant diagnostic test results

- Discussing advantages, disadvantages, alternatives, potential adverse effects and expected response to the treatment recommended, and ensuring that the patient understands them
- Monitoring the response to treatment and possible adverse effects
- Creating and maintaining patient records
- Notifying the patient's primary care physician when appropriate

Consistent with 50-46-201(4), MCA, the Board of Medical Examiners will not apply a higher or special standard of care to the certification of individuals to use marijuana for medical conditions. Neither will the Board apply a lesser or special standard. If the physician fails to meet the generally accepted standards of practice when certifying a patient to use marijuana for a medical condition, the physician may be found to be practicing below the acceptable standard of care and subject to disciplinary action for unprofessional conduct.

The Board cautions physicians that a mass screening format or group evaluations, whether for student athletes or those desiring medical marijuana, inherently tend towards inadequate standards of care. A physician involved in mass screening settings or clinics offering group evaluations for medical marijuana certification must meet the standard of care which the people of Montana rightfully expect and deserve.

Similarly, a written certification provided after a patient evaluation conducted exclusively through currently available electronic methods or the Internet may be inadequate to evaluate the complex medical conditions for which marijuana is an approved therapy. The practice of telemedicine in Montana requires a Montana license and adherence to the same standards of care as required of all Montana-licensed physicians.

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