MEDICAL CANNABIS

NOTE: On November 6, 2012, voters in Washington State approved an initiative which would legalize small amounts of marijuana for most adults, and impose a tax on the sale of marijuana.[1] At this time, the effect of passage of the initiative on the authorization of medical cannabis is not known. This Legal Guide will be updated as soon as new information becomes available.

Does Washington law permit the medical use of cannabis?

Yes. In November 1998, the people of the State of Washington passed Initiative 692, allowing some patients with certain terminal or debilitating conditions, under the care of their physician, to produce, possess, and use a limited amount of marijuana for medical purposes. In 2011, the legislature changed the requirements for providing medical cannabis recommendations to qualifying patients by passing ESSB 5073.

It is still against federal law, however, to distribute or manufacture cannabis, or to possess it with intent to distribute or manufacture.[2] There is no medical necessity exception to those federal law prohibitions. Cannabis is currently classified as a Schedule I drug, meaning that it has no generally recognized medical use.

The Department of Health has developed a list of Frequently Asked Questions about requirements and practice standards when recommending medical cannabis.[3]

Who can recommend the use of medical cannabis?

The following health care providers may recommend medical marijuana (cannabis):[4]

- Medical doctors (MDs)
- Physician assistants (PAs)
- Osteopathic physicians (DOs)
- Osteopathic physician assistants (OPAs)
- Naturopathic physicians (NDs)
- Advanced registered nurse practitioners (ARNPs)

What patients qualify for medical use of cannabis?

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[1] http://sos.wa.gov/_assets/elections/initiatives/i502.pdf
[2] 21 U.S.C. §§811, 841
[3] See http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/MedicalMarijuanaCannabis/HealthCareProvidersFrequentlyAskedQuestions.aspx (Current as of August 18th, 2012)
[4] RCW 69.51A.010(2).

To qualify for medical use of cannabis, a patient:[5]

- Must be under the care of a health care professional licensed in Washington State.

- Must be diagnosed by that physician as having one of the following terminal or debilitating conditions:[6]

    - Cancer.
    - Human immunodeficiency virus (HIV).
    - Multiple sclerosis.
    - Epilepsy or other seizure disorder.
    - Spasticity disorders.
    - Intractable pain, limited for purposes of the medical cannabis law to mean pain unrelieved by standard medical treatments and medications.
    - Glaucoma, either acute or chronic, limited for the purposes of the medical cannabis law to mean increased intraocular pressure unrelieved by standard treatments or medications.
    - Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications.
    - Hepatitis C with debilitating nausea and/or intractable pain unrelieved by standard treatments or medications.
    - Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, and/or spasticity, when those symptoms are unrelieved by standard treatments or medications.
    - Chronic renal failure[7].
    - Such other conditions as may be approved by the Medical Quality Assurance Commission (MQAC)

- Must have been a resident of Washington State at the time of diagnosis.

- Must have been advised by the health care professional of the risks and benefits of the medical use of cannabis.

- Must have been advised by the health care professional that he or she might benefit from the medical use of cannabis.

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[5] RCW 69.51A.010(4).
[6] RCW 69.51A.010(6).
[7] Chronic renal failure was added by petition in 2010. [2010 c 284 § 2] See *Final Order on Petition for Inclusion of Chronic Renal Failure Requiring Hemodialysis as a Terminal or Debilitating Condition Under RCW 69.50A.010(4) (2010).* http://www.doh.wa.gov/portals/1/Documents/2000/RenalFailure.pdf.

Note that a healthcare provider cannot have a business or practice which consists solely of authorizing the medical use of cannabis or include any statement or reference on the medical use of cannabis in advertisements.[8] The law also restricts a healthcare provider from benefiting in certain ways for recommending medical cannabis.

Who is a "designated provider" under Washington law, and what may a "designated provider" do"

Designated providers must be 18 years of age or older, have been designated in writing by a patient to service as the designated provider, are prohibited from consuming marijuana obtained for the personal medical use of the patient, and is the designated provider to only one patient at any one time.[9] The designated provider may possess cannabis within statutory limits for use by a qualifying patient.[10]

What risks are there to recommending medical marijuana (cannabis) to a qualifying patient?

State law establishes provider immunity against prosecution when appropriately recommending medical use of cannabis,[11] but not federal law. Failure to adhere to state law requirements exposes the healthcare provider to risk of prosecution under state law and may also result in disciplinary action by the licensing authority.[12] Healthcare providers might also incur other penalties from privileging hospitals, medical malpractice insurers or certification boards.

What are the requirements for providing a recommendation?

The requirements for providing a recommendation are: [13]

- The patient must have a new or existing documented relationship with a primary care provider or specialist relating to the diagnosis and ongoing treatment or monitoring of the patient's terminal or debilitating medical condition.[14]
- The provider may only provide a recommendation after:[15]
    - Completing a physical examination;
    - Documenting the terminal or debilitating medical condition in the patient's medical record and that the patient may benefit from treatment of the condition or its symptoms with the medical use of cannabis;

[8] RCW 69.51A.030(2)(b).
[9] RCW 69.51A.010(1).
[10] See RCW 69.51A.040.
[11] RCW 69.51A.030.
[12] See RCW 18.130.180.
[13] RCW 69.51A.030(1).
[14] RCW 69.51A.030(2)(a)
[15] *Id*.

- Informing the patient of other options for treating the terminal or debilitating condition; and
- Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve medical cannabis.

How much cannabis may a qualifying patient possess?

The law is not very specific;[16] it only states that a qualifying patient or designated provider may possess no more than fifteen (15) cannabis plants and (i) no more than twenty four(24) ounces of useable cannabis; or (ii) no more cannabis product than what could reasonably be produced with no more than twenty four (24) ounces of useable cannabis; or a combination of useable cannabis and cannabis product that does not exceed a combined total of twenty four (24) ounces of useable cannabis. If an individual is both a qualifying patient and a designated provider for another qualifying patient, the individual can possess no more than twice the amounts described above.

What does the medical cannabis law allow a physician to do?

The medical cannabis law exempts physicians from state criminal laws, and protects physicians from being penalized or denied any right or privilege under state law, for:[17]

- Advising a qualifying patient about the risks and benefits of medical use of cannabis.
- Advising a qualifying patient that he or she may benefit from the medical use of cannabis where such advice and use is within a professional standard of care or appropriate in the individual physician's medical judgment.
- Providing a qualifying patient with valid documentation, based upon the physician's assessment of the qualifying patient's medical history and current medical condition, that the potential benefits of the medical use of cannabis would likely outweigh the health risks for the particular qualifying patient.

Under the medical cannabis law, may physicians prescribe cannabis?

Physicians or the other authorized licensed health care professionals must not prescribe marijuana. It is prohibited under federal law to knowingly or intentionally distribute, dispense or possess marijuana.[18] The terms "distribute" and "dispense" have been broadly interpreted, and physicians and the other authorized licensed health care professionals may be found in violation of federal law for writing a prescription for a substance, such as marijuana, for which federal law has no recognized medical use.[19] Violation of federal laws can bring significant penalties,

[16] RCW 69.51A.040(1)(a).
[17] RCW 69.51A.030
[18] 21 U.S.C. § 841(a).
[19] See *United States v. Cannabis Buyer's Corp.* 523 U.S. 483, 491 (2001).

including imprisonment and fines.[20] In addition, violating federal law (or aid and abet in its violation) may result in other federal sanctions, such as a revocation of a health care provider's DEA registration.[21]

Must a physician authorize the use of medical cannabis?

No, nothing in the medical cannabis law requires any physician to authorize the use of medical cannabis for a patient.

If a physician wishes to authorize the use of medical cannabis for a qualifying patient, what documentation should the physician give the patient?

Under the medical cannabis law, valid documentation is a statement signed by the qualifying patient's physician, or a copy of the patient's pertinent medical records, that states that, in the physician's professional opinion, the potential benefits of the medical use of cannabis would likely outweigh the health risks for the patient.[22]

How should a physician prepare a recommendation for medical cannabis?

Recommendations must include information required in the law and must be written on tamper-proof paper.[23] The paper must meet one or more of the following industry-recognized features: [24]

- One or more features designed to prevent copying of the paper; or
- One or more features designed to prevent the erasure or modification of the information on the paper; or
- One or more features designed to prevent the use of counterfeit valid documentation.

Also, a sample form for a recommendation entitled, "Documentation of Medical Authorization to Possess Cannabis for Medical Purposes in Washington State" may be obtained from the WSMA, www.wsma.org/medical-cannabis.

Can a physician own or have an interest in a medical cannabis enterprise

No. A physician who recommends the use of medical cannabis to qualifying patients may not have an ownership interest in a medical cannabis enterprise.[25]

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[20] 21 U.S.C. § 841(b).
[21] 21 U.S.C. § 824(a).
[22] RCW 69.51A.010(7)(a); RCW 69.51A.030(1).
[23] RCW 69.51A.010(5), (7)(a).
[24] RCW 69.51A.010(5).
[25] RCW 69.51A.030(2)(b)(vi). See also; http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/MedicalMarijuanaCannabis/HealthCareProvidersFrequentlyAskedQuestions.aspx#10 (Current as of August 17th, 2012).

Are there any other Washington laws dealing with the therapeutic use of cannabis?

Yes, the Controlled Substances Therapeutic Research Program Act, which established the Washington State Controlled Substances Therapeutic Research Program, administered by the Department of Health.[26]

Is participation in the Controlled Substances Therapeutic Research Program limited?

Yes. Participation in the program is generally limited to cancer chemotherapy and radiology patients and glaucoma patients who are certified by a physician as being involved in a life-threatening or sense-threatening situation.[27] No patient may be admitted to the Controlled Substances Therapeutic Research Program without full disclosure by the physician of the experimental nature of the program and of the possible risks and side effects of the proposed treatment.[28]

How can a patient qualify to participate in the Controlled Substance Therapeutic Research Program?

In order to receive cannabis for therapeutic use, a patient and the patient's physician must apply to the Patient Qualification Review Committee for approval to participate in the Controlled Substance Therapeutic Research Program.[29]

[26] Title 69.51 RCW.
[27] RCW 69.51.040(2).
[28] *Id*.
[29] RCW 69.51.040(2).