Cannabis Patients United Position on Bona Fide Physician-Patient Relationship

Introduction

A central part of the Michigan Medical Marihuana Act (MMMA) requires that for an individual to qualify as a "patient" under the MMMA, the individual must obtain a "…document signed by a physician, stating the patient's debilitating medical condition, and stating that in the physician's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana…"(MCL 333.26423). The MMMA further states (MCL 333.26424, 4(f)) that the physicians professional opinion is the result of "...a bona fide physician-patient relationship."

Cannabis Patients United believes that the final arbiters of a bona fide physician-patient relationship are the state licensing agencies and professional medical associations. We will reference the existing body of literature that already defines a "bona fide physician-patient relationship" and offer the framework as to how that should be applied to establish that a physician, licensed by the State of Michigan, has a bona fide relationship with a patient that he/she has recommended to use medical marijuana in accordance with the MMMA.

Cannabis Patients Uniteds' objective is to present an outline of a bona fide physician patient relationship in the context of a licensed physician conducting an examination of a patient and recommending a treatment plan to suit their patients medical needs. We believe that a bona fide physician-patient relationship should be uniformly interpreted and applied without prejudice to all physicians.

Discussion

The Michigan Medical Marihuana Act (MMMA) establishes that a "written certification" from a licensed physician is required for a person to be listed in the state registry as being allowed to possess and use medical marijuana (MCL 333.26423 (l)). The MMMA also references some details regarding the conduct of the medical exam and the parties responsible for policing the physician's conduct…

MCL 333.26424 (f) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of ***a bona fide physician-patient relationship*** *and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.*

The term of art, "bona fide physician-patient relationship" is left undefined in the MMMA.

Specific to the State of Michigan and the issue of medical marijuana there are three essential sources that can form the framework for defining a "bona fide physician-patient relationship". One is the American Medical Association, two, the Federation of State Medical Boards, and three, the Medical Board of California.

The American Medical Association(AMA) is the professional association for physicians in the United States. They represent over 228,000 member physicians and have been in existence for over 160 years. While the general public may be most familiar with the AMA thru their numerous scientific studies, their Mission Statement focuses on three core values, one which is "Ethical Behavior".

The AMA's approach to defining "Ethical Behavior" in the area of physician/patient relationships is of a philosophical nature. They recognize that an individual accepted into their ranks has withstood years (internship and residency) of hands on testing by skilled professional physicians. The result is that AMA in the area of "Patient-Physician relationships" provides a simple framework definition. Their statement on this subject was in June 2001. It states:

AMA OPINION 10.015 – THE PATIENT-PHYSICIAN RELATIONSHIP

The practice of medicine, and its embodiment in the clinical encounter between a patient and a physician, is fundamentally a moral activity that arises from the imperative to care for patients and to alleviate suffering.

A patient-physician relationship exists when a physician serves a patient's medical needs, generally by mutual consent between physician and patient (or surrogate)*….. The relationship between patient and physician is based on trust and gives rise to physicians' ethical obligations to place patients' welfare above their own self interest and above obligations to other groups, and to advocate for their patients' welfare.*

…Within the patient-physician relationship, a physician is ethically required to use sound medical judgment, holding the best interests of the patient as paramount.

Cannabis Patients United believes that the policy set forth by the AMA in 2003 to address a patient-physician relationship in the context of Internet Prescribing addresses the goals and objectives of when a bona fide relationship exists. This policy was acknowledged and adopted by the Michigan Board of Medicine.

The American Medical Association (AMA) issued "Policy H-120.949 Guidance for Physicians on Internet Prescribing", which states, in part:

The physician shall:
(i) obtain a reliable medical history and perform a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying conditions and/or contraindications to the treatment recommended/provided;
(ii) have sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment(s);
(iii) as appropriate, follow up with the patient to assess the therapeutic outcome;
(iv) maintain a contemporaneous medical record that is readily available to the patient and, subject to the patient's consent, to his or her other health care professionals; and
(v) include the electronic prescription information as part of the patient medical record.

Exceptions to the above criteria exist in the following specific instances: treatment provided in consultation with another physician who has an ongoing professional relationship with the patient, and who has agreed to supervise the patient's treatment, including use of any prescribed medications; and on-call or cross-coverage situations."

The Federation of State Medical Boards (FSMB) has been in existence for nearly 100 years and is regularly looked to as a source of medical regulation as well as policy and standards development. In its policy and standards role, the FSMB has developed a policy on the "Use of Controlled Substances for the Treatment of Pain". Cannabis Patients United believes that although this is directed towards "prescription" medications and the management of "prescription narcotics", it offers some insight into a bona fide patient-physician relationship.

The guidelines provided by FSMB are:

1. Evaluation of the Patient – Medical history and physical exam
2. Treatment Plan – Written treatment plan w/ stated objectives
3. Informed Consent - Explain risks and benefits of the use of a controlled substance
4. Periodic Review – Periodic review of effectiveness
5. Consultation – Refer the patient for other treatment as necessary
6. Medical Records – Maintain history of treatment
7. Comply with Controlled Substances Laws and Regulations

The U.S. Supreme Court has ruled that doctors may discuss medical marijuana with their patients and may issue written recommendations for its use as part of a comprehensive treatment plan. (Conant vs. Walters, 309 F.3d 629 (2002)).

The Medical Board of California (MBC) has had fifteen years of dealing with the issue of a "Bona Fide Physician-Patient Relationship". After their first eight years of experience dealing with issues of physician certification of medical marijuana users, the Medical Board of California adopted its current standards. These standards include the following:

1. History and Good Faith exam of the patient (in person)
2. Development of treatment plan with objectives
3. Informed consent with discussion of side effects
4. Periodic review of efficacy
5. Consultation
6. Record keeping to support recommendation

The California standards clearly derive from the Federation of State Medical Boards guidelines and have a track record of being accepted as representing a "bona fide physician-patient relationship"

Conclusion

Cannabis Patients United finds that the Patient-Physician relationship has been defined and referenced in numerable sources throughout medical literature. To eliminate potential legal challenges to the efficacy of a "written certification" performed by a physician, we would encourage the Michigan Board of Medicine to promulgate a basic standard. Cannabis Patients United presents our proposed standard to be adopted as an acceptable definition of a bona fide patient-physician relationship.

Cannabis Patients United Proposed Standard

Evaluation of the Patient – Initial evaluations to be performed in person with exceptions allowed for critically ill/immobile individuals. A medical history and physical examination shall be obtained, evaluated and documented in the medical record. The medical record should document the nature of the qualifying condition, past treatment, and the effect of the condition on the patient's physical and psychological condition.

Treatment Plan – A plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function and should indicate if any further diagnostic evaluations or other treatments are planned.

Informed Consent and Agreement for the Treatment – The physician should have sufficient dialogue with the patient, or the patient's surrogate or guardian if the patient is without medical decision-making capacity, regarding treatment options and the risks and benefits of the treatment(s).

Periodic Review- As appropriate, a physician should follow-up with the patient to assess the therapeutic outcome of the treatment, or refer the patient to follow-up with their primary care physician, as needed.

Consultation – The physician should be willing to refer the patient, as necessary, for additional evaluation and treatment in order to achieve treatment objectives.

Medical Records – The physician should keep accurate and complete records that include:

- Medical history and physical exam
- Development of a treatment plan with objectives
- Record of informed consent including discussion or risks, benefits and side effects
- Annual review of treatment efficacy
- Records that support the recommended treatment plan.

Records should remain current and be maintained in an accessible manner and readily available for review.