



Dear Medical Provider,

On December 3, 2018, the Utah State Legislature passed the “Utah Medical Cannabis Act,” which amended the recently-enacted Proposition 2. This new law allows medical providers the option to legally recommend the use of medical cannabis to treat certain qualifying conditions. Because this law is so new, this packet has been prepared to give you a good understanding of the law and the effect it may have on you and your patients.

We have included a brief legal analysis of the law below which answers the following questions:

- 1) What is covered and not covered under this law?
- 2) What is the proper way to recommend medical cannabis?
- 3) What protections do medical providers have if they recommend cannabis?
- 4) How is this law expected to change in the future?

The Utah Patients Coalition has worked tirelessly to give patients access to medical cannabis so that patients who may benefit from its use can do so without fear of prosecution and imprisonment. Although the medical use of cannabis is not appropriate in all circumstances, this law allows patients the option of using cannabis as a treatment when both they and their medical provider believe the patient could benefit.

We hope that since this law is now in effect, you will be open to patients’ questions about whether medical cannabis might be a beneficial treatment option for them. This letter will provide you the information you will need if you decide to recommend medical cannabis. The final page of this packet contains a sample letter you can fill out and provide to your patients. The letter will give your patients more legal certainty and protection so they can use this alternative treatment without being guilty of marijuana possession.

If you have questions about the public policy aspects of medical cannabis or if you would like additional resources that discuss the benefits of medical cannabis, please contact the Utah Patients Coalition at info@utahpatients.org. If you or your patients have questions about the legal requirements and restrictions when possessing and using medical cannabis, please contact Intermountain Legal at 801-970-2800.

Sincerely,

Utah Patients Coalition



LEGAL ANALYSIS OF THE UTAH MEDICAL CANNABIS ACT AS IT RELATES TO MEDICAL PROVIDERS AND PATIENTS

What is covered and not covered under the Utah Medical Cannabis Act?

The Utah Medical Cannabis Act (“UMCA”) is a comprehensive law that governs all aspects of the use, production, distribution, and regulation of medical cannabis in the State. The law went into effect on December 3, 2018, immediately after being signed by the Governor. Although the law is currently in full effect, some aspects of the law will change once the State and the medical cannabis industry have had time to establish adequate systems for production, distribution, and regulation. This is expected to occur by January 1, 2021. Until then, all of the following legal analysis applies.

The UMCA applies specifically to cannabis and cannabis products that are intended for human use and contain tetrahydrocannabinol (“THC”). By definition, cannabis is synonymous with marijuana.¹ The UMCA does not apply to synthetic drugs or drug analogs. It also does not allow for “recreational” use or smoking of marijuana.

As it relates to the treatment of patients, the UMCA governs 1) who may recommend the use of cannabis for medical purposes, 2) in what circumstances a medical provider may recommend the use of cannabis, 3) what legal protections medical providers have when recommending medical cannabis, and 4) what effect a recommendation from a medical provider will have on a person’s possession or use of medical cannabis.

What is the proper way to recommend medical cannabis?

The main purpose of the UMCA is to decriminalize the legitimate use of medical cannabis. The law does this by stating that if certain conditions are met then an individual’s possession of marijuana, THC, or marijuana drug paraphernalia is not illegal. An individual’s possession of cannabis is legal if:

- 1) Before being found in possession, the person had been diagnosed with a “qualifying condition,”²

¹ See Utah Code 26-61a-102(3).

² See Utah Code 58-37-3.7(2)(a)(i)(A).

- 2) Before being found in possession, the person had a pre-existing provider-patient relationship with a medical provider who “believed that the individual’s illness...could benefit from the use in question,”³ and
- 3) At the time the person was found in possession, the cannabis or THC was in “medicinal dosage form” and did not exceed specified limits⁴.

Additionally, in order to be valid under the UMCA, a medical provider recommendation must be made by an MD, DO, APRN, or PA and the medical provider must be licensed in Utah at the time of the recommendation.⁵

Also, in order for the diagnosed illness to be a “qualifying condition,” it must be one of the following⁶:

- Pain lasting longer than two weeks if it is not adequately managed by a non-opioid (e.g. aspirin) or physical intervention (e.g. chiropractic care) after at least two treatment attempts
- HIV or AIDS
- Alzheimer’s disease
- Amyotrophic Lateral Sclerosis (ALS)
- Cancer
- Cachexia
- Persistent nausea (which is not significantly responsive to traditional treatment and is not related to pregnancy, cannabis-induced cyclical vomiting syndrome, or cannabinoid hyperemesis syndrome)
- Crohn’s Disease / Ulcerative Colitis
- Epilepsy / debilitating seizures
- Multiple sclerosis or persistent muscle spasms
- Post Traumatic Stress Disorder (PTSD) which is treated by a licensed mental health therapist and has been diagnosed wither by the VA or through an evaluation by a qualified mental health specialist)
- Autism
- Terminal illness with less than six months life expectancy
- A condition resulting in the patient receiving hospice care
- A rare condition or disease that affects less than 200,000 individuals in the United States and is not adequately managed by a non-opioid or physical intervention.

Currently, under federal and state law, a medical provider is not legally allowed to “prescribe” a specific dosage or treatment regimen. However, the law does allow a medical professional to recommend medical cannabis by stating their opinion or belief that their patient may benefit from a certain type of treatment. Because of this, the UMCA specifies that a person’s medical provider must “believe” that a patient “could benefit” from the use of cannabis in treating his

³ See Utah Code 58-37-3.7(2)(a)(i)(B).

⁴ See Utah Code 58-37-3.7(2)(b).

⁵ See Utah Code 58-37-3.7(2)(a)(i)(B).

⁶ See Utah Code 26-61a-104(2).

or her illness.⁷ This can be done before or after a patient is found in possession of cannabis. Additionally, a verbal recommendation would legally suffice, though it would be more difficult for the patient to prove that the conversation took place. Therefore, it is preferable for a patient to have a written letter before any legal action is commenced. (A sample fill-in-the-blank letter has been attached for your convenience.)

Lastly, independently of their relationship with a medical provider, a patient must ensure that the cannabis they possess is in a “medicinal dosage form”⁸ and that the amount of cannabis does not exceed the limits set by statute⁹. The medicinal dosage form will vary depending on the type of cannabis or cannabis product that is used, and the legal limits are set by statute with the intent of restricting the amount to what would be considered personal use.

In short, for a patient to legally possess cannabis, they must personally ensure that they satisfy all of the legal requirements stated above. In your role as a medical provider, you can help your patient comply with the law simply by 1) verifying that the patient has been diagnosed with one of the qualifying conditions stated above, and 2) indicating you believe that your patient could benefit from the use of medical cannabis in the treatment of a qualifying condition.

What protections do medical providers have if they recommend medical cannabis?

Medical providers and hospitals are protected under federal and state law if they suggest to their patients that they could benefit from the use of cannabis for medical purposes. As long as a medical provider is stating a belief in the potential benefits of cannabis for their patient instead of formally issuing a prescription, the medical provider is protected from adverse legal action which may otherwise stem from the Schedule I nature of cannabis.

In the federal case *Conant v. Walters*¹⁰, which was decided in 2002, the 9th Circuit Federal Court of Appeals had to decide whether the federal government could revoke a physician’s license to prescribe a controlled substance or initiate an investigation which might lead to revocation when the sole basis of the investigation or revocation was the physician’s recommendation for the use of medical marijuana. At the time, the federal government had a policy that a doctor's "action of recommending or prescribing Schedule I controlled substances is not consistent with the public interest” and that such action would lead to revocation of the physician's registration to prescribe controlled substances.

The Court decided that the federal government’s policy interfered with the doctor-patient expression protected by the First Amendment. In short, it ruled that the government cannot

⁷ See Utah Code 58-37-3.7(2)(a)(i)(B).

⁸ See Utah Code 26-61a-102(29).

⁹ See Utah Code 26-61a-502.

¹⁰ *Conant v. Walters*, 309 F.3d 629, Court of Appeals, 9th Circuit (2002).

prohibit the exercise of a doctor's right to recommend medical cannabis and the patient's right to know about the best treatment options available.

In addition to the federal protections stated by *Conant v. Walters*, the UMCA explicitly created protections under state law. The law prohibits the State from imposing licensure sanctions on Utah medical providers "based solely on recommending medical cannabis to their patients."¹¹ This means that if a medical provider commits other unethical or unprofessional acts, they may still face licensure consequences, but the mere act of recommending medical cannabis will not cause negative consequences on a medical provider's license.

The UMCA also protects medical providers (and hospitals) from civil and criminal liability as long as they act within the parameters of the law.¹² This means that the state cannot charge you with a crime, and you cannot be held civilly liable, solely for recommending medical cannabis to you patients. However, the Act does not relieve medical providers of their duty to use reasonable and ordinary care in the treatment of the patient when recommending medical cannabis.¹³

Additionally, some employers may impose policies and restrictions that affect a medical provider's ability to recommend certain treatment options, including medical cannabis. The UCMA does not change an employer's ability to do so. You should make sure you are aware of your employer's policies on medical cannabis before making a decision to recommend cannabis.

How is this law expected to change in the future?

All of the parts of the UMCA that were discussed above are already in effect. However, in the future, the law will require patients to obtain a medical cannabis card in order to possess medical cannabis. The law will also require medical providers to receive training and become "Qualified Medical Providers" in order to recommend medical cannabis cards to patients. Additionally, the State will develop an electronic verification system that will provide a platform for managing distribution and use of the card system and other aspects of the cannabis industry in the State. The UMCA requires this to be done by March 1, 2020.¹⁴

Once the electronic verification system is operational, medical providers have had time to become "Qualified Medical Providers," and the State has created a "central fill medical cannabis pharmacy," then the current defense to a charge of possession of marijuana will no longer apply and a patient will need to obtain a State-issued card in order to legally possess

¹¹ See Utah Code 26-61a-107(1)(b).

¹² See Utah Code 26-61a-107(1)(a).

¹³ See Utah Code 26-61a-107(3).

¹⁴ See Utah Code 26-61a-103(2).

medical cannabis. The law states that the current possession requirements will expire and the new card requirement will take effect on January 1, 2021.¹⁵

When the electronic verification system comes online, an individual will be able to apply for or renew a medical cannabis patient card. The system will also allow medical providers to submit an electronic recommendation for medical cannabis and suggest dosing parameters if they choose to do so. It will also be connected to an inventory control system used by medical cannabis pharmacies and allow law enforcement and many other state agencies to access to the system.

DISCLAIMER AND CONCLUSION

Please note that this information is meant to educate you about the new Utah Medical Cannabis Act and give you helpful information when considering whether to recommend cannabis to your patients. It is not legal advice and does not create an attorney-client relationship. If you have additional questions or need legal advice you should consult directly with an attorney.

¹⁵ See Utah Code 58-37-3.7(2) and 26-61a-201(7)(c).

Signed Letter from Medical Provider

To whom it may concern:

My name is _____. I am licensed in Utah as a:

- MD DO PA APRN

I have had a provider-patient relationship with _____ beginning on ____/____/_____. As of ____/____/_____, my patient was diagnosed with

- Pain lasting longer than two weeks that is not adequately managed by a non-opioid (e.g. aspirin) or physical intervention (e.g. chiropractic care) after having made at least two treatment attempts
 HIV or AIDS
 Alzheimer’s disease
 Amyotrophic lateral sclerosis (ALS)
 Cancer
 Cachexia
 Persistent nausea (which is not significantly responsive to traditional treatment and is not related to pregnancy, cannabis-induced cyclical vomiting syndrome, or cannabinoid hyperemesis syndrome)
 Crohn’s disease / ulcerative colitis
 Epilepsy / debilitating seizures
 Multiple sclerosis / persistent and debilitating muscle spasms
 PTSD (which is treated by a licensed mental health therapist and has been diagnosed either by the VA or through an evaluation by qualified mental health specialist)
 Autism
 Terminal illness with less than six months life expectancy
 A condition resulting in the patient receiving hospice care
 A rare condition or disease that affects less than 200,000 individuals in the United States and is not adequately managed by a non-opioid or physical intervention

I have reviewed my patient’s medical history and condition. Although I cannot prescribe a specific dosage of medical cannabis or treatment regimen for my patient at this time, I believe that my patient could benefit from the use of cannabis for medical purposes.

Signed,

(Signature of medical provider)

(Date)