



December 16, 2022

To: 2022 Special Committee on Medical Marijuana

From: Natalie Nelson, Principal Research Analyst

Re: Liability for Doctors and Other Health Care Providers Facilitating Use of Medical Marijuana

This memorandum was drafted in response to a question posed at the December 9, 2022, meeting of the Special Committee on Medical Marijuana regarding criminal and civil liability for health care providers certifying or advising patients on the use of marijuana to treat medical ailments. Nearly all states that have legalized medical marijuana specify in statute that doctors, and in some cases, other types of health care providers, who provide written documentation or otherwise discuss the possible use of medical marijuana to qualified patients have immunity from arrest, prosecution, and criminal penalties, and may not be denied rights, privileges, incur civil penalties, or be subject to professional disciplinary actions for doing so. A summary of each state's applicable immunity provisions follow, as well as any applicable penalties specific to medical providers.

Alabama

Alabama Code § 20-2A-7

A registered certifying physician who acts in good faith compliance regarding dosage limitations and any applicable administrative rules is immune from civil and criminal penalty for certifying patients or stating a professional opinion that a patient is likely to receive therapeutic benefit from the medical use of cannabis, but nothing in the law prevents the health licensing board from disciplining a physician, and it does not modify, amend, repeal, or supersede any provision contained in the Alabama Medical Liability Act of 1987, the Alabama Medical Liability Act of 1996, or judicial interpretation of these laws.

Alaska

Alaska Stat. Ann. § 17.37.030

Physicians recommending the medical use of marijuana are immune from criminal and civil liability, provided that the advice is based upon the physician's contemporaneous assessment in the context of a *bona fide* physician-patient relationship, and takes into consideration the patient's medical history and current medical condition and other approved

medications and treatments that might provide relief and that are reasonably available to the patient and that can be tolerated by the patient.

Arizona

Ariz. Rev. Stat. Ann. § 36-2811

Physicians are immune from criminal prosecution, civil penalty, or disciplinary action for providing written certifications for the medical use of marijuana by a patient, or providing professional opinions of the therapeutic benefit of marijuana, but the law does not 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.

Arkansas

Ark. Const. Amend. 98, § 3

Physicians are immune from criminal and civil liability and may not be subject to disciplinary action for providing a written certification to a qualified patient to use medical marijuana, but the law allows a professional licensing board to sanction a physician for failing to properly evaluate a patient's medical condition or for otherwise violating the applicable physician-patient standard of care.

California

Cal. Health & Safety Code § 11362.5

No physician in the state may be punished, nor denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

Colorado

Colo. Const. art. XVIII, § 14

Physicians who recommend the use of medical marijuana to a patient, provided that the advice is based upon the physician's contemporaneous assessment of the patient's medical history and current medical condition and a *bona fide* physician-patient relationship, are immune from criminal penalty and may not be denied any rights and privileges.

Connecticut

Conn. Gen. Stat. Ann. § 21a-408c

A physician, physician assistant, or advanced practice registered nurse is immune from criminal or civil penalty and may not be denied any right or privilege or be subject to disciplinary action when such professional has properly diagnosed, provided informed consent, and completed an assessment of the patient in the course of a *bona fide* health care professional-patient relationship, and has no financial interest in a cannabis establishment. A physician assistant or nurse has criminal and civil immunity for administering marijuana to a qualifying patient or research program subject in a hospital or health care facility licensed by the Department of Public Health.

District of Columbia

D.C. Code Ann. § 7-1671.04; D.C. Code Ann. § 7-1671.07

Practitioners are immune from civil and criminal liability for advising or recommending the use of medical marijuana to a qualifying patient, but may be subject to disciplinary actions including revocation, suspension, or denial of a practitioner's license or an imposition of a civil fine, if found to have submitted a false statement regarding a qualifying patient's eligibility to participate in the medical marijuana program.

Florida

Fla. Const. Art. X, § 29

Physicians shall not be subject to criminal or civil liability or sanctions under state law for issuing a physician certification with reasonable care to a person diagnosed with a debilitating medical condition, but this immunity does not affect laws relating to negligence or professional malpractice on the part of a physician.

Hawaii

Haw. Rev. Stat. Ann. § 329-126

Physicians who, after explaining the potential risks and benefits, recommend the use of medical marijuana to a patient, provided that the advice is based upon the physician's contemporaneous assessment of the patient's medical history and current medical condition and a *bona fide* physician-patient relationship, have criminal and civil immunity and may not be denied any right or privilege.

Illinois

410 Ill. Comp. Stat. Ann. 130/25

Certifying health care professionals have immunity from criminal prosecution, civil penalty, or disciplinary action for providing written certifications for the medical use of marijuana by a patient, or providing professional opinions of the therapeutic benefit of marijuana, but the law does not prevent a professional licensing board from sanctioning a health care professional for issuing a written certification to a patient who is not under the certifying health care professional's care for a debilitating medical condition, for failing to properly evaluate a patient's medical condition, or otherwise violating the standard of care for evaluating medical conditions.

Maine

Me. Rev. Stat. Tit. 22, § 2430-C

Any person who lawfully engages in conduct involving the medical use of marijuana pursuant to the state's medical marijuana laws has criminal and civil immunity, and may not be denied any right or privilege or be subject to any disciplinary action. These immunities also apply to state-licensed hospitals and long-term care facilities, and officers, directors, employees, or agents thereof when marijuana is used in the authorized form on the premises of a facility.

Maryland

Md. Code Ann., Health-Gen. § 13-3313

Certifying providers, hospitals, medical facilities, and hospice programs acting in accordance with state law regarding the medical use of or possession of medical cannabis have immunity from criminal and civil penalties.

Massachusetts

Mass. Gen. Laws Ann. ch. 94I, § 2

A healthcare professional shall not be penalized, in any manner, or denied any right or privilege, for advising a qualifying patient about the risks and benefits of the medical use of marijuana, or providing a written or electronic certification that the medical use of marijuana may benefit the patient within a *bona fide* healthcare professional-patient relationship.

Michigan

Mich. Comp. Laws Ann. § 333.26424

Physicians have immunity from criminal prosecution, civil penalty, or disciplinary action for providing written certifications for the medical use of marijuana by a patient, or providing professional opinions of the therapeutic benefit of marijuana, but the law does not prevent a professional licensing board from 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.

Minnesota

Minn. Stat. Ann. § 152.32; Minn. Stat. Ann. § 152.33

Any health care practitioner or licensed pharmacist is not subject to any civil or disciplinary penalties by any professional licensing board for the participation in the medical marijuana registry program, but nothing affects a professional licensing board from taking action in response to violations of any other section of law. A health care practitioner who knowingly refers patients to a manufacturer or to a designated caregiver, who advertises as a manufacturer, or who issues certifications while holding a financial interest in a manufacturer is guilty of a misdemeanor and may be sentenced to imprisonment for not more than 90 days or by payment of a fine of not more than \$1,000, or both.

Mississippi

Miss. Code. Ann. § 41-137-9; Miss. Code. Ann. § 41-137-13

A professional or occupational licensee may provide advice or services related to authorized medical cannabis activities to the extent such advice or services meet or exceed the applicable professional or occupational standard of care. .

Miss. Code. Ann. § 41-137-45

A practitioner who purposely refers patients to a specific medical cannabis establishment or to a registered designated caregiver, who advertises in a medical cannabis establishment, or who issues written certifications while holding a financial interest in a medical cannabis establishment, is guilty of a civil offense for every false certification and shall be fined up to \$5,000.00.

Missouri

Mo. Const. Art. XIV, § 1

A physician or health care provider shall not be subject to criminal or civil liability or sanctions under Missouri law or discipline by any licensing board, for owning, operating, investing in, being employed by, or contracting with any entity licensed or certified pursuant to this section for issuing a physician certification to a patient diagnosed with a qualifying medical condition or providing health care services that involve the medical use of marijuana in a manner consistent with this section and legal standards of professional conduct.

Montana

Mont. Code Ann. § 16-12-520

A physician who provides written certifications may not accept or solicit anything of value (other than a regular fee for providing medical care), offer a discount or any other thing of value, or examine a patient for the purposes of diagnosing a debilitating medical condition at a licensed premises or a testing laboratory. If a physician has violated this law or another related regulation, or has not met the standard of care required under this law, the physician may be referred to the Board of Medical Examiners for disciplinary action. If the Board finds there has been a violation of professional conduct, the Board will restrict the physician's authority to provide written certification for the use of marijuana. If the Board believes a physician's practices may harm the public health, safety, or welfare, the Board may summarily restrict a physician's authority to provide written certification for the use of marijuana for a debilitating medical condition.

Mont. Code Ann. § 16-12-524

A physician who purposely and knowingly misrepresents any information required in a written certification for medical marijuana use is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed one year or a fine not to exceed \$1,000, or both.

Nevada

Nev. Rev. Stat. Ann. § 678C.650

The applicable professional licensing boards shall not take any disciplinary action against an attending provider of health care for advising or recommending the use of cannabis to a person, including a non-resident, if the advice is based on the provider's personal assessment of the person's medical history and current medical condition. The provider also may not be disciplined for providing written documentation or signature for the issuance of a registry identification card to a qualified patient if based on the provider's personal assessment of the person's medical history and current medical condition and the person was advised of possible risks and benefits of the medical use of cannabis.

New Hampshire

N.H. Rev. Stat. Ann. § 126-X:2

A provider shall not be subject to arrest by state or local law enforcement, prosecution or penalty under state or municipal law, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a professional licensing entity for providing written certifications, but nothing prevents a professional licensing entity from sanctioning a provider for failing to properly evaluate a patient's medical condition.

New Jersey

N.J. Stat. Ann. § 24:6I-5.2

A health care practitioner is immune from any civil or administrative penalty and disciplinary action related to the medical use of cannabis as authorized by state law, except that a health care practitioner who has provided written certification of a patient's medical use of cannabis, and immediate family member of such practitioner, is prohibited from seeking to be an interest holder in, or receive any form of direct or indirect compensation from, a medical cannabis cultivator, medical cannabis manufacturer, medical cannabis dispensary, or clinical registrant within 90 days of making the certification. A person who violates this section shall be guilty of a crime of the fourth degree.

N.J. Stat. Ann. § 24:6I-6

Unless failing to do so would result in the health care facility losing a monetary or licensing-related benefit granted pursuant to federal law, a health care facility that employs or maintains a professional affiliation with a health care practitioner shall not take adverse employment action against the health care practitioner or otherwise limit, restrict, or terminate a professional affiliation with the practitioner for engaging in conduct authorized under the medical marijuana laws of the state. Likewise, no health care facility shall be penalized or denied any benefit under state law on the basis of employing or maintaining a professional affiliation with such practitioner.

Unless failing to do so would result in the insurer or insurance association losing a monetary or licensing-related benefit granted pursuant to federal law, an insurer or insurance association authorized to issue medical malpractice liability insurance in New Jersey shall not deny coverage to a health care practitioner, increase the amount of premiums or deductibles under the policy, or charge any additional fees in connection with the policy, based on the health care practitioner engaging in conduct authorized under the medical marijuana laws of the state. Likewise, no insurer or insurance association shall be penalized or denied any benefit under state law on the basis of providing medical malpractice liability insurance to such practitioner.

New Mexico

N.M. Stat. Ann. § 26-2B-4

A practitioner shall not be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for recommending the medical use of cannabis or providing written certification for the medical use of cannabis.

New York

N.Y. Pub. Health Law § 3369

Practitioners 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, for the certified medical use or manufacture of marijuana, or for any other action or conduct in accordance with this title.

North Dakota

N.D. Cent. Code Ann. § 19-24.1-32

Physicians are immune from criminal prosecution, civil penalty, or disciplinary action for providing written certifications for the medical use of marijuana by a patient, or providing professional opinions of the therapeutic benefit of marijuana, but the law does not 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.

Oklahoma

Okla. Stat. Ann. Tit. 63, § 427.10

Physicians are immune from criminal liability, and may not be denied any right or privilege under state, municipal, or county statute, ordinance, or resolution, including without limitation a civil penalty or disciplinary action by a professional licensing board for providing a medical marijuana recommendation for a patient or for monitoring, treating, or prescribing scheduled medication to patients who are medical marijuana licensees, but the law does not prevent the relevant professional licensing boards from sanctioning a physician for failing to properly evaluate the medical condition of a patient or for otherwise violating the applicable physician-patient standard of care.

Oregon

Or. Rev. Stat. Ann. § 475C.891

The applicable professional licensing boards shall not take any disciplinary action against an attending provider of health care if the advice is based on the provider's personal assessment of the person's medical history and current medical condition. The provider also may not be disciplined for providing written documentation or signature for the issuance of a registry identification card to a qualified patient if based on the provider's personal assessment of the person's medical history and current medical condition and the person was advised of possible risks and benefits of the medical use of cannabis.

Pennsylvania

35 Pa. Stat. Ann. § 10231.402

A practitioner may not accept, solicit, or, offer any form of remuneration from or to a prospective patient, patient, prospective caregiver, caregiver, or medical marijuana organization, including an employee, financial backer, or principal, to certify a patient, other than accepting a fee for service with respect to the examination of the prospective patient to determine if the prospective patient should be issued a certification to use medical marijuana, nor may a practitioner hold a direct or economic interest in a medical marijuana organization or advertise that such practitioner can certify a patient to receive medical marijuana. A practitioner who violates this subsection shall be prohibited from issuing certifications and will subject the practitioner to professional discipline by applicable licensing boards.

35 Pa. Stat. Ann. § 10231.1301

In addition to any other penalty provided by law, a practitioner commits a misdemeanor of the first degree if the practitioner intentionally, knowingly, or recklessly certifies a person as being able to lawfully receive medical marijuana or otherwise provides medical marijuana to a person who is not lawfully permitted to receive medical marijuana.

35 Pa. Stat. Ann. § 10231.1308

In addition to any other penalty provided by law, a practitioner who violates any of the provisions of this act or related regulations commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000, or to imprisonment for not more than six months for a first offense. For second and subsequent violations, a practitioner commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$10,000, or to imprisonment for not less than six months or more than one year, or both.

In addition to any other remedy available, a civil penalty may be assessed for a violation of this act or related regulation of not more than \$10,000 for each violation and an additional penalty of not more than \$1,000 for each day of a continuing violation. If the regulatory agency finds that the violation did not threaten the safety or health of a patient, caregiver, or the general

public and the violator took immediate action to remedy the violation upon learning of it, the department may issue a written warning in lieu of assessing a civil penalty. The regulatory body may also impose administrative sanctions for violations of this act.

Rhode Island

21 R.I. Gen. Laws Ann. § 21-28.6-4

A practitioner is immune from criminal and civil liability and disciplinary action for providing written certifications for a patient to use medical marijuana, or otherwise stating a professional opinion that the potential benefits of medical marijuana would likely outweigh the health risks for a patient. In addition, a practitioner licensed to prescribe drugs, a licensed pharmacist, or certified nurse teacher are all immune from criminal and civil liability and disciplinary action for discussing the benefits or health risks of medical marijuana or its interaction with other substances with a patient or administering a non-smokable and non-vaporized form of medical marijuana in a school setting to a qualified patient.

South Dakota

S.D. Codified Laws § 34-20G-5

Physicians are immune from criminal prosecution, civil penalty, or disciplinary action for providing written certifications for the medical use of marijuana by a patient or providing professional opinions of the therapeutic benefit of marijuana, but the law does not prevent a professional licensing board from sanctioning a physician for issuing a written certification to a patient with whom the practitioner does not have a *bona fide* practitioner-patient relationship or failing to properly evaluate a patient's medical condition.

S.D. Codified Laws § 34-20G-6

No person licensed by the state or any other governmental entity to engage in any profession, occupation, or other activity is subject to disciplinary action, denial of the rights and privileges of such license, or other penalty by the licensing authority for lawfully engaging in any activity authorized under this chapter or providing any service to a person engaged in activity that is authorized by this chapter merely because that activity is prohibited by federal law.

Utah

Utah Code Ann. § 26-61a-107

A registered qualified medical provider is not subject to civil or criminal liability or professional licensure sanctions for violating a federal law or regulation that would otherwise prohibit recommending, prescribing, or dispensing medical cannabis, a medical cannabis product, or a cannabis-based drug that the U.S. Food and Drug Administration has not approved. In addition, an employee or agent of a healthcare facility is not subject to civil or

criminal liability for carrying out employment duties, including providing or supervising care to a medical cannabis cardholder or purchasing, transporting, or possessing medical cannabis for the relevant patient and in accordance with the designation.

Virginia

Va. Code Ann. § 18.2-251.1

Medical doctors and pharmacists are immune from criminal prosecution for dispensing or distributing marijuana or tetrahydrocannabinol for medical purposes when such action occurs in the course of their professional practice for treatment of cancer or glaucoma.

Va. Code Ann. § 54.1-3408.3

Practitioners are immune from criminal prosecution and may not be subject to disciplinary action for providing a written certification to a qualified patient to use medical marijuana, but the law allows a professional licensing board to sanction a physician for failing to properly evaluate a patient's medical condition or for otherwise violating the applicable standard of care for evaluating or treating medical conditions.

Washington

Wash. Rev. Code Ann. § 69.51A.030

A health care professional advising a patient regarding the use of medical marijuana or providing an authorization to use medical marijuana is immune from criminal and civil liability and licensure sanction and may not have real or personal property searched, seized, or forfeited pursuant to state law, notwithstanding any other provision of law, provided the health care professional complies with applicable state law. The appropriate health professions disciplining authority may inspect or request patient records to confirm compliance with this section. The health care professional must provide access to or produce documents, records, or other items that are within his or her possession or control, and failure to produce such records shall result in citations and fines issued. Failure to otherwise comply with the requirements of this section shall be considered unprofessional conduct and subject to licensure sanctions.

West Virginia

W. Va. Code Ann. § 16A-15-4

A practitioner is immune from criminal and civil liability or disciplinary action for lawful use of medical cannabis or manufacture or sale or dispensing of medical cannabis, or for any other action taken in accordance with this act.