MEDICAL MARIJUANA PRESCRIBING GUIDELINES FOR LICENSED PODIATRISTS

The Oklahoma Board of Podiatric Medical Examiners adopts the following guidelines regarding the recommendation of medical marijuana by podiatric physicians in Oklahoma.

1. Any doctor of podiatric medicine who chooses to recommend medical marijuana must possess a valid Oklahoma podiatric medical license, be in good standing, and cannot have restrictions on his or her podiatric medical license with the Board of Podiatric Medical Examiners. *See* 63 O.S.Supp.2019, § 427.10(A); OKLA. ADMIN. CODE § 310:681-1-9(a). A podiatric physician who has not completed his or her first residency may not recommend medical marijuana.
2. Licensed Oklahoma podiatrists should only sign medical marijuana recommendations related to the care and treatment of ailments, diseased conditions, deformities, or injuries related to the practice of podiatric medicine as set forth in the Podiatric Medicine Practice Act, 59 O.S.2011, § 135.1.
3. Although Oklahoma law does not require a licensed podiatric physician to obtain a registration, a licensed Podiatrist may register with the Oklahoma Medical Marijuana Authority ("OMMA") as a physician to recommend medical marijuana to patients. He or she has the option to publicly share your registration information or keep certain information private to the extent allowed by Oklahoma law.
4. A licensed podiatric physician must establish a medical record for the patient and possess a *bona fide* physician-patient relationship.
5. When recommending medical marijuana to a patient, a licensed Podiatrist must properly evaluate a patient's medical condition and then prescribe medical marijuana adhering to the accepted standards that a reasonable prudent physician would follow for recommending or approving any medication. *See* 63 O.S.Supp.2019, § 427.10(C).
6. Prior to submitting a Physician Verification Form, a podiatric physician must verify a patient's identity with OMMA. *See* OKLA. ADMIN. CODE § 310:681-1-7.
7. A podiatric physician must complete all required portions of a Physician Recommendation Form for it to be considered by OMMA.
8. While a podiatric physician may prescribe to adults and minors, two (2) physicians must sign a Physician Recommendation Form submitted on behalf of a minor. While the law does not specify if the physicians must hold the same education credential, it would be a best practice to have a second podiatric physician to sign off on the Recommendation Form.
9. A podiatric physician's practice location cannot be collocated at the same physical address as a dispensary or cultivation center.
10. A medical marijuana recommendation may last for up to two (2) years.
11. A podiatric physician should use his or her reasonable medical judgment to determine whether a patient's underlying medical condition warrants at sixty (60) day or two (2) year registration with OMMA.
12. A podiatric physician may terminate his or her recommendation by notifying the State Department of Health ("OSDH") that he or she has determined that the continued use of medical marijuana by patient no longer meets requirements for possession of a license. *See* 63 O.S.Supp.2019, § 427.10(E).
    a. The recommending podiatric physician will need to comply with OSDH's requests for information or documentation for a termination to be processed.

13. A podiatric physician should not recommend a medical marijuana license if he or she knows or should know that the license will be abused and the licensee will willfully violate those sections of law regarding medical marijuana in Title 63 of the Oklahoma State Statutes. *See* 59 O.S.Supp.2019, § 149.1.

Podiatric Physicians must also follow the Code of Ethics of the American Podiatric Medical Association. *See* 59 O.S.2011, § 148(A)(12). Any violation of the Code of Ethics is a violation of the Podiatric Medicine Practice Act. Consequently, podiatric physicians should comply with all provisions of the Code of Ethics at all times. The following provisions from the Code of Ethics are especially relevant to the recommendation of Medical Marijuana:

- Under ME4.41, a podiatric physician cannot cease providing care or being able to provide care to a patient "without giving the patient sufficient notice and/or the opportunity to seeking continuing treatment with another health care practitioner." Consequently, a podiatric physician may want to consider advising a patient that he or she intends to revoke his or her recommendation for the patient to have a medical marijuana license to provide the patient an opportunity to seek a new podiatric physician who may be willing to recommend medical marijuana.

- Under ME5.11, a podiatric physician should respectfully advise patients whether he or she will recommend medical marijuana or not.

- Under BE1.11, podiatric physicians must ensure that communications to the public are accurate and do not convey false, untrue, deceptive, or misleading information. As such, a podiatric physician should accurately advise others on all facts related to the recommendation of medical marijuana as a treatment when directing information for public consumption.

- Under BE2.41, a podiatric physician must truthfully disclose actual and potential conflicts of interest in the recommendation and/or prescription of services, materials, medicines, and facilities that may be utilized in the care of a patient. Therefore, a podiatric physician should disclose any actual or potential conflicts of interest regarding ownership of or financial interest in any dispensary or other commercial medical marijuana entity in operation in this State.

- Under BE4.11, a podiatric physician has a responsibility to supervise his or her employees and/or contractors. Accordingly, a podiatric physician should take all necessary steps to ensure that no employees and/or contractors are signing off on recommendations.

- Under BE4.21, only a podiatric physician should sign a recommendation. Thus, no one on staff other than the licensed podiatric physician should be signing off on recommendations. Under no circumstances should the podiatric physician delegate his or her authority for signing off on a recommendation form.

- Under BE4.31, a podiatric physician has a duty to strive to practice podiatric medicine consistent with standards of care established within the community. As a matter of practice, a podiatric physician should only recommend medical marijuana so long as it is standard care and practice to offer medical marijuana under the particular circumstances in the case within the community that the podiatric physician practices in.

The State Board of Podiatric Medical Examiners further adopts or adapts the following guidelines[1] published by the Federation of State Medical Boards ("FSMB") in April 2016:

Podiatric Physician – Patient Relationship[2]

The health and well-being of patients depends upon a collaborative effort between the physician and the patient. The relationship between a patient and a podiatric physician is complex and based on the mutual understanding of the shared responsibility for the patient's health care. The podiatric physician-patient relationship is fundamental to the provision of acceptable medical care. Therefore, podiatric physicians must have documented that an appropriate podiatric physician-patient relationship has been established, prior to providing a recommendation, attestation, or authorization for marijuana to the patient. Consistent with the prevailing standard of care, podiatric physicians should not recommend, attest, or otherwise authorize marijuana for themselves or family member.

Patient Evaluation[3]

A documented medical evaluation and collection of relevant clinical history commensurate with the presentation of the patient must be obtained before a decision is made as to whether to recommend marijuana for medical use. At minimum, the evaluation should include the patient's history of present illness, social history, past medical and surgical history, alcohol and substance use history, family history with emphasis on addiction or mental illness/ psychotic disorders, physical exam, documentation of therapies with inadequate response, and diagnosis requiring the marijuana recommendation.

Informed and Shared Decision Making[4]

The decision to recommend marijuana should be a shared decision between the podiatric physician and the patient. The podiatric physician should discuss the risks and benefits of the use of marijuana with the patient. Patients should be advised of the variability and lack of standardization of marijuana preparations and the effect of marijuana. Patients should be reminded not to drive or operate heavy machinery while under the influence of marijuana. If the patient is a minor or without decision-making capacity, the podiatric physician should ensure that the patient's parent, guardian or surrogate is involved in the treatment plan and consents to the patient's use of marijuana.

Treatment Agreement[5]

A health care professional should document a written treatment plan that includes:

- Review of other measures attempted to ease the suffering caused by the terminal or debilitating medical condition that do not involve the recommendation of marijuana.

[1] Report of the FSMB Workgroup on Marijuana and Medical Regulation, *Model Guidelines for the Recommendation of Marijuana in Patient Care*, FEDERATION OF STATE MEDICAL BOARDS, April 2016.
[2] *Id.* at 6.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 7.

- Advice about other options for managing the terminal or debilitating medical condition.
- Determination that the patient with a terminal or debilitating medical condition may benefit from the recommendation of marijuana.
- Advice about the potential risks of the medical use of marijuana to include:
    - The variability of quality and concentration of marijuana;
    - The risk of cannabis use disorder;
    - Exacerbation of psychotic disorders and adverse cognitive effects for children and young adults;
    - Adverse events, exacerbation of psychotic disorder, adverse cognitive effects for children and young adults, and other risks, including falls or fractures;
    - Use of marijuana during pregnancy or breast feeding;
    - The need to safeguard all marijuana and marijuana-infused products from children and pets or domestic animals; and
    - The need to notify the patient that the marijuana is for the patient's use only and the marijuana should not be donated or otherwise supplied to another individual.
- Additional diagnostic evaluations or other planned treatments.
- A specific duration for the marijuana authorization for a period no longer than twelve months.
- A specific ongoing treatment plan as medically appropriate.

Qualifying Conditions[6]

At this time, there is a paucity of evidence for the efficacy of marijuana in treating certain medical conditions. Recommending marijuana for certain medical conditions is at the professional discretion of the podiatric physician. The indication, appropriateness, and safety of the recommendation should be evaluated in accordance with current standards of practice and in compliance with state laws, rules and regulations, which specify qualifying conditions[7] for which a patient may qualify for marijuana. However, Oklahoma law explicitly does not require physicians to document any qualifying condition. *See* 63 O.S.Supp.2019, § 420(M). Specifying a medical condition on a Patient Recommendation Form may be probative that a recommending podiatric physician is recommending medical marijuana in accordance with accepted standards that a reasonable prudent physician would follow for recommending or approving any medication.

Ongoing Monitoring and Adapting Treatment Plan[8]

A podiatric physician recommending marijuana should register with the appropriate oversight agency and provide the registry with information each time he or she issues a recommendation. The podiatric physician should regularly assess the patient's response to the use of marijuana and overall health and level of function. This assessment should include the efficacy of the treatment to the patient, the goals of the treatment, and the progress of those goals.

[6] *Id.* at 7.

[7] Oklahoma does not require any qualifying conditions. Instead, the podiatric physician should make his or her recommendations according to accepted standards a reasonable and prudent physician would follow when recommending or approving any medication. *See* 63 O.S.Supp.2019, § 420(M).

[8] Report, at 7.

Consultation and Referral[9]

A patient who has a history of substance use disorder or a co-occurring mental health disorder may require specialized assessment and treatment. The podiatric physician should seek a consultation with, or refer the patient to, a pain management, psychiatric, addiction or mental health specialist, as needed.

Medical Records[10]

The podiatric physician should keep accurate and complete medical records. Information that should appear in the medical record includes, but is not necessarily limited to the following:

- The patient's medical history, including a review of prior medical records as appropriate;
- Results of the physical examination, patient evaluation, diagnostic, therapeutic, and laboratory results;
- Other treatments and prescribed medications;
- Authorization, attestation or recommendation for marijuana, to include date, expiration, and any additional information required by state statute;
- Instructions to the patient, including discussions of risks and benefits, side effects and variable effects;
- Results of ongoing assessment and monitoring of patient's response to the use ofmarijuana;
- A copy of the signed Treatment Agreement, including instructions on safekeeping and instructions on not sharing.

More Information

Podiatric physicians can consult directly with OMMA about any questions that they may have. OMMA can be contacted by phone at 405-522-6662 or by email at OMMAphysicians@ok.gov.

Guidelines adopted on April 7, 2020..

[9] *Id.* at 7
[10] *Id.* at 8.