

Governor Phil Murphy Sets Bold New Direction for Regulating Medical Marijuana –Legislature Considers Significant Changes to the Law

Legal Alert

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New Jersey enacted the New Jersey Compassionate Use Medical Marijuana Act (the “Act”), a comprehensive medical marijuana law in 2010. It is one of twenty-nine states plus the District of Columbia, Guam and Puerto Rico that permits the prescribing of medical marijuana under strict conditions. Under the current law, physicians registered with the Department of Health (the “Department”) may prescribe medical marijuana to patients with certain medical conditions. Consequently, the availability of medical marijuana has been limited and many patients have not been able to receive medical care due to the inadequate number of physicians willing to prescribe medical marijuana. Bold proposals by Governor Murphy and his Administration have expanded the conditions that may be treated, advocated for an increase in the number of dispensaries and encouraged physicians to treat patients with medical marijuana if it is clinically appropriate. Consequently, New Jersey’s legislators have introduced legislation to implement significant legal changes to the Act.

As one of his first acts as Governor, Phil Murphy signed Executive Order 6, which directed the Department and the Division of Consumer Affairs (the “Division”) to review the medical marijuana program (the “Program”) in order to make it easier for patients to obtain medical marijuana. A key component of the Program is the availability of sufficient numbers of physicians willing to prescribe medical marijuana for debilitating conditions. Presently, there are only 600 registered physicians in the registry, which the Department recommends eliminating or modifying. Many other states do not have a registry requirement. Perhaps the only benefit to being listed on the registry is that it offers patients an easy way to identify physicians.

Physicians prescribing medical marijuana have experienced a surge in patients seeking treatment. The Department’s addition of chronic pain related to musculoskeletal disorders, anxiety and migraines to the list of qualifying medical conditions, illustrates the range of diagnoses that physicians are able to treat with medical marijuana. The Legislature will address the evolving standards for prescribing medical marijuana sometime this year if the key legislators can agree upon a regulatory framework. Among other provisions, the proposed legislation should significantly increase the numbers of physicians who prescribe the drug due to the removal of burdensome legal requirements.

Senators Joseph Vitale, Declan O’Scanlon and Nicholas Scutari have introduced S-2426 which is pending in the Senate Health, Human Services and Senior Citizens Committee. The companion bill sponsored by Assemblypersons Herbert Conaway, Reed Gusciora, Tim Eustace and Carol Murphy has already been released from the Assembly as a Committee Substitute for A-3740 and A-3437. These bills repeal the physician registry requirement, permit physicians to prescribe medical marijuana for any health care condition and

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issue licenses to new dispensary contractors “to meet the increased patient demand” among other provisions. “It is our belief that this legislation will significantly increase access for patients, caregivers and providers, and additional forms of medical marijuana that may better suit a patient’s need,” Senator Vitale, Chairman of the Senator Health Committee said in a recent statement.

Currently, New Jersey’s patient registry permits patients to receive a card that entitles them to register for an appointment at one of the State’s medical marijuana dispensaries. Under the proposed bills a patient may go to any dispensary. In addition, the proposed legislation would require the dispensary to inform the physician about the amount, form and strain of the medical marijuana dispensed. The dispensary works with the patient to arrive at the best formulary for the condition being treated.

Most significantly, the legislation proposes the elimination of the current list of medical conditions eligible for medical marijuana prescriptions. It would permit any physician to prescribe medical marijuana if he or she determines that a patient’s diagnosis warrants the prescription.

At the same time, the Division, which regulates the Board of Medical Examiners, recently held hearings to determine whether marijuana should continue to be classified by the State as a Schedule I Controlled Dangerous Substance (“CDS”). Under federal law, Schedule I CDS are the most strictly controlled drugs and those drugs have been labeled as having a “high potential for abuse” with no “accepted medical use” (heroin and LSD are other examples of Schedule I CDS).

Marijuana was placed onto federal Schedule I in 1970 and in 2016 the federal Drug Enforcement Administration (the “DEA”) rejected petitions to reschedule marijuana to a lower tier. If medical marijuana is changed by the Division to a State Schedule II or III drug it would probably be based upon a finding that there is medical value to patients receiving the drug and a low risk for abuse.

Another important reason for the Division to support reclassifying medical marijuana from a State Schedule I drug is that the designation may limit the number of physicians willing to prescribe medical marijuana – particularly in view of New Jersey’s crackdown on physicians who have allegedly indiscriminately prescribed other CDS (i.e., thereby causing the State’s opioid crisis). As a result of heightened scrutiny, physicians may be hesitant to participate in the medical marijuana Program because they do not fully understand all of the legal or medical issues involved with prescribing this drug. For example, is a patient treated with medical marijuana somehow “impaired” so that it affects his or her ability to work? Physicians may be required to respond to those questions if a patient’s employer determines that the employee tested positive for medical marijuana.

Physicians, other than those presently listed on the registry, may not be familiar with the medical literature on the efficacy and/or adverse effects of medical marijuana for particular conditions. If the proposed bills are enacted into law, all physicians who wish to prescribe medical marijuana will have to learn which conditions may benefit from medical marijuana and what potential side effects to be alert to. Physicians will also need to learn how to document the specific diagnosis made and the symptom to be treated so that they thoroughly explain why the prescription was written. Health care providers who wish to prescribe medical marijuana under the potential changes to the law must be knowledgeable about New Jersey’s evolving legal standards as well as the medical issues surrounding the use of medical marijuana (which is, of course, quite

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distinct from how the use of illegal marijuana is treated or prosecuted under federal law).

The authors of a 2017 article on “Cannabis and Pain: A Clinical Review” wrote that in view of the “increasing debates on the merits of medical and recreational cannabis policies, we need a corresponding increase in cannabis research.” Until that research develops further, New Jersey physicians should rely upon information that is being provided by the Commissioner of Health, Shereff Elnahal, M.D., who will conduct grand rounds lectures on medical marijuana research as well as on changes to the Program.

The leadership of Governor Murphy, Commissioner Elnahal and the State’s Legislators to amend the Act and the Division’s potential re-classification of medical marijuana will increase the numbers of New Jersey’s physicians who prescribe medical marijuana to patients in need.

If you have questions about the information contained in this alert, please contact Alma Saravia or any member of Flaster Greenberg’s Cannabis Law Practice Group.

ATTORNEYS MENTIONED

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