



Utah Medical Association  
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### **Brief Explanation of Proposition 2 and Compromise Bill Passage**

You are probably already getting calls from patients about medical marijuana. You probably have many questions about how it works right now and how it will work in the future in Utah. This is a brief explanation for physicians about how the new law works now and in the future. Medical Marijuana is legal for your patients right now but under a transition clause which will be explained later. The product is not currently available through legal, licensed channels in Utah and will not be until at least 2020, which is still earlier than proposed under Proposition 2. Under this new law, other than the medication going through the FDA process and physicians having more information about the effects of, contraindications of, interactions with other medications and other information that comes through the FDA process, the responsibility of physicians will be the same for medical marijuana as for any other treatment or medication that a physician recommends for a patient. The new law attempts to place this medication in the same space as any other medication that a physician would recommend to a patient, and it is the responsibility of the physician to tell the patient the potential benefits, the potential risks and to follow the same standard of care for patients they “recommend” medical marijuana to as for any other procedure or medication. And they can have action against their license or be sued for that care if it is not appropriate care. The bill does protect a physician from legal consequences under state law for the simple act of recommendation of medical marijuana, although marijuana is still illegal federally; so the state, through the bill, gives immunity to a physician for the simple act of the recommendation of medical marijuana but not, of course, for violating the standard of care for a patient that leads to the recommendation or for errors in the actual care of the patient that might involve the recommendation.

To recap what has happened, both Proposition 2 and a medical marijuana compromise bill passed. Shortly after Proposition 2 was passed during the election, the medical marijuana compromise bill was passed by the legislature mainly to fix the many problems that were established by passage of Proposition 2 that were not contemplated by those that wrote the proposition. The compromise bill fixed issues that affected laws that had nothing to do with the marijuana issue at all. Laws such as the hospital assessment that has been in place in Utah for dozens of years that helps fund the Medicaid program in Utah and many other laws that had been undone by the passage of Proposition 2. In addition, the compromise bill, that was negotiated by the Utah Medical Association, the proponents of Proposition 2 (Libertas Institute and Utah Patients Coalition), the President of the Senate and other leaders in the Senate, the Speaker of the House and other leaders in the House, the Governor’s Office, the LDS Church, with input from all state agencies and all law enforcement entities, the league of Cities and Towns, other patient groups, and many other groups and individuals, kept the intent of the Proposition. The compromise bill fixed the many issues that all parties agreed were in the Proposition while maintaining the intent of the Proposition and included appropriate oversight and control over this new “medicine” since this law would replace the FDA process in this case. It was important to make sure that the medical marijuana looked as much like medicine as possible both for the patient and for the physician and that the process was similar to other medications in how it is recommended, dosed

and dispensed which was really the intent of Proposition 2 and what the majority of voters understood the Proposition to do.

Below are questions and answers about how the system works for the medical marijuana.

### **HOW IT WORKS RIGHT NOW/BEFORE 2020**

**Question: Can a physician “recommend” medical marijuana to a patient right now?**

**Answer:** Yes, but the product is not available through legal, licensed channels in Utah yet. It is not available through the system that will be set up under the passed bill (it would also not have been available under Proposition 2). The product will not be available until approximately the first quarter of 2020 in Utah.

**Question: So how can a patient get a recommendation for medical marijuana and obtain medical marijuana before it is available in Utah?**

**Answer:** If a physician (or a nurse practitioner, or a physician assistant – if it is in the DOSA of the PA and the PA’s Supervising Physician is a recommending physician) can “recommend” medical marijuana right now for certain conditions.

**Question: What must a physician do to recommend the medical marijuana currently?**

**Answer:** A physician who has a pre-existing physician-patient relationship with the patient must diagnose the patient with one of the qualifying conditions or verify that the patient has one of the qualifying conditions diagnosed by an appropriate provider (see below under the qualifying illnesses). A physician must believe that the patient’s illness could benefit from medical marijuana decide what type of medical marijuana a patient can try (medicinal format – see formats below). A physician must tell the patient about the possible risks and benefits of the medical marijuana and the possible interactions with other medications the patient is on and must document in the patient’s chart that they believe the patient’s illness could benefit from medical marijuana and they are recommending medical marijuana.

Once that is done, we would recommend that the physician give the patient a letter of some sort or a note saying that they believe the patient’s illness could benefit from medical marijuana and are recommending the patient use medical marijuana. The patient can then take that note with them and keep it with them as they pick up a medicinal dose of medical marijuana across the border in a state that has medical marijuana until medical marijuana products are available for purchase in Utah (approximately March 2020). (This system will change once Utah is fully functioning with growing, processing, distributing and tracking of medical marijuana is in place, then a physician will need to be a “Qualified Medical Provider” explained in the “2020 and Beyond” section).

**Question: Are the conditions for which medical marijuana can be recommended, limited?**

**Answer:** Yes, they are limited to the following illnesses:

1. HIV or acquired immune deficiency syndrome
2. Alzheimer’s disease
3. Amyotrophic lateral sclerosis
4. Cancer
5. Cachexia

6. Persistent nausea that is not significantly responsive to traditional treatment except for nausea related to: pregnancy, cannabis-induced cyclical vomiting syndrome, or cannabinoid hyperemesis syndrome
7. Crohn's disease or ulcerative colitis
8. Epilepsy or debilitating seizures
9. Multiple sclerosis or persistent and debilitating muscle spasms
10. Post-traumatic stress disorder that is being treated and monitored by a licensed mental health therapist and that:
  - a. has been diagnosed by a health care provider or mental health provider employed by the VA and documented in the patient's record; or
  - b. has been diagnosed or confirmed by evaluation by a psychiatrist, doctorate psychologist, a doctorate licensed clinical social worker, or a Psych APRN
11. Autism
12. A terminal illness when the patient's remaining life expectancy is less than six months
13. A condition resulting in the individual receiving hospice care
14. A rare condition or disease that affects less than 200,000 individuals in the U.S., as defined in federal law and that is not adequately managed despite treatment attempts using conventional medications (other than opioids or opiates) or physical interventions
15. Pain lasting longer than two weeks that is not adequately managed, in the physician's opinion, despite treatment attempts using conventional medications other than opioids or opiates or physical interventions
- 16. A condition that the compassionate service board approves on a case-by-case basis (read about compassionate use board below under patients)**

**Question: What types of medical marijuana can a physician recommend and can a patient possess and use? And how much?**

**Answer:** No more than one- month supply of up to 113 grams with no more than 20 grams of total composite THC. So, a patient may not transport more than that or have more than that in their possession. And it must be in medicinal dosage form, which means:

1. A tablet
2. A capsule
3. A concentrated oil
4. A liquid suspension
5. A topical preparation
6. A transdermal preparation
7. A sublingual preparation
8. A gelatinous cube (this will most likely not be available until Utah's products are available in 2020)
9. A blister pack with unprocessed cannabis flower, containing no more than 1 gram of flower pods in each individual blister
10. If a patient fails on two forms listed above, then a physician may recommend wax or resin – must document in chart

**PATIENTS MAY NOT SMOKE MARIJUANA (NO JOINTS), MAY NOT BRING EDIBLES – CANDIES, COOKIES, BROWNIES ETC. INTO THE STATE. THESE ARE NOT PERMITTED UNDER THE LAW.**

**Question: Are physicians required to get education or be qualified in any way to recommend medical marijuana?**

**Answer:** Not now, but they will be in 2020 after the Utah system is set up, in order to become a “Qualified Medical Provider” (see below under “2020 and Beyond”). The UMA and others are already working on education. We would recommend that physicians already start educating themselves before they recommend medical marijuana as they will be responsible for standard of care and will still be liable for appropriate care and treatment for patients.

**Question: Will physicians have to worry about the DEA coming after them for recommending medical marijuana?**

**Answer:** Probably not since it is happening in many other states and federal court (the 9<sup>th</sup> Circuit) has basically decided that free speech protections allow a physician to recommend medical marijuana. Furthermore, the Feds have said enforcing federal law against marijuana, when allowed by state law, is not high priority for them. They have also through an amendment to the balance budget reconciliation act said they will not go after states that have passed medical marijuana bills and physicians in other states have not been targeted.

**Question: What about other physician liability?**

**Answer:** A physician will have to check with their medical malpractice carrier as to what kind of coverage they have when they recommend or deal with medical marijuana since they are recommending a federally illegal drug. In terms of liability for recommending, the state has passed legislation that states that simply for the act of recommending a physician is not liable. However, that does not preclude a physician from being liable for not following some type of standard of care or protocol when recommending or when treating with marijuana. That would include warning the patient of benefits and risks, or telling the patient you are not sure of the benefits and risks, and documenting care in chart, etc.

**Question: Are there limits to how many patients a physician can recommend medical marijuana to?**

**Answer:** Yes, a physician can recommend to 175 patients, and a specialist who is Board Certified in anesthesiology, gastroenterology, neurology, oncology, pain, hospice and palliative medicine, physical medicine and rehabilitation, rheumatology, or psychiatry can recommend to 300 patients. Qualified specialists may recommend to more patients, in additional increments of 100, up to three increments, if DOPL reviews and approves the requests. The reason there is a restriction on this is because the physicians involved in developing this provision felt that it was important that physicians recommending medical cannabis should stay current with all types of medications and treatment and not just become marijuana mills. The physicians involved in this negotiation are physicians who recommend and will recommend medical marijuana, so their input was very valuable in this area.

**Question: Is there an age limit for qualified patients and if not, how does it work for younger patients?**

**Answer:** No, but there are parameters around how it works with patients. A physician can recommend medical marijuana to an individual who is 21 years of age or older (if they are diagnosed with a qualifying illness and could benefit from it) and the patient can go pick up the medication. If the patient does not have a qualifying illness or is under the age of 21, then the patient (if older than age 21 or age

20, 19, or 18), or the patient's guardian (if the patient is younger than 18) can go before the compassionate use board with a letter and information from the recommending physician indicating for what purpose the patient needs medical marijuana and the compassionate use board will determine if the patient can obtain medical marijuana. The compassionate use board is made up of 7 physicians who are knowledgeable about medical marijuana; 2 will be board certified pediatricians.

**Question: Can a physician advertise that they are a medical marijuana physician?**

**Answer:** No, but they can put a green cross on their website and can put "scientific studies" about marijuana on their website. Individuals that know about marijuana will know what the green cross means.

**Question: Is medical marijuana covered by insurance?**

**Answer:** No, it is the patient's responsibility to cover the cost of medical marijuana.

## **2020 and Beyond**

**Question:** When will the physician need to become a "Qualified Medical Provider" in order to recommend medical marijuana?

**Answer:** When the state is fully up and functioning with the electronic tracking system for the medication, the pharmacies are up and running, the growing and processing is up and running and the system for registering patients and medical providers is up and running, the approximate estimate is sometime around March of 2020.

**Question: What must a physician do to become a "Qualified Medical Provider"?**

**Answer:** A physician must take 4 hours of medical marijuana education that is approved by the Department of Health (this is currently being developed and will be available long before the March 2020 implementation deadline) to become a "Qualified Medical Provider." A physician must also continue to take 4 hours of CME every two years to continue to be a "Qualified Medical Provider" and to keep recommending medical marijuana to their patients or to start recommending medical marijuana to their patients. That education can count toward total CME. At that time, a physician will also be required to know how to dose the medical marijuana and must dose the medical marijuana to the patient; or if they recommend the medical marijuana and don't dose it, they must turn over enough records that they pharmacist can dose it for them. SO, WE WOULD RECOMMEND AND PUSH THAT THE PHYSICIAN KNOW HOW TO DOSE AND DO THE DOSING OF THEIR PATIENT BY THAT TIME.

**Question: Where will a patient pick up their marijuana once it is available in Utah?**

**Answer:** In 2020, once the tracking system is set up by the state, a physician who is a qualified medical provider will authorize a patient to get a medical marijuana card from the Department of Health; and then the patient would pick up the marijuana at a specialty pharmacy that will be staffed by a pharmacist or at a county health department location.

At that time, physicians must access the new medical marijuana tracking system when signing patients or their guardians up for medical marijuana cards and must also check to see what products patients are already on or if they have been recommended marijuana by another physician or provider.

These are the basics that you must know about for the new system that is being set up in Utah.

Remember that you are ultimately responsible for patient care and you decide whether to put your patient on medical marijuana; the patient does not decide. We understand patients are already shopping to find physicians that will give them medical marijuana. Again, it is not a requirement that you authorize them to use it and it is up to you as a physician whether medical marijuana is the best care for the patient or not.

Look for further resources from the Utah Medical Association on medical marijuana. We are already working with other states to bring information in to help physicians on this issue. We also are setting up a secure site for physicians to share their experiences, so we can collect data on what works, what doses work, what does not work, and other information that can be shared just between physicians on this very important issue. We would ask you to add your experiences to this site. Continue to watch for our roll-out on the education, the physician share site; and in the meantime, we do have some resources for you at [www.utahmed.org/cannabis](http://www.utahmed.org/cannabis). We will be putting a more comprehensive analysis of the full bill on our website shortly after Christmas.