MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: October 6, 2014
ATTENTION: Members, Enforcement Committee
SUBJECT: Statement on Marijuana
STAFF CONTACT: Kimberly Kirchmeyer, Executive Director

REQUESTED ACTION:
After review and consideration of the information, make a motion to direct staff to update the Statement on Marijuana as amended and post the new version to the Board's website.

BACKGROUND:
On May 7, 2004, the Medical Board of California (Board) adopted a statement clarifying that the recommendation for marijuana by physicians in their medical practice will not have any effect against their physician's license if they follow good medical practice. This statement is posted on the Board's website.

Board staff have reviewed the statement and believe that some edits need to be made to the statement, as some information is misleading and does not comport with current law. The first series of edits pertain to the term "medical marijuana," which is used throughout the entire document. Although marijuana can be recommended for medical purposes, the term medical marijuana is misleading, as there is no difference between regular marijuana and marijuana used for medical purposes. Therefore, this clarification needs to be made throughout the document.

The other issue with the statement was brought to the Board's attention during an administrative hearing. The statement asserts that the initial examination for the condition for which marijuana is being recommended must be in-person. This statement contradicts the Board's telehealth law. The initial examination must follow the standard of care and must provide for an appropriate prior examination, however, the law does not require that this examination must be in-person.

The edits to the statement are identified below in strikeout and underline.

~~Medical~~ Marijuana for Medical Purposes

This statement was adopted by the full Medical Board on May 7, 2004 and amended in October 2014. ~~For more information, please see our news release dated May 13, 2004.~~

On November 5, 1996, the people of California passed Proposition 215. Through this Initiative Measure, Section 11362.5 was added to the Health and Safety Code, and is also known as the Compassionate Use Act of 1996. The purposes of the Act include, in part:

> "(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction."

Furthermore, Health and Safety Code section 11362.5(c) provides strong protection for physicians who choose to participate in the implementation of the Act. "Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes."

The Medical Board of California developed this statement since ~~medical~~ marijuana is an emerging treatment modality. The Medical Board wants to assure physicians who choose to recommend ~~medical~~ marijuana for medical purposes to their patients, as part of their regular practice of medicine, that they WILL NOT be subject to investigation or disciplinary action by the ~~MBC~~ Medical Board if they arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility. The mere receipt of a complaint that the physician is recommending ~~medical~~ marijuana for medical purposes will not generate an investigation absent additional information indicating that the physician is not adhering to accepted medical standards.

These accepted standards are the same as any reasonable and prudent physician would follow when recommending or approving any other medication, and include the following:

1. History and an appropriate prior examination of the patient.
2. Development of a treatment plan with objectives.
3. Provision of informed consent including discussion of side effects.
4. Periodic review of the treatment's efficacy.
5. Consultation, as necessary.
6. Proper record keeping that supports the decision to recommend the use of ~~medical~~ marijuana for medical purposes.

In other words, if physicians use the same care in recommending ~~medical~~ marijuana to patients as they would recommending or approving any other medication, they have nothing to fear from the Medical Board.

Here are some important points to consider when recommending ~~medical~~ marijuana for medical purposes:

1. Although it could trigger federal action, **making a recommendation in writing** to the patient will not trigger action by the Medical Board of California.
2. A patient need not have failed on all standard medications, in order for a physician to recommend or approve the use of ~~medical~~ marijuana for medical purposes.
3. The physician should determine that ~~medical~~ marijuana use is not masking an acute or treatable progressive condition, or that such use will lead to a worsening of the patient's condition.
4. The Act names certain medical conditions for which ~~medical~~ marijuana may be useful, although physicians are not limited in their recommendations to those specific conditions. In

all cases, the physician should base his/her determination on the results of clinical trials, if available, medical literature and reports, or on experience of that physician or other physicians, or on credible patient reports. In all cases, the physician must determine that the risk/benefit ratio of ~~medical~~ marijuana is as good, or better, than other medications that could be used for that individual patient.

5. A physician who is not the primary treating physician may still recommend ~~medical~~ marijuana for a patient's symptoms. However, it is incumbent upon that physician to consult with the patient's primary treating physician or obtain the appropriate patient records to confirm the patient's underlying diagnosis and prior treatment history.
6. The initial examination for the condition for which medical marijuana is being recommended must ~~be in-person~~ be an appropriate prior examination and meet the standard of care.
7. Recommendations should be limited to the time necessary to appropriately monitor the patient. Periodic reviews should occur and be documented at least annually or more frequently as warranted.
8. If a physician recommends or approves the use of ~~medical~~ marijuana for a medical purpose for a minor, the parents or legal guardians must be fully informed of the risks and benefits of such use and must consent to that use.

Physicians may wish to refer to the following CMA documents:

- ON-CALL Document #1315 titled "The Compassionate Use Act of 1996", updated annually for additional information and guidance
- "Physician Recommendation of Medical Cannabis", Guidelines of the Council on Scientific Affairs Subcommittee on Medical Marijuana Practice Advisory

Although the Compassionate Use Act allows the use of ~~medical~~ marijuana for medical purposes by a patient upon the recommendation or approval of a physician, California physicians should bear in mind that marijuana is listed in Schedule I of the federal Controlled Substances Act, which means that it has no accepted medical use under federal law. However, in Conant v. Walters (9th Cir.2002) F.3d 629 the United States Court of Appeals recognized that physicians have a constitutionally-protected right to discuss ~~medical~~ marijuana as a treatment option with their patients and make oral or written recommendation for ~~medical~~ marijuana. However, the court cautioned that physicians could exceed the scope of this constitutional protection if they conspire with, or aid and abet, their patients in obtaining ~~medical~~ marijuana.