On Issuing Cannabis Recommendations

By Stacey Kerr, MD

A veteran physician who recently entered the field of cannabis therapeutics shares intelligence gleaned in the process.

Not too long ago I was doing a home visit with a very sick young woman. She was fighting an aggressive cancer and having horrible side effects to her chemotherapy. I had already spotted the vaporizer on her nightstand, so I asked her if she was using it with any success. She said that the cannabis was wonderful, it worked quickly, and she just wished it lasted longer.

“Are you using clean, organic medicine?” I asked. They showed me what they had and told me that a local physician had suggested that this medication might be quite helpful.

“Did he write you a legal recommendation?”

“Well, no. He said he would, but first he would watch me use it and figure out how. That was about a month ago.”

Ironically, even though he knew it was good medicine, he did not know how to provide legal coverage for this suffering patient.

That’s where I was at several years ago. I knew that many of my patients were using cannabis. I wanted to open the discussion as part of their complete health care, but I was afraid. If I even mentioned it...would they think that I was a chronic pothead? Would I regret it?

Then one day I had an unusual requeest. A patient who also happened to be a police officer, stopped to talk before leaving the office and said, “Doc...would you please start writing more recommendations for medical marijuana?” I find pot in people’s possession and I ask them for their recommendation, and if they don’t have one I have to take them in. I don’t want to waste our time anymore. Please do your part to help.”

That was the day I decided to add medical cannabis recommendations to my full scope family practice.

First — is this good medicine? Writing recommendations can be as simple as putting up a shingle and charging money for your signature. But that’s not the kind of doctor I am, and that’s not what I support. Cannabis is powerful medicine and deserves the respect of a full consultation, accurate record keeping, and some knowledge of the changing laws.

It helps to know that the safety profile of cannabis is well established. Is cannabis an addictive substance? No. Is cannabis a “gateway” to dangerous drugs? No. Are the medical benefits of cannabis substantiated by published studies? Yes!

Legalities

Once I was comfortable with the therapeutic integrity of medical cannabis, I needed to understand my legal rights and liabilities.

Because the Controlled Substances Act of 1970 made it illegal to prescribe cannabis, the wording of Proposition 215 and all other subsequent state laws have used the language to “approve or recommend” cannabis as opposed to “prescribe” cannabis.

There are significant differences, not the least of which is that cannabis cannot be obtained at a pharmacy. It is, however, unambiguously legal and protected by federal law for the physician to recommend cannabis when appropriate.

When you discuss medical cannabis with your patients you should recognize that you are entering into a medical-legal consultation; you need a basic understanding of relevant state and federal law. I recommend California NORML’s:

http://www.cannabis-med.org/studies/study.php

Additionally, it is imperative that you clarify your medical relationship with your patient — are you providing full scope primary care or a limited medication consultation? Clear boundaries are essential.

The law created by California voters by passing Proposition 215 in 1996 — Section 11362.5 of the Health & Safety Code — allows medical use of cannabis, allows possession of cannabis by patient and caregiver, addresses quantities of need without specifying those quantities, and notes the qualifying conditions in California as: treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, and any other illness for which marijuana provides relief.

Although physicians have a First Amendment-based right to discuss the pros and cons of medical marijuana use with patients, if physicians advise patients concerning how to obtain the drug, they risk triggering liability under federal law for aiding and abetting the unlawful possession of a controlled substance.

Bottom line: You may discuss the use and the pros and cons of medical cannabis, but should avoid any discussion about how to obtain said medication.

Meeting MBC Standards

The Medical Board of California clarified its position in its July 2004 Action Report. The key section states: “The MBC wants to assure physicians who choose to recommend medical marijuana 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 if they arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility...”

These accepted standards are the same as any reasonable and prudent physician would follow when recommending or approving any other medication, or prescription drug treatment.”

“Accepted standards of medical responsibility include the following:

“I, History and good faith examination of the patient.”

How does this vague guideline translate in practice?

The initial examination should be a confidential, face-to-face session with the patient. The new patient should re-lease medical records to show evidence of the condition for which he/she is requesting the use of cannabis. Review the work-up and treatment plan for the qualifying condition and make appropriate recommendations and referrals in any other situation. Document the history of the presenting illness. The patient is not required to have exhausted...
all diagnostic possibilities or efforts at conventional therapy.

The complete medical examination is important, even if you are simply providing a medication consult. As primary care has become less accessible, a head-to-toe examination is greatly appreciated by the patient and not uncommonly reveals important unaddressed findings.

Most patients are already using cannabis at the time they present for a cannabis approval.

“2. Development of a treatment plan with objectives.”

Cannabis, an herb with more than 400 constituents of unknown concentrations, is a self-regulated medication. The physician can make recommendations about methods of administration, but it is inappropriate to prescribe a specific regimen. Most patients are already using cannabis at the time they present for a cannabis approval. It is important to explore the patient’s knowledge of alternative methods of administration, especially vaporization and orally ingested forms. Imparting the basic information about the differences in cannabis metabolism by inhaled route (about one hour), as compared to ingested forms (about five hours), will help the patient to better manage their timing and titration of dose.

It is not appropriate for the physician to record information about the patient’s cannabis growing activities, number of cannabis plants, or, information about a patient’s primary caregiver. Avoid documentation of number of plants required for the patient’s medical needs. You may conclude from the use pattern a dosage in grams/day and extrapolate to pounds/year.

You may choose to define a quantity (weight) of cannabis you expect the patient to require for a year so that the weight of cannabis you expect the patient’s needs exceeds the guidelines set forth in California law SB420 and/or guidelines within this patient’s county of residence, as provided by California H&SC §11362.77b.

The physician’s initials below indicate that I approve a quantity enabling the patient to record information about the patient’s needs... Counties and cities may retain or enact medical marijuana guidelines that this quantity does not meet the qualified patient’s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the physician’s initials.

Renewal date

Physician’s signature

California License No. 0000

GENERIC RECOMMENDATION FORM is used by Dr. Kerr in carbonless triplicate — one copy for the doctor’s chart, one for the patient, and one for law enforcement if requested. SB-420 limited the amount of cannabis that can be grown or possessed, but created exceptions: “If a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient’s needs... Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits.”

“3. Provision of informed consent including discussion of side effects.”

Patients should read and sign a document of informed consent and release of liability at the time of the initial evaluation. Information on this informed consent should include the following points:

• The cannabis plant is not regulated by the U.S. FDA. It contains unknown quantities of active constituents, and possibly toxic impurities and contaminants.

• The patient must assume full responsibility for any and all risks associated with requesting an approval or recommendation for the use of this plant as medication.

• Cannabis use may affect coordination and cognition in ways that could impair ability to drive, operate machinery, or engage in potentially hazardous activities.

• The patient must assume full responsibility for any harm resulting to himself and/or other individuals as a result of his use of cannabis.

• The physician and staff will not aid and abet the patient in acquiring cannabis.

• The physician, staff and representatives of this medical practice are neither providing cannabis, nor encouraging any illegal activity.

“4. Periodic review of the treatment’s efficacy.”

Correlating patients’ reports of beneficial effects with the underlying cannabinoid science is very exciting and gratifying. It is important to document the patients described pattern of use at the initial and subsequent visits, including the range of quantities, and methods of administration. From this data the physician may be called upon to report plausible quantities of use.

Both at the initial and follow-up visits, the physician may be called upon to report plausible quantities of use.

Bottom-line Summary

• Begin to educate yourself about cannabinoids—endo, phyto, and synthetic.

• There’s plenty of information at www.cannabis-med.org

• Create an informed consent document and a recommendation form to use in your practice.

• Talk to your patients, provide good medical care, and document your discussions and findings.

It’s as simple as that! There are few recommendations that are as rewarding as those that provide welcome relief to the suffering. Medical cannabis, appropriately used, can do just that.