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**REVISED STATEMENT OF POLICY REGARDING MEDICAL MARIJUANA
AND OSTEOPATHIC PHYSICIANS**

The Nevada State Board of Osteopathic Medicine had previously received inquiries related to various issues that arise as a result of Nevada's medical marijuana laws (Nevada Revised Statutes chapter 453A). Below, the Board addresses questions related to medical marijuana and Nevada's osteopathic physicians and physician assistants.

**An Osteopathic Physician/Physician Assistant's Personal Involvement
with Medical Marijuana**

- (a) The Board cannot discipline an osteopathic physician or a physician assistant who uses medical marijuana in accordance with the provisions of Nevada law.ⁱ This protection against disciplinary action does not extend to recreational use of marijuana by an osteopathic physician or physician assistant.
- (b) The Board may not discipline an osteopathic physician or a physician assistant who acts as the designated primary caregiver for another person who uses medical marijuana in accordance with the provisions of Nevada law.ⁱⁱ
- (c) The Board declines to opine whether an ownership interest implicates the federal Stark law or similar provisions of state or federal law related to physician ownership in certain types of medical facilities.
- (d) Any osteopathic physician or physician assistant who desires to use medical marijuana or to serve as a primary caregiver for another person who desires to use medical marijuana or who desires to own an interest in a marijuana dispensary, a marijuana establishment, or cultivation facility is strongly advised to familiarize himself or herself with the provisions of NRS chapter 453A and NAC

chapter 453A (statutes and regulations related to medical marijuana), and NRS 633.111(3) and NRS 633.131(f)(2) and (h) (Osteopathic Practice Act provisions related to practicing while under the influence of controlled substances).

- (e) Medical marijuana may not be used in any public place or in any “place open to the public or exposed to public view.”ⁱⁱⁱ Though there is no interpretation at this time as to what constitutes a “place open to the public,” an osteopathic physician’s office or practice location might be considered such a place, and so an osteopathic physician or physician assistant should consult with his or her private legal counsel as to the advisability of using medical marijuana at his or her office or practice location.
- (f) An osteopathic physician or physician assistant is advised not to practice medicine under the influence of medical marijuana since such conduct may constitute “professional incompetence” as defined in NRS 633.111(3) and “unprofessional conduct” as defined in NRS 633.131(f)(2) and (h).
- (g) As an employer, an osteopathic physician has an obligation to reasonably accommodate the use of medical marijuana by his or her employees under certain circumstances and conditions.^{iv}
- (h) Marijuana remains a Schedule I controlled substance under federal law so an osteopathic physician or physician assistant could be subject to federal criminal arrest and prosecution for activities that might be lawful under Nevada state law. Any such federal criminal action might affect the ability to retain a DEA registration number of an osteopathic physician or physician assistant, which might thereafter detrimentally affect the practice of an osteopathic physician or physician assistant. Additionally, a federal criminal conviction could serve as the basis for a disciplinary action by the Board.^v

2. Advising Patients Regarding Medical Marijuana

- (a) An osteopathic physician and a physician assistant is qualified as an “attending provider of health care” who may recommend medical marijuana for patients.^{vi}
- (b) To qualify as an “attending provider of health care” who may recommend medical marijuana for a patient, an osteopathic physician or physician assistant must: (i) be legally authorized to prescribe a prescription drug, and (ii) have “responsibility for the care and treatment of a person diagnosed with a chronic or debilitating medical condition.”^{vii}
- (c) An osteopathic physician or physician assistant must make a patient’s recommendation for medical marijuana in writing. The writing must state: (i) that the patient has been diagnosed with a “chronic or debilitating medical condition,” (ii) that the medical use of marijuana “may mitigate the symptoms or effects of that condition,” and (iii) that the osteopathic physician “has explained the possible risks and benefits of the medical use of marijuana” to the patient.^{viii}
- (d) As used in Nevada’s medical marijuana law, “chronic or debilitating medical condition” means:
 - 1. Acquired immune deficiency syndrome;

2. An anxiety disorder;
3. An autism spectrum disorder;
4. An autoimmune disease;
5. Cancer;
6. Dependence upon or addiction to opioids;
7. Glaucoma;
8. A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:
 - a. Cachexia;
 - b. Persistent muscle spasms, including, without limitation, spasms caused by multiple sclerosis;
 - c. Seizures, including, without limitation, seizures caused by epilepsy;
 - d. Severe nausea; or
 - e. Severe pain; or
9. A medical condition related to acquired immune deficiency syndrome or the human immunodeficiency virus;
10. A neuropathic condition, whether or not such condition causes seizures; or
11. Any other medical condition or treatment for a medical condition that is:
 - a. Classified as a chronic or debilitating medication condition by regulation of the Division; or
 - b. Approved as a chronic or debilitating medical condition pursuant to a petition submitted in accordance with NRS 453A.710.

(e) The Board will receive one of the five copies of all application forms from patients for whom an osteopathic physician has recommended the use of medical marijuana to a patient and the Board is thereafter required to verify the osteopathic physician's or physician assistant's licensure status and disciplinary history (if any) to the Division.^{ix}

(f) The Department of Health and Human Services (Division) will register and track all osteopathic physicians who advise patients to use medical marijuana.^x

The tracking will include:

- a. The number of patients whom the physician advises that the medical use of marijuana may mitigate the symptoms or effects of the patients' medical conditions;
- b. The chronic or debilitating medical conditions of such patients;
- c. The number of times the physician advises each patient that the medical use of marijuana may mitigate the symptoms or effects of the patient's medical condition;
- d. The number of different chronic or debilitating medical conditions for which the physician advises each patient that the medical use of marijuana may mitigate the symptoms or effects of the patient's medical conditions; and
- e. How frequently the physician advises each patient that the medical use of marijuana may mitigate the symptoms or effects of the patient's medical condition.

The Division will share its information regarding osteopathic physicians with the Board on an

annual basis.^{xi} Additionally, if the Division determines that an osteopathic physician is advising patients to use medical marijuana at a rate that appears unreasonably high, it will notify the Board so that the Board may investigate the notification as a complaint.^{xii}

3. Best Practices

As the above discussion demonstrates, an osteopathic physician's or physician assistant's participation in Nevada's medical marijuana schema is intended to be closely regulated both statutorily (NRS chapter 453A has 90 sections) and regulatorily (NAC chapter 453A has 180 sections). Any osteopathic physician or physician assistant entering the medical marijuana arena must, therefore, read and understand all of the statutory and regulatory provisions. The Board would offer the following observations from its perspective regarding Nevada's medical marijuana laws.

- Medical marijuana is intended to be another therapy available to patients with specific diagnoses, so an osteopathic physician's or physician assistant's recommendation for medical marijuana must be based in sound medical practices. Nothing in Nevada's medical marijuana laws modifies or lessens an osteopathic physician's obligations to establish a valid patient-physician relationship, to make diagnoses based upon the standard of care for such diagnoses, to assess the efficacy of the medical marijuana therapy like any other ordered therapy, and to make and maintain all standard and customary medical records.
- In addition to an osteopathic physician's or physician assistant's usual and ordinary practices, Nevada's medical marijuana law contains numerous qualifications and obligations that must be met by an osteopathic physician or physician assistant who intends to recommend medical marijuana to a particular patient. As discussed above, these additional qualifications and obligations include:
 - That the osteopathic physician or physician assistant be actually responsible for "the care and treatment of a person diagnosed with a chronic or debilitating medical condition." Mere casual contact with a person seeking medical marijuana without a valid and real patient-physician relationship in which the physician is actually and really caring for and treating the person is legally inadequate.
 - The osteopathic physician or physician assistant must make one of the required diagnoses for which medical marijuana may be recommended, and the making of such a diagnosis is subject to the same standard of care whether the patient is seeking medical marijuana or any other type of treatment or care.
 - Because recommendations for medical marijuana will be monitored and tracked by the Division and may be subject to scrutiny by the Board, an osteopathic physician or physician assistant should seek the appropriate studies and make and maintain records that demonstrate the bona fides of his or her relationship with his or her patient and the sound medical grounds for his or her diagnosis and recommendation.
 - The necessary diagnoses to support a recommendation for medical marijuana are all of such a serious, debilitating, and chronic nature that it is doubtful that proper work-up, diagnostics, patient history, and other medically necessary information to support any such diagnosis could be derived without an actual physical

examination of the patient by the osteopathic physician.

- As should be obvious, an osteopathic physician's or physician assistant's recommendation of medical marijuana for a specific patient must be made with the same gravity and rigor as that osteopathic physician's or physician assistant's recommending or prescribing any other therapy. Nothing in Nevada's medical marijuana laws lowers or otherwise modifies an osteopathic physician's or physician assistant's professional and medical obligations to his or her patient.
- Note: Because marijuana is now also authorized for recreational use, it is not risk free. Osteopathic physicians and physician assistant must remain vigilant. An osteopathic physician or physician assistant may not see or treat a patient while under the influence of any substance, whether alcohol, marijuana, or any other licit or illicit drug.

i NRS 453.510(1)

ii NRS 453.510(2).

iii NRS 453A(1)(d)(1).

iv NRS 453A.800(3).

v *See* NRS633.511(2).

vi NRS 453A.030.

vii NRS 453A.030.

viii NRS 453A.210(2)(a).

ix NRS 453A.210(4)(c)(4)(II).

x NAC 453A.716(1).

xi NAC 453A.716(3).

xii NAC 453A.716(2) and (4).

Approved by the Board on April 13 2021