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Client Alert: Update on Smokable Medical Marijuana in Florida

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On March 18, 2019, Florida Governor, Ron DeSantis, signed Senate Bill 182 which amends Florida's statute for the medical use of marijuana by removing the prior prohibition on physician certifications for medical marijuana in a smokable form, among other related changes. As explained in greater detail herein, the amended law, which became effective immediately upon the Governor's signing, sets forth numerous conditions that must be met before a physician can provide a qualified patient with a certification for medical marijuana in a smokable form, with additional requirements applying where the patient is under 18.

For patients *over* 18, the qualified physician must determine that smoking is an appropriate route of administration for a qualified patient. Also, unless the patient is diagnosed with a terminal condition, the qualified physician must submit the following documentation to the applicable board: (1) a list of other routes of administration, if any, certified by a qualified physician that the patient has tried, the length of time the patient used such routes of administration, and an assessment of the effectiveness of those routes of administration for treating the patient's qualifying condition; (2) research documenting the effectiveness of smoking as a route of administration to treat similarly situated patients with the same qualifying condition as the qualified patient; and (3) a statement, signed by the qualified physician, documenting his or her opinion that the benefits of smoking marijuana for medical use outweigh the risks for the specific qualified patient. The Florida Department of Health is preparing a form for qualified physicians to use to submit the required documentation, a draft version of which is currently available here.

For patients *under* 18, more stringent requirements apply. As a preliminary matter, the patient must be diagnosed with a terminal condition. Also, the qualified physician must determine that smoking is the most effective route of administration for the patient. A second physician, who is board-certified in pediatric medicine, must concur with the qualified physician's determination that smoking is the most effective route of administration, and such concurrence must be documented in the patient's medical record and in the medical marijuana use registry. Finally, the certifying physician must obtain the written informed consent of the patient's parent or legal guardian before issuing the physician certification for marijuana in a smokable form using a standardized informed consent form adopted by the Board of Medicine and the Board of Osteopathic Medicine, which must include information concerning the negative health effects of smoking marijuana on persons under 18 years of age, and an acknowledgment that the physician has sufficiently

explained the contents of the form.

The changes to the statute require the Board of Medicine and Board of Osteopathic Medicine to update the standardized informed consent form to include information concerning the negative health effects associated with smoking marijuana. The revised consent form is available here, but has yet to be adopted. Until the new consent form is approved by the board, the Office of Medical Marijuana Use provides the following FAQ regarding what physicians can do until the new informed consent form is available:

Q. Until the new informed consent form is available, what should a qualified physician do?

A. Obtain informed consent from the qualified patient specifically relating to the negative health effects associated with smoking marijuana, and obtain an acknowledgment from the patient that the qualified physician has sufficiently explained the content of the informed consent. Physicians may want to amend their current informed consent form to include the negative health effects of smoking marijuana until the Board of Medicine and Board of Osteopathic Medicine adopt the amendments to the informed consent form required by s. 381.986, F.S. This and other FAQ information is available here.

Based on the foregoing, we recommend that physicians update or supplement their informed consent form for patients who are receiving a certificate for smokable medical marijuana. A physician may only certify up to six 35-day supply limits of marijuana in a smokable form (as opposed to up to three 70-day supply limits for other forms), which is not to exceed 2.5 ounces per 35-day supply unless an exception to this amount is approved by the Florida Department of Health ("FDOH"). There is also a four ounce possession limitation. An exception request to the above supply limits must be made electronically on a form adopted by the FDOH. As of the date of this email, it does not appear that the FDOH has adopted such form yet.

Note that, whereas medical marijuana delivery devices must typically be dispensed on in a medical marijuana treatment center, a delivery device intended for smoking does not need to be sold from a medical marijuana treatment center in order to qualify as a medical marijuana delivery device. Also, please note that the statute prohibits the smoking of marijuana in an enclosed, indoor workplace. Finally, exceptions to use of low-THC cannabis in public places do not apply to low-THC cannabis in a smokable form.

We hope that you find this useful and informative. Please contact us if you have any questions about this, or any other matter.

1 Medical marijuana remains illegal under federal law even in states, such as Florida, that permit medical use of the drug under certain circumstances. This article is published for general information purposes only. It does not constitute legal advice and does not necessarily reflect the opinions of the firm or any of its attorneys or clients. The information contained herein may or may not be correct, complete or current at the time of reading. The content is not to be used or relied upon as a substitute for legal advice or opinions. No reader should act or refrain from acting on the basis of the content of this article without seeking appropriate legal advice. This article does not create or constitute an attorney-client relationship between the authors, Shumaker, Loop & Kendrick, LLP, and the reader.

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