

An open letter to Utah licensed health care providers regarding medical cannabis recommendations

February 11, 2020

Dear Utah Doctors, Nurse Practitioners and Physician Assistants:

I'm writing as a colleague and advocate, both for our healing profession and for our patients to help you understand the very serious risk posed to your livelihood if you decide to participate in the Utah medical cannabis program as it stands today. I feel many real risks have been veiled from you.

Please refer to the legal analysis of these risks in the attached document (1). This was performed by Dr. Dale Hunt, a nationally noted cannabis patent attorney, and plant scientist.

The Utah Medical Cannabis Act (UMCA) allows certain "Qualified Medical Providers" (QMPs) to **recommend cannabis** ("marijuana") to patients. Making a recommendation is a constitutionally protected act of free speech, as defined by the First Amendment. This was thoroughly discussed in the landmark Federal Ninth Circuit Appellate case, *Conant v. Walters* in 2002. **Recommending cannabis is distinct from the process of prescribing cannabis**, which is expressly prohibited under penalty of federal law.

Prescribing is differentiated from recommending on the basis of provision of dosing directions: dose, frequency, route of administration and quantity dispensed. Unfortunately the UMCA requires this specific information (also called "**dosing parameters**") before any cannabis is dispensed in the soon-to-open Utah cannabis "pharmacies." If the QMP declines to provide these parameters then the task falls to the "Pharmacy Medical Provider" (PMP). Pharmacists have no business deciding for the patients how much/what form/how frequently they use this medicine. Decisions about medications and directions on how to use them is practicing medicine, a skill under the purview of physicians, NPs and PAs. Pharmacists are not licensed in Utah to practice medicine.

Further, declining to provide dosing parameters does not absolve the QMP of legal liability. Simply providing the patient with access to medical cannabis, even with a simple recommendation, would violate federal law and the provider's agreement to adhere to standards of their DEA certification. The court's analysis of *Conant v. Walters* expressly discusses this act. As Dr. Hunt writes, "**the (federal) court made it clear that it was entirely possible for a physician to become so central to a patient's acquisition of marijuana as to meet the requirements of the criminal activities of conspiracy and aiding and abetting the violation of federal law.**" The result of such an act could strip the provider of their DEA certificate. Ironically this would not only disqualify them from prescribing controlled substances but also would disqualify them from participating in the Utah cannabis program. Inexplicably a provider's QMP

qualification is tied to possession of a DEA certificate to prescribe Schedule II medication.

As discussed at a recent public Department of Health meeting for medical providers, there is a possibility that the dosing requirements will be repealed or modified in the legislative session. Unfortunately this does not fix the problem for medical providers.

It is quite naive to think that Utah's medical providers are safe and will not be prosecuted simply because it has not happened in other states. We may "get away with" violating this federal law for some time, but our own state laws do not have to put the burden of this risk on physicians.

An additional issue of serious concern is the arbitrary cap of 175 patients (for non-specialists) and 300 patients (for certain specialists) to whom a medical provider can make a recommendation. These arbitrary limits serve nobody. They artificially restrict access to care and unconstitutionally limit professional free speech. In discussing this matter, I have received such answers as "we don't want providers to benefit financially from treating patients with cannabis" to "we want to make sure providers maintain their skills and training," to an obscure argument about public safety by limiting the number of patients using cannabis.

There are ZERO other therapies offered by licensed medical providers in Utah that are limited in number by laws, and this should not be the first. Our training, skills and practice focus should not be the focus of the legislature. Furthermore despite a critical public health crisis (in the form of non-medical opioid misuse) the legislature has not ever considered a cap on other controlled substance prescriptions. Give medical providers the right to decide which therapy is best for each patient.

I urge you to learn about cannabis and its medical value. Please take the time to educate yourselves, not only about the critical medical aspects but also about the legal risks. Enroll in a registered training program (check <https://medicalcannabis.utah.gov/> for a list of approved courses) and register to become a QMP through the Utah Department of Health (DOH). I have participated in two of these courses and found the content an excellent introduction.

I strongly urge you, though, to thoroughly understand these career risks before enrolling any patients until the issues are fixed. Utah is already on the radar of federal agents who are monitoring this program. Unless you are willing to accept the possibility of forfeiting your DEA certification you should absolutely not participate. **You may continue to write cannabis recommendation letters for your patients that will protect them from arrest until January 2021.** The critical difference is that these letters provide the patients with protection but do not grant them access. Actively enrolling them in the program and patient portal will put you at federal legal risk. Writing a simple recommendation avoids this risk.

The good news is that there are easy fixes. The legislature can very easily remove the risks to providers. Please contact your State Senator and Representative to demand protection for QMPs. Our patients deserve a safe, accessible and working program, as do we. Until our state's healthcare providers are protected this does not exist.

In summary, the issues with the UMCA that require addressing by our state legislature immediately are:

1. The requirement for dosing parameters (by either QMP or PMP) and return to the simple limit of medicine a patient can receive.
2. The obligation (and critical risk) for medical providers to enroll their patients in the system via "patient portal"
3. The caps of 175/300 patients per provider

This information about risk has not previously been openly shared with you by DOPL, the Utah Medical Association, or the Utah DOH. They may not agree this is a risk to providers, but it is easy for others to dismiss risk when they are not the party assuming it. The state has a vested interest in this program. We must take care of each other so that we can take care of our patients. I truly want to see our great state have a fantastic program that improves the health and welfare of its citizens. The goal is in reach, let's make it happen together.

With warm regards as your colleague and friend,

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Attachments: Legal Analysis from Dr. Dale C. Hunt, PhD, JD (1)