



Colorado Department
of Public Health
and Environment

COLORADO MEDICAL MARIJUANA REGISTRY

Medical Marijuana Policy Number 2015-04_001

Policy Title: Physician Referrals to the Department of Regulatory Agencies /
Medical Board and Department Sanctions

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Purpose

This policy establishes the criteria for referring physicians to the Department of Regulatory Agencies (DORA) Medical Board for investigation.

Authority

Colorado Revised Statute Section § 25-1.5-106(6)

Background

The Medical Marijuana Registry (Registry) regularly performs statistical analyses of its data to identify outliers of concern for further review and action. An Office of the State Auditor report issued in July 2013 recommended that the Registry strengthen measures to ensure physician compliance with the state constitution, statutes and regulations involving physician recommendations for medical marijuana. This policy outlines the criteria that the department will use to refer recommending physicians to the Colorado Department of Regulatory Agencies (DORA) Medical Board, as the state entity with the investigative authority and expertise to evaluate physician conduct and take licensing actions as deemed appropriate.

Policy

A. Referral to Colorado Department of Regulatory Agencies (DORA). The department will identify physicians for referral using the following procedure:

1. Physician Certifications

The department will conduct a statistical review of physician recommendations to determine if there is reasonable cause to refer a physician to the Colorado Medical Board based upon the following factors:

- a) Physician caseload as determined by the number of patients for whom medical marijuana is recommended. A high caseload is calculated as 3,521 or more patient recommendations in one year for a general practitioner. This reflects the recommendation of patients equal to or greater than the national average of patient visits per year for a generalist physician as reported by the Centers for Disease Control and Prevention (Hing & Schappert, 2012)ⁱ;

- b) The plant and ounce recommendations by the physician. Physician certification forms with a plant count recommendation above the constitutional standard six plants and two ounces will be referred to DORA for review:
 - (a) Physicians recommending increased plant counts for more than 30% of their caseload may be recommended for referral.
 - (b) The physician's area of specialty will be taken into consideration when considering the appropriateness of a higher rate of increased plant/ounce count recommendations.
- c) Age demographics of the patient caseload. According to the CDC, older adults have a significantly higher prevalence of chronic conditions than younger adults. (Ward & Schiller, 2013) Physicians for whom more than one-third of the patient caseload is under the age of 30 may be recommended for referral.

2. Other Circumstances

The Department will also refer physicians to the Medical Board for whom there is evidence of potential violation of the constitution, statutes, Board of Health regulations or any violation of the Colorado Medical Practice Act § 12-36-101 *et seq.*, C.R.S. These referrals may include:

- a. Patient safety concerns given the physician's training in a field which raises questions as to his/her ability to competently evaluate and treat minor patients and those who have clinical conditions not in the physician's prescribed area of specialty/expertise;
- b. Potential substandard care of patients by physicians making patient recommendations for the use of medical marijuana; or
- c. Other information known or received by CDPHE that may constitute a violation of the Medical Practice Act, § 12-36-101 *et seq.*, C.R.S.

The Medical Marijuana Program Director in consultation with the Chief Medical Officer or Deputy Chief Medical Officer will review recommendations for physician referral. If evidence supports referral, the Program Director will issue a formal referral to the Medical Board Program Director. This referral will contain:

- 1) The physician's identifying information (name and DORA medical license number);
- 2) The reason for the referral; and
- 3) Any statistical data supporting the referral.

Absent the Medical Marijuana Registry taking action against the physician for any other potential violation of the program requirements, the Medical Marijuana Registry will continue to process physician certification forms signed by referring physicians until the Medical Board notifies the Department of corrective actions that may limit the physician's ability to recommend medical marijuana to their patients.

- B. **Department sanctions.** Once the referral is received, DORA will review the documentation and conduct an investigation as deemed appropriate. If sufficient evidence is found, DORA may provide information to the Office of the Attorney General pursuant to board policy for criminal investigation and may impose disciplinary action pursuant to § 12-36-117, C.R.S.

Hing, E. M., & Schappert, S. M. (2012, September). Generalist and Specialty Physicians: Supply and Access, 2009-2010. *National Center for Health Statistics Data Brief*.

Ward, B. W. (2013, April 25). *Prevalence of Multiple Chronic Conditions Among US Adults: Estimates from the National Health Interview Survey, 2010*. Retrieved May 1, 2014, from Centers for Disease Control and Prevention: www.cdc.gov/pcd/issues/2013/pdf/12_0203.pdf

If provided with sufficient evidence from DORA or the Office of the Attorney General or some other credible source the Department will revoke a physicians authority to authorize Medical Marijuana based upon a violation of C.R.S. § 25-1.5-106(5)(d), or upon a finding of unprofessional conduct pursuant to section 12-36-117(1)(mm), C.R.S. by the state board of medical examiners.

- a. Risk to patient safety;
- b. Physician inability to competently evaluate and treat minor patients and those who have clinical conditions not in the physician's prescribed area of specialty/expertise;
- c. Reasonable belief that that a physician has financial ties to a medical marijuana caregiver, distributor, or any other provider of medical marijuana as outlined in CRS § 25-1.5-106(5)(d);
- d. Potential substandard care of patients by physicians making patient recommendations for the use of medical marijuana; or
- e. Other information known or received by CDPHE that may constitute a violation of the Medical Practice Act, § 12-36-101 *et seq.*, C.R.S.

C. Appeals. If the department proposes to sanction a physician, the department shall provide the physician with notice of the grounds for the sanction and shall inform the physician of the physician's right to request a hearing. The hearing shall be conducted in accordance with the state Administrative Procedures Act, § 24-4-101 *et seq.* , C.R.S.