



# POSITION STATEMENT

## ONIA Position on Marijuana in Ohio

Developed: 03/2016

Revised: 09/2018

The Ohio Nurses Association (ONA) recognizes that the use of medicinal marijuana is beneficial in certain patient treatment scenarios. Our organization promotes best practices supported through ongoing research and promotes access to evidence-based therapies including those for patient conditions in which the use of medical marijuana has been proven beneficial.

ONA affirms the American Nurses Association position statement on the therapeutic use of marijuana and related cannabinoids, namely to recommend relisting marijuana as a Schedule II substance for purposes of controlled research, developing prescribing standards and establishing evidence-based standards for therapeutic use, and advocating for protection from civil and criminal penalties for patients using the substance and practitioners who discuss, prescribe, recommend, dispense, or administer marijuana in accordance with professional standards and state laws.

ONA affirms implementing the National Council of State Board of Nursing recommendations regarding education for a nurse caring for a patient utilizing medical marijuana, and extending those guidelines to all licensed nurses in Ohio as well as students in pre-licensure and graduate programs.

Finally, ONA is concerned with the safety of patients and nurses alike, when the nurse is using medical marijuana. Ohio law currently states that employers have the discretion of maintaining a drug-free environment and persons who are found to be using marijuana could be fired for just cause. Likewise, the Ohio Board of Nursing (OBN) has the discretion of disciplining the nurse in such a scenario.

### BACKGROUND

Ohio became the 25<sup>th</sup> state to legalize medical marijuana when Governor John Kasich signed HB 523 on June 8, 2016. The new law became effective on September 6, 2016. Over the next 2 years, Ohio developed their rules, regulations, and laws. The program was to have product on the shelves on September 8, 2018. But due to delays, product will not be available until late 2018 – early 2019.

The Ohio Medical Marijuana Control Program (OHMMCP) set up three state agencies to coordinate the laws, rules, and regulations for the program. These agencies are the Board of Pharmacy, Board of Medicine, and the Department of Commerce. The Board of Pharmacy oversees patient registries and dispensaries. The Board of Medicine oversees participating physicians and requirements for participation. The Department of Commerce oversees the cultivators and testing labs.

## **INFORMATION**

### **For Physicians:**

The federal government does not recognize marijuana as an approved medicine. Therefore, physicians cannot legally prescribe it. Ohio, along with 29 other states, has legalized medical marijuana despite the federal stand. Because of the federal rules, patients must have a recommendation or certification from a certified physician rather than a prescription that is taken to a pharmacy.

### **For Patients:**

To qualify for placement on the registry, a prospective patient must:

1. Establish and maintain a bona fide physician-patient relationship with a recommended physician who shall submit a complete patient registration submission. This should include appropriate ongoing follow-up on a regular basis to determine treatment and dosing efficacy.
2. Receive a diagnosis or confirmation of a qualifying condition from the recommending physician. A recommendation of marijuana should not be automatic for a qualifying condition. Rather, it should be reserved for treatment failures or mainstream medication intolerance.
3. Consent to treatment with medical marijuana. If the patient is a minor, the prospective patient's parent or legal representative shall consent to treatment with medical marijuana.
4. Remit to the Board of Pharmacy the required fee.
5. Be an Ohio resident, unless otherwise provided pursuant to a reciprocal agreement under division (A) of section 3796.16 of the revised code. Currently, there is no reciprocity in Ohio.

### **Qualifying Conditions**

Ohio has 21 qualifying conditions: AIDS, amyotrophic lateral sclerosis (ALS), Alzheimer's Disease, cancer, chronic traumatic encephalopathy, Crohn's Disease, epilepsy or another

seizure disorder, fibromyalgia, glaucoma, hepatitis C, inflammatory bowel disease, multiple sclerosis (MS), pain that is either chronic and severe or intractable, Parkinson's Disease, positive HIV status, post-traumatic stress disorder (PTSD), sickle cell anemia, spinal cord disease or injury, Tourette's Syndrome, traumatic brain injury, and ulcerative colitis. In addition, physicians can make recommendations to the Board of Medicine for future qualifying conditions.

### **Routes of Administration Allowed Under State Law**

Ohio Administrative Code (OAC) 3796:8-2-01 allows for the following authorized forms and methods of administration.

1. Oil, tincture, capsule, or edible form for oral administration
2. Metered oil or solid preparation for vaporization
3. Patches for transdermal administration
4. Lotions, creams, or ointments for topical administration
5. Plant material for administration with the use of vaporizing devices

No plant material may be smoked and the patient may not grow their own product. A patient may possess a 90-day supply. For specific rules surrounding the quantity amounts of medical marijuana that may be purchased by a patient or caregiver, please review OAC 3796:8-2-04.

### **Nursing Practice and the Law**

Per HB 523, employers are permitted to form their own rules, policy, and procedures for medical marijuana use in their specific workplace. Per the Ohio Revised Code (ORC) 3796.28, an employer is not required to permit or accommodate an employee's use, possession, or distribution of medical marijuana.

Per ORC 4723.28(B)(10), the Board of Nursing is authorized to discipline a licensee for impairment of the ability to practice according to acceptable and prevailing standards of safe nursing care because of the use of drugs, alcohol, or other chemical substances, even if obtained legally. The Board of Nursing, by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke, suspend, or place restrictions on any nursing license or dialysis technician certification issued by the board. The BON may reprimand or otherwise discipline a holder of a nursing license or dialysis technician certificate. They may also impose a fine of no more than \$500 per violation.

### **Nursing Practice and Administering Medical Marijuana**

Ohio has set up a caregiver model for the administration of medical marijuana through the passage of HB 523.

*Who is considered a caregiver?*

Per OAC 3796:7-2-02 persons twenty-one years of age or older, who registers with the State Board of Pharmacy to serve as a caregiver for a qualifying patient can be considered eligible as a caregiver. A patient cannot designate more than two caregivers and the Pharmacy Board cannot register more than two caregivers for each patient. Additionally, an individual cannot serve as a caregiver for more than two patients.

Individuals cannot be deemed as a caregiver if he/she falls within one of the following categories: He/she is a patient's recommending physician, those registered as an online abuser through the Ohio Department of Developmental Disabilities, sex offenders, internet-based database of the Department of Rehabilitation and Correction Inmates, or individuals included in the state nurse aide registry through the Ohio Department of Health who has detailed findings showing neglect or abuse to residents in a long-term care or residential care facility.

Nothing within Ohio's statute or rules would prohibit a registered nurse in good standing from registering with the State Board of Pharmacy to become a patient's caregiver, so long as the registered nurse was not providing care to more than two patients as defined in OAC 3796:7-2-02. This would, however, limit the healthcare setting/location the nurse could provide care.

*What laws must be considered if a nurse is registered as a caregiver?*

Per ORC 3796.08:

(A)(1) A patient seeking to use medical marijuana or a caregiver seeking to assist a patient in the use or administration of medical marijuana shall apply to the state board of pharmacy for registration. The physician who holds a certificate to recommend issued by the state medical board and is treating the patient or the physician's delegate shall submit the application on the patient's or caregiver's behalf in the manner established in rules adopted under section 3796.04 of the Revised Code.

(b) In the case of an application submitted on behalf of a patient, the name or names of the one or more caregivers that will assist the patient in the use or administration of medical marijuana;

(c) In the case of an application submitted on behalf of a caregiver, the name of the patient or patients that the caregiver seeks to assist in the use or administration of medical marijuana.

(3) If the application is complete and meets the requirements established in rules, the board shall register the patient or caregiver and issue to the patient or caregiver an identification card.

Per ORC 3796.23:

(A) Notwithstanding any conflicting provision of the Revised Code, a caregiver registered under this chapter who obtains medical marijuana from a retail dispensary licensed under this chapter may do both of the following:

- (1) Possess medical marijuana on behalf of a registered patient under the caregiver's care, subject to division (B) of this section;
- (2) Assist a registered patient under the caregiver's care in the use or administration of medical marijuana;
- (3) Possess any paraphernalia or accessories specified in rules adopted under section 3796.04 of the Revised Code.

(B) The amount of medical marijuana possessed by a registered caregiver on behalf of a registered patient shall not exceed a ninety-day supply, as specified in rules adopted under section 3796.04 of the Revised Code. If a caregiver provides care to more than one registered patient, the caregiver shall maintain separate inventories of medical marijuana for each patient.

(C) A registered caregiver shall not be subject to arrest or criminal prosecution for doing any of following in accordance with this chapter:

- (1) Obtaining or possessing medical marijuana on behalf of a registered patient;
- (2) Assisting a registered patient in the use or administration of medical marijuana;
- (3) Possessing any paraphernalia or accessories specified in rules adopted under section 3796.04 of the Revised Code.

(D) This section does not permit a registered caregiver to personally use medical marijuana, unless the caregiver is also a registered patient.

### **Medical Marijuana and Other States Laws**

30 states and the District of Columbia have legalized medical marijuana. Laws concerning scope, implementation, regulation of dispensaries, professionals able to prescribe/recommend/certify vary by each state. The FindLaw's Criminal Law section concerning medical marijuana is a good source to utilize when looking at particulars.