

GENERAL COUNSEL'S CORNER

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Cannabis Use in Hospitals

As our firm's prior information memos on cannabis have shown¹, the legalization of marijuana for recreational or medical use in states still poses legal issues in higher education due to marijuana's illegality under federal law. This tension in laws is also present in the issue of marijuana use by patients in hospital settings. This memo highlights those issues for higher education lawyers who advise medical facilities.

Health care facilities are accredited through the Center for Medicare and Medicaid Services. Since cannabis is illegal under federal law, health care facilities could be found in violation of federal law, lose federal funding and face potential penalties if they improperly allow cannabis use in their facilities. In addition, health care providers are also prohibited from prescribing or providing cannabis in a health care facility because no cannabis product is approved by the U.S. Food and Drug Administration.

The lack of robust research on cannabis products, cannabis as a therapy and dependence or addiction to cannabis heightens the challenge of developing sound policies on the use of cannabis in health care facilities. There is very little scientific evidence for the efficacy of marijuana in treating certain medical conditions. The American Medical Association developed a policy statement² in 2019 encouraging health systems to "not recommend patient use of non-FDA approved cannabis or cannabis derived products within healthcare facilities until such time as federal laws or regulations permit its use." At the same time, the policy statement acknowledged that effective patient care requires the "free and unfettered exchange of information on treatment alternatives."

Despite these impediments, health care facilities increasingly are being asked to create cannabis policies that allow patient use while the patient is resident in the facility. In fact, the increasing use of marijuana as a remedy for a patient health condition is amplifying the issue because a patient's sudden cessation of marijuana use can create its own medical issue. Over the past few years, a growing number of health care facilities (and their state legislatures) are creating policies and rules for the use of cannabis by an inpatient.

If a health care facility is considering a policy on the use of cannabis in hospitals, there are a number of questions that must be addressed. These include:

- How is the cannabis product identified as a legal substance under state law and in what form should it be permitted?

¹ See <https://www.bsk.com/news-events-videos/general-counsels-corner-cannabis-and-research-on-campus> and <https://www.bsk.com/news-events-videos/cannabis-and-the-campus>

² <https://policysearch.ama-assn.org/policyfinder/detail/Marijuana?uri=%2FAMADoc%2Fdirectives.xml-D-95.969.xml>

- Does the health care facility need to verify its integrity and, if so, how is that done?
- How would the product be stored and administered at the facility and how will potential diversion be prevented?
- What are potential issues related to drug interactions, and potential side effects?

Some organizations have addressed these issues by adopting sample hospital policies based on their respective state's laws. The Washington Health Care Association has developed a template for a hospital policy that conforms to the cannabis laws enacted in that state.³ That policy requires documentation by a qualified health care professional that the patient has a terminal or debilitating condition that may benefit from the use of medical marijuana. A designated provider of the medical marijuana is responsible for bringing the medical marijuana to the patient and removing it after consumption. The health care facility staff's involvement is strictly limited to confirming the documentation for the use of medical marijuana and compliance with the policy; no staff member may otherwise assist in the administration of the medical marijuana in any way.

The University of Pennsylvania health system has a policy, conforming to Pennsylvania law, that prohibits possession or use of marijuana in any form with one limited exception. Certified patients who have a designated caregiver registered with the Pennsylvania Department of Health may be permitted to use medical marijuana during their inpatient admission if clinically appropriate and in compliance with hospital policies. Self-administration is prohibited. Only a designated caregiver may be permitted to administer medical marijuana during inpatient admission⁴.

Legislative action has been taken in several states to address the issue of medical marijuana use in health care facilities. California⁵, Connecticut⁶ and Maine⁷ have passed legislation that permits, to some extent, the use of medical marijuana by hospitalized patients. Each state's requirements are a bit different, but the use of medical marijuana by patients is tightly constrained with respect to which patients qualify and how and by whom the medical marijuana can be administered.

New York amended its regulations⁸ to allow hospitals, if they choose, to authorize patients to self-administer medications, including medical marijuana products. The regulations require that: (1) the hospital develops policies and procedures that outline how, if at all, self-administration is permitted; (2) there be a medical order for the self-administration, (3) the patient or the patient's caregiver has been assessed for the capacity to self-administer; (4) the patient or the patient's caregiver has been given instructions for the safe and accurate administration of the medication; (5) the security of the medication has been addressed; and (6) there is documentation of self-administration in the patient's medical record. For medications brought in by patients, the regulations further require that the medication be identified and evaluated for integrity.

If a health care facility decides to develop a policy for cannabis, it is important to consider the medical and legal issues carefully, and to conduct on-going review and assessment to ensure compliance with federal and state laws.

³ https://dpbh.nv.gov/uploadedFiles/dpbhnavgov/content/Reg/HealthFacilities/Advisory_Councils/ALAC/Meetings/2015/Sample-medical-marijuana-policy_Washington_State.pdf

⁴ <https://www.pennmedicine.org/for-patients-and-visitors/patient-information/medical-marijuana-therapy/medical-marijuana-faqs#can-i-bring-medical-marijuana-to-a-penn-medicine-hospital>

⁵ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB311

⁶ <https://www.cga.ct.gov/2016/TOB/h/2016HB-05450-R00-HB.htm>

⁷ <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0256&item=3&snum=127>

⁸ Title 10 NYCRR Part 405.5



General Counsel's Corner is a publication presented by one of Bond's former general counsels and academic administrators of higher education institutions: [Monica Barrett](#) (Rutgers); [Sandra Casey](#) (SUNY and Siena College); [Shelley Sanders Kehl](#) (Pratt Institute); [Barbara Lee](#) (SVP for Academic Affairs at Rutgers); [Sarah Luke](#) (Governors State University); [Gail Norris](#) (University of Rochester); and [Jane Sovern](#) (CUNY). In each issue, a different attorney from this team will share with you recent legal developments, tips, strategies and useful information to assist you with your daily work on campus.

This post is brought to you by [Gail M. Norris](#) of our Rochester office. Gail served as vice president and general counsel for the University of Rochester where she advised the Board of Trustees and university officials on critical matters involving higher education and health care. As general counsel, Gail managed all legal issues of the university including governance, business and tax matters, litigation, employment and benefits, risk management, patenting, research, technology transfer and licensing.

