

# Medical Marijuana Redux

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There were so many developments that occurred in the first months of 2018 that could potentially affect federal health care—the government shutdown, the proposed change in rights of conscience protections for federal health care professionals (HCPs), and more debate about medical marijuana in the VA—that it was hard to pick just one topic to discuss this month. In the end I felt it was time to examine how and in what ways the new VA policy on medical marijuana may have changed.

In 2014, before I became editor-in-chief of *Federal Practitioner*, I wrote an article analyzing the legal and ethical conflicts that arise for VA clinicians who practice under the federal regulations that prohibit them from prescribing medical marijuana or from completing forms or providing referrals for their patients who live in states where medical marijuana is legal.<sup>2</sup> The article summarized the events and issues that led to the VA issuing a policy on medical marijuana in 2011. When that article was written, medical marijuana had been legalized in 20 states.

Now in March 2018, 29 states have passed legislation to permit marijuana use for medical purposes.<sup>3</sup> Prior to issuing the revised version of its medical marijuana policy, the VA rumor mill went into high gear. Anticipatory stories predicted dramatic changes from the extreme of the VA penalizing veterans who used medical marijuana to allowing doctors to prescribe it. Such massive shifts are not typical of any bureaucracy, and indeed some VA officials denied that the revision represented any substantive movement in either direction.<sup>4</sup>

VHA Directive 1315, Access to Clinical Programs for Veterans Participating in State Medical Marijuana Programs was issued December 8, 2017.<sup>5</sup> In accordance with federal regulation, its issuance superceded VHA Directive 2011-04 of the same title.<sup>6</sup> According to the directive, its emphasis on discussion with veterans was a significant policy shift. “Major changes include

adding policy to support the Veteran-provider relationship when discussing the use of medical marijuana and its impact on health including Veteran-specific treatment plans.” It should be noted that the prior directive did not prohibit or even discourage such conversations, and accompanying less official guidance actually promoted them.<sup>7</sup>

Interestingly, the new directive does not instruct HCPs to ask about medical marijuana in the way questions about alcohol, tobacco, and drug use as well as many other lifestyle factors are mandated. Asking a veteran about marijuana use would be a step toward medical mainstreaming. The burden is still on the veteran to bring up the subject—not an easy thing to do in light of the fear among some veterans that the VA will curtail benefits for a veteran caught using medical marijuana.

The new directive is a minor move toward appropriate medicalization. Practitioners are advised to discuss medical marijuana use with any veteran for whom it “may have clinical relevance” or who asks about medical marijuana. This underscores the need for VA practitioners to have access to up-to-date information in order to keep up with their Internet savvy patients and combat ever proliferating myths about the panacea-like properties of medical marijuana.

But when it comes down to the devilish details, the primary rules provide no deliverance from the impasse between state and federal law. Marijuana remains a Schedule I drug under the Controlled Substances Act. For purposes of federal health care, it still is, “a substance with a high potential for abuse without a currently acceptable medical use in treatment in the United States, and lacking accepted safety for use under medical supervision.”<sup>8</sup> Although many vocal veterans as well as some federal practitioners, HCPs in the wider medical community, and more recently a number of politicians would challenge this regulation, federal law

*I was taught that the way of progress is neither swift nor easy.*  
 Marie Curie<sup>1</sup>

prohibits prescribing medical marijuana. The new VA directive is more explicit in stating that VA practitioners cannot complete forms enrolling veterans or permitting their registration in state-approved medical marijuana programs. This restriction was implicit in the prior directive but has been a continuing source of confusion for HCPs. The new directive at least clarifies these restrictions.

Another point of clinical misunderstanding had been about whether HCPs in the VA could refer patients to state-approved medical marijuana programs and what exactly referral entails. There is a direct prohibition in the new directive on making referrals, yet the term remains undefined. Nothing in the directive contradicts the right of a veteran to access their medical records for purposes of registering for state-approved programs. But the directive does forcefully restate that if a veteran appears in an HCP's office or at the pharmacy with an authorization or registration for medical marijuana from a state-approved program, the VA will neither provide the product nor pay for its purchase elsewhere. The more rules-based form of this directive also strongly states that possession of marijuana on VA grounds even for medical purposes and with state approval is a violation of federal regulation that may be prosecuted under the Controlled Substance Act.

The new directive does clarify a question that had arisen about VA employees' participation in state-approved medical marijuana programs. VA employees, even those who do not receive their care at the VA, are prohibited from using medical marijuana. Individuals who use marijuana for medical indications often do so daily. Considering that a person may test positive for marijuana months after regular use, a segment of VA staff may be at risk for violating federal drug-free workplace regulations.<sup>9,10</sup>

The administrative aspects of the directive are tightened, which will help clinicians know what they are supposed to do when a veteran reports medical marijuana use; it is hoped that this will bring more consistency and fairness to the process. Practitioners continue to be required to enter a veteran's reported use of medical marijuana in the electronic medical record under the

section Non-VA/Herbal Medication/Over the Counter. When HCPs discuss the use of medical marijuana with patients, the requirement to document those discussions is instructive.

Those looking for a relaxation in the VA's clinical approach will find little to cheer about. But there are a few rays of hope for those HCPs and patients trying to do the best they can in this catch-22 situation. First, the VA has stood firm that veterans cannot be excluded from other types of VA medical care due to their use of medical marijuana. "Veterans must not be denied VHA services solely because they are participating in State-approved marijuana programs."<sup>5</sup> The directive specifically acknowledges the clinical areas in which veteran medical marijuana use has been the most contentious: PTSD, substance use, and pain management. It also encourages HCPs to review potential drug interactions and how marijuana use may affect other types of medical or psychiatric care. These 3 areas also are the object of intensified congressional pressure and veteran

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service organization lobbying for the VA to not only incorporate these modalities into VA care, but also to expand research.<sup>11</sup>

Second, the phrase "modifying treatment plans," which understandably makes patients and their advocates apprehensive, is qualified. To those clinicians who would prefer, either because of concerns of professional liability or personal belief, to have a black-and-white stance on the use of medical marijuana, the directive mandates that they must deal with the gray. "Providers need to make decisions to modify treatment plans based on marijuana use on a case-by-case basis."<sup>5</sup>

Third, those modifications cannot be unilateral pronouncements, but must be the result of shared decisions making and mutual discussion. The only ground on which a practitioner can exercise any degree of soft paternalism is when the use of medical marijuana and

treatment for another condition represents an evidence-based threat to the health and safety of the veteran. “Providers need to make decisions to modify treatment plans based on marijuana use on a case-by-case basis, such decisions need to be made in partnership with the Veteran and must be based on concerns regarding Veteran health and safety.”<sup>5</sup>

Overall the policy has no big surprises, leaving those who hoped the revision would bring a softening of the VA’s institutional position and federal law frustrated. Those who sought a strengthening of VA policy based on those same regulations regarding the use of medical marijuana will be equally thwarted. And those clinicians who are just trying to do the right thing as HCPs who work for the federal government and for their patients who are interested only in relief from their most troubling ailments, will stay right where they were, suspended over the ethical chasm that medical marijuana generates between state and federal law.

#### Author disclosure

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#### Disclaimer

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#### References

1. Curie M. *Pierre Curie With Autobiographical Notes*. Kellogg C, Kellogg V, trans. New York: Macmillan; 1923.
2. Geppert CMA. Legal and clinical evolution of Veterans Health Administration policy on medical marijuana. *Fed Pract*. 2014;31(3):6-12.
3. National Conference of State Legislators. State Medical Marijuana Laws. <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> Updated February 15, 2018. Accessed March 2, 2018.
4. Shane L. VA refutes rumors of new policy on medical marijuana. <https://www.militarytimes.com/veterans/2017/12/19/va-refutes-rumors-of-a-new-policy-on-medical-marijuana>. Published December 19, 2017. Accessed March 2, 2018.
5. U.S. Department of Veterans Affairs, Veterans Health Administration. VHA Directive 1315, Access to Clinical Programs for Veterans Participating in State Medical Marijuana Programs. December 8, 2017.
6. U.S. Department of Veterans Affairs, Veterans Health Administration. VHA Directive 2011-004, Access to Clinical Programs for Veterans Participating in State-Approved Marijuana Programs, dated January 31, 2011 (rescinded).
7. U.S. Department of Veterans Affairs, Veterans Health Administration. Clinical considerations regarding veteran patients who participate in state-approved medical marijuana programs. Washington, DC; 2010. [Nonpublic document.]
8. 21 U.S.C. 801 et al, the Controlled Substances Act.
9. Welch SA. The pharmacology of cannabinoids. In: *Principles of Addiction Medicine: The Essentials*. Cavacuiti CA, ed. Philadelphia, PA: Lippincott-Williams & Wilkins; 2011:62.
10. U.S. Department of Veterans Affairs. VA Handbook 5383.2, VA drug-free workplace plan. [https://www.va.gov/vapubs/search\\_action.cfm?dType=2](https://www.va.gov/vapubs/search_action.cfm?dType=2). Published April 11, 1997. Accessed March 2, 2018.
11. Zezima K. VA says it won’t study medical marijuana’s effect on veterans. *The Washington Post*. [https://www.washingtonpost.com/news/post-nation/wp/2018/01/16/va-says-it-wont-study-medical-marijuanas-effect-on-veterans/?utm\\_term=.9d554109d135](https://www.washingtonpost.com/news/post-nation/wp/2018/01/16/va-says-it-wont-study-medical-marijuanas-effect-on-veterans/?utm_term=.9d554109d135). Published January 16, 2018. Accessed March 2, 2018.