Despite the COVID-19 pandemic across America, there is an industry that is growing by leaps and bounds: Cannabis. Yet, under the Controlled Substances Act of 1970, the use and possession of cannabis for any purpose is illegal. And though there is currently no federal legislation legalizing cannabis, there are many states that legalize the use of cannabis in some form. In 1996, California became the first state to legalize medical cannabis, igniting a movement that spread to a majority of states by 2016.

As of August 1, 2020, Louisiana’s amended medical marijuana law will expand access by allowing more doctors to recommend medical marijuana and by making medical marijuana an available treatment to more patients. And, although cannabis remains a schedule I drug, and therefore a controlled substance under the 1970 Act, the bipartisan Rohrbacher-Farr Amendment—which prohibits the Department of Justice (DOJ) from using funds to prevent states from implementing laws authorizing the use, distribution, possession, or cultivation of medical marijuana—was passed into law in 2014 and has been renewed every year since.

Before the recent amendments to Louisiana’s marijuana law, doctors had to be specially licensed by the state to recommend marijuana. In April 2018, only ten doctors were licensed by the state to recommend medical marijuana; by June 2019, that number had increased to only eighty or so doctors statewide. However, starting August 1, 2020, recommendations can reflect the “opinion of any physician licensed by and in good standing with the Louisiana State Board of Medical Examiners.” Physicians will no longer need special approval to recommend medical marijuana to their patients, and patients will be able to obtain medical marijuana recommendations from their regular doctors.

Louisiana’s Therapeutic Marijuana Act allows such physicians to recommend therapeutic marijuana to patients “clinically diagnosed as suffering from a debilitating medical condition.” In its previous iteration, Louisiana’s medical marijuana law limited “debilitating medical conditions” to cancer, HIV, AIDS, cachexia or wasting syndrome, seizure disorders, epilepsy, spasticity, Crohn’s disease, muscular dystrophy, and multiple sclerosis.

Beginning on August 1, this list will include several new conditions including neurodegenerative diseases and conditions, chronic pain, as well as “[a]ny condition for which a patient is receiving hospice care or palliative care. Additionally, doctors will be able to prescribe therapeutic marijuana to patients suffering from “any condition . . . that [the] physician, in his medical opinion, considers debilitating to an individual patient,” so long as the prescribing physician is “qualified through his medical education and training to treat” that condition and the physician and patient “share a bona fide doctor-patient relationship.” Representative Larry Bagley (R-Stonewall) called this a big win “to help people in pain that [previously] had no other choice but opioids.” The new law affords doctors greater flexibility in determining when therapeutic marijuana is the appropriate choice of treatment for their patients. Also, physicians
may recommend any form of marijuana except for smokable “raw or crude” cannabis (though the vaporization of marijuana via a metered-dose inhaler is permitted).

Because marijuana is still illegal under federal law and classified as a Schedule I drug under the Controlled Substances Act (CSA), doctors who prescribe marijuana risk violating federal law, and potentially, the revocation of their Drug Enforcement Agency (DEA) Licenses. Thus, the practice of “recommending” medical marijuana has become the industry standard after a federal district court decision—upheld by the Ninth Circuit Court of Appeals and denied certiorari by the U.S. Supreme Court—permitted doctors’ “recommendation” of the use of cannabis for medical purposes when state law allows them to do so.

If you are not an expert in this field, it is crucial to consult with local counsel in each state, because the laws can vary widely. In our series, we will explore how the law affects physicians, investors, property owners and commercial retailers.

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