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JAMES F. GOSSETT

December 10, 2014

Mr. Richard H. Paul
Executive Director
Illinois Society of Eye Physicians & Surgeons
10 W. Phillip Road, Suite 120
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Re : Illinois Compassionate Use of Medical Cannabis Pilot Program

You have asked us to provide you with a legal opinion concerning the rights and responsibilities of your members under the Illinois Compassionate Use of Medical Cannabis Pilot Program. This program was established by Illinois Public Act 98-0122, effective January 1, 2014 (“the Act”).

The Act creates a four-year pilot program that provides certain immunity from penalties under state and local laws for “registered qualifying patients” and licensed physicians, among others, who are involved in the purchase, possession and use of cannabis in amounts as specified in the Act. Registered qualifying patients are to be issued registration cards by the Illinois Department of Public Health. To be a registered qualifying patient, the Act says that one must receive a “written certification” from a physician, stating that (1) in the physician’s professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat the patient’s debilitating medical condition or symptoms associated with the condition, (2) the patient has a specified debilitating medical condition, and (3) the patient is under the physician’s care for the debilitating medical condition. Further, the Act states that a written certification shall be made only in the course of a bona-fide physician-patient relationship, after the physician has completed an assessment of the patient’s medical history, reviewed relevant records related to the patient’s debilitating condition, and conducted a physical examination.

Generally, the Act permits a registered qualifying patient to purchase up to 2.5 ounces of usable cannabis during a period of 14 days, provided it is derived solely from a source in Illinois.

The Illinois Department of Public Health may allow a patient to purchase more than that amount if a physician provides a substantial medical basis in a signed, written statement asserting that, based on the patient's medical history, in the physician's professional judgment, 2.5 ounces is an insufficiently adequate supply for a 14-day period to properly alleviate the patient's debilitating medical condition or symptoms associated with it.

"Physician" is a term defined in the Act, and only a "physician" as defined in the Act can issue a written authorization to a registered qualifying patient under the Act. The Act defines "physician" as a licensed doctor of medicine or doctor of osteopathy who has a controlled substances license under Article III of the Illinois Controlled Substances Act. Specifically excluded from that definition is "a licensed practitioner under any other Act, including, but not limited to, the Illinois Dental Practice Act."

Another important term defined in the Act is "debilitating medical condition." Listed in the Act as "debilitating medical conditions" are the following:

cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, cachexia/wasting syndrome, muscular dystrophy, severe fibromyalgia, spinal cord disease, including but not limited to arachnoiditis, Tarlov cysts, hydromyelia, syringomyelia, Rheumatoid arthritis, fibrous dysplasia, spinal cord injury, traumatic brain injury and post-concussion syndrome, Multiple Sclerosis, Arnold-Chiari malformation and Syringomyelia, Spinocerebellar Ataxia (SCA), Parkinson's, Tourette's, Myoclonus, Dystonia, Reflex Sympathetic Dystrophy, RSD (Complex Regional Pain Syndromes Type I), Causalgia, CRPS (Complex Regional Pain Syndromes Type II), Neurofibromatosis, Chronic Inflammatory Demyelinating Polyneuropathy, Sjogren's syndrome, Lupus, Interstitial Cystitis, Myasthenia Gravis, Hydrocephalus, nail-patella syndrome, residual limb pain, or the treatment of these conditions.

Other debilitating medical conditions can be added to the above list by the Department of Public Health.

In addition to the above provisions, the Act defines and regulates "designated caregivers," "dispensing organizations" and "cultivation centers." The roles of the latter two are fairly obvious, while a "designated caregiver" is a person to be registered by the Department of Public Health, who is at least 21, has not committed certain criminal offenses, and assists no more than one registered qualifying patient with his or her medical use of cannabis.

Importantly, the Act does not require any physician to prescribe cannabis or to attest to the efficacy of medical cannabis. But it provides certain benefits and responsibilities for physicians who do prescribe cannabis for "registered qualifying patients" and provide "written certifications" to patients under the Act.

The benefit to physicians provided by the Act is that they will have a right to immunity from prosecution for violation of state and local laws that might otherwise apply to the physician

for prescribing cannabis to patients in accordance with the provisions of the Act. That immunity provides that a physician is not subject to arrest, prosecution or penalty in any manner, and may not be denied any right or privilege, or be subjected to any disciplinary action from a professional licensing board, solely for providing “written certifications,” or for otherwise stating that, in the physician’s professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis as permitted under the Act.

There are some limitations, however, on the immunity for physicians provided by the Act. One limitation is that federal law supersedes state law, and the federal Controlled Substances Act (“CSA”) prohibits use, possession and sale of cannabis, including medical use. States are not required to enforce the CSA, and the Obama Administration has advised that it will not enforce this law to prevent medical use of cannabis, which has led many states to enact laws like the Act in order to facilitate such use. But the CSA is still on the books, and policy regarding enforcement is subject to change.

Other limitations on the immunity provided to physicians by the Illinois Act are stated in the Act itself. The Act states that a professional licensing board may sanction a physician for (1) issuing a written certification to a patient who is not under the physician’s care for a debilitating medical condition; or (2) failing to properly evaluate a patient’s medical condition or otherwise violating the standard of care for evaluating medical conditions.

The Act imposes responsibilities on physicians if they certify a debilitating medical condition for a patient, as follows:

1. Compliance with generally accepted standards of medical practice, the Medical Practice Act of 1987, and all applicable rules,
2. Examination of the patient in person and not by remote means, including telemedicine, and
3. Maintenance of a record-keeping system for all such patients that is accessible to and subject to review by the Department of Public Health and the Department of Financial and Professional Regulation.

The Act also prohibits physicians from doing the following:

1. Accepting, soliciting or offering any form of remuneration from or to a qualifying patient or others “other than accepting payment from a patient for the fee associated with the examination required prior to certifying a qualifying patient,”
2. Offering a discount of any other item of value to a qualifying patient who uses or agrees to use a particular primary caregiver or dispensing organization to obtain medical cannabis,

3. Conducting a personal physical examination of a patient for purposes of diagnosing a debilitating medical condition at a location where medical cannabis is sold or distributed or at the address of a principal officer, agent or employee of medical cannabis organization,

4. Holding a direct or indirect economic interest in a cultivation center or dispensing organization if the physician recommends the use of medical cannabis or is in a partnership or other fee or profit-sharing relationship with a physician who recommends medical cannabis,

5. Serving on the board of directors or as an employee of a cultivation center or dispensing organization,

6. Referring patients to a cultivation center, a dispensing organization or a registered designated caregiver, and

7. Advertising in a cultivation center or dispensing organization.

In addition to the above prohibitions, physicians should obviously refrain from making any false statements to the Department of Public Health or patients relating to a patient's medical condition or the physician's role, qualifications, and activities under the Act.

The Department of Public Health generally administers the Act, and that Department has developed forms for use by physicians in providing the written certification a "registered qualifying patient" needs to claim rights under the Act, if, and only if, a physician chooses to provide such a certification. These forms require a physician to provide the Department with information about the patient (name, address, date of birth and gender), and the physician (name, address, phone number, email address, physician license number, DEA registration number, and specialty or practice area of clinical practice), as well as the length of time the patient has been under the physician's care and the date that the patient received an in-person medical examination relating to the certification. Among other things, the forms require that the physician state as follows:

1. The physician has made or confirmed a diagnosis of a debilitating medical condition for the patient, which condition is specified in the form, and the patient is under the physician's care for the treatment of the debilitating medical condition and/or the patient's primary care.

2. The physician has established a bona-fide physician-patient relationship with the patient, and the physician-patient relationship is not limited to recommending that the patient use medical cannabis or a consultation for that purpose.

3. The physician has conducted an in-person physical exam of the patient within the past 90 days, completed an assessment of the patient's current medical condition, and understands that the Department may request additional confirmation of the physician's assessment of the patient's condition.

4. The physician has completed an assessment of the patient's medical history, including a review of medical records from other treating physicians for the previous 12 months, and has established a medical record for the patient.

5. The physician has explained the potential risks and benefits of the medical use of cannabis to the patient.

6. In the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the use of medical cannabis to treat or alleviate the patient's debilitating medical condition or symptoms of that condition.

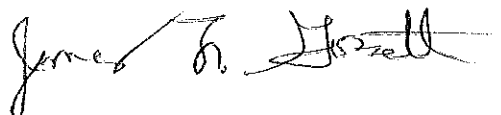
7. In the physician's professional opinion, the potential benefits of medical cannabis use would likely outweigh health risks for the patient.

8. All information in the written certification is true and correct.

This opinion is based on the language of the Act and the regulations and forms developed by the Illinois Department of Public Health and brought to our attention as of the date of this letter. If you have questions, please let us know.

HOWE & HUTTON, LTD.

Sincerely,

A handwritten signature in black ink, appearing to read "James F. Gossett". The signature is written in a cursive style with a horizontal line extending to the right.

James F. Gossett
Partner