October 19, 2016

Public Comment on Register I.D. No.: HLT-37-16-00024-P
Amendment of Subdivision 1004.1(a)(2) of Title 10 NYCRR (Medical Use of Marihuana)
In Support of Proposed Rule Making

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To Whom It May Concern:

Marijuana Policy Project is the largest marijuana policy reform organization in the U.S., and we have been working on medical marijuana advocacy and implementation for over 20 years. We worked side by side with New York patients to help pass this medical marijuana law and have over 7,000 subscribers in New York. As a national organization, we also have expertise on the approaches taken by different states.

I am writing in support of this proposed rule, which would allow nurse practitioners — who are already allowed to prescribe medications in New York — to recommend medical marijuana to their patients, in addition to physicians. **Several other states already allow providers other than physicians to recommend medical marijuana, which expands access to the program to more patients.**

I. Why This Regulation is Needed

One of the biggest obstacles to patients being able to enroll in medical cannabis programs is that some health care practitioners are unable or unwilling to recommend medical cannabis to their patients.[1] Some doctors are concerned about federal law and potential civil liability. Others are uneducated about medical cannabis or are part of a medical practice that forbids all physicians from recommending it. For example, VA doctors are not allowed to certify a patient for medical cannabis. Finally, some are simply not interested in taking the time and money to complete the required training course; New York is one of very few states that requires such a course in order to recommend medical marijuana.

New York's program in particular has suffered from well-documented problems with patient access. For example, in *Assessing New York's Medical Marijuana Program: Problems of Patient Access and Affordability*, a report by the Drug Policy Alliance issued in June 2016,[2] found that: "More than half of patients and caregivers surveyed had not yet found a doctor to certify them, and among those, 3 out of 5 have been waiting for 3 to 4 months to locate a registered physician." Perhaps this is because "less than 1% of 80,000 doctors in New York State had taken

[1] See: "New York doctors just say no to medical marijuana," *Crain's New York Business*, July 31, 2015 and "VA Doctors Still Can't Recommend Medical Marijuana To Veterans," *Huffington Post*, April 30, 2015.
[2] available at:
https://www.drugpolicy.org/sites/default/files/NY%20MMJ%20Implementation%20Report%20Q1%20June%2013%202016.pdf

the training course and registered at that time." There has been extensive news coverage of the issue as well.[3]

Allowing other medical professionals to recommend cannabis improves access. The Department of Health itself acknowledged this in its press release: "Allowing nurse practitioners to participate in New York's program will provide greater access to New Yorkers of all ages and health conditions, since these New Yorkers are increasingly choosing a nurse practitioner as their health care provider." *State Department of Health Expands Medical Marijuana Program to Reach More Patients Suffering From Severe, Debilitating Illnesses in New York*,[4] (quoting Stephen Ferrara, DNP, RN, FNP-BC, FAANP, Executive Director of The Nurse Practitioner Association NYS.) This is particularly helpful in rural areas. If a patient already has a relationship with one of these providers, it is unfair, illogical, and unnecessarily costly to force the patient to establish a bona fide relationship with a physician for the sole purpose of seeking a legally recognized recommendation for the medical marijuana that their nurse practitioner recommends.

II. New York Law Already Allows These Providers to Prescribe Drugs Far More Dangerous than Marijuana

Nurse practitioners already have the authority to prescribe controlled substances in Schedule II, which includes such dangerous drugs as oxycodone and morphine,[5] as long as they are diagnosing and treating illnesses within their specialty area of practice.[6]

It just makes sense to allow providers who can prescribe and dispense controlled substances to recommend medical marijuana, given that marijuana has not been shown to cause an overdose death,[7] while prescription painkillers caused over 16,000 overdose deaths in the United States in 2013 alone.[8] In addition, if a practitioner is prescribing opioids for pain, it may make sense for him or her to recommend marijuana as well, because often using medical marijuana can reduce the amount of opioids that a patient needs.[9]

New York recently passed a Nurse Practitioners Modernization Act in 2014, which eliminated the need for a written practice agreement between a nurse practitioner (with over 3,600 hours of

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[3] For example, *Patients struggle to get medical marijuana in New York*, at http://www.lohud.com/story/news/investigations/2016/02/24/medical-marijuana-new-york/79655424/

[4] Available at: https://www.health.ny.gov/press/releases/2016/2016-08-30_doh_expands_medical_marijuana_program.htm

[5] New York Public Health Law § 3306(b)(1).

[6] See http://www.op.nysed.gov/prof/nurse/nursepracticefaq.htm for an explanation of nurse practitioners' scope of practice.

[7] National Cancer Institute, Complimentary and Alternative Medicine, *Cannabis and Cannabinoids for Health Professionals* ("Because cannabinoid receptors, unlike opioid receptors, are not located in the brainstem areas controlling respiration, lethal overdoses from *Cannabis* and cannabinoids do not occur."). Updated January 20, 2016, available at http://www.cancer.gov/about-cancer/treatment/cam/hp/cannabis-pdq#section/all.

[8] Centers for Disease Control and Prevention, *National Vital Statistics System mortality data*, 2015, available at http://www.cdc.gov/nchs/deaths.htm.

[9] Mary E Lynch, MD, FRCPC, Alexander J Clark, MD, FRCPC, "Cannabis Reduces Opioid Dose in the Treatment of Chronic Non-Cancer Pain," *Journal of Pain and Symptom Management*, Vol. 25, Issue 6, pg. 496–498 (June 2003).

experience) and a physician, as well as eliminating the need for a chart review every three months. This allowed nurse practitioners to open their own practices and demonstrates a degree of trust in nurse practitioners' ability to operate independently, as long as they maintain collaborative relationships with licensed physicians. Given this fact, permitting them to recommend "one of the safest therapeutically active substances known to man"[10] makes good policy sense.

III. Other States Already Allow Practitioners Other Than Physicians to Recommend Medical Marijuana

1) In Arizona, the law defines a "physician" who can recommend medical marijuana to include not only M.D.s, but also licensed osteopathic physicians, naturopathic physicians, and homeopathic physicians.

2) In Minnesota, a patient is only required to have a certification that he or she has a qualifying condition. The medical provider need not recommend marijuana for that condition. A nurse practitioner or physician's assistant may issue the certification.

3) In New Hampshire, an advanced practice registered nurse may also recommend medical marijuana.

4) In Vermont, the law was amended in 2011 to allow physician's assistants and advanced practice registered nurses to certify patients for the program and in 2014 to allow naturopaths to certify patients.

5) In Washington, physician's assistants, osteopathic physician's assistants, naturopaths, and advanced registered nurse practitioners were permitted to issue recommendations beginning in 2010.

6) Most recently, in 2016, Maryland amended its law to allow nurse practitioners, nurse midwives, dentists, and podiatrists to issue recommendations beginning in June 2017.

IV. Conclusion

New York made a compassionate decision to provide protections to medical marijuana patients. We support this commonsense extension of the program so that it can provide access to more patients.

[10] Opinion of Judge Francis L. Young, DEA Administrative Law Judge, In The Matter Of Marijuana Rescheduling Petition, Docket No. 86-22 (1988), available at: http://www.druglibrary.org/schaffer/library/studies/young/young4.html