

**Sex Offender Management Board
Guidance to SOMB Listed Providers
on the Use of Medical Marijuana, Prescription Medications
and Over the Counter Medications by Sexual Offenders
Approved on January 15, 2016**

Recent legislation has impacted the use of medical marijuana by sexual offenders on probation. Probation officers are complying with this legislation.

House Bill (H.B.) - 15-1267

Pursuant to H.B. 15-1267, individuals on probation, including those convicted of a sex crime, are generally permitted to possess or use medical marijuana if they have a valid medical marijuana card. There are two exceptions to the individual being allowed to use medical marijuana:

- If the crime for which the probationer was convicted is a violation of Article 43.3 of Title 12, C.R.S. (Colorado Medical Marijuana Code), the probationer cannot use/possess medical marijuana. This is not discretionary on the part of the judge.
- The law provides that the court, on a discretionary basis, may prohibit use/possession if the “court determines, based on the assessment as required by section 18-1.3-209, a prohibition against the possession or use of medical marijuana is necessary and appropriate to accomplish the goals of sentencing as stated in 18-1-102.5.” Probation officers are to provide the court with pertinent information regarding the assessment, and the court reaches a decision after considering the results of the assessment as well as the goals of sentencing.

Providers who have concerns about abuse/dependence may share those concerns with the probation officer, however, those concerns will not change the fact that a court’s discretion relative to the use/possession of medical marijuana is extremely limited.

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In light of H.B. – 15-1267, the SOMB is offering the following guidance to SOMB Listed Providers. It is not uncommon for a client of therapeutic services to be under the care of a physician and be prescribed medication. This medication can be in the form of prescription narcotics for pain management, prescription psychotropic medication for mental health symptoms, or even medical marijuana. It is important for mental health professionals to consult with the client’s medical provider to determine the effects of the medication, possible side effects, and potential impacts to the therapeutic process.

The Colorado Mental Health Practice Act (12-43-208 and 12-43-209) specifically prohibit a mental health professional from “engaging in the practice of medicine” or to “advise a client with reference to medical problems.” The mental health professional should, however, assess during treatment sessions if a client’s decision-making and judgement are affected by medication

use. A client cannot be impaired during treatment and needs to be able to focus, be present, participate, and track content of treatment sessions. The prescription of a medication or medical marijuana by a physician does not prohibit a SOMB Listed Provider from also determining as necessary whether the medication or medical marijuana use is being abused by the client. The various ethical codes of conduct, including the American Counseling Association, discuss the “inability of incapacitated adults to give consent.” In these cases the mental health professional should discuss the concerns with the client and other members of the treatment team to determine the best course of action.

Specific Guidance Regarding Medical Marijuana and Clients in Treatment for a Sexual Offense

Obtain Information from the Probation Officer

SOMB listed providers, in conjunction with the Community Supervision Team (CST), or Multidisciplinary Team (MDT, should obtain information from the probation officer regarding the allowance or prohibition of medical marijuana use while under court supervision.

SOMB Listed Providers Agency Policies

Ethical standards allow mental health professions, including SOMB Listed Providers, to determine which clients they accept, or do not accept, into treatment, and whether their program has policies or protocols in place to address client impairment due to substance or medication use, including medical marijuana.

Confidentiality of the Marijuana Registry

It is important to keep in mind that per the State Court Administrator’s Office, a sex offender’s “status on the medical marijuana registry is not public information. It is a class 1 misdemeanor to release or make public confidential information from the marijuana registry. Therefore, if the information regarding a person’s status is to be released, it is important to secure a signed release of information from the client before doing so, or place with communication with the court under confidential cover.”

Testing and Assessment Considerations

Medical marijuana usage by clients in sex offense specific treatment may affect their polygraph results. Therefore, the use of medical marijuana by clients subject to polygraph assessment should be discussed with the polygraph examiner and prescribing physician. The CST/MDT should make a determination about the suitability of a client for assessment utilizing polygraph, plethysmograph, VRT, and alternative monitoring and accountability measures.