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December 9, 2016

Commissioner Howard Zucker, MD  
New York State Department of Health  
Office of the Commissioner  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

Dear Commissioner Zucker:

We are writing to you to express our concerns with recent press reports that indicate that the New York State Department of Health is considering expanding the medical marijuana program to include "chronic pain" in the list of conditions that physicians are now able to certify patients for medical marijuana.

First, we believe that to add chronic pain is premature at this time. In February 2015, during the regulatory process, the Medical Society of the State of New York wrote expressing concerns about adding medical conditions or clinically associated conditions to the list of those diseases whereby certification may be given. At that time, MSSNY stated that before such a determination is made, further discussion should be facilitated by DOH with the physician community; possibly as part of a workgroup put together by the department. MSSNY also indicated that list of clinical conditions not be expanded until such time as the research and evaluation of the impact of and the effectiveness of the medical use of marijuana has been analyzed as to its effectiveness in patients. MSSNY also requested that since the evaluation component is required by law, then a portion of the revenue raised from the acquired taxes should be set aside for the evaluation process. Since the program is still so new and little if any outreach has been made to the physician community, we believe that it is premature for DOH to add chronic pain to the list of conditions recognized to be treated by medical marijuana.

Second, we are concerned that use of medical marijuana to treat chronic pain may be inconsistent with national treatment guidelines. According to the Institute of Medicine report "Relieving Pain in American: A Blueprint for Transforming Prevention, Care, Education and Research", 116 million adults experience chronic pain. The report notes that chronic pain is experienced individually and is more than just a physical symptom and is not always resolved by curing the underlying disease. Expansion of the medical marijuana program to include chronic pain will be a significant undertaking by the NYS Department of Health and medical marijuana should not be used as an alternative to the appropriate prescribing of other controlled substances to manage chronic pain.

As you may be aware, the Centers for Disease Control and Prevention recently developed and published the CDC Guideline for Prescribing Opioids for Chronic Pain. This guideline provides the prescriber with a series of recommendations for the prescribing of opioid pain medication for patients 18 and older in primary care settings. Recommendations focus on the use of opioids in treating chronic pain (pain lasting longer than three months or past the time of normal tissue healing).

The guidelines provide guidance for determining when to initiate or continue opioids for chronic pain outside of active cancer treatment, palliative care, and end-of-life care; types of Opioid selection, dosage, duration, follow-up, and discontinuation and also calls for assessing risk and addressing harms of opioid use. The guidance also discusses having prescribers consider alternative treatments (which does NOT include use of marijuana) before initiating opioid therapy. There was significant discussion and revisions by the CDC working with medical stakeholders before these guidelines came to fruition.

Third, there are still many within the medical community who believe marijuana is a gateway drug to addiction. At a time when many have tirelessly worked to address the problems of opioid addiction, and physicians have been maligned for insufficient attention to the potential risks of opioid addiction, many physicians have expressed concern that authorizing the use of medical marijuana for the treatment of chronic pain may be exchanging one type of addiction for another.

Perhaps of greatest concern is the likely enhanced risk of federal prosecution. As you know, the US Department of Justice, Office of Deputy Attorney General has written a letter that indicates there should be prosecutorial discretion in states where there is strong and effective regulatory guidance for patients that are using marijuana for seriously ill individuals or their individuals care givers. However, with the upcoming change in the federal Administration which could result in a US Attorney General who is opposed to the use of medical marijuana, we are concerned that physicians or other prescribers who certify patients for medical use of marijuana may be exposed to criminal or civil sanction by the federal government. Therefore, we are concerned with any proposal that would expand the use of this program at a time with such great uncertainty.

As New York moves to gradually expand its fledgling medical marijuana program, even advocates fear that the incoming administration, led by attorney general nominee, could make it much harder for people to gain access to the drug. MSSNY encourages the state to make a commitment to defend and protect physicians by indemnification against any potential future criminal or civil action taken by the federal government. At the very least, should this occur, then the program must be immediately halted.

Additionally, the Medical Society is concerned that there may not be sufficient statutory authority for NYS Department of Health to propose regulations to allow physicians assistants to certify patients as long as their supervising physicians have been authorized to certify patients. While we do not oppose this concept, it appears that the original statute only gave the Department specific authority to make this change for nurse practitioners. MSSNY is concerned that without a change to the statute physicians assistants and their supervising physician may be at an increased liability risk.

Furthermore, MSSNY would recommend that a similar provision be implemented that would assure that a nurse practitioner who may be employed by a physician not be authorized to issue a certification for medical marijuana use if none of their employing physicians are themselves authorized. The provision of requiring the physician employer to be authorized to certify patients would ensure that there are no conflicts within the practice.

The Medical Society welcomes the opportunity to discuss this matter with you further. While we appreciate the efforts to attempt to provide relief to suffering patients with enhanced treatment options, we are very concerned that a huge expansion in the use of medical marijuana is premature, and now carries with it increased risks of federal prosecution. By working together, we believe that we can obtain the goal of quality medical care for all.

Sincerely,



Malcolm D. Reid, MD, MPP