

Practitioner Liability and Legal Considerations

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What protections does the law provide for health care practitioners who certify a patient to receive a card, or to exceed the 4.5 g/THC purchase limit?

Common Questions from Physicians

- If I participate in the program do I place myself or my staff at risk of criminal prosecution?
- Will I jeopardize my Iowa medical license or my DEA registration?
- Will I increase my risk of being sued for malpractice?

124E.12 Use of Medical Cannabidiol – Affirmative Defenses.

- A healthcare practitioner and their agents and employees are not subject to (1) criminal prosecution, or (2) any civil or disciplinary penalties by the Board of Medicine or other licensing board for activities related to certification, possession or use of medical CBD in the treatment of a patient as authorized under chapter 124E.
- These affirmative defenses broadly cover a health care practitioner's certification of a patient's debilitating medical condition to receive a registration card, certifications required to exceed the 4.5g/THC standard, and designation of a total THC cap deemed appropriate by the practitioner – any certification, possession, or use authorized by chapter 124E

Licensing sanctions

- Disciplinary action against a health care practitioner is authorized only when a provider acts inconsistently with chapter 124E or violates other laws (for example - writing certifications for persons whom they have never examined)

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DEA Registration

- Federal government will not revoke DEA registration for a physician's involvement in state medical cannabis programs if the physician complies with state law ([2013 DOJ guidance](#))
- Related case – [Conant v. Walters \(2000\)](#) – federal government cannot revoke DEA registration if a physician recommends marijuana to a patient if recommendation based on sincere medical judgment

Malpractice Concerns

- **No reported cases** of malpractice brought against physicians for activities related to medical cannabis
- Medscape – “we couldn't find a single case related to medical marijuana” (July 2018)
- Legal experts – legal risk is minimal because physicians are merely certifying that the patient has a qualifying condition; they are not prescribing

Physicians who choose to participate should discuss their role in certifying patients with their legal counsel and malpractice carrier