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Three Capitol Hill
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September 27, 2010

Official Petition for Declaratory Ruling pursuant to RIGL 42-35-8

Issue: Healthcare practitioner with prescriptive privileges (i.e. physician, nurse practitioner, physician assistant, etc.) owning, operating, or being employed by a Compassion Center (Medical Marijuana Dispensaries)

Pursuant to RIGL 42-35-8 and through the procedures provided in *Practices and Procedures before the Department of Health and Access to Public Records* (R42-35-PP), Community Care Health and Wellness, Inc., a Rhode Island non-profit corporation, is seeking a declaratory ruling on whether healthcare practitioners with prescriptive privileges who actively recommend medical marijuana for patients to the RI Department of Health pursuant to *Rules and Regulations Relating to the Medical Marijuana Program [R21-28.6-MMP]* would be subject to disciplinary action by HEALTH's Board of Medical Licensure and Discipline or any other Department of Health professional licensing board for ownership of, employment by, or receipt of remuneration from a RI compassion center.

Potential conflicts that we believe exist with current regulations include:

RI Board of Medical Licensure and Discipline § 5-37-5.1 - Unprofessional conduct (6), (12), and (26).

§ 5-37-5.1 Unprofessional conduct. – The term "unprofessional conduct" as used in this chapter includes, but is not limited to, the following items or any combination of these items and may be further defined by regulations established by the board with the prior approval of the director:

(6) Promotion by a physician or limited registrant of the sale of drugs, devices, appliances, or goods or services provided for a patient in a manner as to exploit the patient for the financial gain of the physician or limited registrant;

(12) Dividing fees or agreeing to split or divide the fees received for professional services for any person for bringing to or referring a patient;

(26) Violating any state or federal law or regulation relating to controlled substances; *

AMA Code of Medical Ethics

Opinion 8.06 - Prescribing and Dispensing Drugs and Devices

(2) Physicians may not accept any kind of payment or compensation from a drug company or device manufacturer for prescribing its products. Furthermore, physicians should not be influenced in the prescribing of drugs, devices, or appliances by a direct or indirect financial interest in a firm or other

supplier, regardless of whether the firm is a manufacturer, distributor, wholesaler, or repackager of the products involved.

To clarify, we are not questioning the clinical evaluation of a patient, diagnosis, and ultimate "recommendation" for medical marijuana by a healthcare practitioner during the normal course of professional practice. We are questioning a practitioner with prescriptive privileges owning, operating, or receiving remuneration from an organization that dispenses medical marijuana to patients and drives revenue through the dispensing of a product on the recommendation of a healthcare provider with prescriptive privileges.

The following RI licensed physicians have involvement with organizations formed to operate compassion centers and would be compensated by a compassion center if approved by HEALTH:

Roy Main, MD (MD08042) – Alternative Therapeutics, Inc.
David Cunningham, MD (MD07724) – Greenleaf Compassion Center, Inc.
Mervyn Woolf, MD (MD09707) – Greenleaf Compassion Center, Inc.
Gyan Pareek, MD (MD11734) – Rhode Island Compassion Center, Inc.
Frank Maggiacomo, DO (DO00383) – Summit Medical Compassion Center, Inc.
Alan Weitberg, MD (MD05313) – Summit Medical Compassion Center, Inc.
David Carpentier, MD (MD07744) – Thomas C Slater Compassion Center, Inc.
Todd Handel, MD (MD10599) – University Compassion Center

There is one physician assistant who is applying to operate a compassion center and is also allowed to "recommend" patients for medical marijuana:

Christopher Sands, PA (PA00301) – Alternative Therapeutics, inc.

The mere fact that physicians and other healthcare practitioners with prescriptive privileges are seeking authorization to operate compassion centers justifies the urgent need for this declaratory ruling.

While we are aware there are no express restrictions to healthcare practitioners owning and operating compassion centers in the *Rules and Regulations Relating to the Medical Marijuana Program [R21-28.6-MMP]*, we are seeking a declaratory ruling from HEALTH regarding whether a healthcare practitioner with prescriptive privileges that is involved in an authorized compassion center will be subject to disciplinary actions pursuant to any other regulations including but not limited to *RI Board of Medical Licensure and Discipline § 5-37-5.1* or the legally adopted *AMA Code of Ethics*.

Since there is no existing Rhode Island case law regarding compassion centers due to the recency of the legislation and the fact that HEALTH has not yet authorized a compassion center, we are including a reference to a recent Colorado Bill (#1284) that was passed prohibiting licensed healthcare practitioners who also make medical marijuana recommendations from owning or operating medical marijuana dispensaries or receiving remuneration in any way from a medical marijuana dispensary. We are including this merely as persuasive argument as we are fully aware a Colorado statute has no authority in Rhode Island. The complete 60 page bill can be accessed at http://www.cdph.state.co.us/hs/medicalmarijuana/1284_enr.pdf.

Of similar interest, *Rhode Island Rules and Regulations Pertaining to Pharmacists, Pharmacies and Manufacturers, Wholesalers and Distributors [R5-19.1-PHAR]* contain

provisions that restrict ownership of pharmacies by practitioners with prescriptive privileges (section 27.1). The reason for these restrictions is to circumvent the conflict of interest that exists when practitioners with prescriptive privileges can gain financially through the dispensing of the medications they prescribe. Compassion centers should elicit similar provisions due to the similarity of their operations to pharmacies.

While *Rules and Regulations Relating to the Medical Marijuana Program* [R21-28.6-MMP] contains provisions for protection of healthcare practitioners for recommending medical marijuana, there are no exemptions for violating existing regulations like those contained in *RI Board of Medical Licensure and Discipline* § 5-37-5.1 .

Please consider this an official petition for a declaratory ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Hughes", written in a cursive style.

David C. Hughes, PharmD
CCO, Community Care Health and Wellness, Inc.

CC: Charles Alexandre, RN, Bruce McIntyre, Esq.