

Medical Marijuana Registries: A Painful Choice

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Abstract

The doctor offered Amy two choices for the severe back pain caused by a hit and run driver; a prescription for Fentanyl or a recommendation for medical marijuana. Amy was desperate for relief, and like everyone else she had heard about the dangers of opioid addiction common to drugs like fentanyl or oxycontin. Being required to be register with the state as a user of medical marijuana, however, was equally as painful---although in a different way. She was panicked that if this information became known that she would lose her job, custody of her young son, and her Section 8 housing. Would she be better off being addicted to opioids or potentially losing everything by opting for medical marijuana? Variations of this dilemma are caused by state laws requiring users of medical marijuana to register in state databases. She wondered: Who has access to the data base? What use would they make of her data? What if there was a data breach? Even though the medical use of marijuana is legal in thirty-three states, it remains illegal under the federal Controlled Substances Act. Any marijuana use can subject individuals to severe criminal and civil penalties under federal law. States that condition access and treatment on registration in a state database impose real risks on the patient. While most patient registries in the United States are designed to promote research and advance public health, marijuana registries without robust patient privacy protection can be punitive and threatening to patient welfare. Furthermore, health data is considered by many to be the most personal and sensitive information possible but very little guidance is provided to dispensaries on their obligations with respect to the handling of medical marijuana card information. Although much has been written about the tension between federal and state treatment of marijuana, this is the first paper to examine marijuana patient registry privacy and civil rights issues. The paper proceeds in five parts. Part I discusses why marijuana is prescribed for patient treatment, as related to rights to healthcare and privacy. Part II addresses the history of marijuana laws in the U.S. and how the conflict between state and federal law is currently handled. Part III describes how contagious disease and other medical condition patient registries are treated under the law and the unique issues presented by marijuana patient registries. Part IV explores the arguments for and against the registries and the risks they propose with respect to employment, custody hearings, leasing and housing, federal programs, and fundamental privacy rights. Part V analyzes and compares the thirty-three state registry laws and concludes by proposing a model privacy protection provision for those with access to medical marijuana card information in states with registries.