

Marijuana Series: Virginia Legislature Approves Expanded Use Of Cannabis-Derived Oils

March 8, 2018

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Both houses of Virginia's legislature have unanimously approved bills that will expand the ability of Virginia doctors to recommend marijuana or cannabis extracts to their patients. The bills are not identical, but once the relatively minor differences between them are reconciled, a consolidated bill will be sent to Governor Terry McAuliffe for his signature.

Under Virginia law, as it now stands, a "practitioner" (defined as a "practitioner of medicine or osteopathy licensed by the Board of Medicine who is a neurologist or who specializes in the treatment of epilepsy") may issue a "written certification" for the use of "cannabidiol oil or THC-A oil" to a patient for "treatment or to alleviate the symptoms of a patient's intractable epilepsy." The practitioner who issues the certification is immune from prosecution under Virginia's laws against distributing controlled substances, and the patient who possesses a valid certification can use that certification as an affirmative defense to prosecution under Virginia's laws against possession of marijuana. Likely as a check against the over-prescription of these oils, Virginia law also allows the Board of Medicine to sanction a practitioner for "failing to properly evaluate or treat a patient's medical condition or otherwise violet[e] the applicable standard of care for evaluating or treating medical conditions."

The bills that just passed the Virginia legislature would expand the universe of doctors allowed to prescribe cannabis-derived oils beyond those who specialize in the treatment of epilepsy, and would expand the universe of patients who could receive such a prescription beyond those suffering from "intractable epilepsy." It keeps in place, however, the Board of Medicine's ability to sanction practitioners who fail to properly evaluate or treat a patient's condition.

Both proposed bills allow any "practitioner of medicine or osteopathy licensed by the Board of Medicine" to prescribe cannabis-derived oils. Both also remove the requirement that a patient be suffering from epilepsy to be eligible, albeit in slightly different ways. The Senate version of the bill allows a practitioner to prescribe cannabis-derived oils, **"for treatment or to alleviate the symptoms of a patient's diagnosed condition or disease."** The House version allows a practitioner to prescribe cannabis-derived oils, **"for treatment or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use."**

While the language used in this provision will need to be reconciled into a final bill, they are nearly identical in substance.

Both bills also allow a patient to receive a 90-day supply of cannabis-derived oils, up from the 30-day supply allowed under existing Virginia law.

Finally, even though cannabis remains illegal under federal law, Virginia continues to allow licensed "pharmaceutical processors" to both grow marijuana plants and compound the cannabis-derived oils that practitioners then prescribe to their patients. Only the Senate proposed any changes to this aspect of existing law. Currently, the Board of Medicine is empowered to adopt regulations that, among other things, establish "a maximum number of marijuana plants a pharmaceutical processor may possess at one time." The Senate proposed eliminating this provision, while the House did not address it.