

More on Medical Marijuana
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As discussed in my prior post, [Why Marijuana is Still a “High” Risk for Physicians](#), some people believe that enforcement guidance memos issued by the Department of Justice (DOJ) allow for medical marijuana use if such use is allowed under state law. The most often cited DOJ memo on this issue is the “[Cole Memo](#)” from 2011, specifying that federal resources should not be spent on marijuana enforcement in states “that have...implemented strong and effective regulatory enforcement systems.” There also is the “[Ogden Memo](#)” from 2009, which instructs federal prosecutors “not [to] focus federal resources” on those that are clearly and unambiguously compliant with state medical marijuana laws.

Last month, Attorney General Jeff Sessions issued a [memo](#) that declared previous DOJ “guidance specific to marijuana enforcement...unnecessary and is rescinded, effective immediately.” AG Sessions specifically abrogated the Ogden memo, the Cole Memo, and other marijuana-related memos.

However, the impact of AG Sessions’ Memorandum is unclear for at least three reasons:

1. The Rohrabacher-Blumenauer amendment (formerly known as the Rohrabacher-Farr amendment until Farr retired from Congress), which prohibits the DOJ from using its funds to prosecute medical marijuana cases where the defendant is compliant with state marijuana laws, remains in effect until at least March 23, 2018.
Update: The March spending bill extended this amendment through September 30th, 2018.
2. AG Sessions’ Memo prompted a speedy and severe backlash on both sides of the political aisle.
3. Sessions’ Memo does not say when marijuana prosecutions will resume, or whether such prosecutions will resume at all. Rather, the Sessions Memo merely directs federal prosecutors to exercise prosecutorial discretion and to “weigh all relevant considerations” when deciding whether to bring a case. The impact of the Sessions Memo will turn on how the U.S. Attorneys in individual jurisdictions approach marijuana cases in the absence of the Ogden and Cole Memos.

Bottom line: Prescribers need to understand the risks. Under federal law, it is still illegal to prescribe marijuana, as it is a Schedule I controlled substance, even if “certification” (or other similar term) is legal under state law. There could be a criminal investigation or prosecution under federal law, which could result in loss of DEA license, exclusion from Medicare, loss of assets, and even prison. Medical malpractice insurance policies typically exclude coverage for illegal acts.

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