

NORTH CAROLINA LAW DOES NOT AUTHORIZE PHARMACIES TO POSSESS OR SELL CANNABIDIOL PRODUCTS

In recent weeks, Board staff have become aware that a few North Carolina pharmacies are advertising the sale of cannabidiol products. These advertisements, and any resulting sales, may be a product of a good-faith misunderstanding of North Carolina law governing such products. This Board staff guidance clarifies for pharmacists and pharmacies the state law prohibiting pharmacies and pharmacists from possessing and selling cannabidiol products.

1. What is “cannabidiol oil,” “CBD oil,” or “hemp extract”?

North Carolina law defines “hemp extract” (which is also known as CBD oil or cannabidiol oil) as “extract from a cannabis plant . . . that . . . [i]s composed of less than nine-tenths of one percent (0.9%) tetrahydrocannabinol by weight,” “[i]s composed of at least five percent (5%) cannabidiol by weight,” and “contains no other psychoactive substance.” NCGS § 90-94.1(a).

2. Is “hemp extract” marijuana?

“Hemp extract” is marijuana as defined in the federal Controlled Substances Act, regardless of what state law says. If there were not a specific, separate definition of “hemp extract” under North Carolina law, it would also meet the definition of marijuana under the North Carolina Controlled Substances Act.

3. Who is allowed to possess “cannabidiol oil,” “CBD oil,” or “hemp extract”?

The North Carolina “hemp extract” law only permits one category of individuals to possess cannabidiol oil, CBD oil, or hemp extract, and only permits one purpose for that possession. Only “caregivers” may possess hemp extract, and they may possess and administer it “only to treat intractable epilepsy.” NCGS § 90-94.1(b) (emphasis added).

A “caregiver” is an “individual that is at least 18 years of age and a resident of North Carolina who is a parent, legal guardian, or custodian of a patient and is registered with the Department of Health and Human Services . . . who possesses a written statement dated and signed by a neurologist that states all of the following: the patient . . . has been examined and is under the care of the neurologist . . . suffers from intractable epilepsy . . . [and] may benefit from treatment with hemp extract.” NCGS § 90-113.101 (emphasis added).

No other persons – including pharmacies and pharmacists -- may possess “hemp extract,” and even “caregivers” may not possess them for other reasons and/or outside of the Intractable Epilepsy Alternative Treatment program.

4. Can’t a pharmacy or a pharmacist be a “caregiver”?

No, they clearly may not, under the statute. A “caregiver” is only an individual who is the “parent, legal guardian, or custodian of a patient [who suffers from intractable epilepsy].” So, a pharmacist is not a “caregiver” in the scope of his or her professional practice. And a pharmacy is certainly not, as it is not an “individual.” Therefore, it is unlawful for a pharmacy or pharmacist to possess and dispense hemp extract.

5. But I have a patient (parent, guardian, “caregiver”) who has a note from a neurologist that says the patient might benefit from hemp extract. Where is the patient supposed to get it?

North Carolina law says that a treating neurologist is authorized to approve a patient’s (or “caregiver’s”) “acquir[ing]” hemp extract “from another jurisdiction.” NCGS § 90-113.105(a) (emphasis added). Therefore, the statute directs that North Carolina pharmacies and pharmacies may not dispense to a patient or caregiver, and that hemp extract may only be acquired from another jurisdiction.

6. So, what you’re saying is that North Carolina law doesn’t authorize pharmacies to possess or sell hemp extract (cannabidiol, CBD oil)?

Correct.

7. If my pharmacy does possess or sell hemp extract (cannabidiol, CBD oil), might I be in trouble with the DEA?

Board staff cannot speak for the DEA. But, as noted in question #2, this product would meet the definition of marijuana in the federal Controlled Substances Act. Marijuana remains a Schedule I controlled substance under the federal CSA, and only DEA-approved researchers are allowed to possess Schedule I controlled substances.

8. I’ve heard that there is a CBD product undergoing clinical trials for FDA approval. Is that true?

Yes. At least one pharmaceutical company, GW Pharmaceuticals, is developing a CBD product called Epidiolex. Epidiolex is currently undergoing Phase 3 clinical trials for use

in the treatment of Dravet syndrome and Lennox-Gastaut syndrome. The company announced promising Phase 3 study results in December 2016 and reported “good progress” toward an NDA submission.

9. If a pharmaceutical company gets FDA approval of a CBD product, would I be able to dispense it from my pharmacy?

Yes. If GW Pharma (or any other pharmaceutical company) obtains FDA approval for a CBD product, a pharmacy would be authorized to dispense it on a valid prescription just like any other FDA-approved prescription drug. Board staff does not view the North Carolina hemp extract statute as placing any limitation on the dispensing of any such FDA-approved product that may become available in the future. The prescription and dispensing requirements would be set by existing federal and North Carolina law.