

AN ACT FOR THE HUMANITARIAN MEDICAL USE OF MARIJUANA*

1) **Purpose:** No punishment **under state law**ⁱ for the medical use of marijuana.

- a) Qualifying patients
- b) Physicians/health care professionals
- c) Personal caregivers
- d) Medical marijuana treatment centers (dispensaries)

2) **Definitions:**

- a) Card holder
 - i) Qualifying patient
 - ii) Personal caregiver
 - iii) Agent of dispensary
- b) Cultivation registration: a registration issued to either
 - i) a dispensary for growing **marijuana**ⁱⁱ for medical use, or
 - ii) **a qualified patient or personal caregiver**ⁱⁱⁱ
- c) Debilitating medical condition:
 - i) **Cancer, glaucoma, positive status for HIV, AIDS, hepatitis C, ALS, crohn's disease, parkinson's disease, multiple sclerosis**^{iv} (9), and
 - ii) **Other conditions**^v as determined in writing by a qualifying patient's physician.
- d) Department: DPH
- e) Dispensary agent: employee, volunteer, officer or board member of a non-profit dispensary who is at least 21 years or age.
- f) Enclosed, locked facility:
 - i) Closet, room, greenhouse, or
 - ii) **Other area**^{vi} equipped with locks or other security devices
 - iii) Accessible only to dispensary agents, patients, or personal caregivers
- g) Marijuana: as defined in Chapter 94C (**Controlled Substance Act**)^{vii} All parts of the cannabis sativa L plant, every derivative, seeds, resin.
- h) Medical Marijuana Treatment Center (Dispensary):
 - i) A "**not for profit**"^{viii} entity" as defined by Massachusetts law only.
 - (1) Nonprofit "corporations" do not have stock and must be formed for an "allowable purpose" pursuant to G.L. Chapter 180, Section 4. ("... *antiquarian, historical, literary, scientific, medical . . . purpose*).
 - (2) Must have articles of organization, officers and board of directors.
 - (3) Can be sued.
 - ii) Registered as a dispensary.
 - iii) That acquires, cultivates, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers the following:
 - (1) Marijuana
 - (2) **Products containing marijuana**^{ix}
 - (3) **Related supplies**
 - (4) Educational materials to qualifying patients or their personal caregivers
 - iv) including the **development of marijuana-related products**^x, such as:
 - (1) **food**

- (2) tinctures
 - (3) aerosols
 - (4) oils
 - (5) ointments
- i) Medical use of marijuana: the acquisition, cultivation, possession, processing, transfer, transportation, sale, distribution, dispensing or administration of marijuana for the benefit of qualifying patients in the treatment of debilitating medical conditions or the symptoms thereof.
 - j) Personal caregiver: A person at least 21 **who has agreed^{xi}** to assist with a qualifying patient’s medical use of marijuana.
 - (1) Prohibited from consuming the medical marijuana.
 - (2) Employee of a hospice provider, nursing or medical provider can serve as personal caregiver.
 - k) Qualifying patient: **A person^{xii}** diagnosed by a **licensed physician^{xiii}** as having a **“debilitating medical condition.”^{xiv}**
 - (1) Registration card: a personal identification card issued by DPH to a qualifying patient, personal caregiver or dispensary agent. The card shall verify:
 - (a) a physician has provided **written “certification”^{xv}** to the qualifying patient,
 - (b) the patient has designated the individual as a personal caregiver, if applicable, or
 - (c) a dispensary and its agents have met the requirement for registering with DPH
 - l) Sixty-day supply: that amount of marijuana that a qualifying patient **“would reasonably be expected to need^{xvi}”** over a period of 60 days for their personal medical use.”

3) Protection for Health Care Professionals

- a) A physician, and other health care professionals under a physician’s supervision, shall not be penalized under MA law for:
 - i) Advising a qualifying patient about the risks and benefits of medical use of marijuana
 - ii) Providing a qualifying patient with written certification
 - (a) Based on assessment of patient’s medical history and condition
 - (b) That medical use of marijuana may benefit patient.

4) Protection for Qualifying Patients and Personal Caregivers

- a) Qualifying patients and personal caregivers shall not be penalized under MA law for:
 - i) Possessing no more marijuana than is necessary for patient’s personal use (60-day supply)
 - ii) And presents his/her registration card to any law enforcement official who questions patient or caregiver.

5) Protection for Dispensary Agents

- a) Agents shall not be penalized under MA law as long as he/she:
 - i) Presents registration card to law enforcement agent
 - ii) Acts in accordance with the law.

6) Protection against Forfeiture and Arrest as long as this law is followed.

7) Limitations of Law^{xvii}

- a) Cannot operate while under the influence of marijuana.
- b) No requirement that health insurance reimbursement for cost of medical use of marijuana.
- c) No requirement that physician authorize the use of medical marijuana for a patient.
- d) No requirement of accommodation of on-site marijuana use in workplaces, school buses, school grounds, youth centers, correctional facilities or **smoking^{xviii}** it in any public place.
- e) No preemption of marijuana laws that are not about medical use of marijuana.

- f) No immunity under federal law.
- g) No obstacle to federal enforcement of federal law.

8) DPH to Define Presumptive 60-day Supply for Qualifying Patients

- a) Based on best available evidence, DPH will define the quantity presumed to be a 60-day supply.
- b) The presumption is rebuttable.^{xix}

9) Dispensary Registration

- a) Must register
- b) DPH must register the dispensary within 90 days of receiving a complete application and issue a cultivation registration if the dispensary has submitted the following:
 - i) State application fee
 - ii) Legal name and address of dispensary
 - iii) Address of one additional location where marijuana will be cultivated, if any
 - iv) Name, address and date of birth of each principal officer and board member.
 - v) Operating procedures consistent with DPH regulations, including cultivation and storage of marijuana only in enclosed, locked facilities.
- c) No officer or board member may serve if he/she was an officer or board member of a dispensary which had its registration revoked.
- d) In the 1st year after the effective date, DPH shall issue up to 35 non-profit dispensaries.
 - i) At least one shall be in each county.
 - ii) Not more than 5 shall be in any one county.
 - iii) DPH can increase or modify the number based on need.

10) Dispensary Agent Registration

- a) Must be registered with DPH.
- b) Dispensary must apply to DPH for a registration card for each affiliated agent
 - i) Name, address and date of birth of agent.
- c) Dispensary shall notify DPH within 1 business day when agent is no longer affiliated with dispensary.
 - i) Agent's registration card immediately revoked.
- d) Agent may not have a felony drug record. DPH authorized to conduct criminal records checks.

11) Hardship Cultivation Registrations^{xx}: DPH shall issue hardship cultivation registrations to qualifying pat whose access to a dispensary is limited by one or more of the following:

- a) Verified financial hardship
- b) Physical incapacity to access reasonable transportation
- c) Lack of dispensary within a reasonable distance of patient's residence.
- d) DPH may deny registration based on provision of false information.
- e) Registration allows patient or patient's caregiver to cultivate a limited number of plants, sufficient to maintain a 60-day supply^{xxi}.
- f) Cultivation and storage shall only be in an enclosed, locked facility.
- g) DPH shall issue regulations relative to hardship cultivation registrations within 120 days of effective date.
- h) Until DPH issues regulations, written recommendation of a qualifying patient's physician shall constitute a limited cultivation registration^{xxii}.

12) Medical Marijuana Registration Cards (Qualifying Patients and Personal Caregivers) must submit the following:

- a) Written certification^{xxiii} from a physician.
- b) Application including:

- i) Name, address unless homeless and date of birth.
- ii) Name, address and date of birth of the qualifying patient’s personal caregiver, if any.

13) DPH Implementation of Regulation and Fees: Within 120 days DPH shall issue regulations for the implementation of Sections 9 – 12. Fees shall be set for dispensaries to defray the administrative costs of the medical marijuana program (revenue neutral).^{xxiv}

14) Penalties for Fraud:

- a) Registration cards may be revoked after a hearing.
- b) Fraudulent use of card or cultivation registration shall be a misdemeanor, unless it’s for distribution.
 - i) Distribution, sale or trafficking of marijuana for non-medical use for profit is a felony.

15) Confidentiality:

- a) DPH shall maintain a confidential list of persons issued a medical marijuana card.

16) Effective date: January 1, 2013

17) Severability: Clauses are severable. If one is found illegal, the rest of the law is not affected.

** This information is provided for educational purposes only and is not to be construed as legal advice. If you have any questions or need any additional information, please contact Cheryl Sbarra, Senior Staff Attorney, Massachusetts Association of Health Boards, 63 Shore Road, Suite 25, Winchester, MA 01890, sbarra@mabb.org, 781-721-0183.*

ⁱ Possession of marijuana is illegal pursuant to federal law. Possession of marijuana for other than medical use is still illegal in MA.

ⁱⁱ How does one get the seeds legally?

ⁱⁱⁱ Guidelines and procedures for personal and/or caregiver cultivation are not clear at this point.

^{iv} What if a person with these diagnosed conditions is symptom free?

^v Not defined.

^{vi} Outside? Not defined.

^{vii} Refers back to Controlled Substance Act (94C) for definition.

^{viii} “Entity” vs. “corporation.” Do we assume these are “corporations” subject to MA law? If so, they must be formed for one of the allowable non-profit purposes pursuant to G.L. Ch. 180, sec. Allowable purposes include “the prosecution of any . . . scientific, medical. . . purpose. Non-profit does not necessarily mean tax-exempt.

^{ix} Wide-open, includes food. Who assures the safety of these products? Who, if anyone regulates these products?

^x What are “related supplies” and “marijuana related products”?

^{xi} What does this mean? Is it a contractual relationship or an informal relationship?

^{xii} Can the person be a minor? If so, will parental consent be required?

^{xiii} Licensed in Massachusetts?

^{xiv} Discretionary decision except for 9 conditions listed. Is it still discretionary for the 9 conditions listed if patient is symptom free?

^{xv} No guidelines for the certification itself. Is it a doctor’s note?

^{xvi} What is a 60-day supply?

^{xvii} We assume that the smokefree workplace law prohibits smoking medical marijuana in workplaces. Is this DPH’s position? What about local laws that are stricter than the state law? Can local laws further restrict the places where medical marijuana can be smoked?

^{xviii} Is it only smoking, or any consumption of marijuana in any form?

^{xix} How will this be determined?

^{xx} This can happen now, without DPH regulations.

^{xxi} How does a qualifying patient or his/her caregiver define a 60-day supply? (No DPH regulations yet.)

^{xxii} When does a “limited cultivation registration” expire?

^{xxiii} See, xiv, above.

^{xxiv} What about local fees to cover costs of local regulation and enforcement? Are locals prohibited from further regulating dispensaries, cultivation, licenses, etc.?