

MARIJUANA FOR THERAPEUTIC USE

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In the United States, marijuana for is legal in over half the states and Washington, D.C. for medicinal purposes. In 2004, the Vermont Legislature passed Act 135, “An Act Relating to Marijuana Use by Persons with Severe Illness.” The Department of Public Safety was designated to administer the Vermont Marijuana Registry (VMR). There have been various amendments passed since 2004, the most notable being the 2011 amendment authorizing the VMR to register four dispensaries throughout the state.

In Vermont, marijuana for symptom relief may be used to alleviate the symptoms or effects of a registered patient’s debilitating medical condition as permitted by Vermont statute and the [Rules Regulating Cannabis for Symptom Relief](#). More information about the clinical applications of cannabis for therapeutic use can be found from the University of Vermont [Medical Cannabis Program](#).

THE VERMONT MARIJUANA REGISTRY

What is the Vermont Marijuana Registry?

The Vermont Marijuana Registry (VMR) is a program located within the Department of Public Safety whose purpose is to implement the provisions of 18 V.S.A. Chapter 86, Therapeutic Use of Cannabis, as they pertain to registered patients, caregivers, and the creation and operation of four dispensaries. The VMR’s primary purpose is to assist individuals applying for a registry identification card and oversee the operations of the four registered dispensaries in Vermont that provide marijuana for symptom relief to registered patients. The VMR reviews and processes applications, issues registry identification cards to residents of Vermont with verified debilitating medical conditions and evaluates the compliance of registered dispensaries. Additionally, the VMR strives to ensure registered patients are able to access cannabis for symptom relief in a timely manner, protect confidentiality, and prevent the diversion and theft of cannabis. The VMR website, including links to statutes, rules and application forms can be found [here](#).

Who is eligible to register with the VMR?

The act creating the VMR was designed to establish a registration process for those with a severe illness who wish to use marijuana for symptom relief. To become a registered patient, a person must be diagnosed with a debilitating medical condition by a health care professional in the course of a bona fide health care professional-patient relationship. A registered patient must also be a resident of Vermont and issued a registry identification card by the VMR. "Resident of

Vermont" means a person whose domicile is Vermont. A "debilitating medical condition" means reasonable medical efforts have been made over a reasonable amount of time to relieve the symptoms associated with:

(A) cancer, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, glaucoma, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or

(B) a disease, medical condition, or its treatment that is chronic, debilitating, and produces one or more of the following intractable symptoms: cachexia or wasting syndrome; chronic pain; severe nausea; or seizures.

How does an individual apply for a registry identification card with the Vermont Marijuana Registry?

To apply a patient must submit:

- A completed Department-approved patient application;
- A Health Care Professional Verification Form completed by a health care professional;
- The required \$50 non-refundable fee payable to the Department of Public Safety; and,
- An electronic color photo of themselves from the shoulders up. Photos may be submitted on a CD or emailed to the VMR at DPS.MJRegistry@vermont.gov.

The VMR must approve or deny an application in writing within 30 days of receipt of a completed application. If the application is approved, the VMR will issue the applicant a registry identification card. A registry identification card expires one year after its issue date, and may be renewed by completing and submitting the required forms and fee listed above.

A registered patient may designate a caregiver to assist with marijuana for symptom relief. A caregiver is a person who has agreed to undertake responsibility for managing the well-being of a registered patient with respect to the use of cannabis for symptom relief. A registered caregiver must be a person who is a resident of Vermont, at least 21 years of age, and has met the criminal history record requirements contained in the Rules Regulating Cannabis for Symptom Relief. A registered caregiver cannot be a currently registered patient and may only assist one registered patient. To apply as a caregiver and individual must submit:

- A completed Department-approved caregiver application;
- The required \$50 non-refundable fee payable to the Department of Public Safety; and,
- An electronic color photo of themselves from the shoulders up. Photos may be submitted on a CD or emailed to the VMR at DPS.MJRegistry@vermont.gov.

What is the definition of a Health Care Professional?

A health care professional is an individual licensed as a:

- Doctor of Medicine (M.D.);
- Osteopathic Physician (D.O.);
- Naturopathic Physician (N.P);
- Physician Assistant (P.A.); or,
- Advanced Practice Registered Nurse (APRN).

This definition includes individuals licensed in Vermont and under substantially equivalent provisions in New York, New Hampshire and Massachusetts.

What are the responsibilities of the patient's Health Care Professional?

A health care professional verifies that the patient has a debilitating medical condition and whether or not the health care professional has a “bona fide health care professional-patient relationship” with the applicant. The phrase “bona fide health care professional-patient relationship” means a treating or consulting relationship of not less than three months’ duration, in the course of which the health care professional has completed a full assessment of the registered patient’s medical history and current medical condition, including a personal physical examination. 18 VSA § 4472 (1)(A).

The three-month requirement does not apply if a patient has been diagnosed within the past six months or diagnosed with:

- A terminal illness;
- Cancer;
- Acquired immune deficiency syndrome; or
- Is currently under hospice care.

Two additional exceptions to the three-month requirement were added in 2016:

- (1) When a patient been diagnosed with a debilitating medical condition by a health care professional in another jurisdiction in which the patient had been formerly a resident and the patient is now a resident of Vermont and has his or her diagnosis confirmed by a health care professional in Vermont or a neighboring state. The new health care professional must still complete a full assessment of the patient’s medical history and current medical condition, including a personal physical examination. 18 VSA § 4472 (1)(B)(ii).
- (2) When a patient who is already registered with the VMR changes health care professionals three months or less prior to the annual renewal of the patient’s registration, provided the patient’s new health care professional has completed a full assessment of the patient’s medical history and current medical condition, including a personal physical examination. 18 VSA § 4472 (1)(B)(iii).

The health care professional must also certify that reasonable medical efforts have been made over a reasonable amount of time without success to relieve the patient’s symptoms. See VMR Rules Regulating Cannabis for Symptom Relief § 3.3.

The Health Care Professional Verification Form can be found [here](#).

Can a Health Care Professional inactivate a patient's registry identification card?

Yes, a registered patient’s verifying health care professional may void a registered patient’s registry identification card by notifying the VMR in writing. The VMR will issue a written notice informing the patient his or her registry identification card has been inactivated. The patient’s designated dispensaries will also be informed when a registered patient has been inactivated. See VMR Rules Regulating Cannabis for Symptom Relief § 11.9.5.

Where can I obtain information about the dispensaries and the types of products they offer?

The VMR website has information available from the dispensaries in a document titled [Dispensary Selection Information](#). Additional information may be obtained from the individual dispensary's websites listed under Resources.

What protections are there for Health Care Professionals?

A health care professional who has participated in a patient's application process under the statute, rules, policies or procedures of the VMR are not be subject to arrest, prosecution, or disciplinary action under 26 V.S.A. Chapter 23, penalized in any manner, or denied any right or privilege under state law, except for giving false information, pursuant to 18 V.S.A. § 4474c(f). 18 V.S.A. § 4474b (b). Health Care Professionals are not asked to prescribe or recommend the use of marijuana. They are verifying the nature of the disease and its symptoms. All information received by the VMR is confidential, including identifying information pertaining to health care professionals.

Have questions about the Vermont Marijuana Registry?

Contact the VMR at:

45 State Drive

Waterbury, VT 05671-1300

Tel: 802.241.5115

Fax: 802.241.5230

Email: DPS.MJRegistry@vermont.gov

OTHER LEGAL AND REGULATORY CONSIDERATIONS FOR CLINICIANS

This section has been prepared by the Vermont Medical Society to provide additional information to clinicians considering whether to participate in a patient's application under Vermont law. For further information, contact the Vermont Medical Society at 802-223-7898.

Despite state laws legalizing marijuana for therapeutic and recreational use, the federal government continues to classify marijuana as a Schedule I drug with no currently accepted medical use and a high potential for abuse. Federal law prohibits knowingly or intentionally distributing, dispensing, or possessing marijuana. 21 U.S.C. §§841–44. Additionally, a person who aids and abets another in violating federal law or engages in a conspiracy to purchase, cultivate, or possess marijuana may be punished to the same extent as the individual who commits the crime. 18 U.S.C. §2, 21 U.S.C. §846. Other federal sanctions for prescribers who violate federal law are also possible, such as revocation of a prescriber's DEA registration or exclusion from participation in the Medicare and Medicaid programs.

Based on the increasing number of states legalizing marijuana for therapeutic and recreational use, the U.S. Department of Justice has issued several memoranda regarding its marijuana enforcement policy. An August 2013 [updated policy](#) reiterates marijuana's classification as an illegal substance under federal law, but states that it is not an efficient use of resources to focus federal enforcement efforts on seriously ill individuals and that federal enforcement activities will focus on addressing threats such as distribution to minors, revenue going to criminal enterprises and state-authorized marijuana activity from being used as a cover for illegal activity.

Participating in a patient's application process under a state medical marijuana law is generally considered low risk for federal enforcement or other disciplinary or legal action. However, the continuing inconsistency between federal and state law, and lack of clarity in case law around the country regarding the extent to which clinicians are protected from federal prosecution when discussing marijuana with patients, raises questions for medical professionals. The Vermont Medical Society recommends that physicians and other clinicians consider the following:

- If you assist a patient with the application process, you should comply with all state statutory requirements for establishing a bona fide professional-patient relationship under the Vermont program and meet the same standard of care as in other types of patient encounters. Disciplinary actions from other states that have been reported in the press relate to issues such as physicians completing a high number of forms without establishing the required physician-patient relationship, not performing required medical exams and/or maintaining inadequate patient records. See [the model guidelines](#) created by the Federation of State Medical Boards discussing best practices regarding patient evaluations, medical record keeping, informed decision making and written treatment agreements.
- Limit the information provided to the Department of Public Safety to that required to complete and confirm the accuracy of the information contained on the Health Care Professional Verification Form. Do not prescribe, and avoid "recommending," marijuana to patients. While health care professionals may discuss relevant information regarding possible health risks and therapeutic benefits of cannabis with patients, "recommending" marijuana may be seen as akin to "prescribing" and abetting the patient in obtaining an illegal substance in violation of federal law. (See e.g. *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, affirming *Conant v. McCaffrey* (N.D.Cal. Sept. 7, 2000) 2000 WL 1281174). Also, avoid offering individualized patient advice concerning appropriate cannabis strains, dosage, timing, amount and route of administration as this may also be interpreted as prescribing.
- Do not dispense or otherwise provide marijuana to patients.
- Discuss your participation with your liability carrier to ensure that you would have coverage for any harms resulting from medications, including cannabis, that are not approved by the FDA.
- Discuss your participation with any employer or facility for which you work. Health care facilities and employers may have to comply with additional federal regulations that impact the ability of a physician to participate in the application process.
- The statute does not require a health care professional to participate in the application process.

RESOURCES

- Department of Public Safety, Vermont Marijuana Registry:
<http://vcic.vermont.gov/marijuana-registry>
- Vermont Marijuana Registry, Document Library (Forms and other useful information)
<http://vcic.vermont.gov/marijuana-registry/library>

- Vermont Statutes Online, Title 18, Chapter 86
<http://legislature.vermont.gov/statutes/fullchapter/18/086>
- Federation of State Medical Boards, Model Guidelines for the Recommendation of Marijuana in Patient Care (April 2016)
https://www.fsmb.org/Media/Default/PDF/BRD_RPT_16-2_Marijuana_Model_Guidelines.pdf
- Vermont Department of Health, Board of Medical Practice
<http://healthvermont.gov/systems/medical-practice-board>
- Mayo Clinic, Medical Marijuana
<http://www.mayoclinic.org/healthy-lifestyle/consumer-health/in-depth/medical-marijuana/art-20137855>
- Champlain Valley Dispensary and Southern Vermont Wellness: <http://www.cvdvt.org/>
- Vermont Patients Alliance: <http://www.vtpatientsalliance.org/>
- Grassroots Vermont: <http://www.grassrootsvermont.com/>

ABOUT THE AUTHORS

Lindsey Wells, B.S., received her Bachelor of Science Degree in Business Administration in 2005 from Norwich University. She has an extensive work history with state and federal regulations. She has been employed by the Department of Public Safety as the Marijuana Program Administrator for the Vermont Marijuana Registry since 2012. Her duties include overseeing and performing assessments of Vermont's four registered dispensaries, overseeing the Registry's applicant process, participating in the legislative process, and amending the rules governing the program to facilitate the implementation of various statutory changes.

Meredith Bullock has been employed by the Department of Public Safety as a Program Technician for the Vermont Marijuana Registry (VMR) since August 2013. Her job duties include assisting applicants and the general public with inquiries, interacting with Health Care Professionals, and processing applications for patients, caregivers, and dispensary personnel. Since she began working for the VMR she has strived to build the VMR's rapport with the general public, applicants, dispensary personnel, and health care professionals.