

VERMONT MEDICAL SOCIETY

Date: February 2, 2017

To: Senator Sears, Senate Judiciary Committee

From: Paul Harrington, Executive Vice President

RE: Vermont Medical Society Educational Resources Regarding Marijuana Registry

Thank you for taking testimony this morning from the Vermont Medical Society regarding S. 16, An act relating to expanding patient access to the Medical Marijuana Registry. As I indicated in my testimony, the Medical Society believes it is important to share information with Vermont's physicians regarding the Marijuana Registry. Below are some of the resources that VMS already does provide to Vermont physicians, as well as those we would be pleased to offer in the future.

- Vermont Medical Society "Materials and Resources" website – links to Marijuana Registry Information (attached)
- Vermont Medical Society "Vermont Guide to Health Law" chapter on Marijuana for Therapeutic Use – the entire guide is being updated and this chapter has just been rewritten with the assistance of staff at the Vermont Department of Public Safety – it will be posted online in winter 2017 (unpublished draft attached)
- Vermont Medical Society Wednesday Webinar Series: VMS has begun a free monthly webinar series aimed at Vermont physicians and their medical staff. We would be pleased to dedicate one of the webinar slots in 2017 to the topic of the Medical Marijuana Registry (current list of topics attached)

Please let me know if you have further questions or concerns.



Vermont Medical Society

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Materials and Resources

VMS dues support a number of educational offerings throughout the state. Examples include CME sessions on opiate treatment, various legal and clinical issues, and the VMS annual meeting.

Below is a collection of educational materials that may be helpful to physicians. See also the VMS [Green Mountain Physician](#) newsletter and [Legislative Bulletin](#) articles for helpful updates on clinical and policy issues that arise throughout the year.

Vermont Guide to Health Law

A comprehensive guide written by Vermont health care attorneys and other experts designed to give physicians and health care facilities a fundamental understanding of legal and regulatory requirements that affect the delivery of health care in Vermont today. Topics include:

- Business formation
- State and federal confidentiality laws
- Employment law
- End-of-life
- Fraud and abuse
- Medical marijuana
- Mental health law
- Professional liability
- Risk management.

Opiate Prescribing & Substance Use Disorder Information

This page includes helpful information such as:

- Links to the Vermont Department of Health Rules regarding prescribing opioids and checking the Vermont Prescription Monitoring Program
- Information for clinicians engaged in medication assisted therapy
- Treatment guidelines for opiate prescribing and drug screening, and
- Resources that help treat patients with alcohol and other substance use disorders.

Vermont Board of Medical Practice

- Board [Website](#)
- [CME and Licensing Requirements](#)
- VMS Communications:
 - [Unannounced Investigators from the Board of Medical Practice](#) (Nov. 2012)
 - [Medical Malpractice Questions 2012 Physician License Renewal Application](#) (April 2013)

Quick Links

- [Upcoming Meetings](#)
- [Physician Quality Reporting System \(PQRS\)](#)
- [Wednesday Webinars](#)
- [Vermont Physician Leaders Initiative](#)
- [Opiate Prescribing & Substance Use Disorder Information](#)
- [Education and Research Foundation](#)
- [Vermont Practitioner Health Program](#)
- [Medicare Access and CHIP Reauthorization Act of 2015 \(MACRA\) resources](#)
- [Free HIT Services for Primary Care Physicians](#)
- [CMS EHR Incentive Program](#)
- [Vermont Psychiatric Association](#)
- [VMS Rounds archives](#)

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Up-to-date on Medicare Changes?

Access **FREE** services & resources from:

HIPAA

- [Information and resources for small practices](#)
- [AMA toolkit](#) that aims to help physicians comply with HIPAA, including revisions that went into effect Sept. 23, 2013.
- [VMS Model Notice of Privacy Practices](#) (Updated 2013)
- [Free CME on HIPAA compliance](#)

Non-Discrimination

- [Section 1557 Summary and Resources](#): Regulations implementing a prohibition of discrimination by health care services found in Section 1557 of the Affordable Care Act
- [Americans with Disability Act Information](#): Providing access to medical care for individuals with mobility disabilities
- [Interpreter Issues and Resources](#)

Patient Choice and Control at End of Life (Physician Assisted Suicide)

[Department of Health Website](#) dedicated to the Patient Choices and Control and the End of Life law in Vermont, including:

- Forms for Patients and Physicians
- Patient Choice and Control at End of Life
- Vermont Law
- Resources and Information

Vermont Therapeutic Use of Cannabis/Medical Marijuana Registry

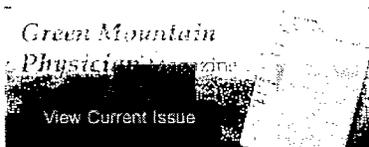
Website for the [Vermont Marijuana Registry](#), a program located within the Department of Public Safety. Information includes:

- Forms
- Information for Health Care Professionals

Workers' Compensation

Understanding Workers' Compensation - A series by Nelson S. Haas, M.D.

- [Part I: History of Workers' Compensation in the United States and Vermont](#)
- [Part II: Vermont's Workers' Compensation Statutes, Rules, and Legal Precedents](#)
- [Part III: Understanding Workers' Compensation: Workers' Compensation and Medical Ethics](#)
- [Part IV: Determination of Causation in Workers' Compensation](#)



MARIJUANA FOR THERAPEUTIC USE

Topics Covered in this Chapter:

The Vermont Marijuana Registry

Legal and Regulatory Considerations for Clinicians

Resources

About the Authors

By Lindsey Wells, B.S & Meredith Bullock
Vermont Department of Public Safety

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/hc/med_board/bmp.aspx
- 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.



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VMS launches free webinar series

In an effort to keep Vermont's physicians up-to-date on legal, regulatory and practice management issues of importance to their practices, the Vermont Medical Society is launching a monthly series of free webinars.

Taking place the third Wednesday of each month from 12 noon to 1 p.m., the webinars are open to VMS members, practice staff and others interested in the practice of medicine.

The series will kick off Sept. 21st with *Nondiscrimination in Health Programs and Activities*, led by Monika D. Rushford, J.D., Senior Investigator, U.S. Dept. of Health & Human Services, Office for Civil Rights. Webinar participants will hear directly from the federal Office of Civil Rights what physician practices need to know about new federal non-discrimination requirements, including grievance policy requirements and notice requirements going into effect in October.

Webinar Schedule

Sept. 21st

[Registration instructions and additional information](#)

Nondiscrimination in Health Programs and Activities – Monika D. Rushford, J.D., Senior Investigator, US Dept. of Health & Human Services, Office for Civil Rights.

Hear directly from the federal Office of Civil Rights: What physician practices need to know about new federal non-discrimination requirements, including grievance policy requirements and notice requirements going into effect in October.

Oct. 19th

Employment Law Update - Alexa Clauss, Esq., Primmer Piper Eggleston & Cramer PC

Important changes in employment law for physician practices: ban the box, overtime pay changes effective Dec 1, paid sick leave and more.

Jan. 18th

Update on the Quality Payment Program: What you Need to Know to be Successful - Jennifer Gordon, MSW, Project Coordinator, NE QIN-QIO, and Miriam Sheehy, OneCare Vermont.

Feb. 15th

What's New in Fraud and Abuse & Recoupment | Register [here](#)

Presenter: Linda J. Cohen, JD, MHCDS, Director, Dinse, Knapp & McAndrew, P.C.

Mar. 15th

HIPAA & Compliance Update - Anne Cramer, Esq. & Shireen Hart, Esq., Primmer Piper Eggleston & Cramer PC.

Hear from some of Vermont's experts on privacy and confidentiality laws: updates in HIPAA, including HIPAA the audit program and recent enforcement actions. Attend with your staff to meet HIPAA training obligations.

April 19th

Responding to Board Complaints - David Pocius, Esq., Paul Frank & Collins

Quick Links

- Upcoming Meetings
- Physician Quality Reporting System (PQRS)
- Wednesday Webinars
- Vermont Physician Leaders Initiative
- Opiate Prescribing & Substance Use Disorder Information
- Education and Research Foundation
- Vermont Practitioner Health Program
- Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) resources
- Free HIT Services for Primary Care Physicians
- CMS EHR Incentive Program
- Vermont Psychiatric Association
- VMS Rounds archives

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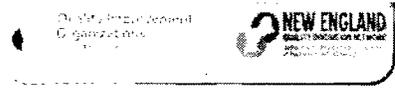
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Learn how the Board of Medical Practice complaint, investigation and discipline process works, plus how to respond when a complaint is filed with the Vermont Board of Medical Practice.



May 17th

New Health Care Laws for 2017

VMS Advocacy Staff will provide an update about new legislation passed in 2017 that will impact the practice of medicine in Vermont.



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PO Box 1457 - 134 Main Street - Montpelier, VT 05601 | Tel. 802-223-7898 | Fax. 802-223-1201 | info@vtmd.org