

RULE

**Department of Health
Board of Medical Examiners**

Physician Practice; Marijuana for Therapeutic Use by Patients Suffering From a Debilitating Medical Condition (LAC 46:XLV.Chapter 77)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (Board) by the Louisiana Medical Practice Act, R.S. 37:1270, the Board has amended its Rules governing physicians who utilize therapeutic marijuana in the treatment of their patients who are suffering from a debilitating medical condition, LAC 46:XLV Chapter 77. The amendments a herein set forth.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 77. Marijuana for Therapeutic Use by Patients Suffering from a Debilitating Medical Condition

Subchapter A. General Provisions

§7701. Preamble, Warning, and Suggested Consultation

A. Preamble—State Law. Pursuant to Act 261, R.S. 40:1046, of the 2015 Session of the Louisiana Legislature, as amended and supplemented by Act 96 of the 2016 Session of the Louisiana Legislature, the Louisiana State Board of Medical Examiners was directed to:

1. promulgate rules and regulations authorizing physicians licensed to practice in this state to recommend marijuana for therapeutic use by patients clinically diagnosed as suffering from a debilitating medical condition; and

- A.2. - C. ...
- D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2631 (December 2015), amended by the Department of Health Hospitals, Board of Medical Examiners, LR 43:318 (February 2017).

§7703. Scope of Chapter

A. This Chapter is being adopted in order to comply with the obligations imposed upon the board by Act 261, R.S. 40:1046, of the 2015 Session of the Louisiana Legislature, as amended and supplemented by Act 96 of the 2016 Session of the Louisiana Legislature, and govern a physician’s recommendation for the therapeutic use of marijuana for a patient suffering from a debilitating medical condition with whom the physician has established a bona-fide physician-patient relationship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2632 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:318 (February 2017).

§7705. Definitions

A. As used in this Chapter, the following terms and phrases shall have the meanings specified.

Conventional Treatment or Conventional Medicine—therapeutic modalities and medications offered or employed by a physician in the treatment of a debilitating medical condition which are generally accepted and recognized as falling within the standard of care in the course of medical practice based upon medical training, experience and peer reviewed scientific literature.

Debilitating Medical Condition (also referred to in this Chapter as a *Qualifying Medical Condition*)—cancer, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, cachexia or wasting syndrome, seizure disorders, epilepsy, spasticity, Crohn’s disease, muscular dystrophy, or multiple sclerosis, and/or such other diseases or conditions that may subsequently be identified as a debilitating medical condition by amendment of R.S. 40:1046 or other state law.

Qualifying Medical Condition—a debilitating medical condition, as defined in this Section.

Recommend or Recommendation (also referred to in this Chapter as a *Written Request* or Recommendation—a physician’s written direction transmitted in a form and manner specified in §7721 of this Chapter, to a licensed therapeutic marijuana pharmacy. The issuance of a recommendation must be in good faith and in the usual course of the physician’s professional practice.

Step Therapy or Fail First Protocols—as used in this Chapter means that if the USFDA approves the use of therapeutic marijuana for a debilitating medication condition, in a form or derivative that is different than provided for in this Chapter, the USFDA form or derivative shall be used first. If the physician determines that such USFDA approved form or derivative has been ineffective in the treatment of the patient’s debilitating medical condition, the physician may then recommend a form of therapeutic marijuana provided in this Chapter for use by the patient as medically necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2632 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:319 (February 2017).

Subchapter B. Prohibitions and Exceptions

§7709. Exceptions

A. This Chapter is subject to the following exceptions.

1. The rules of this Chapter shall not apply to a physician’s prescription of cannabinoid derived pharmaceuticals that are approved by the USFDA for administration to patients.

2. If the USFDA approves the use of therapeutic marijuana:

a. in the same form provided for in this Chapter for a debilitating medical condition, identified in §7705.A, that medical condition shall no longer be covered by this Chapter;

b. in a form or derivative different than provided for in this Chapter for a debilitating medical condition, identified in §7705.A, that disease state shall remain covered by this Chapter. However, the patient shall first be treated through utilization of step therapy or fail first protocols.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2632

(December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:319 (February 2017).

Subchapter C. Registration

§7711. Registration, Physician Eligibility

A. To be eligible for registration under this Chapter a physician shall, as of the date of the application:

1.-2. ...

3. be domiciled in and practice at a physical practice location in this state; and

4.-D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2633 (December 2015), amended by the Department of Health, Board of Medical Examiners LR 43:319 (February 2017).

Subchapter D. Marijuana for Therapeutic Purposes, Limitations, Access to Records

§7717. Use of Marijuana for Therapeutic Purposes, Limitations

A. ...

1. Medical Diagnosis. A medical diagnosis of a debilitating medical condition shall be clinically established and clearly documented in the patient's medical record, based on an in-person physical examination. The diagnosis shall be supported by an assessment of the patient which, at a minimum, shall include a review of the patient's present illness, medical and surgical history, social history, alcohol and substance use history (including addiction, mental illness and psychotic disorders), prescription history, and an assessment of current coexisting illnesses, diseases, or conditions.

2. ...

3. Independent Medical Judgment. A physician's decision to utilize marijuana in the treatment of a patient must be based on the physician's independent medical judgment. The indication, appropriateness, and safety of the recommendation shall be evaluated in accordance with current standards of practice and in compliance with the laws of this state and the rules of this Chapter.

4. Treatment Plan. An individualized treatment plan shall be formulated and documented in the patient's medical record which includes medical justification for the use of marijuana. In addition, the plan shall include documentation:

a. that conventional treatment for the patient's debilitating medical condition have been considered, are being undertaken or have been attempted without adequate or reasonable success or a statement that the patient has refused such methods;

b. whether therapeutic marijuana could interfere with any ongoing conventional treatment; and

c. the intended role of therapeutic marijuana within the overall plan.

5. Informed Consent. A physician shall explain the potential risks and benefits of both the therapeutic use of marijuana and any alternative conventional treatment to the patient. Among other items, informed consent should caution against driving, operating machinery or performing any task that requires the patient to be alert or react when under the influence of the drug and the need for secure storage to reduce the risk of exposure to children or diversion by others. Unless approved by the USFDA for treatment of the patient's debilitating medical condition, a physician shall also advise patients that therapeutic marijuana is experimental, unconventional, and has not been approved by the USFDA for the treatment of the patient's debilitating medical condition, and that possession may be viewed as illegal under federal law and subject to federal (and workplace) enforcement action. Discussion of the risks and benefits should be clearly noted in the patient's record. If the patient is a minor a custodial parent or legal guardian shall be fully informed of the risks and benefits and consent to such use.

A.6. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2633 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:319 (February 2017).

§7721. Form of Written Request or Recommendation

A. Required Contents. A written request or recommendation for therapeutic marijuana shall include:

1. - 3. ...

4. the form, amount, dosage and instructions for use of therapeutic marijuana in an amount which is not greater than that necessary to constitute an adequate supply to ensure uninterrupted availability for a period of one month, including amounts for topical treatment; and

A.5. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2634 (December 2015), amended by the Department of Health, Board of Medical Examiners LR 43:320 (February 2017).

Subchapter E. Sanctions, Severability

§7725. Effective Date

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2635 (December 2015), repealed by the Department of Health, Board of Medical Examiners LR 43:320 (February 2017).

§7729. Appendix—Form for Recommendation for Therapeutic Marijuana

—THIS IS NOT A PRESCRIPTION—

PHYSICIAN RECOMMENDATION FORM

* * *

Section C. Patient's Debilitating Medical Condition(s) (Required)

This patient has been diagnosed with the following debilitating medical condition: (A minimum of one condition must be checked)
<input type="checkbox"/> Acquired Immune Deficiency Syndrome <input type="checkbox"/> Cachexia or Wasting Syndrome <input type="checkbox"/> Cancer <input type="checkbox"/> Crohn's Disease <input type="checkbox"/> Epilepsy <input type="checkbox"/> Multiple Sclerosis <input type="checkbox"/> Muscular Dystrophy <input type="checkbox"/> Positive Status for Human Immunodeficiency Virus <input type="checkbox"/> Spasticity <input type="checkbox"/> Seizure Disorders

* * *

Section E. Certification, Signature and Date (Required)

By signing below, I attest that the information entered on this recommendation is true and accurate. I further attest that the above-named individual is my patient, who suffers from a debilitating medical condition and that this recommendation is submitted by and in conformity with Louisiana Law, R.S. 40:1046, and administrative rules promulgated by the Louisiana State Board of Medical Examiners, LAC 46:XLV.Chapter 77. Signature of Physician: X _____ Date: _____
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AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, and R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2635 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:320 (February 2017).

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.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended 41:2145 (October 2015), LR 43:317 (February 2017).

§7509. Patient Records

A. Patient records shall be:

1. created and maintained for every telemedicine visit according to the same standards of care as in an in-person visit. The record shall clearly reflect and state that the patient encounter occurred by telemedicine;

2. - 3. ...

4. made available to the patient or a physician to whom the patient may be referred within a reasonable period of time; and

5. made available to the board upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended 41:2146 (October 2015), LR 43:318 (February 2017).

§7513. Prohibitions

A. - B. ...

C. No physician shall utilize telemedicine:

1. - 2. ...

3. to authorize or order the prescription, dispensation or administration of any controlled substance unless;

a. the physician has had at least one in-person visit with the patient within the past year; provided, however, the requirement for an in-person visit shall not apply to a physician who holds an unrestricted license to practice medicine in this state and who practices telemedicine upon any patient being treated at a healthcare facility that is required to be licensed pursuant to the laws of this state and which holds a current registration with the U.S. Drug Enforcement Administration;

C.3.b. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009), amended LR 41:2146 (October 2015), LR 43:318 (February 2017).