

Mississippi Secretary of State
 125 South Congress St., P. O. Box 136, Jackson, MS 39205-0136

ADMINISTRATIVE PROCEDURES NOTICE FILING

AGENCY NAME Mississippi State Board of Medical Licensure		CONTACT PERSON Jonathan Dalton	TELEPHONE NUMBER 601-987-3079	
ADDRESS 1867 Crane Ridge Drive, Suite 200-B		CITY Jackson	STATE MS	ZIP 39216
EMAIL mboard@msbml.ms.gov	SUBMIT DATE 11/30/2023	Name or number of rule(s): 30 Miss. Admin. Code, Pt. 2640, Ch. 2: <i>Cannabis Certification</i>		

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: Proposed revision of the regulations regarding cannabis certification. Updates necessary to comply with statutory changes regarding medical cannabis.

Specific legal authority authorizing the promulgation of rule: Miss. Code Ann., §73-43-11

List all rules repealed, amended, or suspended by the proposed rule: Rules 1.1 – 1.6

ORAL PROCEEDING:

An oral proceeding is scheduled for this rule on Date: _____ Time: _____ Place: _____

Presently, an oral proceeding is not scheduled on this rule.

If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.

ECONOMIC IMPACT STATEMENT:

Economic impact statement not required for this rule. Concise summary of economic impact statement attached.

<p align="center">TEMPORARY RULES</p> <p>_____ Original filing _____ Renewal of effectiveness To be in effect in _____ days Effective date: _____ Immediately upon filing _____ Other (specify): _____</p>	<p align="center">PROPOSED ACTION ON RULES</p> <p>Action proposed: _____ New rule(s) _____ Amendment to existing rule(s) _____ Repeal of existing rule(s) _____ Adoption by reference Proposed final effective date: _____ 30 days after filing _____ Other (specify): _____</p>	<p align="center">FINAL ACTION ON RULES</p> <p>Date Proposed Rule Filed: <u>5/24/23</u> Action taken: <input checked="" type="checkbox"/> Adopted with no changes in text _____ Adopted with changes _____ Adopted by reference _____ Withdrawn _____ Repeal adopted as proposed Effective date: <input checked="" type="checkbox"/> 30 days after filing _____ Other (specify): _____</p>
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Printed name and Title of person authorized to file rules: Jonathan Dalton, Director of Investigations

Signature of person authorized to file rules: *Jonathan Dalton*

<p>OFFICIAL FILING STAMP</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div> <p>Accepted for filing by</p>	<p>DO NOT WRITE BELOW THIS LINE</p> <p>OFFICIAL FILING STAMP</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div> <p>Accepted for filing by</p>	<p>OFFICIAL FILING STAMP</p> <div style="border: 1px solid black; padding: 10px;"> <p align="center">FILED</p> <p align="center">NOV 30 2023</p> <p align="center">MISSISSIPPI SECRETARY OF STATE</p> <p>Accepted for filing by <i>27263 JBA</i></p> </div>
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The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.



RESOLUTION

Whereas, it is necessary for the Occupational Licensing Review Commission to issue a resolution regarding the approval or denial of specific rules submitted for its review: NOW, THEREFORE, LET IT BE RESOLVED BY THE OCCUPATIONAL LICENSING REVIEW COMMISSION, that the following rules shall be known to have been approved by the Commission at a duly-called meeting of its members on September 12, 2023, and may now be filed as final with the Secretary of State's Office for inclusion in the Mississippi Administrative Code:

- Rules of the Mississippi Board of Pharmacy - Title 30, Part 3001, Article III: Revision of existing regulations regarding extern/intern requirements; Proposed new regulation for externs/interns transitioning to a pharmacy technician.
- Rules of the Mississippi Board of Pharmacy - Title 30, Part 3001, Article XX: Revision of existing regulation regarding the partial filing of Schedule II prescriptions for terminally-ill or long-term care facility patients.
- Rules of the Mississippi Board of Pharmacy – Title 30, Part 3001, Article LI: Proposed new regulation outlining responsibilities of consultant pharmacist advising ambulatory surgery centers or multi-provider clinics.
- Rules of the Mississippi State Board of Massage Therapy – Title 30, Part 2501, Chapter 2, R. 2.1: Revision of existing regulation to eliminate cost of additional location license certificate, replacement location license certificate, and replacement of mobile therapist card.
- Rules of the Mississippi Real Estate Commission – Title 30, Part 1601, Chapter 2, Rules 2.1: Revision of existing regulation to change the fees associated with the real estate broker's license and real estate salesperson's license.
- Rules of the Mississippi State Board of Medical Licensure – Title 30, Part 2640, Chapter 2: Revision of existing regulations regarding cannabis certification to comply with statutory changes regarding medical cannabis.
- Rules of the Mississippi State Board of Medical Licensure – Title 30, Part 2615, Chapter 1: Revision of existing regulations to make requirements for physician assistants consistent with requirements for nurse practitioners.

Part 2640: Chapter 2: Cannabis Certification

Rule 1.1 | Scope

The rules contained in this Part 2640, Chapter 2, are promulgated by the Mississippi Board of Medical Licensure (the “Board”) to implement the Mississippi Medical Cannabis Act, Miss. Code Ann., §§ 41-137-1, et seq., (the “Act”). These rules shall apply to all licensees who are registered as certifying practitioners with the Mississippi State Department of Health (MDOH); or who are applying, or re-applying, to register as certifying practitioners with the MDOH. Nothing in these rules shall be construed to require any licensee to issue any written certification pursuant to the Act. No licensee is required to register with the Board in order to certify patients. However, all advice or services provided pursuant to the Act must meet or exceed the applicable professional standard of care.

Source: Miss. Code Ann. § 73-43-11 (1972, as amended); Miss. Code Ann. § 41-137-5(7)(c) (as amended Mar. 27, 2023); Miss. Code Ann. § 41-137-9(2)(d) (2022).

Rule 1.2 | Definitions

For the purposes of Part 2640, Chapter 2, the following terms have the meanings indicated:

- A. ***Bona fide practitioner-patient relationship*** means:
- (i) A practitioner and patient have a treatment or consulting relationship, during the course of which the practitioner, within his or her scope of practice, has completed an in-person assessment of the patient’s medical history and current mental health and medical condition and has documented their certification in the patient’s medical file;
 - (ii) The practitioner has consulted in person with the patient with respect to the patient’s debilitating medical condition; and
 - (iii) The practitioner is available to or offers to provide follow-up care and treatment to the patient.
- B. ***Cannabis*** means all parts of the plant of the genus cannabis, the flower, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including whole plant extracts. Such term shall not mean cannabis-derived drug products approved by the federal Food and Drug Administration under Section 505 of the Federal Food, Drug, and Cosmetic Act.
- C. For the purposes of this Chapter, ***Practitioner*** means a physician or physician assistant who is licensed to prescribe medicine under the licensing requirements of the Boards and the laws of this state. In relation to a nonresident cardholder, the term means a physician or physician assistant who is licensed to prescribe medicine under the licensing requirements of their respective occupational boards and under the laws of the state or territory in which

the nonresident patient resides. For registered qualifying patients who are minors, “practitioner” shall mean a physician or doctor of osteopathic medicine who is licensed to prescribe medicine under the licensing requirements of the Board and the laws of this state.

- D. **Chronic pain** means a pain state in which the cause of the pain cannot be removed or otherwise treated, and which in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible, or none has been found after reasonable efforts by the certifying practitioner.
- E. **Debilitating medical condition** means:
- (i) Cancer, Parkinson’s disease, Huntington’s disease, muscular dystrophy, glaucoma, spastic quadriplegia, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis, amyotrophic lateral sclerosis (ALS), Crohn’s disease, ulcerative colitis, sickle-cell anemia, Alzheimer’s disease, agitation of dementia, post-traumatic stress disorder (PTSD), autism, pain refractory to appropriate opioid management, diabetic/peripheral neuropathy, spinal cord disease or severe injury, or the treatment of these conditions;
 - (ii) A chronic, terminal or debilitating disease or medical diagnosis, or its treatment, that produces one or more of the following: cachexia or wasting syndrome, chronic pain, severe or intractable nausea, seizures, or severe and persistent muscle spasms, including, but not limited to, those characteristic of multiple sclerosis; or
 - (iii) Any other serious medical condition or its treatment added by the Mississippi Department of Health, as provided for in Section 41-137-17.
- F. **Medical use** includes the acquisition, administration, cultivation, processing, delivery, harvest, possession, preparation, transfer, transportation, or use of medical cannabis or equipment relating to the administration of medical cannabis to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition. The term "medical use" does not include:
- (i) The cultivation of cannabis unless the cultivation is done by a cannabis cultivation facility; or
 - (ii) the extraction of resin from cannabis by mechanical or chemical extraction unless the extraction is done by a cannabis processing facility.
- G. **Qualifying Condition** means any condition as described and defined in Section 41-137-3(r) and R.1.2(E) of this Chapter.
- H. **Qualifying Patient** means a person who has been diagnosed by a practitioner as having a debilitating medical condition as described and defined in Section 41-137-3(r)(1) and has

been issued a written certification, or who is eligible to receive such certification, under Section 41-137-5.

- I. ***Scope of practice*** means the defined parameters of various duties, services or activities that may be provided or performed by a physician as authorized under Section 73-25-33, or by a physician assistant under Section 73-26-5, and the rules and regulations adopted by the Board for those practitioners.
- J. ***Written Certification*** means a form approved by the Mississippi State Department of Health, signed and dated by a practitioner, certifying that a person has a debilitating medical condition. A written certification shall include the following:
 - (i) The date of issue and the effective date of the recommendation;
 - (ii) The patient's name, date of birth and address;
 - (iii) The practitioner's name, address, and federal Drug Enforcement Agency number; and
 - (iv) The practitioner's signature.

Source: Miss. Code Ann. § 73-43-11 (1972, as amended); Miss. Code Ann. § 41-137-3 (2022, as amended March 27, 2023).

Rule 1.3 | Certification

A. Certification Generally

(i) Practitioners must be authorized and registered with the Mississippi State Department of Health to certify patients as eligible to obtain cannabis for medical use. No person shall be authorized to use medical cannabis in this state unless the person (a) has been diagnosed by a practitioner, with whom the person has a bona fide practitioner-patient relationship within his or her scope of practice, as having a debilitating medical condition for which the practitioner believes, in his or her professional opinion, that the person would likely receive medical or palliative benefit from the medical use of medical cannabis to treat or alleviate the person's debilitating medical condition or symptoms associated with the person's debilitating medical condition, (b) has received a written certification of that diagnosis from the practitioner, and (c) has been issued a registry identification card from the MDOH under Section 41-137-23. A person who has been diagnosed by a practitioner as specified in paragraph (a) of this subsection shall be a qualifying patient, and the practitioner who has diagnosed the patient shall document that diagnosis with a written certification. However, nothing herein shall require a practitioner to issue a written certification.

(ii) A written certification shall:

- (a) Affirm that it is made in the course of a bona fide practitioner-patient relationship;
- (b) Remain current for twelve (12) months, unless the certifying practitioner specifies a shorter period of time;
- (c) Be issued only after an in-person assessment of the patient by the certifying practitioner;

- (d) Only be issued on behalf of a minor when the minor's parent or guardian, as defined in the Act, provides signed consent; and
- (e) Be limited to the allowable amount of cannabis in a thirty-day period.

After a practitioner has issued a written certification to a qualifying patient, a practitioner may assist the patient in registering for a registry identification card with the Department of Health, in a manner provided by regulations of the Department of Health.

After a qualifying patient receives a written certification from a practitioner, the patient shall be required to make a follow-up visit with the practitioner not less than six (6) months after the date of issuance of the certification for the practitioner to evaluate and determine the effectiveness of the patient's medical use of medical cannabis to treat or alleviate the patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition. Qualifying patients may make a follow-up visit with a different practitioner than the practitioner who originally issued their written certification, provided that such practitioner is otherwise registered and acting within their scope of practice and the provisions of this chapter.

B. Pediatric Certifications

Only physicians (Medical Doctors [MD] or Doctors of Osteopathic Medicine [DO]) may issue written certifications to registered qualifying patients who are minors (younger than eighteen (18) years of age).

A certifying practitioner may not issue a written certification to a qualifying patient who is younger than eighteen (18) years of age unless:

- (a) The qualifying patient's practitioner has explained the potential risks and benefits of the medical use of medical cannabis to the custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient; and
- (b) The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:
 - (i) Acknowledge the potential harms related to the use of medical cannabis;
 - (ii) Allow the qualifying patient's medical use of medical cannabis;
 - (iii) Serve as the qualifying patient's designated caregiver; and
 - (iv) Control the acquisition of the medical cannabis, the dosage and the frequency of the use of medical cannabis by the qualifying patient.

C. Young Adult Certifications

Notwithstanding any other provision to the contrary, a patient with a qualifying condition who is between eighteen (18) years to twenty-five (25) years of age is not eligible for a medical cannabis registry identification card unless two (2) practitioners from separate medical practices have diagnosed the patient as having a qualifying condition after an in-person consultation. One (1) of these practitioners must be a physician (Medical Doctor [MD] or Doctor of Osteopathic Medicine [DO]).

If one (1) of the recommending practitioners is not the patient's primary care practitioner, the recommending practitioner shall review the records of a diagnosing practitioner. The requirement that the two (2) practitioners be from separate medical practices does not apply if the patient is homebound or if the patient had a registry identification card before the age of eighteen (18).

Source: Miss. Code Ann. § 73-43-11 (1972, as amended); Miss. Code Ann. § 41-137-5 (2002, as amended March 27, 2023); Miss. Code Ann. § 41-137-9 (2022, as amended March 27, 2023); Miss. Code Ann. § 41-137-23 (2022, as amended March 27, 2023).

Rule 1.4 | Patient Record

A practitioner who assesses a patient for certification must maintain a complete record of his or her assessment, just as with any other patient.

Source: Miss. Code Ann. § 73-43-11 (1972, as amended).

Rule 1.5 | Continuing Medical Education (CME)

- (a) A practitioner shall be registered to issue written certifications to qualifying patients by completing the required application process as set forth by the MDOH. The MDOH shall require a practitioner to complete a minimum of eight (8) hours of continuing education in medical cannabis in order to issue written certifications. After the first year of registration, these practitioners shall complete five (5) hours of continuing education in medical cannabis annually to maintain this registration.
- (b) A practitioner shall not be required to have any additional qualifications to be authorized to certify a qualifying patient for a registry identification card, other than such requirements for practitioners as provided under the Mississippi Medical Cannabis Act.
- (c) A practitioner shall not be required to be registered to certify patients with any state agency or board other than the MDOH

Source: Miss. Code Ann. § 73-43-11 (1972, as amended); Miss. Code Ann. § 41-137-5 (2022, as amended March 27, 2023).

Rule 1.6 | Violations

Violation of any of the rules or requirements in this Part 2640, Chapter 2, or of any provision of the Mississippi Medical Cannabis Act, constitutes unprofessional conduct in violation of Miss. Code Ann. § 73-25-29(8)(d) and may subject a licensee to discipline. Discipline under this Chapter and other provisions of the Administrative Code shall be in addition to any other civil, criminal, or administrative penalties available under state law.

Source: Miss. Code Ann. § 73-43-11 (1972, as amended).

The above rules pertaining to cannabis certification shall become effective August 26, 2022.