

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 601-987-0248	
ADDRESS 1867 Crane Ridge Drive, Suite 200-B		CITY Jackson	STATE MS	ZIP 39216
EMAIL mboard@msbml.ms.gov	SUBMIT DATE 7/26/22	Name or number of rule(s): Part 2640, Chapter 2 <i>Cannabis Certification</i>		

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: Creation of a new chapter setting forth rules for medical practitioners regarding certification of certain medical conditions for which patients may obtain cannabis, and for related purposes.

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List all rules repealed, amended, or suspended by the proposed rule: None

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.

TEMPORARY RULES	PROPOSED ACTION ON RULES	FINAL ACTION ON RULES
<input type="checkbox"/> Original filing <input type="checkbox"/> Renewal of effectiveness To be in effect in _____ days Effective date: <input type="checkbox"/> Immediately upon filing <input type="checkbox"/> Other (specify): _____	Action proposed: <input type="checkbox"/> New rule(s) <input type="checkbox"/> Amendment to existing rule(s) <input type="checkbox"/> Repeal of existing rule(s) <input type="checkbox"/> Adoption by reference Proposed final effective date: <input type="checkbox"/> 30 days after filing <input type="checkbox"/> Other (specify): _____	Date Proposed Rule Filed: <u>3/28/22</u> Action taken: <input type="checkbox"/> Adopted with no changes in text <input checked="" type="checkbox"/> Adopted with changes <input type="checkbox"/> Adopted by reference <input type="checkbox"/> Withdrawn <input type="checkbox"/> Repeal adopted as proposed Effective date: <input checked="" type="checkbox"/> 30 days after filing <input type="checkbox"/> Other (specify): _____

Printed name and Title of person authorized to file rules: Jonathan Dalton, Director of Investigations

Signature of person authorized to file rules: 

OFFICIAL FILING STAMP <div style="border: 1px solid black; height: 150px; width: 100%;"></div> Accepted for filing by	DO NOT WRITE BELOW THIS LINE OFFICIAL FILING STAMP <div style="border: 1px solid black; height: 150px; width: 100%;"></div> Accepted for filing by	OFFICIAL FILING STAMP  Accepted for filing by 
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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 June 21, 2022, and may now be filed as final with the Secretary of State's Office for inclusion in the Mississippi Administrative Code:

- Rules of the Board of Medical Licensure – Part 2640, Chapter 2 Cannabis Certification; Creation of a new chapter setting forth rules for medical practitioners regarding certification of certain medical conditions for which patients may obtain cannabis, and for related purposes. *Approved as amended to add the following language to Rule 1.6, “Refer also to Title 15: Mississippi State Department of Health, Part 22: Medical Cannabis Program, Chapter 1: Subchapters 1-5 Regulations for Advertisement and Marketing.”*
- Rules of the Board of Medical Licensure – Part 2635 Chapter 5: Practice of Telemedicine; Revision of the definitions and other sections regarding telemedicine to clarify certain terms common to the telemedicine industry and for other purposes.
- Rules of the Board of Nursing – Part 2840, Chapter 1: Section II Cannabis Certification, Rule 1.1 Scope for Part 2840, Chapter 1: Section II
- Rules of the Board of Optometry – Part 2901 Chapter 12: Cannabis Certification
- Rules of the Real Estate Commission – Title 30, Part 1601, Rules 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9; Promulgation of Rules governing Miss. Real Estate Commission Administrative and Disciplinary Proceedings. *Approved as amended to include the following changes along with some non-substantive renumbering:*
 - *Add the following definition to Rule 5.2, “C. Administrative Hearing Officer Option: The option for a licensee/Respondent to elect to have his or her Administrative Hearing conducted by an Administrative Hearing Officer instead of a Commission Hearing Panel. When the Administrative Hearing Officer Option is elected, the Administrative Hearing Officer shall have the same powers to conduct administrative hearings and render decisions as would the Commission Hearing Panel.”*
 - *Delete Subsection 4) in Rule 5.5.*
 - *Clarify Rule 5.7 E. 1) by adding the words ‘or Administrative Hearing Officer’ after ‘...the Commission Hearing Panel’.*
 - *Clarify Rule 5.8 F. and G. by adding the words ‘or Administrative Hearing Officer’ after ‘...before the Commission’.*

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., §§ ___-___-___, et seq., (the “Act”). These rules shall apply to all licensees who are registered as certifying practitioners; or who are applying, or re-applying, to register as certifying practitioners. Nothing in these rules shall be construed to require any licensee to issue any written certification pursuant to the Act.

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

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 certifying practitioner and patient have a treatment or consulting relationship, during the course of which the certifying 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 records;
 - (ii) The certifying practitioner has consulted in person with the patient with respect to the patient’s debilitating medical condition; and
 - (iii) The certifying 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. “Certifying practitioner” means any physician or physician assistant who is licensed to prescribe under the licensing requirements set forth in the Administrative Code and the laws of this state, who maintains a current and unrestricted Mississippi medical license, has satisfied all continuing medical education requirements, and who has registered with both the Board and the Mississippi State Department of Health to certify patients as qualifying patients. For purposes of this Chapter, the term “practitioner” shall mean a “certifying practitioner.” For registered qualifying patients who are minors, “certifying practitioner” shall mean only a physician (Medical Doctor [MD] or Doctor of Osteopathic Medicine [DO]) who meets all other requirements for registration.

- 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 the Act.
- 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 in this chapter in R.1.2(E).
- H. "Qualifying Patient" means a person who has been diagnosed by a certifying practitioner as having a debilitating medical condition and has been issued a written certification, or who is eligible to receive such certification, under the Act.

- I. “Scope of Practice” means the defined parameters of various duties, services or activities that may be provided or performed by a certifying practitioner under state law and the rules and regulations adopted by the Board.
- J. “Written Certification” means a form approved by the Mississippi State Department of Health, signed and dated by a certifying practitioner, certifying that a person has a debilitating medical condition, and that includes 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).

Rule 1.3 | Certification

A. Certification Generally

Certifying practitioners must be authorized and registered with both the Board and the Mississippi State Department of Health to certify patients to obtain cannabis for medical use. A practitioner shall not issue a written certification unless (a) a bona fide certifying practitioner-patient relationship exists; (b) the certifying practitioner has diagnosed the patient as having a qualifying condition after an in-person evaluation, including any necessary and appropriate laboratory testing; and (c) the certifying practitioner believes, in his or her professional opinion, that the patient would likely receive medical or palliative benefit from the medical use of cannabis to treat or alleviate the patient's qualifying condition or symptoms associated with that condition.

A certifying practitioner shall conduct the evaluation, diagnosis, and certification processes in a manner consistent with all professional and medical standards of care, and document all information related to those processes in the patient’s records.

The diagnosis of a qualifying condition must be documented in a written certification that shall:

- (i) Affirm that it is made in the course of a bona fide practitioner-patient relationship;
- (ii) Remain current for twelve (12) months, unless the certifying practitioner specifies a shorter period of time;
- (iii) Be issued only after an in-person assessment of the patient by the certifying practitioner;
- (iv) Only be issued on behalf of a minor when the minor’s parent or guardian, as defined in the Act, provides signed consent; and
- (v) Be limited to the allowable amount of cannabis in a thirty-day period.

B. Treatment Plan

Prior to certifying a patient, certifying practitioners must document a written treatment plan that includes:

- (i) Review of other measures attempted to ease the suffering caused by the qualifying condition that do not involve the recommendation of cannabis.
- (ii) Advice about other options for managing the qualifying condition.
- (iii) Determination that the patient may benefit from cannabis.
- (iv) Stated goals that include the reduction of, and optimally the elimination of, controlled substances used to treat the qualifying condition.
- (v) Advice about the potential risks of the medical use of cannabis, to include:
 - (a) The risk of cannabis use disorder;
 - (b) Exacerbation of psychotic disorders and adverse cognitive effects for children and young adults;
 - (c) Adverse events, including falls or fractures;
 - (d) Use of cannabis during pregnancy or breast feeding;
 - (e) The need to safeguard all cannabis and cannabis-infused products from children and pets; and
 - (f) Notification to the patient that the cannabis is for the patient's use only and the cannabis should not be donated or otherwise supplied to another individual (i.e., diverted).
- (vi) Additional diagnostic evaluations or other planned treatments.
- (vii) A specific duration for the cannabis authorization for a period no longer than twelve (12) months.

Patients with a history of substance use disorder or a co-occurring mental health disorder may require specialized assessment and treatment. The certifying practitioner may seek consultation with, or refer the patient to, a pain management, psychiatric, addiction, or mental health specialist as needed.

After a certifying practitioner has issued a written certification for a patient, the Act requires the patient 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 cannabis to treat or alleviate the patient's qualifying condition or symptoms associated with that condition. Should the patient fail to attend a follow-up visit as required, the certifying practitioner may not re-certify said patient until a follow-up visit is conducted.

C. 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.

D. 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).

Rule 1.4 | Patient Record

A practitioner who evaluates a patient for certification must maintain a complete record of his or her examination, evaluation and treatment of the patient. The record required by this rule must be maintained in the patient's medical records, and said records must be available for inspection by the representatives of the Mississippi State Board of Medical Licensure. Records shall be maintained for a minimum period of seven (7) years from the date of completion or the last certification occurred.

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

Rule 1.5 | Continuing Medical Education (CME)

Practitioners applying to register with the Board as a certifying practitioner for the first time must complete a minimum of eight (8) hours of CME in the area of medical cannabis before initial registration shall be approved. After the first year of registration, certifying practitioners shall complete at least five (5) hours of CME in the area of medical cannabis before a reapplication shall be approved. All CME hours in the area of medical cannabis must be earned in courses approved by the Mississippi State Department of Health. CME hours obtained under this rule are in addition to the standard number of CME hours required in Pts. 2610 and 2615.

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

Rule 1.6 | Advertising

Advertising for cannabis certification must be professional in nature and may not be designed in such a way as to suggest that patients will obtain certification regardless of their condition or compliance with the requirements of the Act, or in any way that entices minors. Refer also to Title 15: Mississippi State Department of Health, Part 22: Medical Cannabis Program, Chapter 1: Subchapters 1-5 Regulations for Advertisement and Marketing.

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

Rule 1.7 | Freedom of Choice and Conflicts of Interest

Patients are entitled to the same freedom of choice in selecting where to obtain their cannabis as they are in the choice of a certifying practitioner. The following conduct by any certifying practitioner is a direct violation of the Mississippi Medical Cannabis Act and is prohibited: (a) purposefully referring patients to a specific medical cannabis establishment or to a registered designated caregiver, (b) advertising in a medical cannabis establishment, or (c) issuing written certifications while holding a financial interest in a medical cannabis establishment.

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

Rule 1.8 | Mississippi Prescription Monitoring Program (MPMP) and Urine Drug Screening

Certifying Practitioners who certify patients for cannabis must review the MPMP at each patient encounter involving certification, re-certification, or follow-up related to medical cannabis. MPMP data reviewed shall include all information since the previous review. The certifying practitioner shall note in the patient's chart that the MPMP was reviewed and provide appropriate information regarding the findings of said review.

As part of the in-person evaluation of a patient for initial certification or for re-certification each year, certifying practitioners shall conduct urine drug screening (UDS) and other laboratory tests necessary for full evaluation of the patient's eligibility for medical cannabis. In the absence of urine, other testing methods may be used. Tests must include, at a minimum, assays for opioids, benzodiazepines, amphetamines, cocaine, and cannabis. Inconsistent UDS should be utilized as a tool to determine compliance with treatment.

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

Rule 1.9 | Concomitant Prescribing of Controlled Substances and Cannabis Certification

The concomitant prescribing of controlled substances after certification for cannabis is generally discouraged and should be considered with caution. There is a lack of data currently on the interactions between controlled substances and cannabis. When considering certification or re-certification for cannabis, certifying practitioners should focus on improving their patient's quality of life while simultaneously assessing for contraindications to the concurrent use of controlled substances and cannabis, with the goal of greatly reducing or completely eliminating other mood-altering substances when possible.

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

Rule 1.10 | 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).