

Washington voters passed the Medical Use of Marijuana Act in 1998 as a ballot initiative (I-692). The Washington Legislature amended the Act in 2007 with SB 6032, in 2010 with SB 5798, and in 2011 with SB 5073. The latter retitled it the Medical Use of Cannabis Act.

This law is codified in Chapter 69.51A of the Revised Code of Washington and at Chapter 246-75 of the Washington Administrative Code. The information here provides a general explanation of the Medical Use of Cannabis Act. For legal advice on how the act may apply to you personally, you should speak with an attorney familiar with this law.

What does the Medical Use of Cannabis Act do?

Washington's medical cannabis law provides qualifying patients and their designated providers **a defense in state and local courts against criminal charges relating to growing, possessing, or administering medical cannabis.** The law also clarifies that health care professionals may discuss medical cannabis as a treatment option with their patients and authorize its use without penalty.

Washington's law does not, however, change federal cannabis laws, and these prohibit even medical use of cannabis. Therefore, anyone who manufactures, distributes, dispenses, or possesses cannabis for **any** purpose still may be prosecuted under federal law. (See Title 21, Chapter 13, sections 841 and 844 of the United States Code.)

Washington's Medical Use of Cannabis Act does not legalize cannabis for recreational or any other use that is not specifically covered by the law. The law applies **only to** the medical conditions listed in the statute (see below) or those added by administrative rule.

What medical conditions are covered by the Medical Use of Cannabis Act?

The following conditions are listed in and covered by the Medical Use of Cannabis Act:

- (a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders;
- (b) Intractable pain, meaning pain unrelieved by standard medical treatments and medications;
- (c) Glaucoma, either acute or chronic, meaning increased intraocular pressure unrelieved by standard treatments and medications;
- (d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications;
- (e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; and
- (f) Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications.

Anyone may petition the Medical Quality Assurance Commission and the Board of Osteopathic Medicine and Surgery to add other terminal or debilitating conditions to the list.

Washington's Medical Use of Cannabis Act

A Guide for
Health Care Professionals



*Prepared by the ACLU-WA Foundation's
Drug Policy Project (November 2011)*

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Which health care professionals may write medical cannabis authorizations?

Washington state health care professionals licensed under state law as M.D.s, physician assistants, osteopathic physicians, osteopathic physicians' assistants, naturopaths, or advanced registered nurse practitioners may provide a patient with valid documentation authorizing the medical use of cannabis.

Valid documentation is a statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper. It must state that, in the health care provider's professional opinion, the patient may benefit from the medical use of cannabis. And it must include proof of identity, such as a Washington state driver's license or identicard (as defined in RCW 46.20.035).

Tamper-resistant paper means paper that includes one or more industry-recognized features designed to prevent copying, counterfeiting, or erasure or modification of information. A standard authorization form can be downloaded at:

<http://aclu-wa.org/medical-marijuana-guide>

How does the medical marijuana law protect health care professionals?

The following acts do not constitute crimes under state law or unprofessional conduct (under chapter 18.130 RCW). That means a health care professional may not be arrested, searched, prosecuted, disciplined, or subject to other criminal sanctions or civil consequences or liability under state law, or have property searched, seized, or forfeited pursuant to state law for doing these things:

(a) Advising a patient about the risks and benefits of the medical use of cannabis or that the patient may benefit from the medical use of cannabis; or

(b) Providing a qualifying patient with valid documentation, based upon the health care professional's assessment of the patient's

medical history and current medical condition, where such use is within a professional standard of care or in the individual health care professional's medical judgment.

Health care professionals and their prescription licenses also are protected under federal law. The Ninth Circuit Court of Appeals ruled (in *Conant v. Walters*),¹ that threats from the federal government to revoke physicians' DEA registrations or to initiate investigations based solely on physicians' recommendations of medical marijuana to their patients violated the core First Amendment values of the doctor-patient relationship. But health care professionals still cannot formally prescribe or provide marijuana to their patients – only patients and their providers may possess marijuana for the patient's medical use.

What are the requirements for a health care professional to authorize the medical use of cannabis?

RCW 69.51A.030 mandates that health care professionals meet the following requirements when authorizing the medical use of cannabis:

(2)(a) A health care professional may provide a patient with valid documentation authorizing the medical use of cannabis only if he or she has a newly initiated or existing documented relationship with the patient, as a primary care provider or a specialist, relating to the diagnosis and ongoing treatment or monitoring of the patient's terminal or debilitating medical condition, and only after:

(i) Completing a physical examination of the patient as appropriate, based on the patient's condition and age;

(ii) Documenting the terminal or debilitating medical condition of the patient in the

patient's medical record and that the patient may benefit from treatment of this condition or its symptoms with medical use of cannabis;

(iii) Informing the patient of other options for treating the terminal or debilitating medical condition; and

(iv) Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve the medical use of cannabis.

(b) A health care professional shall not:

(i) Accept, solicit, or offer any form of pecuniary remuneration from or to a licensed dispenser, licensed producer, or licensed processor of cannabis products;

(ii) Offer a discount or any other thing of value to a qualifying patient who is a customer of, or agrees to be a customer of, a particular licensed dispenser, licensed producer, or licensed processor of cannabis products;

(iii) Examine or offer to examine a patient for purposes of diagnosing a terminal or debilitating medical condition at a location where cannabis is produced, processed, or dispensed;

(iv) Have a business or practice which consists solely of authorizing the medical use of cannabis;

(v) Include any statement or reference, visual or otherwise, on the medical use of cannabis in any advertisement for his or her business or practice; or

(vi) Hold an economic interest in an enterprise that produces, processes, or dispenses cannabis if the health care professional authorizes the medical use of cannabis.

¹ 309 F.3d 629 (9th Cir. 2002), *cert. denied*, 540 U.S. 946, 124 S. Ct. 387, 157 L. Ed. 2d 276 (2003).