



**Louisiana Board of Pharmacy**  
3388 Brentwood Drive  
Baton Rouge, Louisiana 70809-1700  
Telephone 225.925.6496 ~ E-mail: [info@pharmacy.la.gov](mailto:info@pharmacy.la.gov)



July 23, 2020

Senator P. Page Cortez, President  
Louisiana Senate  
Via e-mail: [APA.SenatePresident@legis.la.gov](mailto:APA.SenatePresident@legis.la.gov)

**Electronic Mail – Delivery Receipt Requested**

Re: Report No. 2 of 3 for Regulatory Project 2020-5 ~ Marijuana Pharmacy

Dear Senator Cortez:

As we indicated in our first report to your office on April 9, 2020, the Board initiated this regulatory project to amend its rules for marijuana pharmacies to (1) repeal an outdated definition of the term 'marijuana', (2) repeal the dispensing limitation of not more than a one-month supply of marijuana in a single container, and (3) to repeal a business limitation which prohibits a marijuana pharmacy from dispensing any other non-controlled prescription drugs.

Subsequent to the publication of our *Notice of Intent* in the April 2020 edition of the Louisiana Register, we conducted a public hearing on May 29, 2020 to receive comments and testimony on the proposed rule changes. We received two written comments on the proposed rule changes. During their subsequent meeting on June 25, 2020, the Board considered those comments and determined no revisions were necessary. The Occupational Licensing Review Commission approved the continuation of the promulgation process during their meeting earlier today. In connection with this regulatory project, you should find the following documents in this package:

- *Notice of Intent*, as published in the April 2020 Louisiana Register Page 02
- Record from the May 29, 2020 Public Hearing Page 05
- Full text of proposed rule Page 17

Subject to review by the Joint Legislative Oversight Committee on Health & Welfare, the Board proposes to publish the original proposal without amendment as a *Rule* in the September 20, 2020 edition of the Louisiana Register with an immediate effective date. If you have any questions about the enclosed information or our procedures, please contact me directly at [mbroussard@pharmacy.la.gov](mailto:mbroussard@pharmacy.la.gov) or 225.925.6481.

For the Board:

Malcolm J. Broussard  
Executive Director

cc: Chair, Senate Committee on Health and Welfare – [APA.S-H&W@legis.la.gov](mailto:APA.S-H&W@legis.la.gov)  
Speaker, House of Representatives – [APA.HouseSpeaker@legis.la.gov](mailto:APA.HouseSpeaker@legis.la.gov)  
Chair, House Committee on Health and Welfare – [APA.H-HW@legis.la.gov](mailto:APA.H-HW@legis.la.gov)  
Editor, Louisiana Register – [Reg.Submission@la.gov](mailto:Reg.Submission@la.gov)  
Reference File

**NOTICE OF INTENT**

**Department of Health  
Board of Pharmacy**

Marijuana Pharmacy (LAC 46:LIII.2441, 2443, and 2451)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to amend three sections within Chapter 24 of its rules relative to marijuana pharmacy. The proposed change in §2441 repeals the definition of marijuana which has changed since the rule was promulgated in 2017. The proposed change in §2443 repeals the limitation that a single container hold no more than a one-month supply of marijuana. The proposed change in §2451 removes the limitation that marijuana pharmacies may sell only marijuana products, over-the-counter medications, durable medical equipment, and other retail items.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS  
Part LIII. Pharmacists  
Chapter 24. Limited Service Providers  
Subchapter E. Marijuana Pharmacy**

**§2441. Definitions**

A. As used in this Subchapter, the following terms shall have the meaning ascribed to them in this Section:

\* \* \*

*Marijuana*—Repealed.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1538 (August 2017), amended LR 45:1473 (October 2019), amended LR 46:

**§2443. Marijuana Products**

A. - D.1.c. ...

d. Repealed.

D.1.e - E.4.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1540 (August 2017), amended LR 45:1473 (October 2019), amended LR 46:

**§2451. Operation of Marijuana Pharmacy**

A. - M. ...

N. No marijuana pharmacy shall acquire, possess or dispense any controlled substance other than medical marijuana products authorized by R.S. 40:1046.

O. - U. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1547 (August 2017), amended LR 46:

**Family Impact Statement**

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be

published in the *Louisiana Register* with the proposed agency Rule.

1. The Effect on the Stability of the Family. The proposed rule change will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed rule change will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. The proposed rule change will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed rule change will have no effect on family earnings or family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed rule change will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The proposed rule change will have no effect on the ability of the family or a local government to perform the activity as contained in the proposed rule.

#### **Poverty Impact Statement**

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The Effect on Household Income, Assets, and Financial Security. The proposed rule change will have no effect on household income, assets, or financial security.

2. The Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed rule change will have no effect on early childhood development or preschool through postsecondary education development.

3. The Effect on Employment and Workforce Development. To the extent a marijuana pharmacy elects to dispense an expanded offering of prescription drugs, the proposed rule change may improve the economic viability of the marijuana pharmacy which could improve employment opportunities at that pharmacy.

4. The Effect on Taxes and Tax Credits. The proposed rule change will have no effect on taxes or tax credits.

5. The Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. The proposed rule change will have no effect on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

#### **Small Business Analysis**

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. The proposed rule change does not change the current compliance or reporting requirements for small businesses.

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. The proposed rule change does not change the current schedule or deadline for compliance or reporting requirements.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. The proposed rule change does not change the current compliance or reporting requirements for small businesses.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. The proposed rule change will repeal an operational standard which limits the type of products that may be sold at a marijuana pharmacy, which may improve the economic viability of the marijuana pharmacy.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the Proposed Rule. There are no exemptions for small businesses.

#### **Provider Impact Statement**

In accordance with House Concurrent Resolution No. 170 of the Regular Session of the 2014 Legislature, there is hereby submitted a provider impact statement on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, the following effects on the providers of services to individuals with developmental disabilities:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed rule change will have no effect on the staffing level requirements or the qualifications for that staff to provide the same level of service.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed rule change will have no effect on the cost to the provider to provide the same level of service.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of service. The proposed rule change will have no effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to Malcolm J Broussard, Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding the proposed Rule amendment.

#### **Public Hearing**

A public hearing to solicit comments and testimony on the proposed Rule amendment is scheduled for 9 a.m. on Friday, May 29, 2020. During the hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12:00 noon that same day. To

request reasonable accommodations for persons with disabilities, please call the board office at 225.925.6496.

Malcolm J Broussard  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Marijuana Pharmacy**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will require the Louisiana Board of Pharmacy (LBP) to publish the proposed and final rules in the state register, resulting in a one-time expense of \$1,000 in FY 20 and \$1,000 in FY 21. There will be no additional expenditures or cost savings for LBP or other state or local governmental units.

The proposed rule change repeals the limitation that a single container hold no more than a one-month supply of marijuana. The proposed rule change also repeals the limitation that a marijuana pharmacy may not sell prescription drugs, allowing marijuana pharmacies to sell prescription drugs that are not controlled substances.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will not affect revenue collections for state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will allow the pharmacist at a marijuana pharmacy to dispense a single container that may contain more or less than a one-month supply of marijuana. In addition, marijuana pharmacies will be allowed to dispense prescription drugs that are not classified as controlled substances. That allowance may improve the economic viability of marijuana pharmacies, which are currently restricted to marijuana products, over-the-counter medications, and other retail items.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change will not affect competition; however, it could improve employment if the economic viability of marijuana pharmacies is improved.

Malcolm Broussard  
Executive Director  
2004#073

Evan Brasseux  
Staff Director  
Legislative Fiscal Office



# Louisiana Board of Pharmacy

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Summary of Testimony & Public Comments  
re  
Regulatory Project 2020-5 ~ Marijuana Pharmacy  
at  
May 29, 2020 Public Hearing

1. Email dated May 25, 2020 from Ms. Kathryn Thomas, CEO, The Healing Clinics, LLC  
Ms. Thomas objects to the repeal of the one-month limitation on the dispensing quantity.
2. Letter received May 28, 2020 from Dr. Jonathan Allen, Green Medical Solutions  
Dr. Green objects to the repeal of the one-month limitation on the dispensing quantity, and he objects to allowing marijuana pharmacies to dispense prescription medications other than controlled substances.

Louisiana Administrative Code

Title 46 – Professional and Occupational Standards

Part LIII: Pharmacists

Chapter 24. Limited Service Providers

Subchapter E. Marijuana Pharmacy

§2441. Definitions

A. As used in this Subchapter, the following terms shall have the meaning ascribed to them in this Section:

\* \* \*

~~Marijuana — all parts of plants of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination~~ Repealed.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1538 (August 2017), amended LR 45:1473 (October 2019), amended LR

§2443. Marijuana Products

A. – D.1.c. ...

d. ~~No single container shall contain more than a one month supply of marijuana.~~ Repealed.

D.1.e – E.4.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1540 (August 2017), amended LR 45:1473 (October 2019), amended LR

\* \* \*

§2451. Operation of Marijuana Pharmacy

A. – M. ...

N. No marijuana pharmacy shall ~~sell anything other than marijuana products; however, the pharmacy may elect to sell over the counter (OTC) medications, durable medical equipment (DME), and other retail products from the same premises but outside the prescription department~~ acquire, possess or dispense any controlled substance other than medical marijuana products authorized by R.S. 40:1046.

O. – U. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1547 (August 2017), amended LR

**From:** [Kathryn Thomas](#)  
**To:** [Malcolm J. Broussard](#)  
**Subject:** Proposed Rule Change/BOP/5.29.2020  
**Date:** Monday, May 25, 2020 3:07:12 PM

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Dear Dr. Broussard,

In speaking with various concerned parties regarding the proposed rule changes, particularly:

§2443. Marijuana Products A. – D.1.c.... d. No single container shall contain more than a one-month supply of marijuana. Repealed. D.1.e – E.4.f.... AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046. HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1540 (August 2017), amended LR 45:1473

I no longer think this is an effort to provide patients with recommended medical marijuana for a period longer than a 30 day supply. However, I do think the wording leaves this particular amendment open to interpretation. I am in favor of physicians having the ability to write patients a recommendation for periods longer than a 30 day supply, however, it would seem the intent would be that the dispensary NOT provide the patients receiving medical marijuana more than a 30 day supply at a time.

Would it be possible to add an amendment to the working so indicating? This wording may be elsewhere in the current rules, but I was unable to locate said language. I do believe that it is clearly not the Louisiana Board Of Pharmacy's intent to supply medical marijuana patients with more than a 30 day supply at one time. If you could be so kind as to indicate to me where I might locate said language, I will withdraw my public comment.

Thank you so much,

Kathryn Thomas, CEO  
The Healing Clinics, LLC  
318-227-4088 (o)  
318-469-0968 (c)



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June 30, 2020

Kathryn Thomas, CEO  
The Healing Clinics, LLC  
Via e-mail: [kthomaslpc25@icloud.com](mailto:kthomaslpc25@icloud.com)

Re: Regulatory Project 2020-5 ~ Marijuana Pharmacy

Dear Ms. Thomas:

Thank you for your interest in the Board's rulemaking activity relative to marijuana pharmacies and offering comments about those proposed rules change during the May 29 public hearing. In particular, you offered a comment relative to the proposed repeal of the existing limitation in §2443.D.1.d that no single container shall contain more than a one-month supply of marijuana. You indicated support for the physician to request more than a 30-day supply and questioned whether the Board's intent was to limit the pharmacy to dispensing more than a 30-day supply.

The limitation at §2443.D.1.d is part of the Board's original rule for marijuana pharmacies which was promulgated in August 2017. It is important to note the original rule was promulgated before the marijuana products were available and even before it was known what the first product would be or how it would be packaged.

When the first product was introduced to the market in August 2019, it was packaged in a one ounce container with a calibrated dropper. Using the treatment principle of start low and go slow in naïve patients, the one ounce container holds more than a 30-day supply for some patients. Therefore, the dispensing pharmacist must choose between transferring the amount of the product which exceeds a 30-day supply for that patient to an empty container (with no calibrated dropper) and dispensing only that amount which constitutes a 30-day supply, or in the alternative, dispense the entire package and violate the rule at issue.

As the medical marijuana program evolves and matures, it is reasonable to reconsider some of the Board's initial rules which were promulgated in an abundance of caution in the context of an undeveloped marketplace. The proposed repeal of the rule at issue is not intended to address the separate question of the duration of treatment which may be authorized by a single recommendation; rather, it is intended to prevent the wasting of product merely to comply with a rule limiting the amount of product which may exist in a single container dispensed by the marijuana pharmacy.

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**NOTICE:** In compliance with Act 256 of the 2019 Louisiana Legislature, the Board gives public notice that any information submitted to the Board may become public record unless specifically exempted by the Public Records Law, R.S. 44:1 *et seq.*

**NOTICE:** In compliance with Act 655 of the 2018 Louisiana Legislature, the Board gives notice to its licensees and applicants of their opportunity to file a complaint about board actions or board procedures. You may submit such complaints to one or more of the following organizations: (1) Louisiana Board of Pharmacy; 3388 Brentwood Dr.; Baton Rouge, LA 70809; 225.925.6496; [info@pharmacy.la.gov](mailto:info@pharmacy.la.gov). (2) Committee on House & Governmental Affairs; La. House of Representatives; PO Box 44486; Baton Rouge, LA 70804; 225.342.2403; [h&ga@legis.la.gov](mailto:h&ga@legis.la.gov). (3) Committee on Senate & Governmental Affairs; La. Senate; PO Box 94183; Baton Rouge, LA 70804; 225.342.9845; [s&g@legis.la.gov](mailto:s&g@legis.la.gov).

Kathryn Thomas  
The Healing Clinics, LLC  
June 29, 2020  
Page 2 of 2

The Board considered your comments during their subsequent meeting on June 25. They determined it appropriate to make no revisions to the original proposed rule change and directed staff to complete the promulgation process. We will file the required report with the Joint Legislative Oversight Committee on Health and Welfare. In the absence of legislative intervention, the Board intends to publish the original proposed rule change as a final rule in the state register with an immediate effective date.

In closing, the separate question of the duration of treatment which may be authorized by a single recommendation is scheduled to be considered by the Board's Regulation Revision Committee during their July 16 meeting. In the event the members determine a rule is necessary to address that issue, that would be a separate regulatory project. If you have any questions or need additional information, please let us know.

For the Board:

Malcolm J Broussard  
Executive Director

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With respect to the proposed changes to Section 2443, patients should only be dispensed 1 month supply of the Schedule I medications. This is standard for Schedule 2 medications, some Schedule 3/3N as well as some Schedule 4 medications. There should be no expectation of having less strict requirements for more highly controlled substances, specifically marijuana products.

With regard to the proposed changes to Section 2451, marijuana pharmacies should not be able to dispense prescription medications for the following reasons:

- 1) The pharmacy should be putting more focus on medical cannabis business and how to improve that with more patient education, patient follow-up, and outcome recording, rather than trying to sell other drugs to improve their bottom line.
- 2) Pharmacies all knew that per LBP rules they could not fill prescriptions for other drugs besides cannabis products when they applied for their license. They should not try to change the rules to suit their agenda after the fact. All pharmacies that applied for licenses knew the restrictions and financial risks. If their individual business plans did not provide them financial security and viability, then they should surrender their license and the Board of Pharmacy should have an open application for others to apply for the license for that region.
- 3) Pharmacies should expand their delivery area to make the medicine more accessible to patients and thereby sell more cannabis products.
- 4) Pharmacies could lower the price to allow patient to stay in the program rather than dropping out due to medicine being overpriced. Decreased numbers of patients has resulted in decreased profits for them.
- 5) There is no need for more pharmacies in these areas selling prescription medications. These nine pharmacies are concerned about their economic viability in the cannabis market but they have no problem suggesting to add another pharmacy to their area to decrease the profits of the pharmacies already there. These areas already have plenty of pharmacies to accommodate the catchment area. (A Google search showed that Baton Rouge has 22 retail pharmacies, Alexander has 20, Houma has 19, the North Shore has 18, New Orleans has 25, Lake Charles has 18, Shreveport has 20, Lafayette has 22, and Monroe has 19. There is no need for more retail pharmacies in these areas.
- 6) Other states with medical cannabis dispensaries do not have to sell other prescription medications to remain viable and their medications are sold at a much lower price than those in Louisiana. They can turn a profit even at the much lower prices and with competition from other dispensaries.
- 7) Cannabis is a Schedule I medication in Louisiana and federally. The pharmacies should practice with great care and focus on cannabis medications and not be distracted by trying to sell other prescription medications. They should turn their energies to improve the service that they are already providing.
- 8) If the patients in Louisiana have more accessibility to affordable cannabis medications then more patients will remain active in the therapeutic marijuana program and the profits will come from the volume of patients each pharmacy cares for rather than price gouging ones that can afford it.

9) In the spirit of free enterprise that they are proposing, if they can sell prescription medications then all pharmacy should be able to sell medical cannabis products if they meet LBP requirements. These pharmacies oppose having more cannabis pharmacies in the state.

10) Medical cannabis pharmacies are intended to specialize specifically in medical marijuana products. If they began selling other medications then they are no longer specialists in medical marijuana. They become a one stop shop like any other retail pharmacy and then patients will lose confidence in their ability to specialize in this medical treatment that is new to the state and to the patients.

11) Federally marijuana is still illegal. If the pharmacy sells other prescription drugs they would need to be licensed by the DEA. If the DEA discovers they are selling cannabis products they will be at risk for losing their license as well as being sanctioned. With only nine pharmacies in Louisiana, the patient's in the state cannot afford to lose a single pharmacy as a result of DEA investigation and sanctioning.

The Louisiana Board of Pharmacy should be more concerned about the economic viability of the entire medical marijuana program for the patients' sake rather than changing rules to ensure the economic viability of a handful of businessman and pharmacists who own or operate pharmacies which already have a monopoly on the cannabis market in their region. LA Board of pharmacy should not put the financial needs of a few businessman ahead of the medical needs of the patients of the State of Louisiana. I agree that reform in the program is needed but it should be to make the program more robust and medicine more accessible and affordable to the people that need it. By increasing accessibility to more patients the program will grow and be more viable for all involved: patients, providers, pharmacies, investors, producers, and the State of Louisiana.

The focus of this program is to provide better medical care to the patients in the state that need an alternative to treatments that have not worked for them in the past. We should not lose sight of this and change the rules governing the program just to meet financial projections of a few investors in each region. The Board of Pharmacy should not change this rule or be concerned about the financial position of the pharmacies. Instead the Board should remain true to their purpose in ensuring that the program continues in a way that will benefit as many patients as possible. Each individual pharmacy should focus on retention of the patients that entered the program since its inception but were forced to withdraw from medical cannabis treatment due to financial or geographic obstacles. If they do this then their economic viability will be ensured and the needs of the patients with debilitating conditions will also be met.

I get no personal benefit by opposing these changes. I chose to write this letter to shed light on the fact that everyone involved in this new enterprise should be working together to improve the program for the patients. That is the reason the program exists in the first place. I am doing this to help patients obtain medicine for condition that have failed to be treated effectively with other treatments and modalities. We have all made sacrifices by participating in this program, and those sacrifices should have been made for the right reasons, altruistic reasons. Their profits will come, even if it isn't as fast as they'd like. Let's keep the patients as our priority

**From:** [Jonathan Allen](#)  
**To:** [Malcolm J. Broussard](#)  
**Cc:** [Sajal Roy](#); [Ricky Indovina](#); [Andy Soileau](#); [Raymond Strong](#); [Jackie Hall](#); [Blake Pitre](#); [Rhonny Valentine](#); [Douglas Robichaux](#); [Carl Aron](#); [Robert Cloud](#); [Ron Moore](#); [Richard Mannino](#); [Allen Cassidy](#); [Kevin LaGrange](#); [Robert LeBas](#); [Marty McKay](#); [Don Resweber](#)  
**Subject:** Concerns about rule changes for medical cannabis program  
**Date:** Thursday, May 28, 2020 4:19:05 AM  
**Attachments:** [BOP letter.docx](#)

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Mr Broussard,

Please read my letter at the board meeting Friday May 28th in the section discussing cannabis rule changes. Please have it entered into the minutes since I will be unable to attend. Thank you in advance for your time and energy on my behalf.

Sincerely,

Jonathan Allen MD FAAEM FAWM

**Green Medical Solutions**  
**Today's Health Care**  
Jonathan Allen MD FAAEM FAWM - Medical Director  
Therapeutic Marijuana Registrations  
<http://www.TheGreenMedMD.com>  
985-242-4577



# Louisiana Board of Pharmacy

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June 30, 2020

Jonathan Allen, MD  
Medical Director  
Green Medical Solutions  
Via e-mail: [jallen@greenmedicalmd.com](mailto:jallen@greenmedicalmd.com)

Re: Regulatory Project 2020-5 ~ Marijuana Pharmacy

Dear Dr. Allen:

Thank you for your interest in the Board's rulemaking activity relative to marijuana pharmacies and offering comments about those proposed rule changes during the May 29 public hearing. In particular, you offered comments relative to two of the proposed changes: the proposed repeal of the existing limitation in §2443.D.1.d that no single container shall contain more than a one-month supply of marijuana, as well as the proposed repeal of the existing limitation in §2451.N that a marijuana pharmacy may not sell prescription medications which are not controlled substances. You indicated the Board should not repeal those existing limitations.

The existing limitation at §2443.D.1.d is part of the Board's original rule for marijuana pharmacies which was promulgated in August 2017. It is important to note the original rule was promulgated before the marijuana products were available and even before it was known what the first product would be or how it would be packaged.

When the first product was introduced to the market in August 2019, it was packaged in a one ounce container with a calibrated dropper. Using the treatment principle of start low and go slow in naïve patients, the one ounce container holds more than a 30-day supply for some patients. Therefore, the dispensing pharmacist must choose between transferring the amount of the product which exceeds a 30-day supply for that patient to an empty container (with no calibrated dropper) and dispensing only that amount which constitutes a 30-day supply, or in the alternative, dispense the entire package and violate the rule at issue.

You indicated your belief that a one month supply limitation is standard for Schedule 2 medications, some Schedule 3/3N and Schedule 4 medications and that there should not be a less strict requirement for a Schedule 1 medication such as marijuana. In fact, there are no specific quantity limits on the prescribing of any controlled substance under federal law; rather, the quantity prescribed must be for a legitimate medical purpose in the usual course of professional practice. Similarly, there are no specific quantity limits

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on the prescribing of controlled substances in the state controlled substance law, with the single exception of a seven day limit for certain opiates, and even then, there are numerous exceptions. It is true that some insurance companies impose limits on the quantity they will pay for in a single dispensing, and it is also true some professional licensing boards have standards of practice for the management of certain medical conditions such as pain management. Those business and practice standards are commonly conflated as legal prescribing limits applicable to controlled substances in one or more schedules.

As the medical marijuana program evolves and matures, it is reasonable to reconsider some of the Board's initial rules which were promulgated in an abundance of caution in the context of an undeveloped marketplace. The proposed repeal of the 30-day supply limit in a single container is not intended to address the separate question of the duration of treatment which may be authorized by a single recommendation; rather, it is intended to prevent the wasting of product merely to comply with a rule limiting the amount of product which may exist in a single container dispensed by the marijuana pharmacy.

The original enabling legislation for the use of marijuana for therapeutic purposes directed the Board to develop a specialty pharmacy permit for pharmacies to dispense medical cannabis products, and further, limited the number of such permits to no more than ten at any given time. The legislation was unique in the sense that it directed the implementation of a medical model instead of the dispensary model used in other states. Moreover, the legislation requires the cannabis products to be of pharmaceutical grade. Finally, it requires the products to be dispensed in a pharmacy by a pharmacist, further in support of the medical model contemplated.

The existing limitation in §2451.N is part of the Board's original rule for marijuana pharmacies which was promulgated in August 2017. While it is reasonable to foresee a change in the federal scheduling of marijuana in the future, there was uncertainty in 2017 about the degree to which federal law enforcement agencies would attempt to strictly enforce that federal law in this state even in the context of a state-approved medical marijuana program. In an abundance of caution, the Board imposed the limitation in §2451.N even though there is no such restriction in the state marijuana law. Since the marijuana pharmacy does not hold a federal controlled substance registration but is licensed in accordance with the state marijuana law, it has been suggested the federal law enforcement agency would not attempt to strictly enforce the federal law in a properly operating marijuana pharmacy.

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Given the legislative preference for a medical model for the marijuana program, it has been suggested the current restriction in §2451.N prohibiting a marijuana pharmacy from dispensing other prescription medications is an unnecessary fragmentation of pharmacy care. To reduce the fragmentation of care in further support of the medical model and still shield, to the extent possible, a marijuana pharmacy from federal law enforcement agency intrusion, the Board has suggested a reduction of the restriction in §2451.N such that a marijuana pharmacy could dispense other prescription medications but not any other controlled substances. In order to dispense any other controlled substances, the pharmacy would need to obtain a federal controlled substance registration. It is not likely the federal law enforcement agency would issue a federal registration to a marijuana pharmacy as long as marijuana remains listed in Schedule I.

Finally, in terms of competition with other types of pharmacies, a marijuana pharmacy would be able to dispense prescription medications and only one controlled substance, whereas other types of pharmacies are able to dispense prescription medications and all controlled substances except marijuana.

The Board considered your comments during their subsequent meeting on June 25. They determined it appropriate to make no revisions to the original proposed rule change and directed staff to complete the promulgation process. We will file the required report with the Joint Legislative Oversight Committee on Health and Welfare. In the absence of legislative intervention, the Board intends to publish the original proposed rule as a final rule in the state register with an immediate effective date.

In closing, the separate question of the duration of treatment which may be authorized by a single recommendation is scheduled to be considered by the Board's Regulation Revision Committee during their July 16 meeting. In the event the members determine a rule is necessary to address that issue, that would be a separate regulatory project. If you have any questions or need additional information, please let us know.

For the Board:

Malcolm J Broussard  
Executive Director

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**RULE**

**Department of Health  
Board of Pharmacy**

Marijuana Pharmacy (LAC 46:LIII.2441, 2443, and 2451)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended three sections within Chapter 24 of its rules relative to marijuana pharmacy. The change in Section 2441 repeals the definition of marijuana which has changed since the rule was promulgated in 2017. The change in Section 2443 repeals the limitation that a single container hold no more than a one-month supply of marijuana. The change in Section 2451 reduces the limitation on marijuana pharmacies to enable them to dispense prescription medications which are not controlled substances, in addition to marijuana products, over-the-counter medications, durable medical equipment, and other retail items. This Rule is hereby adopted on the day of promulgation.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part LIII. Pharmacists**

**Chapter 24. Limited Service Providers**

**Subchapter E. Marijuana Pharmacy**

**§2441. Definitions**

A. As used in this Subchapter, the following terms shall have the meaning ascribed to them in this Section:

\* \* \*

*Marijuana*—Repealed.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1538 (August 2017), amended LR 45:1473 (October 2019), LR 46

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**§2443. Marijuana Products**

A. – D.1.c. ...

d. Repealed.

D.1.e – E.4.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1540 (August 2017), amended LR 45:1473 (October 2019), LR 46

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**§2451. Operation of Marijuana Pharmacy**

A. – M. ...

N. No marijuana pharmacy shall acquire, possess or dispense any controlled substance other than medical marijuana products authorized by R.S. 40:1046.

O. – U. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1547 (August 2017), amended LR

Malcolm J Broussard

Executive Director