

## Part X-E. Therapeutic Use of Marijuana

*[Editor's Note: A prior Part X-A, Therapeutic Use of Marijuana, consisting of R.S. 40:1021 to 40:1026, was repealed by Act 662 of 1989 Legislature, effective July 7, 1989. Act 874 of 1991 Legislature re-established Part X-A, Therapeutic Use of Marijuana. Act 676 of 2006 Legislature re-designated this Part as Part X-E. Subsequent amendments are noted herein. Act 261 of 2015 Legislature designated as "The Alison Neustrom Act." ]*

### **§1046. Recommendation of marijuana for therapeutic use; rules and regulations; Louisiana Board of Pharmacy and the adoption of rules and regulations relating to the dispensing of recommended marijuana for therapeutic use; the Department of Agriculture and Forestry and the licensure of a production facility**

- A. (1) Notwithstanding any other provision of this Part, a physician licensed by and in good standing with the Louisiana State Board of Medical Examiners to practice medicine in this state and who is domiciled in this state may recommend, in any form as permitted by the rules and regulations of the Louisiana Board of Pharmacy except for inhalation, and raw or crude marijuana, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols for therapeutic use by patients clinically diagnosed as suffering from a debilitating medical condition.
- (2) (a) For purposes of this Subsection, "debilitating medical condition" means 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.
- (b) If the United States Food and Drug Administration approves the use of medical marijuana in the same form provided for in this Part for any debilitating medical condition specifically identified in this Paragraph, the medical condition shall no longer be covered by the provisions of this Part.
- (c) If the United States Food and Drug Administration approves the use of medical marijuana in a form or derivative different than provided for in this Part for any debilitating medical condition specifically identified in this Paragraph, the disease state shall remain covered by the provisions of this Part. The patient shall first be treated by the approved form or derivative of medical marijuana through utilization of step therapy or fail first protocols. If, after use of the United States Food and Drug Administration approved form or derivative of medical marijuana, the physician determines that the preferred treatment required under step therapy or fail first protocol has been ineffective in the treatment of the patient's debilitating medical condition, he may recommend the form of medical marijuana provided for in this Part for use by the patient as medically necessary.
- (3) For purposes of this Part, "recommend" or "recommended" means an order from a physician domiciled in Louisiana and licensed and in good standing with the Louisiana Board of Medical Examiners and authorized by the board to recommend medical marijuana that is patient-specific and disease-specific in accordance with Paragraph (2) of this Subsection, and is communicated by any means allowed by the Louisiana Board of Pharmacy to a Louisiana-licensed pharmacist in a Louisiana-permitted dispensing pharmacy as described in Subsection G of this Section, and is preserved on file as required by Louisiana law or federal law regarding medical marijuana.
- (4) Physicians shall recommend use of medical marijuana for treatment of debilitating medical conditions in accordance with rules and regulations promulgated by the Louisiana State Board of Medical Examiners.
- (5) The Louisiana State Board of Medical Examiners shall submit to the Senate and House committees on health and welfare on an annual basis not less than sixty days prior to the beginning of the regular session of the legislature a report as to any additional diseases or medical conditions that should be added to the list of eligible diseases and conditions for recommendation.
- B. The Louisiana State Board of Medical Examiners shall promulgate rules and regulations authorizing physicians licensed to practice in this state to recommend marijuana for therapeutic use by patients as described in Subsection A of this Section. Any rules published by the Louisiana State Board of Medical Examiners on or before January 1, 2016 that describe the physician's authority to prescribe should be repromulgated to indicate that he is "recommending" use of therapeutic marijuana.

*(Added by Act 874 of 1991 Legislature, effective September 6, 1991; amended Act 261 of 2015 Legislature, effective June 29, 2015; amended Act 96 of 2016 Legislature, effective May 19, 2016)*

- C. (1) The Louisiana Board of Pharmacy shall adopt rules relating to the dispensing of recommended marijuana for therapeutic use. Any rules published by the Louisiana Board of Pharmacy on or before January 1, 2016 that describe the pharmacist as dispensing medical marijuana based on a physician's prescription should be repromulgated to indicate that the physician is "recommending" use of

therapeutic marijuana.

- (2) The rules shall include but not be limited to:
  - (a) Standards, procedures, and protocols for the effective use of recommended marijuana for therapeutic use as authorized by state law and related rules and regulations.
  - (b) Standards, procedures, and protocols for the dispensing and tracking of recommended therapeutic marijuana in Louisiana.
  - (c) Procedures and protocols to provide that no recommended therapeutic marijuana may be dispensed from, produced from, obtained from, sold to, or transferred to a location outside of this state.
  - (d) The establishment of standards, procedures, and protocols for determining the amount of usable recommended therapeutic marijuana that is necessary to constitute an adequate supply to ensure uninterrupted availability for a period of one month, including amounts for topical treatments.
  - (e) The establishment of standards, procedures, and protocols to ensure that all recommended therapeutic marijuana dispensed is consistently pharmaceutical grade.
  - (f) The establishment of standards and procedures for the revocation, suspension, and nonrenewal of licenses.
  - (g) The establishment of other licensing, renewal, and operational standards which are deemed necessary by the Louisiana Board of Pharmacy.
  - (h) The establishment of standards and procedures for testing recommended therapeutic marijuana samples for levels of tetrahydrocannabinols (THC) or other testing parameters deemed appropriate by the Louisiana Board of Pharmacy.
  - (i) The establishment of health, safety, and security requirements for dispensers of recommended therapeutic marijuana.
  - (j) Licensure of dispensers of recommended therapeutic marijuana.
  - (k) The establishment of financial requirements for applicants of therapeutic marijuana dispensing pharmacy license under which each applicant demonstrates the following:
    - (i) The financial capacity to operate a therapeutic marijuana dispensing pharmacy.
    - (ii) The ability to maintain an escrow account in a financial institution headquartered in Louisiana in an amount of two million dollars, if required by the Louisiana Board of Pharmacy.

*(Amended by Act 96 of 2016 Legislature, effective May 19, 2016)*

- D. Nothing in this Section shall be construed to prohibit the Louisiana State Board of Medical Examiners or the Louisiana Pharmacy Board from adopting emergency rules as otherwise provided for in the Administrative Procedure Act.
- E. Marijuana, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols recommended pursuant to this Section shall be dispensed in person from a licensed pharmacy in good standing located in Louisiana.

*(Amended by Act 96 of 2016 Legislature, effective May 19, 2016)*

- F. A person who recommends and person who dispenses marijuana, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols pursuant to this Section shall review the patient's information in the Prescription Monitoring Program database prior to the recommending and dispensing thereof.

*(Amended by Act 96 of 2016 Legislature, effective May 19, 2016)*

- G. The Louisiana Board of Pharmacy shall develop an annual, nontransferable specialty license for a pharmacy to dispense recommended marijuana for therapeutic use and shall limit the number of such licenses granted in the state to no more than ten licenses. The Louisiana Board of Pharmacy shall develop rules and regulations regarding the geographical locations of dispensing pharmacies in Louisiana.

*(Amended by Act 96 of 2016 Legislature effective May 19, 2016)*

- H. (1) (a) The Department of Agriculture and Forestry shall develop the rules and regulations regarding the extraction, processing, and production of recommended therapeutic marijuana and the facility producing therapeutic marijuana. The rules and regulations shall include but not be limited to both of the following minimum standards:
  - (i) In order to mitigate the risk of bacterial contamination, food-grade ethanol extraction shall be used.
  - (ii) The extraction and refining process shall produce a product that is food safe and capable of producing pharmaceutical-grade products.
- (b) The rules and regulations shall also include but not be limited to the procedures for application, qualifications, eligibility, background checks, and standards for suitability for a license and penalties for violations of the rules and regulations.
- (2) (a) The Department of Agriculture and Forestry shall develop an annual, nontransferable specialty

license for the production of recommended marijuana for therapeutic use. Other than the licenses granted pursuant to Subparagraph (b) of this Paragraph, the Department of Agriculture and Forestry shall limit the number of such licenses granted in the state to no more than one license. The Louisiana State University Agricultural Center and the Southern University Agricultural Center shall have the right of first refusal to be licensed as the production facility, either separately or jointly. If neither of the centers exercise this option, the license shall be awarded pursuant to the requirements provided for in Paragraphs (3) through (5) of this Subsection.

- (b) Prior to September 1, 2016, the Louisiana State University Agricultural Center and the Southern University Agricultural Center shall each provide written notice to the commissioner of agriculture and forestry of their intent to be licensed as a production facility, either separately or jointly.
  - (c) The Louisiana State University Agricultural Center or the Southern University Agricultural Center may conduct research on marijuana for therapeutic use if the center is licensed as a production facility pursuant to this Section
- (3) The license shall be limited to one geographic location as provided for in rule by the Department of Agriculture and Forestry. The geographic location shall be a public record subject to disclosure under the Public Records Law, R.S. 44:1 *et seq.* The licensee shall permit inspection of the production facility by any elected member of the Louisiana Legislature upon request after receipt of reasonable notice.
- (4) (a) The Department of Agriculture and Forestry shall grant the license pursuant to a contract awarded through a competitive sealed bid or a competitive sealed proposal as provided for in R.S. 39:1594 and 1595. The contract for the license shall be subject to the Louisiana Procurement Code and shall not be subject to any exceptions to or other variances from the Louisiana Procurement Code. The contract shall not be awarded under the sole source procurement provisions provided for in R.S. 39:1597.
- (b) Any contract for the license awarded pursuant to this Subsection shall not exceed five years.
  - (c) Any contract, memorandum of understanding, or cooperative endeavor agreement entered into pursuant to this Section shall be a public record subject to disclosure under the Public Records Law, R.S. 44:1 *et seq.*
  - (d) Any contract, memorandum of understanding, or cooperative endeavor agreement entered into for services for the cultivation or processing in any way of marijuana pursuant to this Section shall be a public record subject to disclosure under the Public Records Law, R.S. 44:1 *et seq.*
  - (e) No person licensed pursuant to this Subsection shall subcontract for services for the cultivation or processing in any way of marijuana if the subcontractor, or any of the service providers in the chain of subcontractors, is owned wholly or in part by any state employee or member of a state employee's immediate family, including but not limited to any legislator, statewide public official, university or community or technical college employee, Louisiana State University Agricultural Center employee, or Southern University Agricultural Center employee. For the purposes of this Paragraph, "immediate family" has the same meaning as provided in R.S. 42:1102.
  - (f) Any bid for the license awarded pursuant to this Subsection shall include proof of the financial capability of the bidder to operate a therapeutic marijuana production facility including but not limited to a net worth of not less than one million dollars.
- (5) No person licensed pursuant to this Subsection shall give or receive anything of value in connection with any contract, memorandum of understanding, or cooperative endeavor agreement executed pursuant to this Subsection except the value that is expressed in the contract, memorandum of understanding, or cooperative endeavor agreement.
- (6) (a) The Department of Agriculture and Forestry shall collect the following information from each licensee:
- (i) The amount of gross marijuana produced by the licensee during each calendar year.
  - (ii) The details of all production costs including but not limited to seed, fertilizer, labor, advisory services, construction, and irrigation.
  - (iii) The details of any items or services for which the licensee subcontracted and the costs of each subcontractor directly or indirectly working for the contractor.
  - (iv) The amount of therapeutic chemicals produced resulting from the marijuana grown pursuant to this Section.
  - (v) The amounts paid each year to the licensee related to the licensee's production of therapeutic marijuana pursuant to this Section.
  - (vi) The amount of therapeutic marijuana distributed to each pharmacy licensed to dispense

therapeutic marijuana in this state during each calendar year.

(b) The Department of Agriculture and Forestry shall provide the information collected pursuant to this Paragraph for the previous calendar year in the form of a written report to the Louisiana Legislature no later than February first of each year. The department shall also make a copy of the report required by this Subparagraph available to the public on the Internet.

(7) No company that has made a contribution to a candidate in a Louisiana election governed by the provisions of the Campaign Finance Disclosure Act within the five years prior to bidding for the license, or is controlled wholly or in part by a person who made such a contribution within the five years prior to the company bidding for the license, may be eligible for the license.

*(Amended by Act 96 of 2016 Legislature, effective May 19, 2016)*

I. The levels of THC in any marijuana produced pursuant to this Section shall be reduced to the lowest acceptable therapeutic levels available through scientifically accepted methods.

J. The provisions of this Section shall terminate on January 1, 2020.

*(Added by Act 261 of 2015 Legislature, effective June 29, 2015)*

#### **§1047. Louisiana Department of Agriculture and Forestry; authorization to obtain criminal history record information**

A. As used in this Section, the following terms shall have the following meaning:

- (1) "Applicant" means a natural person, a corporation, limited liability corporation, partnership, joint stock association, sole proprietorship, joint venture, business association, cooperative association, professional corporation, or any other legal entity or organization through which business is conducted.
- (2) "Bureau" means the Louisiana Bureau of Criminal Identification and Information of the office of state police within the Department of Public Safety and Corrections.
- (3) "Criminal history record information" means information collected by state and federal criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, criminal correctional supervision, and release. It shall not include intelligence information gathered for investigatory purposes or any identification information which does not indicate involvement of the individual in the criminal justice system.
- (4) "Department" means Louisiana Department of Agriculture and Forestry.
- (5) "FBI" means the Federal Bureau of Investigation of the United States Department of Justice.
- (6) "Licensure" means any license or permit that the department is authorized to issue for the production of recommended therapeutic marijuana and the facility producing therapeutic marijuana.

B. In addition to any other requirements established by department rules, the department shall require an applicant, as a condition of eligibility for licensure:

- (1) To submit a full set of fingerprints, in a form and manner prescribed by the department.
- (2) To permit the department to request and obtain state and national criminal history record information on the applicant.
- (3) To pay the reasonable costs to be incurred by the department in requesting and obtaining state and national criminal history record information on the applicant.

C. In accordance with the provisions and procedures prescribed by this Section, the department shall request and obtain state and national criminal history record information from the bureau and the FBI relative to any applicant for licensure whose fingerprints the department has obtained pursuant to this Section for the purpose of determining the applicant's suitability and eligibility for licensure.

D. Upon request by the department and upon submission of an applicant's fingerprints, and such other identifying information as may be required, the bureau shall survey its criminal history records and identification files and make a simultaneous request of the FBI for like information from other jurisdictions. The bureau may charge the department a reasonable processing fee for conducting and reporting on any such search.

E. Any and all state or national criminal history record information obtained by the department from the bureau or FBI which is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the department in evaluating the applicant's eligibility or disqualification for licensure. No such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the department to any other person or agency.

*(Added by Act 96 of 2016 Legislature, effective May 19, 2016)*

**[Editorial Note:** Act 96 of 2016 Legislature contains information not printed here. In particular, Section 2 of the Act contains alternative amendments that will only become effective if, and when, the United States Drug Enforcement Administration reclassifies marijuana from a Schedule I drug to a Schedule II drug. The primary difference is the use of the term “recommend” vs “prescribe”; Section 2 uses the term “prescribe”, which would only be appropriate when the drug is reclassified to Schedule II. If and when that reclassification occurs, we will update the Louisiana Pharmacy Law Book with the language from Section 2 of Act 96 of the 2016 Legislature.]

(end of Part X-E of Chapter 4)