

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 100—Division of Cannabis Regulation
Chapter 1—Marijuana

EMERGENCY RULE

19 CSR 100-1.050 Physicians and Nurse Practitioners

PURPOSE: Under Article XIV, Section 1 of the Missouri Constitution, patients with qualifying medical conditions have the right to discuss freely with their physicians and nurse practitioners the possible benefits of medical marijuana use, and physicians and nurse practitioners have the right to provide professional advice concerning the same. This rule explains how the department will implement provisions of Article XIV, Section 1 related to physicians and nurse practitioners.

EMERGENCY STATEMENT: This emergency rule serves to implement Article XIV, Section 1, related to physicians and nurse practitioners. This emergency rule is necessary to protect a compelling governmental interest since Amendment 3 to the Missouri Constitution made significant changes to the regulation of marijuana, and new rules will be needed to effectuate those changes. As a result, the Department of Health and Senior Services finds a compelling governmental interest, which requires emergency action. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Health and Senior Services believes this emergency rule is fair to all interested persons and parties under the circumstances. If an emergency is not enacted, there would be no rules explaining how the new provisions of Article XIV of the Missouri Constitution apply, and there would be much confusion as to the processes and procedures related to licensure and regulation of the marijuana industry. This emergency rule was filed January 20, 2023, becomes effective February 3, 2023, and expires August 1, 2023.

(1) **Certifying Physician or Nurse Practitioner Qualifications.** All physicians or nurse practitioners who intend to certify patients for their patient medical marijuana licenses must be licensed to practice in their respective fields and must be in good standing.

(A) A certifying physician must have a current license to practice medicine or osteopathy. Practice of medicine or osteopathy means practice by persons

who hold a physician and surgeon license pursuant to Chapter 334, RSMo, including those who are admitted to practice in Missouri by reciprocity pursuant to §334.043, RSMo.

(B) A nurse practitioner must have a current Missouri or compact RN license and be recognized by the Missouri State Board of Nursing as an advanced practice registered nurse.

(C) A physician is in good standing if:

1. The physician's license is registered with the Missouri Board of Healing Arts as current, active, and not restricted in any way, such as by designation as temporary or limited; and

2. The physician is not currently on the list of individuals from whom the department will not accept certifications.

(D) A nurse practitioner is in good standing if:

1. That individual's license is registered with the Missouri State Board of Nursing as current and active;

2. That individual's license is not restricted in any way, such as by designation as cease and desist, denial of license, expired, restriction, revoked, suspension, voluntary agreement to refrain from practice, or voluntary surrender; and

3. That person is not currently on the list of individuals from whom the department will not accept certifications.

(2) Physician or Nurse Practitioner Certification. Physicians or nurse practitioners will submit certifications electronically through a department-provided, web-based system. In the event of system unavailability, the department will arrange to accept physician or nurse practitioner certifications in an alternative, department-provided format and will notify the public of those arrangements through its website at <http://cannabis.mo.gov>.

(A) Physician or nurse practitioner certifications must be issued no earlier than thirty (30) days before the date the patient will apply for a patient identification card or renewal of a patient identification card.

(B) Physician or nurse practitioner certifications must include at least the following information:

1. The physician's or nurse practitioner's name, as it appears in the records of the Missouri Division of Professional Registration;

2. The physician's or nurse practitioner's licensee number;

3. Whether the physician or nurse practitioner is licensed to practice medicine or osteopathy, or is licensed as an advanced practiced registered nurse;

4. The physician's or nurse practitioner's business address, telephone number, and email address;

5. The qualifying patient's name, date of birth, and Social Security number;

6. The qualifying patient's qualifying condition;

7. The physician's or nurse practitioner's recommendation for the amount of medical marijuana product the qualifying patient should be allowed to purchase in a thirty- (30-) day period if the recommended amount is more than six (6) ounces of dried, unprocessed marijuana or its equivalent;

A. If the recommended amount is more than six (6) ounces in a thirty- (30-) day period, the physician or nurse practitioner shall provide compelling reason(s) why the qualifying patient needs a greater amount;

8. Statements confirming the following:

A. In the case of a non-emancipated qualifying patient under the age of eighteen (18), before certifying the qualifying patient for use of medical marijuana product, the physician or nurse practitioner received the written consent of a parent or legal guardian who asserts he or she will serve as a primary caregiver for the qualifying patient;

B. The physician or nurse practitioner met with and examined the qualifying patient, reviewed the qualifying patient's medical records or medical history, reviewed the qualifying patient's current medications and allergies to medications, discussed the qualifying patient's current symptoms, and created a medical record for the qualifying patient regarding the meeting;

C. In the opinion of the physician or nurse practitioner, the qualifying patient suffers from the qualifying condition;

D. The physician or nurse practitioner discussed with the qualifying patient risks associated with medical marijuana, including known contraindications applicable to the patient, risks of medical marijuana use to fetuses, and risks of medical marijuana use to breastfeeding infants; and

9. The signature of the physician or nurse practitioner and date signed.

(3) The department may request to interview any physician or nurse practitioner who chooses to certify individuals as qualifying patients. If such a request is made, the physician or nurse practitioner shall arrange for the interview to occur as soon as possible but no later than thirty (30) days after the department makes the request.

(4) Physician or Nurse Practitioner Investigations. All complaints against physicians or nurse practitioners may be submitted either via forms available on the department's website or by otherwise notifying the department. Complaints shall include the name and address of the physician or nurse practitioner against whom the complaint is made and a clear description of what violation(s) the complainant believes the physician or nurse practitioner has committed.

(A) After receiving a complaint against a physician or nurse practitioner, the department will determine whether an investigation is warranted. Investigations may also be initiated by the department.

(B) If the department conducts an investigation pursuant to a complaint, the physician or nurse practitioner will receive a copy of the complaint. In the event the investigation is initiated by the department, the physician or nurse practitioner will receive a written description of the violation the department believes the physician or nurse practitioner has committed.

(C) The department may conclude an investigation by taking any of the following actions:

1. Dismissing the complaint;
2. Referring the complaint to the Missouri State Board of Registration for the Healing Arts or Missouri State Board of Nursing, as applicable;
3. Referring the complaint to law enforcement; and
4. Refusing to accept any new certifications from the physician or nurse practitioner for a reasonable period of time as determined by the department and adding the physician's or nurse practitioner's name to a publicly available list of physicians or nurse practitioners from whom the department is not accepting certifications. Such action shall only be taken upon concluding the physician or nurse practitioner has violated a provision of this chapter, Article XIV of the *Missouri Constitution*, or any other rule or law applicable to implementation of Article XIV. The length of time the department shall refuse to accept the physician's or nurse practitioner's certifications shall be based upon the following criteria:

A. Whether the physician or nurse practitioner acted recklessly or knowingly in violating an applicable rule or law;

B. The degree of imminent danger to the health of a qualifying patient the physician's or nurse practitioner's actions caused;

C. The degree or recurrence of falsification of a physician or nurse practitioner certification;

D. Whether the department has previously received substantiated complaints against the physician or nurse practitioner; and

E. Any aggravating circumstances.

(D) Upon completion of an investigation, the department shall notify the physician or nurse practitioner of any department action, the reasons for that action, and the procedure for filing an application for a hearing.

(E) Any physician or nurse practitioner aggrieved by the department's actions taken pursuant to this section may file an application for a hearing with the department. The department shall grant the application within

fourteen (14) days after receipt by the department and set the matter for hearing.

(F) The provisions of Chapter 536, RSMo for a contested case, except those provisions or amendments that are in conflict with this section, shall apply to and govern the proceedings contained in this section and the rights and duties of the parties involved. The person requesting a hearing shall be entitled to present evidence, pursuant to the provisions of Chapter 536, RSMo relevant to the allegations.

(G) Upon the record made at the hearing, the director of the department or the director's designee shall determine all questions presented and shall determine whether the initial decision shall stand. The director of the department or the director's designee shall clearly state the reasons for his or her decision.

(H) A person aggrieved by the decision following the hearing shall be informed of his or her right to seek judicial review as provided under Chapter 536, RSMo. If the person fails to appeal the director of the department's findings within thirty (30) days of their issuance, those findings shall constitute a final determination.

(I) A decision by the director of the department shall be inadmissible in any civil or criminal action brought against a physician or nurse practitioner.

AUTHORITY: Sections 1.3.(1)(b), 1.3.(2), 2.4(1)(b), and 2.4(4) of Article XIV, Mo. Const. Emergency rule filed January 20, 2023, effective February 3, 2023, expires August 1, 2023. A proposed rule covering this same material is published in this issue of the Missouri Register.

PUBLIC COST: This emergency rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.

PRIVATE COST: This emergency rule will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.