

What are the requirements? Educating health care professionals and supporting doctors rights and responsibilities in the relationship. (legal) Analysis and documentation of the proper (BME) procedures and communication of the same. (Medical) Information to educate your physician about cannabis as medicine.

# A Physicians Guide to OMMA

- OMMP Rules and Regulations
  - The Process
  - Contacting the OMMP; visit:  
<http://oregon.gov/DHS/ph/ommp/index.shtml>
  
- Other Organizations and Resources for Information and Support – for medical professionals and patients.
  - Cannabis as Medicine
    - Information by Condition, Symptom
    - Patient Contacts and Organizations
    - Professional groups
  - Legal issues –
    - See below

This document was researched, prepared and presented as public service by  
**MERCY – the Medical Cannabis Resource Center**  
1469 Capital St. NE., Salem, Oregon, 97301 \* 503.363-4588 \* [MercyCenters.org](http://MercyCenters.org)

visit - [http://mercycenters.org/libry/i\\_Doctors.html](http://mercycenters.org/libry/i_Doctors.html) - for the latest info and to update everybody with yours.

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## A Physicians Guide to OMMA

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**The Oregon Medical Marijuana Act (OMMA), a ballot initiative approved by voters in 1998, allows patients to possess and grow small amounts of medical marijuana. The law required DHS to create a registry system for persons authorized to use marijuana for medicinal purposes. Applicants must provide a statement from their physician that they have a qualifying medical condition and that medical marijuana might alleviate their symptoms or disease. Once their application is approved they are issued a registration card that is renewable annually. For those who understand the utilization of cannabis as medicine, this is an invaluable option in therapy.**

The Oregon Medical Marijuana Act was adopted by voters at the November 3, 1998 general election (Ballot Measure 67). The Act was amended by House bill 3052, passed during the 1999 legislative session.

### Basic Facts

- The Oregon Medical Marijuana Act protects medical marijuana users who comply with its requirements from state criminal prosecution for production, possession or delivery of a controlled substance.
- "The (state) Act neither protects marijuana plants from seizure nor individuals from prosecution if the federal government chooses to take action against patients or caregivers under the federal Controlled Substances Act."
- You must be an Oregon resident to be a registered patient in the Oregon Medical Marijuana Program (OMMP).
- You must have a qualifying debilitating medical condition as listed on the Attending Physician's Statement.
- Your physician must be a Medical Doctor (MD) or Doctor of Osteopathy (DO) licensed to practice medicine in Oregon. You must have an established patient/physician relationship with your "attending physician." Naturopaths, chiropractors, and nurse practitioners cannot sign the documentation.
- The OMMP cannot refer you to a physician. The OMMP does not have a physician referral list.
- The application fee cannot be waived. Partial payments cannot be accepted. Credit card payments are not accepted.
- You must list a grow site address on your application. You, or your designated primary caregiver, may grow your medication. There is no place in the State of Oregon to legally purchase medical marijuana.
- The OMMP cannot find a designated primary caregiver for you. The OMMP does not keep a referral list of persons who want to be caregivers for patients. (You are not required to list a caregiver unless you are less than 18 years old.) Your caregiver cannot be your physician.
- If you decide to change your caregiver, it is your responsibility to notify him or her that he or she is no longer protected under the law. The OMMP does not communicate directly with caregivers.

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- The OMMP will only speak directly with the patient. All written requests to release information must be signed and dated by the patient. The OMMP will not accept written or verbal requests for information from your caregiver or any other person without your permission.
- The OMMP cannot supply you with seeds or starter plants, or give you advice on how to grow medical marijuana.

## Some FAQs

visit: <http://oregon.gov/DHS/ph/ommp/top20.shtml>

1) Can the OMMP refer me to a physician?

No. The names of physicians who have submitted forms, letters, or chart notes for their patients are confidential, and the OMMP does not have a physician referral list.

2) Why do I need to have a physician sign and date the form or send a chart note to the OMMP? Why can't I just provide my medical records?

According to the Oregon Medical Marijuana Act (Section 4 (2)(a)), and OAR 333-008-0020(1)(a), a physician must state in writing that the patient has a qualifying debilitating medical condition **and** that medical marijuana may mitigate the symptoms or effects of that condition. The OMMP accepts medical records as long as they clearly state the physician is aware that medical marijuana is being used as a treatment and he or she believes the patient may benefit from the use of medical marijuana. The physician must sign and date the relevant portions of medical records you send to the OMMP. The OMMP contacts each physician during the application process to verify the patient is under the physician's care. A signed and dated "Attending Physician's Statement," copies of chart notes or medical records must be current **within 3 months** of the date of a person's new or renewal application.

3) Why are only MDs (Medical Doctors) and DOs (Doctors of Osteopathy) qualified to sign the "Attending Physician's Statement" of the application? Why not naturopaths, chiropractors, or nurse practitioners? Does the physician have to be licensed in Oregon?

The Oregon Medical Marijuana Act states that an "attending physician" means a physician licensed under ORS chapter 677 (OAR 333-008-0010(1)). MDs and DOs are the physicians licensed under this chapter. The law also specifies that a physician must be licensed in Oregon. The OMMP verifies with the Board of Medical Examiners that each patient's attending physician has a valid license to practice medicine in Oregon and has no disqualifying restrictions.

4) Is my confidentiality protected?

Yes. The OMMP does not give out lists of patients or physicians. Law enforcement personnel may call the OMMP only to verify a specific name or address of a patient or caregiver. The OMMP will tell law enforcement staff if the patient, caregiver, or address in question is registered, or if an application is in process. The OMMP will disclose patient information to others only at the specific written request of the patient. OMMP computer files are secure and paper files are kept locked when not in use.

5) It is time to renew my card and my physician's clinic has adopted a policy of not signing "Attending Physician's Statements".

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A renewal application does not require a statement from a physician regarding the use of medical marijuana; however, a renewal does require the patient to demonstrate that his or her debilitating medical condition continues. You can submit a copy of relevant portions of your medical records made by your physician within **3 months** of your application date. The records must be signed and dated by the physician. The OMMP urges patients to work closely with their attending physicians throughout the application process.

### **Cannabis is medicine**

**and has been so since mans ancestors first encountered it. Archeology tells us more about the history of this fascinating and versatile plant every day. Educate yourself and others on the issues surrounding it and its utilization. Visit:**

**[http://mercycenters.org/links/can\\_hist\\_med.htm#medicine](http://mercycenters.org/links/can_hist_med.htm#medicine)**

**The IOM (Institute of Medicine) Report of 1999 is the most recent proof of this. Visit:**

**[www.nap.edu/catalog/6376.html](http://www.nap.edu/catalog/6376.html)**

#### **--- Sources of Information ---**

#### **Scientific Articles Online:**

The International Association of Cannabis as Medicine (IACM) Database on Clinical Studies and Case Reports [www.acmed.org/english/nav/home-science.htm](http://www.acmed.org/english/nav/home-science.htm)

GW Pharmaceuticals Research and Development (Cannabinoid Research Institute)  
[www.gwpharm.com/research\\_cri.asp](http://www.gwpharm.com/research_cri.asp)

O'Shaughnessy's Journal of the California Cannabis Research Medical Group (CCRMG) [www.ccrm.org/journal.html](http://www.ccrm.org/journal.html)

1999 Institute of Medicine/National Academy of Sciences Report "Marijuana And Medicine: Assessing The Science Base" By Janet E. Joy, Stanley J. Watson, Jr. And John Benson Jr., Editors > [www.nap.edu/catalog/6376.html](http://www.nap.edu/catalog/6376.html)

For more **Web sites to visit** see

Oregon Medical Marijuana Act (OMMA) & Oregonians for Medical Rights (OMR)  
Home Page: <http://www.omma1998.org/>

and/or the [MERCY Links page](http://mercycenters.org/links.html) at: <http://mercycenters.org/links.html>

#### **Books to get and read:**

Is Marijuana the Right Medicine for You? A Factual Guide to Medical Uses of Marijuana by Bill Zimmerman, PhD with Rick Bayer, MD and Nancy Crumpacker,

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MD, ISBN#0-87983-906-6 (Keats 1998). Chapter 3: Why All the Controversy? What Does The Research Actually Show? is online at:  
[www.medmjscience.org/Media/pdf/chap3.pdf](http://www.medmjscience.org/Media/pdf/chap3.pdf)

Cannabis and Cannabinoids: Pharmacology, Toxicology, and Therapeutic Potential edited by Franjo Grotenhermen, MD and Ethan Russo, MD (Haworth Press 2002)

The Oregon Medical Marijuana Guide: A Resource for Patients & Health Care Providers by Ed Glick, RN (Contigo-Connmigo 2001). This is the most comprehensive guide to the Oregon Medical Marijuana Act. It is available online at [www.or-coast.net/contigo/](http://www.or-coast.net/contigo/) and for purchase on CD - ROM or paper.

Marijuana Medical Handbook by Rosenthal, Gieringer and Dr. Mikuriya, "A Guide to Therapeutic Use". ISBN#0-932551-16-5 \$16.95

The Emperor Wears No Clothes By Jack Herer, The Original Hemp Bible. ISBN#1-878125-02-8 \$24.95

see more at the OMMA1998 website Medical Cannabis (Marijuana) Bibliography page: [http://www.omma1998.org/omr\\_mmj\\_bibliography.html](http://www.omma1998.org/omr_mmj_bibliography.html)

Download the administrative rules for printing (PDF format) by clicking here > <http://oregon.gov/DHS/ph/ommp/oarrev.shtml>, or browse through the rules at the Oregon State Archives Website >

[http://arcweb.sos.state.or.us/rules/OARs\\_300/OAR\\_333/333\\_008.html](http://arcweb.sos.state.or.us/rules/OARs_300/OAR_333/333_008.html).

### **The Act intends:**

- (1) To allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to receive the benefit of their doctor's professional advice regarding the possible risks and benefits of medical marijuana;
- (2) To allow Oregonians suffering from debilitating medical conditions to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them; and
- (3) To make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for non-medical purposes.

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- some important legal References -

**Dr. Marcus Conant, et al., v. McCaffrey et al.** This September 7, 2000, US District Court held that the US Government could not punish physicians for voicing their professional opinions based on their best medical judgment. Go to: <http://oregon.gov/DHS/ph/ommp/conantmc.shtml> or see below.

**Dr. Marcus Conant, et. al., v. John P. Walters, et. al.** This October 29, 2002, decision by the United States Court of Appeals for the Ninth Circuit upheld an earlier decision that the US Government could not punish physicians for voicing their professional opinions based on their best medical judgment (Conant v. McCaffrey, September 7, 2000). The Court of Appeals decision upholds the First Amendments rights of physicians who recommend the use of medical marijuana for their patients. Go to: <http://oregon.gov/DHS/ph/ommp/conantapeal.shtml> or see below

Legal Resources –

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| ACLU of Oregon<br>Executive Director: David Fidanque<br>P.O. Box 40585<br>Portland, OR 97240-0585<br>Phone: 503-227-3186<br><a href="http://www.aclu-or.org/">http://www.aclu-or.org/</a> | NORML - and the NORML Foundation<br>1600 K Street, NW<br>Suite 501<br>Washington, DC 20006-2832<br>Phone: (202) 483-5500<br>Fax: (202) 483-0057<br><a href="http://norml.org/">http://norml.org/</a> |
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### **Dr. Marcus Conant, et al., v. McCaffrey et al.**

This information provided by the [Office of the State Public Health Officer](#). Dr. Marcus Conant, et al., v. McCaffrey et al. Source=> <http://oregon.gov/DHS/ph/ommp/conantmc.shtml>

This September 7, 2000, US District Court held that the US Government could not punish physicians for voicing their professional opinions based on their best medical judgment. According to the Court decision, "the government is permanently enjoined from revoking a physician's DEA registration merely because the doctor recommends medical marijuana based on a sincere medical judgment and from initiating an investigation solely on the ground" that a physician recommends the use of medical marijuana for a patient.

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**The Human Services Assistant Attorney General for the Oregon Department of Justice, prepared this summary at the request of the Oregon Medical Marijuana Program. This summary describes highlights of the September 7, 2000 US District Court decision and is intended for information purposes only and is not to be used for legal purposes or reference. For more complete information please check the transcript for the text of this decision.**

## Dr. Marcus Conant, et al., v. McCaffrey et al.

### SUMMARY

Dr. Marcus Conant, et al., v. McCaffrey et al.  
Nos. C 97-00139 WHA

September 7, 2000 The US District Court held that the US Government could not punish physicians for voicing their professional opinions based on their best medical judgment. According to the Court decision, "the government is permanently enjoined from revoking a physician's DEA registration merely because the doctor recommends medical marijuana based on a sincere medical judgment and from initiating an investigation solely on the ground" that a physician recommends the use of medical marijuana for a patient.

The US District Court for the Northern District of California decided this case on Sept 7, 2000. Plaintiffs (represented by Dr. Conant) were a class of physicians who feared prosecution or loss of Drug Enforcement Administration registration that would affect their licenses to practice medicine. The Defendant was Barry McCaffrey, Director of the Office of National Drug Control Policy.

On November 5, 1996, voters in California adopted Proposition 215, the Compassionate Use Act, also known as the Medical Marijuana Initiative. The Act provides in relevant part that: "...seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit..." The California Health and Safety Code and the Act say "[No] physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes."

On December 30, 1996, the Director of the Office of National Drug Control Policy issued a response to California's Act, stating "that a practitioner's action of recommending or prescribing Schedule I controlled substances is not consistent with the 'public interest' (as that phrase is used in the federal Controlled Substances Act) and will lead to administrative action by the Drug Enforcement Administration to revoke the practitioner's registration." In addition, the US Inspector General for Health and Human Services was authorized to exclude specified individuals (for example, physicians who recommend marijuana to patients for medical purposes) from participation in Medicare and Medicaid programs.

The US Government later clarified its position, stating that "nothing in federal law prevents a physician, in the context of a legitimate physician-patient relationship, from merely discussing with a patient the risks and benefits of the use of marijuana to relieve pain or alleviate symptoms." At the same time, however, "physicians may not intentionally provide their patients with oral or written statements in order to enable to obtain controlled substances in violation of federal law."

## **Dr. Marcus Conant, et. al., v. John P. Walters, et. al.**

This information provided by the [Office of the State Public Health Officer](http://oregon.gov/DHS/ph/ommp/conantapeal.shtml). Dr. Marcus Conant, et. al., v. John P. Walters, et. al. Source=> <http://oregon.gov/DHS/ph/ommp/conantapeal.shtml>

This October 29, 2002, decision by the United States Court of Appeals for the Ninth Circuit upheld an earlier decision that the US Government could not punish physicians for voicing their professional opinions based on their best medical judgment (Conant v. McCaffrey, September 7, 2000). The Court of Appeals decision upholds the First Amendments rights of physicians who recommend the use of medical marijuana for their patients.

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**Rhea Kessler, J.D., Assistant Attorney General for the Oregon Department of Justice, approved this summary at the request of the Oregon Medical Marijuana Program. This summary describes highlights of the October 29, 2002 decision of the United States Court of Appeals for the Ninth Circuit and is intended for information purposes only and is not to be used for legal purposes or reference. For more complete information please check the Internet for the full text of this decision.**

### SUMMARY

Dr. Marcus Conant, et al., v. John P. Walters et al.

No. 00-17222

D.C. No

CV 97-00139 WHA

### Opinion

October 29, 2002 **On September 7, 2000, the US District Court for the Northern District of California entered a permanent injunction to protect the First Amendment rights of physicians (Conant v. McCaffrey, 2000 WL 1281174 N.D. Cal.). The September 2000 order prohibited the federal government from either revoking a physician's license to prescribe controlled substances or from conducting an investigation of a physician that might lead to such revocation, where the federal government's action is based solely on the physician's professional "recommendation" of the use of medical marijuana. The federal government appealed this decision and the US Court of Appeals for the Ninth Circuit issued a decision in Conant v. Walters (No. 00-17222) on October 29, 2002.**

**In Conant v. Walters, a three-judge panel of the Court of Appeals unanimously agreed that the federal government may not investigate or revoke the licenses of physicians who recommend the use of medical marijuana to their patients. More specifically, the Court of Appeals voted that: (1) a "recommendation" by a physician for a patient's use of medical marijuana is not similar to a "prescription" for a controlled substance; (2) a physician's anticipation that a patient will use his or her recommendation to obtain marijuana does not translate into the physician "aiding and abetting, or conspiracy" to obtain a controlled substance; (3) "physicians must be able to speak frankly and openly to patients," a need recognized through the law of doctor-patient privilege; and (4) doctor-patient privilege**

reflects the "imperative need for confidence and trust" inherent in the relationship and recognizes that "a physician must know all that a patient can articulate in order to identify and to treat the disease; barriers to full disclosure would impair diagnosis and treatment." One justice cited several studies "that indicate the potential therapeutic value" of medical marijuana for pain relief, control of nausea and vomiting, and appetite stimulation.

In making these, and similar determinations, the US Court of Appeals for the Ninth Circuit affirmed the September 2000 decision of *Conant v. McCaffrey* to: (1) uphold the injunction to protect physicians' First Amendment rights; and (2) prohibit the federal government from either revoking a physician's license to prescribe controlled substances or conducting an investigation of a physician that might lead to such revocation based on a professional recommendation of the use of medical marijuana. The September 2000 and October 2002 decisions apply only to the states within the jurisdiction of the Ninth Circuit Court-Oregon, Washington, California, Alaska, Hawaii, and Nevada.

**The Oregon Administrative Rules contain OARs filed through August 15, 2005**

**DEPARTMENT OF HUMAN SERVICES, PUBLIC HEALTH**

**DIVISION 8**

**MEDICAL MARIJUANA**

**333-008-0000**

**Description of the Oregon Medical Marijuana Act**

The Oregon Medical Marijuana Act was adopted by voters at the November 3, 1998 general election (Ballot Measure 67). The Act was amended by House bill 3052, passed during the 1999 legislative session. The text of the combined Act and HB 3052 is included in ORS 475.300 -- ORS 475.346. The Oregon Health Division was assigned rule-making authority necessary for the implementation and administration of the Oregon Medical Marijuana Act.

The Act intends:

- (1) To allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to receive the benefit of their doctor's professional advice regarding the possible risks and benefits of medical marijuana;
- (2) To allow Oregonians suffering from debilitating medical conditions to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them; and

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(3) To make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for non-medical purposes.

Stat. Auth.: ORS 475.300

Stats. Implemented: ORS 475.300

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01

### **333-008-0010**

#### **Definitions**

For the purposes of OAR 333-008-0000 through 333-008-0090, the following definitions apply:

(1) "Attending physician" means a physician who has established a physician/patient relationship with the patient, is licensed under ORS chapter 677, and who, with respect to a patient diagnosed with a debilitating medical condition:

(a) Is primarily responsible for the care and treatment of the patient;

(b) Is primarily responsible for providing medical specialty care and treatment of the patient as recognized by the American Board of Medical Specialties;

(c) Has been asked to consult and treat the patient by the patient's primary care physician who is licensed under ORS Chapter 677, a Physician Assistant licensed under ORS Chapter 677, or a Nurse Practitioner licensed under ORS Chapter 678; or

(d) Has reviewed a patient's medical records at the patient's request, has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(2) "Debilitating medical condition" means:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, agitation due to Alzheimer's disease, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(i) Cachexia;

(ii) Severe pain;

(iii) Severe nausea;

(iv) Seizures, including but not limited to seizures caused by epilepsy; or

(v) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or

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(c) Any other medical condition or treatment for a medical condition adopted by the Department by rule or approved by the Department pursuant to a petition submitted under OAR 333-008-0090.

(3) "Delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship.

(4) "Department" means the Oregon Department of Human Services.

(5) "Designated primary caregiver" means an individual eighteen years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Department. Designated primary caregiver" does not include the person's attending physician. Each patient may have only one designated primary caregiver at any given time.

(6) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(7) "Mature plant" means the following: A marijuana plant shall be considered mature when male or female flower buds are readily observed on the plant by unaided visual examination. Until this sexual differentiation has taken place, a marijuana plant will be considered immature.

(8) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(9) "New application" means an application defined under OAR 333-008-0020 signed, dated, and submitted by:

(a) A new applicant to qualify for an initial registry identification card;

(b) A patient after the patient's previous application has been denied or after the patient's registry identification card has been suspended; or

(c) A patient after the expiration date of the patient's previously issued registry identification card.

(10) "Oregon Health Plan" means the medical assistance program administered by the Department under ORS chapter 414.

(11) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

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(12) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(13) "Registry identification card" means a document issued by the Department that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(14) "Renewal application" means an application as defined under OAR 333-008-0040, signed, dated, and submitted by a patient within 3 months prior to the expiration date of the patient's current registry identification card and no later than the expiration date of that current card. Applications received after the expiration date of the patient's current registry identification card must meet all criteria for a "new application" under OAR 333-008-0010(9).

(15) "Supplemental Security Income" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(16) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(17) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.005, ORS 677.010, ORS 475.302 & ORS 475.309(3)

Stats. Implemented: ORS 475.300 - ORS 475.346

Hist.: OHD 15-1998(Temp), f. & cert. ef. 12-24-98 thru 6-22-99; OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03

### **333-008-0020**

#### **Registration Application and Verification**

(1) The Department shall create registration application forms and issue them to requesting physicians, applicants, or designated primary caregivers.

(2) Except as provided in subsection (4) of this section, the Department shall issue a registry identification card to any person who pays a new or renewal application fee as set forth in subsections (2)(a) and (2)(b) of this section and who provides to the Department a completed application as set forth in subsections (2)(c) and (2)(d) of this section.

(a) For the period January 1, 2005 through December 31, 2006, the following fees will be charged: \$100 (fifty-five dollars) for a new application; \$100 (fifty-five dollars) for a renewal application; or, \$20 (twenty dollars) for either a new or renewal application by any patient who

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can demonstrate current eligibility in the Oregon Health Plan or who can demonstrate being a recipient of current Supplemental Security Income monthly benefits.

(A) Eligibility in the Oregon Health Plan is demonstrated by providing a current, valid eligibility determination statement from the Department's Office of Medical Assistance Programs. To qualify for a reduced fee, a copy of the patient's current eligibility statement must be provided at the time the patient submits an application. The Department will verify the patient's Oregon Health Plan eligibility with the Office of Medical Assistance Programs.

(B) Eligibility for Supplemental Security Income is demonstrated by providing a copy of a receipt of a current monthly benefit. To qualify for a reduced fee, a copy of a receipt of a current Supplemental Security Income monthly benefit must be provided at the time the patient submits an application. The Department will verify the patient's current Supplemental Security Income receipt of monthly benefits through the Department or with the Social Security Administration.

(b) The Department will notify any patient who submits a reduced fee for which the patient is not eligible and will give the patient 14 days from the date of notice to pay the correct fee or to submit a current, valid eligibility determination statement for the Oregon Health Plan, or to submit a copy of a receipt for current Supplemental Security Income monthly benefit, as applicable. The Department will not suspend processing of the patient's application pending receipt of an eligibility statement. The Department will not grant application fee refunds for any eligibility determination made on or after the issue date of the patient's registry identification card.

(c) To supply a completed application, the patient must provide to the Department either:

(A) completed copies of all patient application, attending physician declaration, and parent/legal guardian (if applicable) forms; or

(B) legible written statements that include all information required on the Department's forms. A copy of the relevant portions of the patient's medical record may serve as written documentation from the attending physician as long as it states that the patient has been diagnosed with a debilitating medical condition; the medical use of marijuana may mitigate the symptoms or effects of the patient's debilitating medical condition; and contains the physician's signature and the date the medical record was made.

(d) In addition to the information required in ORS 475.309(2), the patient and the designated primary caregiver (if applicable) must provide a copy of current, legible photographic identification (i.e., Oregon driver's license, Oregon identification card, or Voter Registration card plus another current, legible photographic identification). The designated primary caregiver (if applicable) must also supply his or her address and date of birth. The patient must provide the Department with the address of the site where marijuana will be manufactured or produced, and indicate whether the property is under the control of the patient or the designated primary caregiver of the patient.

(3) Optional information may be added to application forms at the discretion of the Department if such information serves the best interest of the patient and assists agencies in the implementation of the Act. Optional information need not be provided by the patient, attending

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physician, or designated primary caregiver, and failure to provide optional information will have no bearing on the approval or denial of a registry identification card.

(4) The Department shall issue a registry identification card to a person who is under eighteen years of age if the person submits the materials required under subsection (2) of this section, and one of the person's parents or legal guardians signs and has notarized a written declaration that states:

(a) The person's attending physician has explained to the person and to one of the person's parents or legal guardians the possible risks and benefits of the medical use of marijuana;

(b) The parent or legal guardian consents to the use of marijuana by the person for medical purposes;

(c) The parent or legal guardian agrees to serve as the person's designated primary caregiver; and

(d) The parent or legal guardian agrees to control the acquisition of marijuana and the dosage and frequency of use by the person.

(5) The Department will verify information on all initial registration applications or written documentation.

(a) The Department will contact each patient and designated primary caregiver (if appropriate) by telephone or by mail to confirm that the information provided is accurate. In cases where the patient is less than eighteen years old, the Department will also contact the parent or legal guardian to verify the information. In cases where proof of identity is uncertain, the Department may require a face-to-face meeting with the patient or designated primary caregiver and/or the production of additional identification materials for verification purposes.

(b) The Department will verify with the Oregon Board of Medical Examiners that the attending physician is licensed to practice in the state and is in good standing. The Department will also contact each attending physician to confirm that the information provided is accurate and valid, and that the physician is an "attending physician" as defined by 333-008-0010(1).

(6) Upon annual renewal of a registration application, the Department will verify all new information, but may use its discretion in determining the need to verify information that has not changed.

Stat. Auth.: ORS 475.309, 475.312 & 475.316

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 38-2004, f. 12-22-04, cert. ef. 1-1-05

**333-008-0030**

### **Registration Approval and Denial**

(1) The Department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days of receiving the fully completed application, including payment of the designated fee.

(2) Once the Department has verified the information in a completed application, the Department shall issue a serially numbered registry identification card within five days. The registry identification card shall state:

- (a) The cardholder's name, address and date of birth;
- (b) The date of issuance and expiration date of the registry identification card;
- (c) The name and address of the person's designated primary caregiver, if any; and
- (d) Such other optional information as the Department may specify.

(3) When the person to whom the Department has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the Department shall issue an identification card to the designated primary caregiver. The designated primary caregiver's registry identification card shall contain the information provided in subsection (2)(a), (b), and (d) of this section. The designated primary caregiver's registry identification card shall also contain the patient's name and address.

(4) In accordance with provisions of these rules, the Department has the authority to deny a registration application and to preclude a person from obtaining or using a registry identification card for a period of up to six months.

(5) The Department may deny an application only for the following reasons:

- (a) The applicant did not provide the information required as provided in ORS 475.309; or
- (b) The Department determines that the information provided was falsified.

(6) When the Department determines that an applicant does not qualify for a registry identification card, the Department shall send the applicant a denial letter within 30 days of receipt of the application or renewal application. The time periods set forth in subsection (9)(a) and (b) of this rule, that provide an applicant an opportunity to supplement an application that does not meet all of the requirements of ORS 475.309, do not count towards the 30-day time limitation for processing an application. The denial letter will be sent by certified, first-class mail to the address listed on the application form. The letter will state the reason for denial and the date at which another application may be submitted.

(7) Denial of a registry identification card shall be considered a final Department action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of eighteen years of age whose application has been denied, the person's parent or legal guardian shall have standing to contest the Department's action.

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(8) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the Department or a court of competent jurisdiction.

(9) The Department will deny and return to the applicant a copy of the application including the application fee if either of the conditions below applies to the application:

(a) The applicant did not provide all required information, and following a written request by the Department for the missing information, did not adequately respond within 14 days; or

(b) Following an investigation by the Department, the Department has been unable to verify that the individual signing the application as the attending physician meets the definition under OAR 333-008-0010(1). The applicant will be allowed 30 days to submit written documentation and/or a new attending physician's declaration from a physician meeting the requirements of these rules. After that time, if no adequate response has been received, the application will be denied and returned.

(c) Applicants whose application is denied under (a) or (b) above may re-apply for a registry identification card at any time.

Stat. Auth.: ORS 475.309 & 475.316

Stats. Implemented: ORS 475.300 - ORS 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; OHD 21-2001(Temp), f. & cert. ef. 10-12-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 12-2004(Temp), f. & cert. ef. 4-1-04 thru 8-2-04; Administrative correction 8-19-04

### **333-008-0040**

#### **Annual Renewal and Interim Changes**

(1) A person who possesses a registry identification card shall register on an annual basis to maintain active registration status.

(2) Between 30 and 45 calendar days prior to expiration, the Department shall mail notification to the patient's address of the upcoming expiration date.

(a) The patient must submit, prior to the expiration, the following:

(A) Written documentation to reconfirm the person's debilitating medical condition;

(B) A copy of the patient's current, valid Oregon Health Plan eligibility determination statement or a copy of a receipt of the patient's current Supplemental Security Income monthly benefit, if applicable;

(C) The name of the person's designated primary caregiver, if a primary caregiver has been designated for the upcoming year; and

(D) Confirmation that existing application information has not changed.

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(b) If the application is not received by the expiration date, the patient's registry identification card and the designated primary caregiver's card (if applicable) will be deemed expired. The expiration date may be extended, due to personal hardship, at the discretion of the Department.

(c) A patient must notify the Department within 30 working days of any change in his or her name, address, telephone number, attending physician, designated primary caregiver, or grow site.

(d) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition shall return the registry identification card to the Department within seven calendar days of notification of the diagnosis. Any designated primary caregiver shall return his or her registry identification card within the same period of time.

Stat. Auth.: ORS 475.309 & ORS 475.312

Stats. Implemented: ORS 475.309 & ORS 475.312

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03

### **333-008-0050**

#### **Confidentiality**

(1) The Department shall create and maintain both paper and computer data files of the persons to whom the Department has issued registry identification cards. The data files will include all information collected on the application forms or equivalent information from other written documentation, plus registry identification card, date of issue and expiration date. Except as provided in subsection (2) of this section, the names and identifying information of persons to whom the Department has issued registry identification cards pursuant to ORS 475.309 and their designated primary caregivers, and the names and identifying information of pending applicants for such cards and their designated primary caregivers, shall be confidential and not subject to public disclosure.

(2) Names and other identifying information made confidential under subsection (1) of this section may be released to:

(a) Authorized employees of the Department as necessary to perform official duties of the Department, including the production of any reports of aggregate (i.e., non-identifying) data or statistics; and

(b) Authorized employees of state or local law enforcement agencies when they provide a specific name or address. Information will be supplied only as necessary to verify that a person is a lawful possessor of a registry identification card, that a person is the designated primary caregiver of such a person, or to supply optional information provided on the application forms, or as provided in OAR 333-008-0060(2).

(c) Other persons (such as, but not limited to, employers, lawyers, family members, other government officials) upon written request given by the registered patient or designated primary

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caregiver. Information will be supplied only as necessary to verify that a person is a lawful possessor of a registry identification card, that a person is the designated primary caregiver of such a person, or to supply other specific information provided, as requested in writing by the patient.

Stat. Auth.: ORS 475.331

Stats. Implemented: ORS 475.300 -- ORS 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02

### **333-008-0060**

#### **Monitoring and Investigations**

(1) The Department may, at any time, contact a patient, designated primary caregiver, or attending physician by telephone, mail or in person to verify the current accuracy of information provided to the registration system. This authority does not extend to allowing Department staff to routinely search the person or property of a person who possesses a registry identification card or an attending physician.

(2) Notwithstanding (1) above, the Department may, when it has reason to believe a violation of the conditions of registration exists, either conduct investigations to collect evidence of violations of the Oregon Medical Marijuana Act, or arrange for this responsibility to be assumed by the proper state or local authorities. Such violations include, but are not limited to:

(a) A patient fails to notify the Department of any change in the patient's name, address, attending physician, or designated primary caregiver.

(b) A patient or designated primary caregiver fails to return the registry identification card to the Department within seven calendar days of notification of the diagnosis that he or she no longer has a debilitating medical condition.

(c) A patient, designated primary caregiver, or attending physician falsifies information during the registration or registration renewal process.

(d) A patient or designated primary caregiver is convicted of a marijuana-related offense that occurred after the date of issuance of a registry identification card.

(3) If the Department has reason to believe that an individual signing an application as the attending physician does not meet the definition of attending physician under these rules, the Department may examine the original patient medical record in the physician's possession or a copy provided by the physician. The sole purpose of this examination is to determine whether the physician meets the definition of OAR 333-008-0010(1) and does not include review of any clinical judgments such as adequacy of diagnosis or propriety of treatment. The Department will send written notification allowing the physician 10 days to provide additional information

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requested by the Department, a copy of the patient's medical record, or the original medical record for Department review.

(4) In determining whether to examine a patient's medical record pursuant to subsection (3) of this section, the Department may consider, but is not limited to, factors such as complaints from patients or family members, complaints from health care providers, total number of applicants for whom the physician provided documentation, and/or number of applicants for whom the physician provided documentation during a specific time period.

(5) In determining whether to examine a patient's medical record pursuant to subsection (3) the Department will notify the patient of the intent to review the medical records and request his or her authorization to conduct the review. A patient's failure to authorize a review of his or her medical records for investigation purposes may result in an incomplete application and the denial of the patient's registry identification card.

(6) At any time, the attending physician may notify the Department that the patient's condition no longer warrants the use of medical marijuana. The Department shall then request that the physician notify the patient of the contact.

(7) The Department shall refer criminal and/or medical practice complaints against patients, designated primary caregivers, or attending physicians to the appropriate state or local authorities.

Stat. Auth.: ORS 475.309

Stats. Implemented: ORS 475.300 -- ORS 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02

### **333-008-0070**

#### **Suspensions**

(1) In accordance with provisions of these rules, the division has the authority to suspend a registration card. The division may preclude a person from using a registry identification card for a period of up to six months, at the discretion of the division.

(2)(a) When the division proposes to suspend a registration card of a patient or a designated primary caregiver, the division shall send a notice of proposed suspension by certified and first class mail to person's address currently listed in the data file.

(b) The notice shall contain the information required under ORS 183.415.

(c) A registrant (patient or designated primary caregiver) may contest the proposed suspension of registration by submitting a request for a hearing in writing. The request for hearing shall be addressed to: State Health Officer, Oregon Health Division, 800 NE Oregon Street, Suite 925, Portland, OR 97232, and must be received within twenty-one (21) days of receipt of notice of the proposed action.

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(3)(a) When the Division obtains evidence that establishes that a registrant has committed egregious violations of the Act, including obtaining a registration card by fraud, committing multiple and/or continuing violations, or being convicted of a marijuana related offense, the Division may immediately deem the registration suspended. The Division will immediately attempt to notify the registrant by phone and will send written notification of the action by certified and first class mail within one working day.

(b) The notification of immediate suspension will allow the registrant an opportunity to immediately request a hearing on the suspension.

(c) The hearing will be conducted as soon as practicable and will be conducted under the provisions of ORS 183.

(4) The division may, at its discretion, reinstate a registration card without re-application. However, if the registration card was obtained by fraudulent means, the Division may require the person to re-apply.

Stat. Auth.: ORS 475.316

Stats. Implemented: ORS 475.300 -- ORS 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01

### **333-008-0080**

#### **Permissible Amounts of Medical Marijuana**

(1) A person who possesses a medical marijuana registry identification card issued pursuant to OAR 333-008-0030 may engage in, and a designated primary caregiver of such a person may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical condition.

(2) A patient and a designated primary caregiver may not individually or collectively possess more than a total amount of one ounce of usable marijuana, if present at a location at which marijuana is not produced, including any residence associated with that location.

(3) A patient and a designated primary caregiver may not individually or collectively possess more than a total of three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant, if present at a location at which marijuana is produced, including any residence associated with that location.

(4) If any individuals described in (1) possess, deliver, or produce marijuana in excess of the amounts allowed in (2) and (3), such individuals are not excepted from the criminal laws of the state but may establish an affirmative defense to such charges, by a preponderance of the evidence, that the greater amount is medically necessary to mitigate the symptoms or effects of the person's debilitating medical condition.

Stat. Auth.: ORS 475.306 & 475.319(1)(c)

Stats. Implemented: ORS 475.300 -- ORS 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01

### **333-008-0090**

#### **Addition of Qualifying Diseases or Medical Conditions**

(1) The Department shall accept a written petition from any person requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under section 333-008-0010(2) of these rules and be added to the list.

(2) The Department shall, within 14 days of receipt of the petition, send a letter by first-class mail requesting the petitioner to provide if possible:

(a) An explanation for why the condition should be included;

(b) Any literature supporting the addition of the condition to the list;

(c) Letters of support from physicians or other licensed health care professionals knowledgeable about the condition; and

(d) Suggestions for potential expert panel members.

(3) The State Public Health Officer or designee may make a final determination that a petition is frivolous and deny the petition without further review.

(4) If the petition is not denied under (3) above, the Department shall appoint an expert panel of five to seven individuals to review a petition. The members of the panel shall include the State Public Health Officer or designee, other physicians licensed under ORS 677, at least one patient, at least one patient advocate, and other professionals knowledgeable about the condition being considered.

(a) If the petitioner so desires, she or he shall be given the opportunity to address the panel in person or by telephone.

(b) If the petitioner so desires, his or her confidentiality shall be strictly maintained.

(5) The Department shall submit the written petition to the expert panel, which shall make recommendations to the Department regarding approval or denial.

(a) The members of the panel may examine medical research pertaining to the petitioned condition, and may gather information (in person or in writing) from other parties knowledgeable about the condition being considered.

(b) The panel members will submit individual recommendations to the State Public Health Officer, and the meetings of the panel will not be considered to be public hearings.

(6) The Department will make a final determination on a petition within 180 days of receipt of the petition.

(7) Denial of a petition shall be considered a final Department action subject to judicial review.

(8) In cases where the condition in a person's petition is the same as, or is, as determined by the Department's State Public Health Officer, substantially equivalent to a condition that has already

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been denied in a previous determination, the Department may similarly deny the new petition unless new scientific research supporting the request is brought forward.

Stat. Auth.: ORS 475.334

Stats. Implemented: ORS 475.300 -- ORS 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 6-2002, f. & cert. ef. 3-25-02

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