



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Author: Jason Hoskins, Attorney
Reviewer: Laurel Mannion, Division Chief

Volume 133 Issue 29a
October 14, 2020

Ohio’s Medical Marijuana Control Program

The Ohio Medical Marijuana Control Program regulates the production, sale, and use of medical marijuana in this state. The program regulates every aspect of the supply chain, from the cultivators who grow medical marijuana, to the patients who purchase and use it. Under Ohio law, three state agencies are responsible for regulating various aspects of the program: the State Medical Board, the State Board of Pharmacy, and the Department of Commerce.

Contents

Medical Marijuana Control Program	1
Patient use of medical marijuana	2
Qualifying medical conditions	2
Patient and Caregiver Registry	3
Legal forms, methods, and amounts of consumption	4
Impact on employment	5
Caregivers	5
Physician certificate to recommend	6
Medical marijuana cultivators	6
Medical marijuana processors.....	7
Testing laboratories	7
Medical marijuana dispensaries	7
Licensing.....	7
Sales	8
Note on COVID-19.....	8

Medical Marijuana Control Program

Ohio’s Medical Marijuana Control Program (MMCP) was established in 2016 in H.B. 523 of the 131st General Assembly. It was to be fully operational by September 8, 2018, following a two-year lead-up period; however, the first sales of medical marijuana in Ohio did not occur until

January 16, 2019. The MMCP allows individuals with specified medical conditions to purchase and use medical marijuana. Ohio law gives three state agencies the authority to regulate various aspects of the program. The State Medical Board is responsible for certifying physicians to recommend medical marijuana to patients and adding qualifying medical conditions for which medical marijuana may be recommended. The State Board of Pharmacy regulates medical marijuana retail dispensaries, registers medical marijuana patients and caregivers, and approves new forms of medical marijuana. Finally, the Department of Commerce is responsible for licensing medical marijuana cultivators, processors, and testing laboratories.

Patient use of medical marijuana

Qualifying medical conditions

Under Ohio law, only a patient diagnosed with a qualifying medical condition may use, possess, or purchase medical marijuana.¹ The law specifies 21 qualifying conditions:²

- AIDS
- Alzheimer’s Disease
- Amyotrophic Lateral Sclerosis (Lou Gehrig’s Disease)
- Cancer
- Chronic Traumatic Encephalopathy
- Crohn’s Disease
- Epilepsy or other seizure disorders
- Fibromyalgia
- Glaucoma
- Hepatitis C
- Inflammatory Bowel Disease
- Multiple Sclerosis
- Pain that is either chronic and severe or intractable
- Parkinson’s Disease
- Positive status for HIV
- Post-Traumatic Stress Disorder
- Sickle Cell Anemia
- Spinal Cord Disease or Injury
- Traumatic Brain Injury
- Tourette’s Syndrome
- Ulcerative Colitis

In 2020, the Medical Board added cachexia, also known as wasting syndrome.³ With this addition, there are now 22 qualifying medical conditions. Individuals may petition the Board to approve a condition or disease as a qualifying medical condition.⁴ The Board establishes yearly submission periods for accepting petitions, which must be filed electronically through medicalmarijuana.ohio.gov. The Board has rejected other conditions, including autism spectrum disorder, opioid use disorder, depression, insomnia, and anxiety.

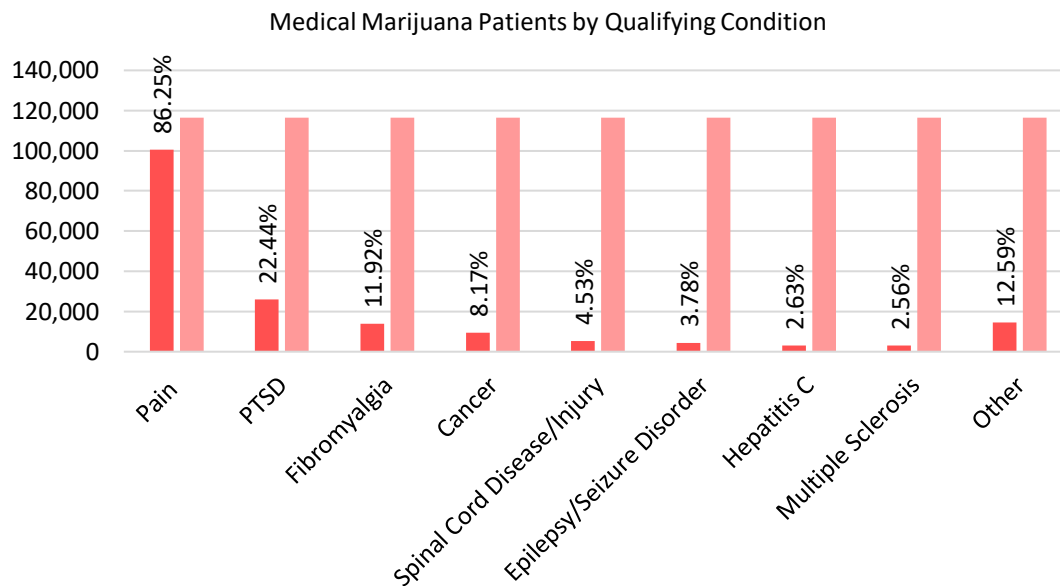
¹ R.C. 3796.01, 3796.08, and 3796.22.

² R.C. 3796.01(A)(6).

³ State Medical Board of Ohio, *Recent News, New Qualifying Condition For OMMCP*, <https://med.ohio.gov/Publications/Recent-News/new-qualifying-condition-for-mmcp>.

⁴ R.C. 4731.302.

The following chart classifies registered medical marijuana patients by the eight most common qualifying medical conditions as of the end of June 2020.⁵ Note that some patients register with multiple conditions.



Patient and Caregiver Registry

A patient seeking to use medical marijuana must apply to register with the State Board of Pharmacy. A physician who holds a certificate to recommend medical marijuana and is treating the patient must submit the application on the patient's behalf.⁶

To be eligible to register, a patient must (1) be diagnosed with a qualifying medical condition, (2) have undergone an in-person examination by a physician who is certified by the Medical Board to recommend medical marijuana, and (3) have an expectation of receiving care from the physician on an ongoing basis.⁷

If the physician has performed the in-person examination, has an expectation of providing ongoing care, has requested a patient report from the Pharmacy Board's Ohio Automated Rx Reporting System (OARRS), and has discussed with the patient the risks and benefits of treatment with marijuana, the physician may submit a recommendation to the Patient and Caregiver Registry on the patient's behalf. The registration fee is \$50 per year; however, patients who

⁵ Medical Marijuana Advisory Committee, *State Board of Pharmacy Patient and Caregiver Registry Updates*, pp. 5-6 (July 2020) [https://www.medicalmarijuana.ohio.gov/Documents/advisory-committee/Meeting%20Materials/2020-07%20\(July\)/MMAC%20Updates%20July%202020.pdf](https://www.medicalmarijuana.ohio.gov/Documents/advisory-committee/Meeting%20Materials/2020-07%20(July)/MMAC%20Updates%20July%202020.pdf).

⁶ R.C. 3796.08.

⁷ R.C. 3796.08 and 4731.30.

qualify for indigent or veteran status may qualify for a 50% fee reduction.⁸ Proceeds from patient and caregiver registration fees are deposited to the Medical Marijuana Control Program Fund (Fund 5SY0) established by the Controlling Board in August 2018 and used by the Pharmacy Board and the Department of Commerce to administer the MMCP. In FY 2020, revenues from patient and caregiver registration fees totaled \$3.97 million, an increase of \$2.03 million, or 104.4%, from FY 2019 revenues of \$1.94 million.

A registered patient receives a registration card. The patient needs this card to purchase medical marijuana from a licensed dispensary and must carry it whenever in possession of medical marijuana.⁹ In order to continue participating in the program, a patient must undergo at least one in-person visit with a certified physician every year.

As of August 31, 2020:

- 168,678 patients had received a recommendation to use medical marijuana from a physician who holds a certificate to recommend.
- 131,654 had completed the registration necessary to purchase and use medical marijuana. Of these, 9,267 had veteran status, and 9,694 had indigent status.
- 103,642 unique patients actually purchased medical marijuana.¹⁰

A study from the Ohio State University's Drug Enforcement and Policy Center reported that as of July 2020, 38% of surveyed potential patients who currently use marijuana, and more than 70% of all surveyed eligible patients, choose not to participate in Ohio's MMCP. The report cites the price of medical marijuana and fears about losing employment as the primary reasons for not participating.¹¹ According to the Department of Commerce, as of October 4, 2020, the average price of medical marijuana in Ohio is \$10.48 per gram (for plant sales) and \$44.47 per unit (for manufactured sales). This has fallen from a high of \$48 and \$100, respectively, from when initial sales were launched.

Legal forms, methods, and amounts of consumption

The MMCP limits what forms of medical marijuana a patient may purchase and what methods of consumption a patient may use. Permissible forms include:

- Oils, tinctures, capsules, or edible marijuana for oral consumption;

⁸ Quick Reference Guide: *Registering with Indigent/Veteran Status* (updated March 4, 2020), <https://www.medicalmarijuana.ohio.gov/Documents/PatientsCaregivers/Quick%20Reference%20Guide%20-%20Registering%20With%20Indigent%20Or%20Veteran%20Status.pdf>.

⁹ Ohio Administrative Code (O.A.C.) 3796:7-2-05.

¹⁰ Medical Marijuana Control Program, *Program Update: By The Numbers* (updated October 7, 2020), <https://www.medicalmarijuana.ohio.gov/Documents/ProgramUpdate/program%20update.pdf>.

¹¹ Hrdinova, Jana and Post, Stephen J. and Ridgway, Dexter, *Ohio Medical Marijuana Control Program at Two Years: Evaluating Satisfaction and Perception*, Ohio State Legal Studies Research Paper No. 568, Drug Enforcement and Policy Center (September 8, 2020), available at <https://ssrn.com/abstract=3688992> or <http://dx.doi.org/10.2139/ssrn.3688992>.

- Patches for transdermal administration or lotions, creams, or ointments for topical application; and
- Metered oil, solid preparation, or plant material for vaporization.

Patients are not permitted to smoke medical marijuana or burn the plant material. Further, patients may not vape marijuana resin or other extracts.¹² Individuals may petition the Board of Pharmacy to approve additional forms or methods of using medical marijuana at <https://www.medicalmarijuana.ohio.gov/AddFormMethod>.¹³

Ohio law restricts a patient's possession of medical marijuana to a 90-day supply.¹⁴ In April 2020, the Pharmacy Board simplified the way that a patient's supply is calculated by dividing it into two 45-day fill periods based on the patient's current, active recommendation.¹⁵

Impact on employment

An employer has no obligation to permit or accommodate an individual's use, possession, or distribution of medical marijuana. An employer may fire, refuse to hire, discipline, or otherwise take an adverse employment action against an individual because of that conduct, and the individual cannot sue the employer for taking any of those actions as they relate to medical marijuana. The MMCP also does not prohibit an employer from establishing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy.¹⁶

An individual who is fired for using medical marijuana in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal policy is considered to have been fired for just cause and is not eligible for unemployment benefits.¹⁷ An individual or the individual's dependent is ineligible for compensation and benefits under Workers' Compensation if the proximate cause of the workplace injury, occupational disease, or death was the individual being under the influence of marijuana, regardless of whether the individual was using marijuana under a doctor's care.¹⁸

Caregivers

Registered caregivers may purchase, possess, and administer a patient's medical marijuana. Much like a patient, a caregiver must be entered into the Patient and Caregiver Registry by a certified physician (but see **Note on COVID-19** below). The annual registration

¹² R.C. 3796.05 and O.A.C. 3796:8-2.

¹³ R.C. 3796.061; Forms and Methods, *Ohio Medical Marijuana Control Program*, <https://www.medicalmarijuana.ohio.gov/formsmethods>.

¹⁴ R.C. 3796.22.

¹⁵ State Board of Pharmacy, *90-Day Supply Resolution and Guidance* (April 15, 2020) <https://www.medicalmarijuana.ohio.gov/Documents/90DaySupply/Documents/90-Day%20Supply%20Resolution%20and%20Guidance.pdf>.

¹⁶ R.C. 3796.28(A).

¹⁷ R.C. 3796.28(B) and 4141.29.

¹⁸ R.C. 4123.54.

fee for caregivers is \$25. The caregiver's registration must be linked to the registered patient.¹⁹ In general, an individual may not serve as a caregiver for more than two patients.²⁰ As of August 31, 2020, there are 14,775 registered caregivers in Ohio.

Physician certificate to recommend

Only a physician who is certified by the Medical Board may recommend the use of medical marijuana. A physician seeking this certification must apply to the Board. To qualify for a certificate to recommend, a physician must meet several requirements that include, in part, having been granted access to OARRS, having an active registration with the U.S. Drug Enforcement Administration, and not having any disciplinary actions taken related to inappropriate prescribing, dispensing, administering, supplying, or selling a controlled substance or dangerous drug. Additionally, to renew the certificate, a physician must complete at least two hours of continuing medical education in diagnosing qualifying medical conditions and treating them with medical marijuana.

A physician with a certificate to recommend is prohibited from having an ownership interest in or other compensation agreement with any licensed medical marijuana entity.²¹ As of September 10, 2020, the Medical Board has issued 670 certificates to recommend.²²

Medical marijuana cultivators

Medical marijuana cultivators grow marijuana for the MMCP. The Department of Commerce licenses cultivators. Cultivators are divided into two categories, based on the size of the growing operation.²³ As of October 7, 2020, the Department has issued 19 Level I provisional licenses, 11 of which have received a certificate of operation (full licensure), and 14 Level II provisional licenses, 12 of which have received certificates of operation.²⁴

Cultivator licensing fees are as follows:

	Level I	Level II
Application fee	\$20,000	\$2,000
Initial license fee	\$180,000	\$18,000
Annual license renewal fee	\$200,000	\$20,000

¹⁹ R.C. 3796.08; Frequently Asked Questions, *Ohio Medical Marijuana Control Program*, <https://www.medicalmarijuana.ohio.gov/faqs>.

²⁰ O.A.C. 3796:7-2-02.

²¹ O.A.C. 4731-32-02.

²² Program Update: By The Numbers, see note 10.

²³ O.A.C. 3796:2-1-01.

²⁴ Program Update: By The Numbers, see note 10.

Medical marijuana cultivators must comply with numerous regulations, including adherence to a quality assurance plan established by the cultivator, proper disposal of medical marijuana waste, ensuring proper storage of medical marijuana and facility security, and keeping proper records regarding the medical marijuana cultivated at the facility.²⁵ A license holder is prohibited from cultivating medical marijuana for personal, family, or household use.²⁶

Medical marijuana processors

Medical marijuana processors manufacture medical marijuana products that are distributed to medical marijuana dispensaries. There are three different types of processors: standalone processors, vertically integrated facilities, and plant-only processors.²⁷ As of October 7, 2020, the Department has issued 48 provisional licenses. Of those, 23 have received certificates of operation.²⁸ The processor application fee is \$10,000, and the certificate of operation fee is \$90,000. The annual license renewal fee is \$100,000.

Like cultivators, processors must adhere to the Department's rules regarding adherence to a quality assurance plan established by the processor, proper disposal of medical marijuana waste, ensuring proper storage of medical marijuana and facility security, and keeping proper records regarding the medical marijuana products processed at the facility.²⁹

Testing laboratories

Testing laboratories include both universities and private laboratories licensed by the Department. The laboratory application fee is \$2,000, and the certificate of operation fee is \$18,000, with an annual renewal fee of \$20,000. Currently, the Department has issued six provisional licenses, and three of those have received certificates of operation.³⁰

Medical marijuana dispensaries

Licensing

Only dispensaries licensed by the Pharmacy Board may sell medical marijuana.³¹ Following the creation of the MMCP, the Board's rules specified that, until September 8, 2018, no more than 60 dispensaries could receive provisional licenses.³² Of these, 57 provisional licenses have been issued. Of the 57, 52 have received a certificate of operation as of October 7, 2020.³³ Should the

²⁵ O.A.C. 3796:2-2-01 to 3796:2-2-08.

²⁶ R.C. 3796.18(B).

²⁷ Ohio Medical Marijuana Control Program, *Processors*, <https://www.medicalmarijuana.ohio.gov/processing>.

²⁸ Program Update: By The Numbers, see note 10.

²⁹ O.A.C. 3796:3-2-01 to 3796:3-2-08.

³⁰ Program Update: By The Numbers, see note 10.

³¹ R.C. 3796.10.

³² O.A.C. 3796:6-2-05.

³³ Program Update: By The Numbers, see note 10.

Board ever determine that additional licensed dispensaries are needed, it may issue a request for additional applications.³⁴ The application fee is \$5,000 and each dispensary that receives a license must pay a \$70,000 biennial renewal fee.³⁵

For purposes of licensing dispensaries, the Board has divided the state into four regions, which are further divided into districts within each region. It has established a maximum number of dispensaries that may operate in each region.³⁶

Region	Maximum Number of Dispensaries
Northeast	18
Northwest	10
Southeast	17
Southwest	15

There are several restrictions for where a medical marijuana dispensary may be located. Ohio law prohibits any dispensary from being located within 500 feet of a school, church, public library, public playground, or public park.³⁷ Additionally, a municipal corporation or a board of township trustees may prohibit or limit the number of dispensaries located within the municipal corporation or the township's unincorporated territory.³⁸ While not required by statute, the Pharmacy Board also licenses three categories of dispensary employees: associated key employees, key employees, and support employees.³⁹

Sales

As of October 3, 2020, 25,637 pounds of plant material and 1,724,396 units of manufactured products had been sold at Ohio's medical marijuana dispensaries. These sales have come from 1,592,096 unique transactions totaling \$212.3 million in sales.⁴⁰

Note on COVID-19

The Medical Board and Pharmacy Board have adopted several policies related to medical marijuana use during the COVID-19 pandemic. On March 18, 2020, the Medical Board suspended the enforcement of telemedicine regulations for licensees. This allows physicians to use

³⁴ O.A.C. 3796:6-2-01.

³⁵ O.A.C. 3796:6-5-01.

³⁶ State Board of Pharmacy, *Dispensary Districts*, <https://medicalmarijuana.ohio.gov/Documents/Dispensaries/Dispensary%20Districts/Medical%20Marijuana%20Dispensary%20Districts.pdf>.

³⁷ R.C. 3796.30.

³⁸ R.C. 3796.29.

³⁹ O.A.C. 3796:6-2-07 to 3796:6-2-08.

⁴⁰ Program Update: By The Numbers, see note 10.

telemedicine in place of in-person visits to make recommendations and renewals for medical marijuana.⁴¹ To reduce exposure for high-risk patients who may be unable to visit a dispensary to purchase their medical marijuana, the Pharmacy Board issued guidance for caregiver registration that authorizes a patient to have up to three caregivers, instead of one, and permits caregivers to be added by submitting an application directly to the Board, rather than through a physician.⁴² The Pharmacy Board also authorized curbside pickup and permitted telephone and online orders.⁴³

⁴¹ State Medical Board of Ohio, *Telemedicine Guidance* (March 18, 2020) https://www.med.ohio.gov/Portals/0/Resources/COVID-19/3_18%20Telemed%20Guidance%20Updated%20March%2018.pdf?ver=2020-03-18-215407-857.

⁴² State Board of Pharmacy, *Temporary Expansion of Caregiver Registration* (March 23, 2020) <https://www.medicalmarijuana.ohio.gov/Documents/CoronaVirus/Temporary%20Expansion%20of%20Caregiver%20Registration.pdf>.

⁴³ State Board of Pharmacy, *Sales to Patients and Caregivers Outside the Dispensary Department* (April 3, 2020) <https://www.medicalmarijuana.ohio.gov/Documents/CoronaVirus/Sales%20to%20Patients%20and%20Caregivers%20Outside%20the%20Dispensary%20Department.pdf>.