

#3290

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PA Independent Regulatory Review Commission (PA IRRC)  
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Independent Regulatory  
Review Commission

Re: IRRC #3290. Final Rulemaking on Regulation #10—219: Medical Marijuana

Dear Members of IRRC,

Thank you for considering my comments regarding the final-form regulations. The following statements are my own and not of my employer.

I appreciate The Department for clarifying the 1:1 ratio of one, distinct medical professional per dispensary in the preamble dated September 16, 2022.

Since my last comment on July 19, 2022 regarding *Section 1161a.25(b) Licensed Medical Professionals At Facility*, more concerns have come to my attention which require written clarification from IRRC before the final rulemaking on October 20, 2022.

**§ 1161a.25. Licensed medical professionals at facility.**

**Subsection (a)** Except as provided in subsection (b), a dispensary shall ensure that a physician or a pharmacist is [present at the facility] available, either in person or by synchronous interaction, to verify patient certifications and to consult with patients and caregivers at all times during the hours the facility is open to dispense or to offer to dispense medical marijuana products to patients and caregivers.

**Comment:**

- Please consider keeping [present at the facility] in the final-form regulations. This is very important to maintain patient safety so patients have access to a medical professional on-site at all times.
- To maintain consistency through out the final rulemaking, would you consider using the term medical professional to address a physician, pharmacist, certified registered nurse practitioner, and physician assistant?

**Subsection (b)** Furthermore, no less than one dedicated medical professional must be present either, physically or by synchronous interaction, for each distinct dispensary facility location and shall not cover more than one dispensary facility location regardless of whether in-person or synchronous interaction is used.

**Comment:**

- Please consider adding the underlined words to the above sentence to read:
  - Furthermore, no less than one dedicated medical professional must be present either, physically at the dispensary facility or by synchronous interaction, for each distinct dispensary facility location and shall not cover more than one dispensary facility location simultaneously regardless of whether in-person or synchronous interaction is used.
- It is not clarified whether this should occur at all times during the hours the facility is open in subsection (b) even though the designation appears in subsection (a).
- Given the potential for misinterpretation by many growers/processors and dispensary owners/operators, please consider inserting at all times during the hours the facility is open in subsection (b) as well.

**§ 1161a.23. Dispensing medical marijuana products.**

**Subsection (a)** A dispensary may only dispense medical marijuana products to a patient or caregiver who presents a valid identification card to an employee [at the facility] who is authorized to dispense medical marijuana products at the facility. The valid identification card must be presented in-person at the facility or from within a vehicle on the dispensary's site. [Please note the previous sentence writes in-person at the facility].

**Subsection (b)** Prior to dispensing medical marijuana products to a patient or caregiver the [dispensary] dispensary's medical professional shall: (1) Verify the validity of the patient or caregiver identification card using the electronic tracking system.

**Comment:**

- A medical professional is not required to perform this duty.
- Subsection (a) identifies an employee; Subsection (b) identifies a medical professional.
- Subsection (a):
  - Please consider keeping the wording [at the facility] in the first sentence as this may be misinterpreted that the employee can work remotely.
- To check if a patient or caregiver has a valid identification card, it must be physically scanned by a dispensary employee in Admissions.
- Please consider updating the wording under **Subsection (b)(1)** to:
  - (b) Prior to dispensing medical marijuana products to a patient or caregiver the dispensary shall (1) Verify the validity of the patient or caregiver identification card using the electronic tracking system by a dispensary employee at the facility.

**Subsection (b)(2)** Review the information on the patient's most recent certification by using the electronic tracking system to access the Department's database.

- We do not use the electronic tracking system to access The Department's database; we use Oracle; they are two separate entities.
- Medical professionals use The Department's database to check patient and caregiver certifications.
- Non-medical professionals located in Admissions use the electronic tracking system via MJ Freeway to scan patient and caregiver identification cards for validation.
- Please consider removing the wording the electronic tracking system to access in Subsection (b)(2) to now read:
  - Review the information on the patient's most recent certification by using The Department's database.

### **What is the Electronic Tracking System?**

In April 2017, Health Secretary Karen Murphy announced that MJ Freeway would be the seed-to-sale electronic tracking system (ETS).

<https://www.media.pa.gov/Pages/Health-Details.aspx?newsid=422>

You can also find it in Section 1141a.21, page 107 of the preamble.

#### **Comment:**

- The ETS allows dispensary staff to check patients and caregivers in at the Admissions window, before they can enter the dispensary, by physically scanning their state-issued medical marijuana card. Scanning the identification cards will determine whether they are valid or invalid. An invalid card is a hard stop at Admissions and the patient or caregiver cannot proceed into the dispensary.
- A medical professional is not required to perform this duty.

### **§ 1181a.23. Medical professionals generally.**

**Subsection (c)** A medical professional shall notify by telephone the practitioner listed on a patient certification of a patient's adverse reaction to medical marijuana products dispensed by that dispensary immediately upon becoming aware of the reaction.

#### **Comment:**

- It is very difficult to speak to a physician via telephone. Oftentimes, we have to leave a voicemail or a message with the receptionist and the turn-a-round time can be days, weeks, or no response at all. This is not favorable to patient safety.
- Please consider changing the wording to:

- A medical professional shall notify by telephone **or email** the practitioner listed on a patient certification of a patient's adverse reaction to medical marijuana products dispensed by that dispensary immediately upon becoming aware of the reaction.

**§ 1181a.22. Practitioners generally.**

**Subsection(c)** A practitioner shall notify a dispensary by telephone of a patient's adverse reaction to medical marijuana products dispensed by that dispensary immediately upon becoming aware of the reaction.

**Comment:**

- Some dispensaries do not have a landline on-site for patients to call with help or questions; they may utilize an out-of-state call center. These call centers will call the dispensary manager to relay the message and leave a message if no one answers. Depending on how busy the dispensary and the manager are, the turn-around times can be days. This is not favorable to patient safety.
- Practitioners should not be notifying a dispensary; they should be notifying a medical professional.
- Please consider changing the wording to:
  - A practitioner shall notify a **dispensary medical professional** by telephone **or email** of a patient's adverse reaction to medical marijuana products dispensed by that dispensary immediately upon becoming aware of the reaction.

Sincerely,

Tina Brunetti, RPh, MS Gerontology