

(Please note that the following is for general information purposes only and should not be construed as legal advice. Please consult with an attorney licensed to practice law in your jurisdiction for specific questions regarding your own individual circumstances.)

I am a nurse and a medical cannabis patient. Am I at risk of losing my license?

One of the first things that you learn in law school, on your very first day, is that the universal answer to just about any question of law is: “It depends”. And in keeping with tradition, that’s what I’m going with here. It depends. Naturally, this in turn leads to the next question: “Well then, what does it depend on?”. Getting to the bottom of this question requires a bit of discussion.

Before we dive further into our answer, it’s important to keep in mind the interplay between state and federal law. As of March 1st, 2020, thirty-three states have established medical cannabis programs, eleven of which have also legalized cannabis for adult use. Despite the groundswell of support for legalization at the state level, cannabis containing more than .3% THC remains a Schedule I controlled substance under federal law. This means that technically, every medical cannabis patient in the country, every dispensary, and yes even those of us who provide ancillary services to the industry, are all acting in direct violation of the federal Controlled Substances Act. Thankfully, the days of federal agents raiding medical dispensaries and arresting patients are, for the most part, history. For the past several years, Congress has included a rider to its annual budget which effectively prevents federal interference with state-sanctioned medical cannabis programs. When it comes to the issue of professional licensing and employment, however, cannabis’s federal status as an illegal substance plays an important role in the analysis.

Getting back to our question, the first place to look at are the laws of the state that we’re in. If you happen to live and work in one of the seventeen states which have not established a medical program, you wouldn’t be a medical cannabis patient, and using cannabis will most likely cost you your professional license and could even result in criminal prosecution. For those of you working in a state other than the one you live in, remember that even if you are a registered patient at home, your medical card is limited to the state in which it was issued. While some states are beginning to explore reciprocity, most do not recognize out-of-state patients, and those jurisdictions which have not legalized for medical use certainly don’t care about your medical

card. If you are planning on working in a state other than your own, make sure you take the time to check the local laws. If you're going to a state without a medical program, or without reciprocity, leave your cannabis at home or you'll be taking a big risk.

For those of you who are legally registered medical patients, the best bet is to check with your State Board of Nursing and find out what the most current policy is regarding the medical use of cannabis by licensees. As cannabis legalization and policy reform has swept across the country, professions spanning the spectrum have been confronted with the question of what to do about cannabis use amongst their ranks. Given the state-specific nature of legalization, it is no surprise that cannabis policies will vary from state to state, in some cases rather dramatically. Thankfully for the nursing profession, it appears that many individual state nursing boards are taking their cues from the National Council of State Boards of Nursing. This helps to create a consistent approach amongst jurisdictions and establishes a clear set of guidelines for licensees.¹

In its 2018 presentation, “Medical Marijuana and Nursing Practice: Current Legislation, Scientific Literature Review, and Nursing Implications”, the National Council of State Boards of Nursing dedicated a portion of the presentation to address complaints regarding licensees and cannabis use. The NCSBN has taken a relatively progressive approach to the issue, stating that: ***“Absent impairment or other indicators of a SUD, principles of public protection may not be served by a per se violation for a positive test for THC which results in a BON action or request for a substance use evaluation/fitness to practice evaluation”***². In plain language, the organization has adopted the position that an allegation of cannabis use, in and of itself, should not automatically trigger an adverse action. Rather, the totality of circumstances surrounding the allegation must be taken into consideration. The primary concern is always going to be whether the nurse was impaired while on duty. Working under the influence of cannabis, or any intoxicating substance, is a surefire way to find yourself in hot water, regardless of your status as a medical patient. It is never ok to medicate while on duty and doing so could result in both civil and criminal liability, as well as the loss of your professional licensure. When cannabis use occurs outside of work, the NCSBN has taken the position that simply testing positive for THC,

¹ The positions and opinions referred to here are current as of the time of writing, but cannabis policy is constantly in flux. You should be regularly checking with the State Board of Nursing in the jurisdiction you work in to see if their cannabis policies have been updated or amended.

² National Council of State Boards of Nursing, “Medical Marijuana and Nursing Practice: Current Legislation, Scientific Literature Review, and Nursing Implications”, Kent Gowen et al., 2018, https://www.ncsbn.org/2018DCM_Medical-Marijuana.pdf

whether it is for medicinal or recreational use, should not be *per se* grounds for disciplinary action. Many state boards have begun to follow suit and have adopted the same or similar policies. If the nurse is not alleged to have been impaired while on duty, and there is no indication of a more serious substance abuse disorder, cannabis use in and of itself alone is insufficient grounds for disciplinary action against a licensee. But that's not quite the end of the story.

While state regulatory boards seem to be heading in the right direction on cannabis policy, the same does not necessarily hold true for the various institutions and organizations that employ healthcare workers. Hospitals are notorious for employee drug testing and strict enforcement of zero-tolerance employment policies. Even though you may not lose your nursing license for being a medical cannabis patient, you may very well lose your job. Remember, as a federally illegal substance, cannabis use is not protected by the ADA or any other federal patient protections. Similarly, federal case law dealing with cannabis use in the workplace has not been favorable to patients. The courts have consistently ruled that employers have the right to implement "drug-free" workplace policies and that violating these policies, even as a medical patient, is valid grounds for termination. In the past year, several states have begun to introduce legislation which gives medical cannabis users some workplace protections, but these types of laws are still few and far between. It is important to communicate with your employer and to know the internal workplace policies regarding cannabis use. If your employer has a blanket prohibition on cannabis use, even by medical patients, it might be an opportunity to try and educate them as to why the policy should be revisited. But if you choose to consume in violation of workplace policy, and as a result are terminated, your status as a medical patient will not give you much of a legal leg to stand on.

In conclusion, the best advice I can give about being both a healthcare professional and a medical cannabis patient is to use common sense. Check with your local State Board to see what current policy is, have an open and honest discussion with your employer about the therapeutic use of cannabis, and be responsible about your consumption. One day, the world will recognize all the benefits that cannabis has to offer. Until then, the best we can do is play by the rules and take every opportunity that presents itself to educate those willing to listen.