

New Mexico Medical Board

New Mexico Medical Board: Policy on Cannabis Use by Licensees

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Approved by: New Mexico Medical Board

Background Information

The New Mexico Medical Board often receives inquiries from physicians and other licensees regarding the personal use of cannabis by licensees under our jurisdiction for medicinal or recreational purposes. While our actions are based on the Medical Practice and Impaired Health Care Provider Acts, and relevant regulations, the following reflects the Board's policy on this matter and other considerations our licenses should contemplate.

Cannabis use, both medical and recreational, has been legalized under New Mexico state law. However, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act. Healthcare professionals, as licensees of the New Mexico Medical Board (NMMB), are held to a high standard of professional and ethical conduct, including considerations of clinical safety, professional judgment, and public trust. The use of cannabis by a physician, physician assistant, or other licensee may raise concerns regarding impairment, patient safety, and malpractice liability. The NMMB recognizes the complexity of evolving state and federal regulations but affirms its responsibility to protect the public and uphold the integrity of the medical profession.

The law prohibits licensees from using drugs of any kind, including cannabis, or alcohol to the extent or in such a manner as to be impaired while practicing medicine, or use that is habitual or excessive on or off the job, whether they are using cannabis for medical purposes or for recreational use. The Impaired Healthcare Provider Care Act authorizes the Board to take action against a NMMB licensee who is impaired, and the Medical Practice Act authorizes the Board to take action for unprofessional conduct. The Board will take appropriate action against any NMMB licensee who has violated the Medical Practice Act.

Purpose

This policy provides guidance to licensees regarding the personal use of cannabis (marijuana), including medical and recreational use, and outlines the Board's expectations and disciplinary approach. It is intended to promote patient safety, uphold professional

standards, and ensure compliance with federal and state law, including the New Mexico Medical Practice Act.

Scope

This policy applies to all licensees of the New Mexico Medical Board, whether in clinical practice, training, or administrative roles. It addresses:

- Cannabis use by licensees while actively licensed.
- Use while enrolled in a substance monitoring program.
- Positive drug screening results, regardless of impairment.
- Interactions with employer, federal, and immigration authorities.

Policy Guidelines

1. Prohibition During Monitoring Programs

Licensees enrolled in the New Mexico Health Professional Wellness Program (NMHPWP) may not use cannabis in any form under any circumstances. Use during monitoring will be considered non-compliance and may result in immediate referral for disciplinary action or petition for interim suspension.

2. Zero-Tolerance for Impairment

Any use that results in impairment or diminishes the licensee's ability to safely and effectively practice medicine constitutes unprofessional or dishonorable conduct under the New Mexico Medical Practice Act, §61-6-15(D).

3. Drug Screening and Malpractice Risk

A positive drug test for marijuana, even in the absence of impairment or a state-issued medical cannabis card, may complicate legal defense in malpractice or credentialing matters. Licensees are advised to consult risk management and maintain documentation regarding any cannabis-related treat.

4. Employment and Institutional Policies

Licensees must comply with the cannabis policies of their employer, hospital, or training institution, including rules governing safety-sensitive positions or pre-employment testing. The Board will consider non-compliance with such policies as potential evidence of unprofessional conduct if patient safety is compromised.

5. Federal and Immigration Considerations

Federal employees and non-citizens working under U.S. immigration or visa restrictions may be prohibited from using cannabis. Licensees should seek legal counsel to avoid jeopardizing employment or immigration status.

Ethical and Legal Considerations

- Practicing under the influence of cannabis is inconsistent with the American Medical Association Code of Ethics and may violate §61-6-15 of the New Mexico Medical Practice Act regarding impairment, incompetence, or dishonorable conduct.
- The Impaired Health Care Provider Act (NMSA 1978, § 61-7-1 to 61-7-12) authorizes the Board to refer licensees suspected of substance use disorders to an approved monitoring program such as the New Mexico Health Professional Wellness Program (NMHPWP).

Education Requirements

Licensees are encouraged to complete continuing medical education (CME) on:

- Impairment and safety-sensitive roles in healthcare.
- State and federal regulatory differences regarding cannabis use.

The Board may require specific CME courses as a condition of remediation, probation, or reinstatement following disciplinary action related to cannabis use.

Enforcement and Disciplinary Action

- If a licensee is convicted for a drug-related crime, including for cannabis, be it a misdemeanor or felony, the Board must adhere to its mission of patient protection and treat the conviction as it does any crime committed by licensees. The Board will investigate the circumstances surrounding the conviction, assess whether the licensee has a substance or alcohol use disorder and take appropriate action to protect the public. Moreover, the Board is alerted when a licensee is arrested, including for driving under the influence, and the Board investigates the circumstances leading to the arrest and take similar appropriate action for public protection.

- The Board investigates all complaints it receives regarding a licensee who may be impaired (including from cannabis use – medical or recreational). The Board must determine if a physician is impaired, which may require an evaluation pursuant to the Impaired Health Care Provider Act. If it is determined through the investigative process that it would be dangerous to allow the licensee to continue practicing, the Board can also petition for an Interim Suspension Order preventing the licensee from practicing medicine pending resolution of the disciplinary matter.

- A positive drug screen for cannabis may prompt investigation under §61-6-15.
- The Board may seek an Interim Suspension Order if cannabis use is associated with evidence of impairment or non-compliance with the NMHPWP.
- Possible disciplinary actions include reprimand, probation, suspension, revocation, or denial of licensure.

Each case will be assessed individually, considering:

- Whether use was recreational or medically authorized.
- Evidence of impairment.
- Compliance with employment and institutional policies.
- The licensee's candor, insight, and cooperation with Board proceedings.

References

1. New Mexico Medical Practice Act, NMSA 1978, §§ 61-6-1 to 61-6-35.
 - §61-6-15. Grounds for refusal, suspension or revocation of license.
 - §61-6-15(D): "The board may refuse to license or may suspend or revoke the license... for being unfit to practice due to habitual or excessive use of drugs, intoxicants or controlled substances."
2. New Mexico Controlled Substances Act, NMSA 1978, § 30-31-1 et seq.
3. Federal Controlled Substances Act, 21 U.S.C. § 801 et seq.
4. American Medical Association Code of Medical Ethics, Opinion 9.3.1 – "Physician Health and Wellness."
5. New Mexico Health Professional Wellness Program: Program guidance and participant contracts.
6. FDA Approved Cannabis-Related Drugs: U.S. Food & Drug Administration, <https://www.fda.gov>.
7. Impaired Health Care Provider Act, NMSA 1978, §§ 61-7-1 to 61-7-12.
 - §61-7-5(A): "A health care provider who self-reports impairment to the board or is referred to the board... may be offered an alternative to disciplinary action by entering into a nondisciplinary monitoring agreement."
 - §61-7-6: Confidentiality and cooperation with monitoring programs.

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