

# Practitioner Rights and Protections

## Who Is Eligible to Certify Patients?

Practitioners who are eligible to certify patients for medical cannabis include:

- **Any practitioner who is licensed, registered or certified by New York State to prescribe controlled substances to humans in New York State.** Currently, physicians, nurse practitioners, physicians' assistants, midwives, podiatrists, and dentists can be certifying practitioners.
- Eligible practitioners who have completed at minimum an Office-approved 2-hour educational course on cannabis. For a list of approved courses visit [cannabis.ny.gov/practitioners](https://cannabis.ny.gov/practitioners)

## Practitioner's Right to Certify Patients

- You have the right and responsibility to confidentially explore your patient's health care options
- Your ability to discuss and make medical cannabis recommendations to your patients is considered protected speech under the First Amendment
- You are federally protected to discuss cannabis with your patients
- You are protected in New York State to discuss cannabis' medical benefits and effects with patients without fear of arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau

Patients may be curious about exploring cannabis for therapeutic use. As a practitioner, you have the right and the responsibility to confidentially explore your patient's health care options. Article 3 of New York State's Cannabis Law provides the legislative framework for the use of medical cannabis.

**While a practitioner cannot "prescribe" medical cannabis to their patients, they can discuss the potential benefits of medical cannabis and make "recommendations" if appropriate for a patient's condition.**

Under the Controlled Substances Act, cannabis is a Schedule I substance and therefore may not be prescribed. However, the ability for a licensed practitioner to discuss and make medical cannabis recommendations to their patients is considered protected speech under the First Amendment.

A 2002 landmark case *Conant vs Walters*, examined the distinction between a prescription and a recommendation and upheld a practitioner's right to recommend medical cannabis. With a recommendation, a practitioner is not ordering a patient to take medical cannabis, instead they are discussing the potential risks and benefits with their patient. This is protected as it is essential communication between a practitioner and a patient.

**Recently, Federal and New York State governments have taken additional action to protect practitioners' right to discuss cannabis for medical use with their patients.**

## Federal Protections

On December 2, 2022, the federal government signed into law the Medical Marijuana and Cannabidiol Research Expansion Act. This act permits physicians to discuss cannabis with their patients under federal protections.

### **The Medical Marijuana and Cannabidiol Research Expansion Act states:**

It shall not be a violation of the Controlled Substances Act (21 U.S.C. 801 et seq.) for a State-licensed physician to discuss--

- (1) the currently known potential harms and benefits of marijuana derivatives, including cannabidiol, as a treatment with the legal guardian of the patient of the physician if the patient is a child; or
- (2) the currently known potential harms and benefits of marijuana and marijuana derivatives, including cannabidiol, as a treatment with the patient or the legal guardian of the patient of the physician if the patient is a legal adult.

**This affords licensed physicians the right to discuss cannabis openly with their patients without fear of prosecution by the federal government.**

## New York State Protections

Article 3 of New York State Cannabis Law explicitly protects the rights of practitioners to discuss cannabis' medical benefits and effects with patients.

Section 42 states that practitioners lawfully participating in the Medical Cannabis Program cannot - "be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau."

## The Right to Clinical Discretion

Certifying practitioners have the right to certify patients for any condition they deem clinically appropriate. It is up to the clinical discretion of the certifying practitioner to make the determination if their patient would benefit from medical cannabis treatment.

## The Right to Privacy

Certifying practitioners have the right to privacy. A certifying practitioner is not required to publicly disclose their status as a certifying practitioner. Practitioners who do wish to be included on the public directory of certifying practitioners must provide explicit consent.



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