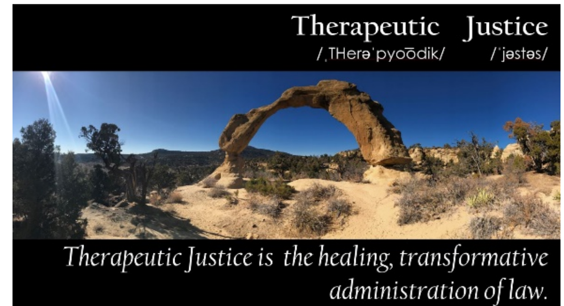
New Mexico Treatment Courts
Medical Cannabis Reference Sheet



Two essential principles will demand our attention throughout this document: the primacy of the individual participant and the duty among professionals to ensure responsible care coordination.

Responding to medical cannabis use in a treatment court program is a complex matter. Although there are no simple and standardized solutions to the questions that arise about medical cannabis use, complicated decisions are nothing new to treatment courts. In fact, challenging, coherent, compassionate, and critical decision-making describes the typical nature of treatment court functioning.

The Administrative Office of the Courts Department for Therapeutic Justice provides this information sheet as a reference for both treatment court programs and others who are interested in appropriately guiding participants toward a healthy life of recovery and away from the debilitating effects of substance use and mental health disorders. This document contemplates certain legal, clinical, and other professional responsibilities while recognizing there are significant inherent related ethical obligations. The common focus, after all, of both treatment courts and the New Mexico medical cannabis program, is to provide quality care for individuals with identified needs. The reference sheet contemplates how treatment courts, with an emphasis on the needs of their individual participants and the advice of licensed professionals, effect their duty of care.

This document is not legal advice; rather it provides principles and information for consideration as programs navigate a developing realm of medical cannabis use within treatment court programs serving high risk and need individuals.

Medical Cannabis Presents Unique Considerations for Treatment Courts

- Research about the efficacy of cannabis for medical purposes is growing, but remains limited. The full spectrum of benefits and potential adverse consequences is unknown. A recent (2020) fact sheet produced by Harvard Medical School states, "If you enter the world of medical cannabis, you'll hear and read a lot of information (and misinformation) about the scientific evidence. It helps to maintain a healthy skepticism and try to access multiple sources of information."[1] Though somewhat scarce, especially in the United States, research does exist. In fact, the January 15, 2018 Harvard Health Blog (also from Harvard Medical School) features a contribution from Peter Grinspoon, MD. In his post, Dr. Grinspoon writes, "The most common use for medical marijuana in the United States is for pain control. While marijuana isn't strong enough for severe pain (for example, post-surgical pain or a broken bone), it is quite effective for the chronic pain that plagues millions of Americans, especially as they age. Part of its allure is that it is clearly safer than opiates (it is impossible to overdose on and far less addictive) and it can take the place of NSAIDs such as Advil or Aleve, if people can't take them due to problems with their kidneys or ulcers or GERD."[2] The blog continues with Grinspoon's list of other potential uses and then he concludes the section stating, "As with all remedies, claims of effectiveness should be critically evaluated and treated with caution."
- Both anecdotal and scientific evidence, to varying degrees, have demonstrated efficacy for some patients in some situations who are using cannabis to treat medical conditions.
- Although the U.S. Food and Drug Administration recognizes there is "…an increasing interest in the potential utility of cannabis for a variety of medical conditions, as well as research on the potential adverse health effects

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[1] Harvard Health Publishing (2020). *Medical Marijuana: Facts about cannabis, THC, and CBD.* Purchased at https://www.health.harvard.edu

[2] https://www.health.harvard.edu/blog/medical-marijuana-2018011513085

from the use of cannabis… the FDA has not approved a marketing application for the treatment of any disease or condition."[3] There are, however, approved drug products available by prescription.

- Cannabis, whether appropriated for medicinal use or legalized for adult use by state statute, *currently* remains a Class 1 substance and a violation of federal law.
- Medical cannabis is legal in New Mexico. "New Mexico became the 12th state to allow medical cannabis with the Lynn and Erin Compassionate Use Act in 2007 (Senate Bill 523) … New Mexico's law was updated in June 2019 (Senate Bill 406)."[4] The SB406 text may be found here: https://www.nmlegis.gov/Sessions/19%20Regular/final/SB0406.pdf
- The Substance Abuse and Mental Health Services Administration (SAMHSA) *currently* has a strong position on cannabis use, banning grantees from using funds if individuals served by those funds are using cannabis [even Substance Abuse Prevention and Treatment (SABG) and State Opioid Response (SOR) grantees].
- The American Society for Addiction Medicine (ASAM) Board of Directors adopted a *Public Policy Statement on Cannabis*[5] on October 10, 2020. This comprehensive, thirteen-page document clearly lays out the current issues confronting the use of cannabis in the realm of addiction medicine and provides recommendations to move the conversation forward. Some of the key recommendations related to medical cannabis and relative to treatment court decisions in New Mexico include:
    - "Healthcare professionals who recommend non-FDA-approved cannabis products under the authority of state-level medical cannabis programs should be required to complete specific training with an emphasis on risk mitigation and the prevention, diagnosis, and management of cannabis use disorder and other substance use disorders. Such training should be evidence-based and be informed by high standards of medical professionalism."
    - "Healthcare professionals who recommend or write permits for non-FDA approved cannabis should do so only within the context of a *bone fide* patient-clinician relationship that includes appropriate patient evaluation, creation of a medical record and follow-up visits to assess the results of use and amend the treatment plan as needed. The same amount of caution exercised when any other controlled substance is prescribed should be applied when cannabis is recommended by a healthcare professional for a medical use. Clinicians should be prepared to discontinue treatment with cannabis if it is not effective or causes harm."
    - "Healthcare professionals should only recommend non-FDA-approved cannabis if there is evidence that the potential benefits outweigh the potential harms. Healthcare professionals should avoid recommending cannabis to pregnant persons, and should recommend cannabis with great caution, if at all, to those with substance use disorders or psychiatric disorders, or to children and adolescents. Healthcare professionals should screen all patients for cannabis and other substance use disorders and refer to treatment as appropriate before recommending cannabis to be used for medical purposes."
    - "Healthcare professionals should not recommend cannabis use for the treatment of OUD."[6]
    - "Non-FDA-approved cannabis recommended by clinicians should be reported to Prescription Drug Monitoring Programs (PDMPs). Healthcare professionals who recommend cannabis should check the PDMP prior to making a recommendation."
- The National Association of Alcohol and Drug Abuse Counselors (NAADAC) does not currently support the use of cannabis as medicine or for recreational purposes stating,

    > "Until the body of accepted research allows the scientific community to reach an evidence-based consensus on the effects of cannabis on the human brain and body, NAADAC is unable to support legislative or voter ballot initiatives to legalize cannabis for medical or recreational use."[7]

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[3] https://www.fda.gov/news-events/public-health-focus/fda-and-cannabis-research-and-drug-approval-process

[4] https://www.nmhealth.org/publication/view/regulation/126/

[5] https://www.asam.org/docs/default-source/public-policy-statements/2020-public-policy-statement-on-cannabis.pdf

[6] Opioid Use Disorder

[7] https://www.naadac.org/position-statement-on-the-medical-and-recreational-use-of-cannabis

- The National Association of Drug Court Professionals (NADCP) Board, for reasons enumerated in a six-page document, unanimously approved a *Position Statement on Marijuana*[8] with pertinent reflections for treatment courts. Among the statements, the Board:
    - "Supports reasonable prohibitions in Drug Courts against the use of smoked or raw marijuana by participants and the imposition of suitable consequences, consistent with evidence-based practices, for positive drug tests or other evidence of illicit marijuana consumption; and
    - Recommends Drug Courts require convincing and demonstrable evidence of medical necessity presented by a competent physician with expertise in addiction psychiatry or addiction medicine before permitting the use of smoked or raw marijuana by participants for ostensibly medicinal purposes;"
- In a publication entitled, *The Facts on Marijuana*[9], the NADCP offered the following information:
    - "Individuals who possess a letter from a physician and/or a valid state-issued ID card for marijuana present a more challenging issue, but one that is probably also not insurmountable. Under such circumstances, the judge might subpoena the physician to testify or respond to written inquiries about the medical justification for the recommendation. In addition, the court may be authorized by the rules of evidence or rules of criminal procedure to engage an independent medical expert to review the case and offer a medical recommendation or opinion. Having a Board-certified addiction psychiatrist on hand to advise the drug court judge may provide probative evidence about whether marijuana use is medically necessary or indicated.
    - It remains an open question what degree of deference appellate courts are likely to give to the conclusions of a treating physician. In the absence of clear precedent, the best course of action is to develop a factual record and make a particularized decision in each case about the medical necessity for the use of marijuana and the rationale for restricting marijuana usage during the term of criminal justice supervision.
    - If judges make these decisions based on a reasonable interpretation of medical evidence presented by qualified experts, it seems unlikely that drug courts — which were specifically designed to treat seriously addicted individuals — could not restrict access to an intoxicating and addictive drug as a condition of criminal justice supervision."
- Some conditions recognized in New Mexico for medical cannabis qualification have been questioned, even cautioned, by authorities in addiction medicine. [Note: The NM DOH Medical Cannabis Program Patient Statistics report dated February 2020[10] is the source for all data on the number of individuals with specific qualifying conditions included below.]
    - Post-Traumatic Stress Disorder (PTSD). Current data show 42,504 individuals using medical cannabis in NM due to the qualifying condition of PTSD. The ASAM *Public Policy Statement on Cannabis* referenced above cautions:

        > "Although some states include mental health disorders as indications for cannabis for medical purposes, cannabis use may be particularly harmful to populations with or at risk for mental health disorders. A 2019 meta-analysis of 83 studies reported scarce evidence that cannabis or any type or formulation of medicinal cannabinoids improve depressive disorders, anxiety disorders, attention-deficit hyperactivity disorder, Tourette syndrome, post-traumatic stress disorder (PTSD), or psychosis. In 2019 the American Psychiatric Association stated that 'there is no current scientific evidence that cannabis is in any way beneficial for the treatment of any psychiatric disorder. Current evidence supports, at minimum, a strong association of cannabis use with the onset of psychiatric disorders.' Cannabis has been shown to contribute to risk factors for the onset and symptom severity of substance-induced psychosis and bipolar disorder as well as the onset of depression and anxiety disorders; there is preliminary evidence that

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[8] National Association of Drug Court Professionals (2012). *Position Statement on Marijuana.* Virginia, Alexandria.
[9] https://ndci.org/sites/default/files/nadcp/The%20Facts%20on%20Marijuana%20-%20NADCP_2.pdf
[10] https://www.nmhealth.org/publication/view/report/5648/

ongoing cannabis use in persons with a history of trauma increases the odds of developing PTSD."

    - Opioid Use Disorder (added to the list of NM qualifying conditions in June 2019). Current data show 217 individuals using medical cannabis in NM due to the qualifying condition of Opioid Use Disorder. The ASAM *Public Policy Statement on Cannabis* referenced above cautions:

      "A widely publicized study found lower opioid overdose rates in states that legalized cannabis use for medical purposes compared with other states through 2010. This led some states to include opioid use disorder (OUD) as a possible indication for cannabis used for medical purposes. However, a subsequent analysis extended through 2017 and using similar methods with additional controls found the opposite association. Studies of individuals show an association between cannabis use and increased rates of non-medical opioid use and OUD. There is no current evidence that cannabis is effective for the treatment of OUD. Further, due to its mechanism of action, cannabis would not be expected to reduce opioid overdose rates, unlike the existing FDA-approved medications for OUD. There has been a preliminary finding of an effect of CBD in reducing opioid cue-induced craving, but this requires further research to assess the clinical significance."

- To obtain a patient I.D. card, the NM Medical Cannabis Program requires a medical provider to complete a *Medical Cannabis Program Patient Enrollment Application.*[11] The application must be completed by a medical provider and indicate, among other information, the primary qualifying condition, the provider's contact information and NM Controlled Substance Number, and a one-page clinical note related to qualifying conditions. The medical provider/practitioner must certify:
    - They have conducted an appropriate examination of the qualified patient during the preceding 12 months as indicated (in-person or telemedicine).
    - The qualified patient continues to have the identified qualifying debilitating medical condition.
    - They believe the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified patient.
    - They have included a one-page copy from the patient medical record which includes the diagnosis as well as the name and contact information of the practitioner who created the medical record and have retained the full patient medical record in accordance with statutory and regulatory requirements as determined by their licensure board pertaining to medical record retention.
- The court has a duty to respect the professional opinions of medical practitioners.
- The court has a duty to fully evaluate each case presented on its individual merits.

NM Treatment Court General Information and Guiding Principles with a Focus on Medical Cannabis

1. **Treatment courts function as the compassionate and strategic braiding of criminal justice and behavioral health best practices; treatment courts exist to heal.** In the criminal justice enterprise this is often measured by reduced recidivism and the length of sober days, and perhaps quantified in other ways by the treatment community; however, the various purposes coalesce around access to opportunities for health, personal growth, wellness, and recovery.

   The Substance Abuse and Mental Health Services Administration (SAMHSA) identified a working definition for recovery associated with 10 guiding principles.[12] According to this document, recovery is "A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential." One important aspect of recovery is health, where SAMHSA concludes,

[11] https://www.nmhealth.org/publication/view/form/135/

[12] https://store.samhsa.gov/sites/default/files/d7/priv/pep12-recdef.pdf

> "Overcoming or managing one's disease(s) or symptoms—for example, abstaining from use of alcohol, illicit drugs, and non-prescribed medications if one has an addiction problem— and for everyone in recovery, making informed, healthy choices that support physical and emotional wellbeing."

2. **Treatment courts focus on rehabilitative efforts, not punitive ones.** For example, even when sanctions are considered, a multidisciplinary professional team trained in best practices is involved in this consideration, and the dialogue takes place in the context of incentives and therapeutic adjustments to effect behavior change toward recovery goals.

3. **Treatment courts focus on individual participants.** Every individual served by a NM treatment court enters the program based on the results of a validated, standardized screening instrument followed by assessment and diagnosis with an appropriately licensed treatment provider. Individual treatment plans are established with a licensed professional and specific responses to individual's behavior are at the judge's discretion based upon input from a professional multidisciplinary team.

4. **Blanket prohibitions are generally limited and eligibility predicated upon objective criteria.** Eligibility criteria are tied to legal considerations, often called offense characteristics, and participant characteristics that address issues such as age, risk/need levels, diagnoses, residency or jurisdiction requirements, etc.

5. **Participant risk and need levels are identified using validated screening instruments.** In NM, treatment courts typically use the Risk and Needs Triage (RANT), the DUI-RANT, and the Global Appraisal of Individual Needs Short Screener (GAIN-SS) as a prescreening tools for admission.

6. **Participant substance use disorder and/or mental health disorder diagnoses are predicated upon assessment by an appropriately licensed practitioner.** Practitioners must be licensed in the state of New Mexico and must be working within their level of licensure to provide services with our treatment courts.

7. **Treatment courts primarily serve high risk and moderate-to-high need participants.** Treatment court participants are specifically identified for services based on their significant propensity for continuing their criminogenic behavior (risk) and inability to stop the behaviors on their own (need).

8. **Continuity of care requires a comprehensive, multidisciplinary, and integrated approach.** To ensure the best possible care for the individual participant, a care plan must be implemented, and responses to behaviors must be determined, within the wide scope of the actions, interactions, intended effects, and potential unintended consequences of many dynamic factors. These factors, for example, include social issues like relationships and family responsibilities, legal issues like criminal history and charges, clinical issues like co-occurring disorders and/or polysubstance use, and medical issues like prescriptions and the medically indicated use of cannabis.

9. **One responsibility of the multidisciplinary team is to ensure continuity of care.** Decisions affecting very complex participant risks and needs reflect the combined insights of a team of professionals; the team approach provides unequaled perspective on the individual participant to the rest of the team and to the judge. The professional team always includes a judge, treatment provider(s), defense counsel, prosecutor, and coordinator, and will often also include a probation/compliance officer, law enforcement officer, program alumni or a peer support worker, caseworker, school representative, veterans affairs representative, veteran mentor coordinator, traditional healer, tribal community advocate, tribal participant advocate, etc. When issues arise

that threaten the continuity of services for a participant, treatment courts collaborate with other service providers to ensure the most favorable outcomes for the individual.

10. **Medical decisions are made by medical professionals.** The advice of appropriately licensed professionals guide the multidisciplinary team discussions and the ultimate decisions by the judge. With medication-assisted treatment (MAT), for example, treatment courts will not deny any eligible participant access to the treatment court program because of their use of FDA-approved medications for the treatment of substance abuse unless very specific conditions have been met (New Mexico Treatment Court Standard 4-24). Further, Applicants are not denied entry to treatment courts because they are receiving a lawfully prescribed medication for psychiatric, substance use, and/or other physical disorders and participants are not required to discontinue lawfully prescribed medication for psychiatric, substance use, and/or other physical disorders as a condition of graduating from the treatment court (New Mexico Treatment Court Standard 3-14).

11. **Treatment decisions are made by treatment professionals.** As noted, the advice of appropriately licensed professionals guides the multidisciplinary team discussions and the ultimate decisions by the judge. Sometimes, however, the professional recommendations of licensed professionals conflict. Substance use disorder is serious, disrupting, and potentially debilitating to the patient, as are many mental health disorders. If licensed professionals contraindicate the use of medical cannabis, the multidisciplinary team must focus on coordination of care for the individual.

12. **Treatment courts focus on rehabilitation and must address activities that subvert recovery.** Not every medical treatment is appropriate for every individual participant in a treatment court setting. If a particular medical treatment, for example, prevents participation in the program for lengthy periods, requires unreasonable accommodation, or exists at cross-purposes to the ultimate success of the individual, the participant may be ineligible to remain in the program. If an individual participant is showing signs of impairment or decreased quality of life due to a medical intervention, a medical professional should be consulted so coordination of care can be maintained.

13. **Medical cannabis is legal in New Mexico.** At face value, if an individual has a legally obtained and valid medical cannabis card, the use for the medically indicated qualifying condition neither disqualifies a potential participant from entry into a treatment court, nor from progressing through the court program. However, discontinuing use, and seeking alternative remedies, may be recommended if use is contraindicated by an appropriately licensed professional(s), and/or the multidisciplinary team believes functional impairment or incapacity is occurring; or has reason to question the qualifying condition; and the case has been reviewed by a medical professional with expertise in addiction medicine who has recommended that use should be suspended (cf: New Mexico Treatment Court Standard 4-3a).

14. **Medical cannabis, like all other drugs, should be reassessed over time and evaluated for its therapeutic effect and the patient's overall wellness.** Like every mind-altering substance, cannabis should be thoughtfully and carefully certified and recertified with continued use predicated upon the desired healing or palliative properties in consideration of the whole person. Even if cannabis use is indicated at the onset of treatment, as the participant attains progress toward their proximal treatment goals related to their primary diagnosis, dependence upon other substances should be evaluated and addressed as necessary. Distal goals are likely to become proximal over time.

For more information or to continue the conversation, contact Robert Mitchell, AOC Department for Therapeutic Justice Senior Statewide Program Manager, at aocrvm@nmcourts.gov.