

Opinion No. 2013-015

February 19, 2013

David A. Couch, Esq.
1501 North University, Suite 228
Little Rock, Arkansas 72207

Dear Mr. Couch:

This is in response to your submission on behalf of Arkansans for Compassionate Care for certification of the popular name and ballot title for a proposed initiated act pursuant to A.C.A. § 7-9-107 (Repl. 2007). Two similar measures were rejected due to ambiguities in the text of the proposed acts. *See* Ops. Att’y Gen. 2011-038 and 2011-023. This office substituted the popular name and ballot title and certified a proposed measure on April 18, 2011, as evidenced by Op. Att’y Gen. 2011-049. You have made changes to the text of the measure and submitted a revised ballot title for my certification. The popular name and ballot title of your current proposal state:

Popular Name

THE ARKANSAS MEDICAL MARIJUANA ACT

Ballot Title

An act making the medical use of marijuana legal under Arkansas state law, but acknowledging that marijuana use, possession, and distribution for any purpose remain illegal under federal law; establishing a system for the cultivation, acquisition and distribution of marijuana for qualifying patients through nonprofit medical marijuana dispensaries and granting those nonprofit dispensaries limited immunity; allowing localities to limit the number of nonprofit dispensaries and to enact reasonable zoning regulations governing their operations; providing that qualifying patients, and

nonprofit dispensary agents shall not be subject to criminal or civil penalties or other forms of discrimination for engaging in or assisting with the patients' medical use of marijuana; requiring that in order to become a qualifying patient, a person submit to the state a written certification from a physician licensed in the state of Arkansas that he or she is suffering from a qualifying medical condition; establishing an initial list of qualifying medical conditions; directing the Department of Health to establish rules related to the processing of applications for registry identification cards, the operations of nonprofit dispensaries, and the addition of qualifying medical conditions if such additions will enable patients to derive therapeutic benefit from the medical use of marijuana; setting initial maximum registration fees for nonprofit dispensaries; establishing qualifications for registry identification cards; establishing standards to ensure that qualifying patient registration information is treated as confidential; directing the Department of Health to provide the Legislature annual quantitative reports about the medical marijuana program; setting certain limitations on the use of medical marijuana by qualifying patients; establishing an affirmative defense for the medical use of marijuana; establishing registration and operation requirements for nonprofit dispensaries; setting limits on the amount of marijuana a nonprofit dispensary may cultivate and the amount of marijuana a nonprofit dispensary may dispense to a qualifying patient; prohibiting certain conduct by and imposing certain conditions and requirements on physicians, nonprofit dispensaries, nonprofit dispensary agents, and qualifying patients; establishing a list of felony offenses which preclude certain types of participation in the medical marijuana program; and providing that the sale of usable marijuana is subject to all state and local sales taxes.

The Attorney General is required, pursuant to A.C.A. § 7-9-107, to certify the popular name and ballot title of all proposed initiative and referendum acts or amendments before the petitions are circulated for signature. The law provides that the Attorney General may substitute and certify a more suitable and correct popular name and ballot title, if he can do so, or if the proposed popular name and ballot title are sufficiently misleading, may reject the entire petition. **Neither certification nor rejection of a popular name and ballot title reflects my view**

of the merits of the proposal. This Office has been given no authority to consider the merits of any measure.

In this regard, A.C.A. § 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment, or concerning the likelihood that it will accomplish its stated objective. In addition, following Arkansas Supreme Court precedent, this office will not address the constitutionality of proposed measures in the context of a ballot title review unless the measure is “clearly contrary to law.”¹ Consequently, this review has been limited to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the proposed popular name and ballot title accurately and impartially summarize the provisions of your proposed amendment or act.

The purpose of my review and certification is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.²

The popular name is primarily a useful legislative device.³ It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal.⁴ The popular name is to be considered together with the ballot title in determining the ballot title’s sufficiency.⁵

The ballot title must include an impartial summary of the proposed amendment or act that will give the voter a fair understanding of the issues presented.⁶ According to the court, if information omitted from the ballot title is an “essential fact which

¹ *Kurrus v. Priest*, 342 Ark. 434, 445, 29 S.W.3d 669, 675 (2000); *Donovan v. Priest*, 326 Ark. 353, 359, 931 S.W.2d 119, 121 (1996).

² See *Arkansas Women's Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

³ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

⁴ E.g., *Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976). ; *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958).

⁵ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

⁶ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980).

would give the voter serious ground for reflection, it must be disclosed.”⁷ At the same time, however, a ballot title must be brief and concise (*see* A.C.A. § 7-9-107(b)); otherwise voters could run afoul of A.C.A. § 7-5-522’s five minute limit in voting booths when other voters are waiting in line.⁸ The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke.⁹ The title, however, must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring.¹⁰ A ballot title must convey an intelligible idea of the scope and significance of a proposed change in the law.¹¹ The ballot title must be intelligible, honest, and impartial.¹²

Having analyzed your proposed measure, as well as your proposed popular name and ballot title under the above precepts, it is my conclusion that I must reject your proposed popular name and ballot title due to ambiguities in the *text* of your proposed measure. A number of additions or changes to your ballot title may be necessary in order to more fully and correctly summarize your proposal. I cannot, however, at this time, fairly or completely summarize the effect of your proposed measure to the electorate in a popular name or ballot title without the resolution of the ambiguities. I am therefore unable to substitute and certify a more suitable and correct popular name and ballot title pursuant to A.C.A. § 7-9-107(b).

I refer to the following ambiguities:

- Section 103(c)(ii) refers to the “presumptions made in section 103(d)” but section 103(d) contains no presumptions.

⁷ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

⁸ *Id.* at 288, 884 S.W.2d at 944.

⁹ *Id.* 293, 884 S.W.2d at 946–47.

¹⁰ *Id.* at 284, 884 S.W.2d at 942.

¹¹ *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 245, 884 S.W.2d 605, 607 (1994) (internal quotations omitted).

¹² *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

- The initial capital letter in section 103(i)'s reference to "Qualifying" marijuana paraphernalia suggests that the word is a defined term but it does not appear to be.
- The word "physician" is used in section 105(a)(i) without an initial capital letter, suggesting that the word does not have the meaning attributed to the defined term "Physician." Additionally, the reference is to "the" physician, suggesting a single person is authorized to issue certificates.
- Section 105(f)(vi) refers to a "Designated Caregiver," falsely implying that the proposal contains that defined term.
- Section 109(b)(xi) suggests that marijuana may be dispensed to a Qualifying Patient or a Nonprofit Dispensary Agent, in either case without a registry identification number, but the proposal does not otherwise appear to make provision for any person to become a Qualifying Patient or Nonprofit Dispensary Agent without having an identification number.
- It is not clearly expressed that the "contact information" at the end of the proposal is not intended to constitute part of the proposal.¹³

All of the foregoing ambiguities are new to this version of your proposal. Because I am rejecting your proposed popular name and ballot title due to those ambiguities, I take this opportunity to point out the following ambiguities which may have been embodied in prior versions of your proposal but the resolution of which would aid in clarifying the proposal and any popular name and ballot title ultimately certified:

- The proposal uses words and phrases with initial letters capitalized that are neither proper nouns nor defined terms, thus creating confusion in a document that does also contain defined terms with initial letters capitalized. Additionally, the proposal contains several syntax errors that tend to obscure the proposal's meaning (*e.g.*, section 103(d) is most

¹³ As a condition of my certification, I must be provided with the complete text of your proposed act. This requirement is reflected in A.C.A. § 7-9-107(a), which provides that "the sponsors shall submit the *original draft* to the Attorney General, with a proposed . . . ballot title and popular name." (Emphasis added.)

naturally read to provide in part that “A Cardholder may not be . . . denied any right or privilege, including . . . a civil penalty . . .”).

- In section 102, “Nonprofit Dispensary” is defined to exclude individual human beings; it includes entities only. But section 107(a)(i) implies that a Nonprofit Dispensary may be an individual.
- The word “physician” is used in the definition of the term “Written Certification” and in section 104(e)(iii) without an initial capital letter, suggesting that the word does not have the meaning attributed to the defined term “Physician.”
- The proposal uses the phrase “may not be,” or the like, in several instances where the context makes it appear likely that the intended meaning is “shall not be,” or the like (*e.g.*, section 103(a)).
- Section 103(d) is not clear with respect to whether a Cardholder may transfer marijuana to a Nonprofit Dispensary Agent.
- Section 103(f)(i) is ambiguous in providing that failing to refuse to enroll or lease might cause a person to violate federal law.
- Section 103(h)’s reference to “the standard of care” is ambiguously vague.
- Section 104(d)(i) provides that not all Nonprofit Dispensary fees need be the same but does not provide any standards for charging different fees.
- Section 105(f)(ii) refers to “an agent of the Nonprofit Dispensary,” implying that someone other than a Nonprofit Dispensary Agent is intended. It also refers to issuance of a Registry Identification Card “in accordance with section 108(h),” but section 108(h) does not provide for issuance of such a card.
- Sections 105(g)(i) and 109(b)(xii) refer to a “medical record under” HIPAA, but that federal law does not employ the term “medical record” to designate any record to which its privacy provisions apply.

- Section 105(h) implies that a Cardholder may transfer marijuana to a Nonprofit Dispensary Agent, a proposition that is not clearly expressed elsewhere in the proposal.
- Section 106(b)(iv) uses the phrase “qualified patient” without initial capitals, implying that the term means something other than “Qualifying Patient.”
- The subsection designations of section 107(a)(i)-(ii) and (iii)-(v) are unclear and ambiguous.
- Sections 107(a)(ii) and (v) refer to “the requirements imposed by . . . section 103,” but section 103 does not by its terms impose requirements. To the extent the sections refer to requirements implied by section 103, one of those is card possession, and a person described in section 107(a)(iii)-(v) cannot be in compliance with that requirement.
- Section 107(b)(1) refers to revocation of a Registry Identification Card for misconduct, a procedure not expressly provided for or described elsewhere in the proposal.
- Section 107(c) provides that actual possession of a Registry Identification Card is not required to raise the affirmative defense set forth in section 107, but section 103(a) implicitly provides that a Qualifying Patient not in actual possession of a Registry Identification Card may be subject to prosecution for a marijuana offense.
- Section 108(b)(i)(C) refers to rules of the “department,” implying that something other than “The Department” is meant.
- Section 108(e)(i) refers to “useable marijuana,” implying that something other than “Usable Marijuana” is meant.
- Sections 108(e)(i) and (ii) are unclear whether “Usable Marijuana derived from such plants” means only marijuana derived from the same 45 or five flowering plants referred to in the sections, or whether it includes marijuana derived from predecessor plants so long as the Nonprofit Dispensary never

possesses no more than 45 or five flowering plants. The sections are also ambiguous with respect to whether a Nonprofit Dispensary may possess an unlimited number of, or no, non-flowering plants.

- Section 108(i) refers to “the requirements contained in this section,” but the section does not appear to impose any requirements on Nonprofit Dispensaries or Nonprofit Dispensary Agents.
- Sections 109(a) and 110(a)(ii) are ambiguously vague with respect to whether “inspection” includes “search.”
- Section 109(b)(i)’s reference to “residential district” is ambiguously vague.
- Section 109(b)(vi)’s reference to “operating documents” is ambiguously vague.
- Section 109(b)(vii) is ambiguous with respect to whether there are any limitations on how a Nonprofit Dispensary may dispose of marijuana.
- Section 110(a)(i) uses the phrase “medical purposes,” implying that something other than “Medical Use” is meant. If “Medical Use” is meant, the section is ambiguously redundant because “Medical Use” includes Acquisition, possession, etc.
- Section 110(b)(i) ambiguously suggests that Nonprofit Dispensary Agents are not allowed to possess marijuana when transporting marijuana.
- Section 111(b) is ambiguous in imposing a penalty only on a Nonprofit Dispensary Agent for a Nonprofit Dispensary’s violation of section 111(a).
- Section 112 is ambiguously vague in failing to place any restrictions on or describe any criteria for a city’s power to “limit the number” of dispensaries.

While the following items do not necessarily constitute ambiguities in and of themselves, I note them in the interests of making the proposal clearer and more readable:

- The definitions of “Qualifying Medical Condition” and “The Department” in section 102 are not in alphabetical order.
- The proposal contains several misused words (*e.g.*, “and” for “an”), misdesignations (*e.g.*, section 103(j)(i) appears twice), and surplus words (*e.g.*, “or” at the end of section 102(j)).

I cannot certify a ballot title for your proposed amendment in the face of the ambiguities noted above. You must remedy these confusing and ambiguous points before I can perform my statutory duty.

My office, in the certification of ballot titles and popular names, does not concern itself with the merits, philosophy, or ideology of proposed measures. I have no constitutional role in the shaping or drafting of such measures. My statutory mandate is embodied only in A.C.A. § 7-9-107 and my duty is to the electorate. I am not your counsel in this matter and cannot advise you as to the substance of your proposal.

At the same time, however, the Arkansas Supreme Court, through its decisions, has placed a practical duty on the Attorney General, in exercising his statutory duty, to include language in a ballot title about the effects of a proposed measure on current law. *See, e.g., Finn v. McCuen, supra*. Furthermore, the Court has recently confirmed that a proposed amendment cannot be approved if “[t]he text of the proposed amendment itself contribute[s] to the confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure.” *Roberts v. Priest*, 341 Ark. 813, 20 S.W.3d 376 (2000). The Court concluded: “[I]nternal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself.” *Id.* Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my statutory duty to the satisfaction of the Arkansas Supreme Court without clarification of the ambiguities.

My statutory duty, under these circumstances, is to reject your proposed ballot title, stating my reasons therefor, and to instruct you to “redesign” the proposed measure and ballot title. *See* A.C.A. § 7-9-107(c). You may, after clarification of the matters discussed above, resubmit your proposed amendment, along with a

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proposed popular name and ballot title, at your convenience. I anticipate, as noted above, that some changes or additions to your submitted popular name and ballot title may be necessary. I will be pleased to perform my statutory duties in this regard in a timely manner after resubmission.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/cyh

Enclosure

Popular Name

THE ARKANSAS MEDICAL MARIJUANA ACT

Ballot Title

AN ACT MAKING THE MEDICAL USE OF MARIJUANA LEGAL UNDER ARKANSAS STATE LAW, BUT ACKNOWLEDGING THAT MARIJUANA USE, POSSESSION, AND DISTRIBUTION FOR ANY PURPOSE REMAIN ILLEGAL UNDER FEDERAL LAW; ESTABLISHING A SYSTEM FOR THE CULTIVATION, ACQUISITION AND DISTRIBUTION OF MARIJUANA FOR QUALIFYING PATIENTS THROUGH NONPROFIT MEDICAL MARIJUANA DISPENSARIES AND GRANTING THOSE NONPROFIT DISPENSARIES LIMITED IMMUNITY; ALLOWING LOCALITIES TO LIMIT THE NUMBER OF NONPROFIT DISPENSARIES AND TO ENACT REASONABLE ZONING REGULATIONS GOVERNING THEIR OPERATIONS; PROVIDING THAT QUALIFYING PATIENTS, AND NONPROFIT DISPENSARY AGENTS SHALL NOT BE SUBJECT TO CRIMINAL OR CIVIL PENALTIES OR OTHER FORMS OF DISCRIMINATION FOR ENGAGING IN OR ASSISTING WITH THE PATIENTS' MEDICAL USE OF MARIJUANA; REQUIRING THAT IN ORDER TO BECOME A QUALIFYING PATIENT, A PERSON SUBMIT TO THE STATE A WRITTEN CERTIFICATION FROM A PHYSICIAN LICENSED IN THE STATE OF ARKANSAS THAT HE OR SHE IS SUFFERING FROM A QUALIFYING MEDICAL CONDITION; ESTABLISHING AN INITIAL LIST OF QUALIFYING MEDICAL CONDITIONS; DIRECTING THE DEPARTMENT OF HEALTH TO ESTABLISH RULES RELATED TO THE PROCESSING OF APPLICATIONS FOR REGISTRY IDENTIFICATION CARDS, THE OPERATIONS OF NONPROFIT DISPENSARIES, AND THE ADDITION OF QUALIFYING MEDICAL CONDITIONS IF SUCH ADDITIONS WILL ENABLE PATIENTS TO DERIVE THERAPEUTIC BENEFIT FROM THE MEDICAL USE OF MARIJUANA; SETTING INITIAL MAXIMUM REGISTRATION FEES FOR NONPROFIT DISPENSARIES; ESTABLISHING QUALIFICATIONS FOR REGISTRY IDENTIFICATION CARDS; ESTABLISHING STANDARDS TO ENSURE THAT QUALIFYING PATIENT REGISTRATION INFORMATION IS TREATED AS CONFIDENTIAL; DIRECTING THE DEPARTMENT OF HEALTH TO PROVIDE THE LEGISLATURE ANNUAL QUANTITATIVE REPORTS ABOUT THE MEDICAL MARIJUANA PROGRAM; SETTING CERTAIN LIMITATIONS ON THE USE OF MEDICAL MARIJUANA BY QUALIFYING PATIENTS; ESTABLISHING AN AFFIRMATIVE DEFENSE FOR THE MEDICAL USE OF MARIJUANA; ESTABLISHING REGISTRATION AND OPERATION REQUIREMENTS FOR NONPROFIT DISPENSARIES; SETTING LIMITS ON THE AMOUNT OF MARIJUANA A NONPROFIT DISPENSARY MAY CULTIVATE AND THE AMOUNT OF MARIJUANA A NONPROFIT DISPENSARY MAY DISPENSE TO A QUALIFYING PATIENT; PROHIBITING CERTAIN

CONDUCT BY AND IMPOSING CERTAIN CONDITIONS AND REQUIREMENTS ON PHYSICIANS, NONPROFIT DISPENSARIES, NONPROFIT DISPENSARY AGENTS, AND QUALIFYING PATIENTS; ESTABLISHING A LIST OF FELONY OFFENSES WHICH PRECLUDE CERTAIN TYPES OF PARTICIPATION IN THE MEDICAL MARIJUANA PROGRAM; AND PROVIDING THAT THE SALE OF USABLE MARIJUANA IS SUBJECT TO ALL STATE AND LOCAL SALES TAXES.

“An Act to Establish the Arkansas Medical Marijuana Act”.

Be it enacted by the People of the State of Arkansas as follows:

Amending Title 20, Arkansas Code, by adding new Subtitle 6, Chapter 91, Medical Marijuana

Section 101. Short title. This chapter shall be known and cited as "The Arkansas Medical Marijuana Act."

Section 102. Definitions. As used in this chapter, unless the context otherwise requires:

(a) “Acquire” or “Acquisition” means coming to possess marijuana by means of any legal source herein authorized, and not from any unauthorized source; and in accordance with this act and any regulations promulgated by The Department.

(b) “Assist,” or “Assisting” mean helping a Qualifying Patient make Medical Use of marijuana by physically enabling such Medical Use by any means herein authorized.

(c) “Cardholder” means a Qualifying Patient or a Nonprofit Dispensary Agent.

(d) “Qualifying Medical Condition” means one or more of the following:

(i) Cancer, Glaucoma, positive status for Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome (HIV/ AIDS), Hepatitis C, Amyotrophic Lateral Sclerosis, Tourette's Disease, Crohn’s Disease, ulcerative colitis, Post Traumatic Stress Disorder (PTSD), Fibromyalgia, agitation of Alzheimer’s Disease or the treatment of these conditions;

(ii) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or Wasting Syndrome; peripheral neuropathy; intractable pain, which is pain that has not responded to ordinary medications, treatment or surgical measures for more than 6 months; severe nausea; seizures, including those characteristic of Epilepsy; or severe and persistent muscle spasms, including those characteristic of Multiple Sclerosis;

(iii) Any other medical condition or its treatment approved by The Department as provided for in section 104(e).

(e) “The Department” means the Arkansas Department of Health or its

successor.

(f) "Enclosed, Locked Facility" means a closet, room, greenhouse or other indoor enclosed area equipped with locks or other security devices that permit access only by a Cardholder.

(g) "Excluded Felony Offense" means:

(i) A felony violent crime or felony crime against a person in the jurisdiction where the person was convicted, provided, an offense which has been expunged by a court or was unadjudicated and the conditions satisfied and the offender released from conditions shall not be considered and Excluded Felony Offense; or

(ii) A violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted but does not include:

(A) An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten or more years earlier,

(B) An offense which has been expunged by a court or was unadjudicated and the conditions satisfied and the offender released from conditions; or

(C) An offense involving conduct that would be immune from arrest, prosecution or penalty under this chapter except that the conduct occurred before the effective date of this chapter or was prosecuted by an authority other than the State of Arkansas.

(h) "Medical Use" means the Acquisition, possession, cultivation, preparation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a Qualifying Patient's Qualifying Medical Condition or symptoms associated with the Qualifying Patient's Qualifying Medical Condition.

(i) "Nonprofit Dispensary" means a not-for-profit entity that has registered with The Department pursuant to section 108, and performs any combination of the activities therein described.

(j) "Nonprofit Dispensary Agent" means:

(i) An employee, supervisor, volunteer, or agent of a Nonprofit Dispensary

who:

(A) Is 21 years of age or older;

(B) Works at the Nonprofit Dispensary; and

(C) Has registered with The Department pursuant to section 108; or

(i) The owner(s) of a Nonprofit Dispensary who has registered with The Department pursuant to section 108;

(ii) the board members and officers of a Nonprofit Dispensary if the Nonprofit Dispensary has exercised its discretionary right to incorporate pursuant to section 109(b)(i);or

(k) "Physician" means a doctor of medicine or doctor of osteopathic medicine who holds a valid, unrestricted and existing license to practice medicine in the state of Arkansas and who possesses certification from the United States Drug Enforcement Administration to prescribe controlled substances.

(m) "Qualifying Patient" means a person who has been diagnosed by a Physician as having a Qualifying Medical Condition, and who has registered with The Department pursuant to 105(a).

(n) "Registry Identification Card" means a document issued by The Department that identifies a person as a Qualifying Patient or a Nonprofit Dispensary Agent.

(o) "Usable Marijuana" means the dried leaves and flowers of the marijuana plant and any mixture or preparation thereof, but does not include the seeds, stalks and roots of the plant and does not include the weight of any ingredients other than marijuana that are combined with marijuana and prepared for consumption as food or drink.

(p) "Written Certification" means a document signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the Qualifying Patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the Qualifying Patient has a Qualifying Medical Condition and the potential benefits of the Medical Use of marijuana would likely outweigh the health risks for the Qualifying Patient. A written certification shall specify the Qualifying Patient's Qualifying Medical Condition, which also shall be noted in the Qualifying Patient's medical records.

Section 103. Protections for the Medical Use of marijuana

(a) Qualifying Patient. A Qualifying Patient in actual possession of a Registry Identification Card may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the Medical Use of marijuana in accordance with this chapter as long as the Qualifying Patient possesses not more than 2 1/2 ounces of Usable Marijuana.

(b) Incidental amount of marijuana. Marijuana that is incidental to Medical Use, but is not Usable Marijuana, shall not be counted toward a Qualifying Patient's allowable amount of marijuana.

(c) Presumption.

(i) A Qualifying Patient is presumed to be lawfully engaged in the Medical Use of marijuana in accordance with this chapter if the Qualifying Patient is in actual possession of a Registry Identification Card and possesses an amount of marijuana that does not exceed the amount allowed under this chapter.

(ii) The presumptions made in section 103(d) may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the Qualifying Patient's Qualifying Medical Condition or symptoms associated with the Qualifying Medical Condition, in accordance with this chapter.

(d) Cardholder not subject to arrest. A Cardholder may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for giving an amount of marijuana the person is allowed to possess under subsection 103 to a Cardholder for the Qualifying Patient's Medical Use when nothing of value is transferred in return or for offering to do the same.

(e) Transfer of seeds and seedlings

(i) A Nonprofit Dispensary may accept marijuana seeds, seedlings, plants, or Usable Marijuana from other Nonprofit Dispensaries in Arkansas. A Nonprofit Dispensary may transfer or sell marijuana seeds, seedlings, plants, or useable marijuana to other Nonprofit Dispensaries in Arkansas.

(ii) A Nonprofit Dispensary may accept a donation of marijuana seeds or seedlings, without compensation, from individuals and entities from jurisdictions outside of Arkansas who are authorized to cultivate medical marijuana in their home state.

(iii) Individuals and entities from jurisdictions outside of Arkansas who are authorized to cultivate medical marijuana in their home state shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege for donating marijuana seeds or seedlings to Nonprofit Dispensaries.

(f) Discrimination

(i) No school or landlord may refuse to enroll or lease to, or otherwise penalize, an individual solely for his or her status as a Qualifying Patient unless failing to do so would put the school or landlord in violation of federal law or regulations.

(ii) For the purposes of medical care, including organ transplants, a Qualifying Patient's authorized use of marijuana in accordance with this chapter shall be considered the equivalent of the authorized use of any other medication used at the direction of a Physician, and shall not constitute the use of an illicit substance.

(iii) An employer shall not discriminate against an individual in hiring, termination, or any term or condition of employment, or otherwise penalize an individual, based upon the individual's past or present status as a Qualifying Patient.

(g) Person may not be denied custody or visitation of minor. A person otherwise entitled to custody of, or visitation or parenting time with, a minor may not be denied custody, visitation or parenting time and there shall be no finding of abuse solely for conduct allowed under this chapter and there shall be no presumption of neglect or child endangerment for conduct allowed under this chapter.

(h) Physician not subject to penalty. A Physician may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by the Arkansas State Medical Board or by any other business or occupational or professional licensing board or bureau, solely for providing written certifications that, in the Physician's professional opinion, a patient is likely to receive therapeutic benefit from the Medical Use of marijuana to treat or alleviate the patient's Qualifying Medical

Condition or symptoms associated with the Qualifying Medical Condition, provided that nothing shall prevent a professional licensing board from sanctioning a Physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care.

(i) Person not subject to penalty for providing Qualifying marijuana paraphernalia. A person may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a Qualifying Patient with marijuana paraphernalia for purposes of facilitating a Qualifying Patient's Medical Use of marijuana.

(j) Property not subject to forfeiture. Any marijuana, marijuana paraphernalia, licit property or interest in licit property that is possessed, owned or used in connection with the Medical Use of marijuana, as allowed under this chapter, or property incidental to such use, may not be seized or forfeited.

(k) Person not subject to penalty for being in presence of Medical Use of marijuana. A person may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, simply for being in the presence or vicinity of the Medical Use of marijuana as allowed under this chapter or for directly Assisting a physically disabled Qualifying Patient with the Medical Use of marijuana.

(l) Effect of Registry Identification Card issued by another jurisdiction. A Registry Identification Card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth or insular possession of the United States shall not be recognized as valid.

Section 104. Rules

(a) Rule making power. The Department may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are Rules as defined in Ark.Code Ann. § 25-15-201 et seq., the Arkansas Administrative Procedure Act.

(b) Registry Identification Cards. Not later than 120 days after the effective date of this chapter, The Department shall adopt rules governing the manner in which it considers applications for and renewals of Registry

Identification Cards.

(c) Nonprofit Dispensaries. Not later than 120 days after the effective date of this chapter, The Department shall adopt rules with the goal of protecting against diversion and theft, without imposing an undue burden on the registered Nonprofit Dispensaries or compromising the confidentiality of Qualifying Patients, including rules governing:

- (i) The manner in which it considers applications for and renewals of registration certificates for Nonprofit Dispensaries;
- (ii) The form and content of registration and renewal applications;
- (iii) Oversight requirements for Nonprofit Dispensaries;
- (iv) Record-keeping requirements for Nonprofit Dispensaries;
- (v) Security requirements for Nonprofit Dispensaries which shall include lighting, physical security, alarm requirements, and measures to prevent loitering;
- (vi) Sanitary requirements for Nonprofit Dispensaries;
- (vii) Electrical safety requirements for Nonprofit Dispensaries;
- (viii) The specification of acceptable forms of picture identification that a Nonprofit Dispensary may accept;
- (ix) Personnel requirements including how many volunteers a Nonprofit Dispensary is permitted to have and requirements for supervision;
- (x) Labeling and testing standards for marijuana distributed to Qualifying Patients;
- (xi) Manufacture and dispensing of medical marijuana prepared for consumption as food or drink to Qualifying Patients;
- (xii) Procedures for suspending or terminating the registration of Nonprofit Dispensaries that violate the provisions of this section or the rules adopted pursuant to this section, procedures for appealing penalties, and a schedule of penalties;
- (xiii) Procedures for inspections and investigations of Nonprofit Dispensaries;
- (xiv) Advertising restrictions for Nonprofit Dispensaries;

- (xv) Permissible hours of operation for Nonprofit Dispensary sales; and
- (xvi) Such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this chapter.

(d) Application and renewal fees for Nonprofit Dispensaries. Not later than 120 days after the effective date of this chapter, The Department shall adopt rules establishing application and renewal fees for Nonprofit Dispensary registration certificates, according to the following:

(i) The initial Nonprofit Dispensary application fee shall be a maximum of \$5,000. The application fee for all Nonprofit Dispensaries need not be the same.

(ii) The total amount of revenue from Nonprofit Dispensary application and renewal fees and Cardholder fees for shall be sufficient to administer the Nonprofit Dispensary provisions of this chapter, except that the fee revenue may be offset or supplemented by private donations or appropriations by the General Assembly. The Department may establish a sliding scale of application and renewal fees based upon a Qualifying Patient's family income.

(e) Adding Qualifying Medical Conditions.

(i) Not later than 180 days after the effective date of this chapter, The Department shall adopt rules that govern the manner in which The Department shall consider petitions from the public to add medical conditions or treatments to the list of Qualifying Medical Conditions set forth in section 102(d).

(ii) In considering such petitions, The Department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions.

(iii) In considering such petitions, The Department shall add medical conditions or treatments to the list of Qualifying Medical Conditions set forth in section 102(d) if patients suffering from the medical conditions or undergoing the treatments in question would derive therapeutic benefit from the use of marijuana, taking into account the positive and negative health effects of such use. The Department may consider published studies in peer-reviewed journals, physician testimony, and public comments made pursuant to 104(e)(ii) in making such determination.

(iv) The Department shall, after hearing, approve or deny such petitions within 60 days of their submission. The approval or denial of such a petition constitutes final agency action, subject to judicial review, and jurisdiction for judicial review is vested in the Circuit Court of Pulaski County.

Section 105. Registry Identification Cards

(a) Application for Registry Identification Card; qualifications. The Department shall issue Registry Identification Cards to Qualifying Patients who submit, in accordance with The Department's rules:

(i) Written certification issued by the physician within 30 days of the application;

(ii) Application or renewal fee;

(iii) Name, address and date of birth of the Qualifying Patient, except that if the applicant is homeless, no address is required;

(iv) Name, address and telephone number of the Qualifying Patient's Physician;

(v) A designation as to which Nonprofit Dispensary will be allowed under state law to cultivate marijuana plants for the Qualifying Patient's Medical Use. Only one Nonprofit Dispensary may be allowed to cultivate marijuana plants for a Qualifying Patient at a time.

(vi) A signed statement from the Qualifying Patient pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.

(b) Issuing Registry Identification Card to minor. The Department may not issue a Registry Identification Card to a Qualifying Patient who is under 18 years of age unless:

(i) The Qualifying Patient's Physician has explained the potential risks and benefits of the Medical Use of marijuana to the Qualifying Patient and to a parent, guardian or person having legal custody of the Qualifying Patient; and

(ii) A parent, guardian or person having legal custody consents in writing to:

(A) Allow the Qualifying Patient's Medical Use of marijuana;

- (B) Assist the Qualifying Patient in the Medical Use of marijuana; and
- (C) Control the Acquisition of the marijuana, the dosage and the frequency of the Medical Use of marijuana by the Qualifying Patient.

(c) Department approval or denial. The Department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 14 days of receiving it. The Department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the applicant previously had a Registry Identification Card revoked, The Department determines that the information provided was falsified, or The Department determines the written certification was not made in the context of a bona fide Physician-patient relationship. Rejection of an application or renewal is considered a final agency action, subject to judicial review, and jurisdiction is vested in the Circuit Court of Pulaski County.

(e) Registry Identification Card issuance. The Department shall issue Registry Identification Cards to Qualifying Patients within 5 business days of approving an application or renewal under this section. Registry Identification Cards expire one year after the date of issuance, unless the Physician states in the written certification that he believes the Qualifying Patient would benefit from medical marijuana only until a specified earlier date, then the Registry Identification Card shall expire on that date.

(i) Registry Identification Cards shall contain:

(A) The name, address and date of birth of the Qualifying Patient;

(B) The date of issuance and expiration date of the Registry Identification Card;

(C) A random, 10-digit alphanumeric identification number that is unique to the Cardholder;

(D) A photograph, if The Department decides to require one.

(f) Notification of changes in status or loss of card. This subsection governs notification of changes in status or the loss of a Registry Identification Card.

(i) A Qualifying Patient shall notify The Department within 10 days of any change in the Qualifying Patient's name, address, or preference regarding

which Nonprofit Dispensary may cultivate marijuana for the Qualifying Patient or if the Qualifying Patient ceases to have a Qualifying Medical Condition.

(ii) A Nonprofit Dispensary shall notify The Department within 10 days of any change in the name or address of an agent of the Nonprofit Dispensary issued a Registry Identification Card in accordance with section 108(h).

(iii) A Qualifying Patient or a Nonprofit Dispensary who fails to notify The Department as required under sections 105(f)(i) or 105(f)(ii) commits a civil violation for which a penalty of not more than \$250 may be adjudged and collected by The Department.

(iv) If the Qualifying Patient's certifying Physician notifies The Department in writing that the Qualifying Patient has ceased to suffer from a Qualifying Medical Condition, the Qualifying Patient's Registry Identification Card becomes void upon notification by The Department to the Qualifying Patient.

(v) A Nonprofit Dispensary shall notify The Department of any change in the Nonprofit Dispensary's name or address within 10 days of such change. A Nonprofit Dispensary who fails to notify The Department of any of these changes commits a civil violation for which a penalty of not more than \$250 may be adjudged and collected by The Department

(vi) When a Qualifying Patient notifies The Department of any changes listed in this subsection, The Department shall issue the Qualifying Patient and the Designated Caregiver a new Registry Identification Card within 10 days of receiving the updated information.

(vii) If a Cardholder loses the Cardholder's Registry Identification Card, the Cardholder shall notify The Department within 10 days of losing the card. Within 5 days after such notification, The Department shall issue a new Registry Identification Card with a new random identification number.

(g) Confidentiality.

(i) Applications and supporting information submitted by Qualifying Patients under this chapter, including information regarding their Physicians are confidential as a medical record under The Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L.104-191).

(ii) The Department shall maintain a confidential list of the persons to

whom The Department has issued Registry Identification Cards. Individual names and other identifying information on the list are confidential, exempt from the Arkansas Freedom of Information Act, and not subject to disclosure except to authorized employees of The Department as necessary to perform official duties of The Department.

(iii) The Department shall verify to law enforcement personnel whether a Registry Identification Card is valid without disclosing more information than is reasonably necessary to verify the authenticity of the Registry Identification Card.

(iv) A person, including an employee or official of The Department or another state agency or local government, who breaches the confidentiality of information obtained pursuant to this chapter commits a Class A misdemeanor. However, department employees may notify law enforcement about falsified or fraudulent information submitted to The Department as long as the employee who suspects that falsified or fraudulent information has been submitted confers with the employee's supervisor and both agree that circumstances exist that warrant reporting.

(h) Cardholder who sells marijuana to person not allowed to possess.

Any Cardholder who transfers marijuana to a person who is not a Cardholder under this chapter shall have his Registry Identification Card revoked and shall be subject to any other penalties established by law for unlawful transfer of a controlled substance. The Department may revoke the Registry Identification Card of any Cardholder who violates any provision of this chapter, and the Cardholder is subject to any other penalties established in law for the violation.

(i) Annual report. The Department shall submit to the Legislature an annual report that does not disclose any identifying information about Cardholders or Physicians, but does contain, at a minimum:

(i) The number of applications and renewals filed for Registry Identification Cards;

(ii) The number of Qualifying Patients approved in each county;

(iii) The nature of the Qualifying Medical Conditions of the Qualifying Patients;

(iv) The number of Registry Identification Cards revoked;

(v) The number of Physicians providing written certifications for Qualifying Patients;

(vi) The number of registered Nonprofit Dispensaries; and

(vii) The number of Nonprofit Dispensary Agents.

Section 106. Scope

(a) Limitations. This chapter does not permit any person to:

(i) Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice;

(ii) Possess, smoke, or otherwise engage in the Medical Use of marijuana:

(A) In a school bus;

(B) On the grounds of any day care center, preschool, primary or secondary school, or college or university;

(C) At a drug or alcohol treatment facility;

(D) At a skating rink, Boys Club, Girls Club, YMCA, YWCA, or any similar community or recreation center;

(E) In any correctional facility;

(F) On any form of public transportation; or

(G) In any public place;

(ii) Operate, navigate or be in actual physical control of any motor vehicle, aircraft, motorized watercraft or any other vehicle drawn by power other than muscular power while under the influence of marijuana; or

(iii) Use marijuana if that person does not have a Qualifying Medical Condition.

(b) Construction. This chapter may not be construed to require:

(i) A government medical assistance program or private health insurer to reimburse a person for costs associated with the Medical Use of marijuana;

(ii) An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana;

(iii) Any individual or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to use marijuana on or in that property; or

(iv) A landlord to permit a qualified patient to smoke marijuana on any or in any leased property, except that a landlord may not prohibit the Medical Use of marijuana on leased property by a qualified patient through means other than smoking.

(c) Penalty for fraudulent representation. Fraudulent representation to a law enforcement official of any fact or circumstance relating to the Medical Use of marijuana to avoid arrest or prosecution is a civil violation punishable by a fine of \$500 payable to The Department, which is in addition to any other penalties that may apply for making a false statement to law enforcement or for the use of marijuana other than use undertaken pursuant to this chapter.

Section 107. Affirmative defense and dismissal for medical marijuana

(a) Except as provided in section 106(a) and this section, an individual may assert a medical purpose for using marijuana as an affirmative defense to any prosecution for an offense involving marijuana intended for the individual's Medical Use, and this defense shall be presumed valid and the prosecution shall be dismissed where the evidence demonstrates that:

(i) The individual is a Qualifying Patient or Nonprofit Dispensary; and

(ii) The individual is in compliance with the requirements imposed by this act in section 103; or

(iii) The Department has delayed the review of the individual's application, the issuance of the individual's Registry Identification Card, or both for a period of greater than thirty days; and

(iv) The individual's application meets the requirements of a Qualifying Patient; and

(v) The individual is in compliance with the requirements imposed by this act in section 103.

(b) The defense and motion to dismiss shall not prevail if either of the following are proven:

(i) The individual's Registry Identification Card has been revoked for

misconduct; or

(ii) The purposes for the possession of marijuana were not solely for Medical Use.

(c) An individual is not required to be in actual, physical possession of a Registry Identification Card to raise the affirmative defense set forth in this section.

(d) If an individual demonstrates a Medical Use of marijuana pursuant to this section, except as provided in section 106(a), the individual shall not be subject to the following:

(i) Disciplinary action by an occupational or professional licensing board or bureau; or

(ii) Forfeiture of any interest in or right to non-marijuana, licit property.

Section 108. Registration, certification of Nonprofit Dispensaries

(a) Nonprofit Dispensaries shall register with The Department.

(b) Not later than ninety days after receiving an application for a Nonprofit Dispensary, The Department shall register the Nonprofit Dispensary and issue a registration certificate and a random 20-digit alphanumeric identification number if:

(i) The prospective Nonprofit Dispensary had submitted the following:

(A) The application fee;

(B) An application, including:

(1) The legal name of the Nonprofit Dispensary;

(2) The physical address of the Nonprofit Dispensary and the physical address of one additional location, if any, where marijuana will be cultivated, neither of which may be within one thousand feet of a public or private school or church existing before the date of the Nonprofit Dispensary application;

(3) The name, address and date of birth of each Nonprofit Dispensary Agent;

(C) Operating procedures consistent with department rules for oversight of the Nonprofit Dispensary, including procedures to ensure accurate record-

keeping and adequate security measures; and

(D) If the city, town or county in which the Nonprofit Dispensary would be located has enacted zoning restrictions, a sworn statement certifying that the Nonprofit Dispensary will operate in compliance with the restrictions;

(ii) None of the owners, board members or officers has been convicted of an Excluded Felony Offense;

(iii) None of the owners, board members or officers has previously been an owner, board member or officer of a Nonprofit Dispensary that has had its registration certificate revoked; and

(iv) None of the Nonprofit Dispensary Agents is under twenty-one years of age.

(c) The Department may not issue more than one Nonprofit Dispensary registration certificate for every twenty pharmacies that have obtained a pharmacy permit from the Arkansas Board of Pharmacy and operate within the state, except that The Department may issue Nonprofit Dispensary registration certificates in excess of this limit if The Department determines that additional Nonprofit Dispensaries are necessary to provide convenient access to patients in all parts of the state.

(d) The Department may conduct a criminal records check in order to carry out this section.

(e) A Nonprofit Dispensary registered under this section may Acquire, possess, cultivate, manufacture, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana paraphernalia, and related supplies and educational materials, to Qualifying Patients who have designated it as their Nonprofit Dispensary for the Qualifying Patients' Medical Use. A Nonprofit Dispensary may receive compensation for providing the goods and services allowed by this section. A Nonprofit Dispensary may cultivate and possess whichever of the following quantities is greater:

(i) 45 flowering marijuana plants and all useable marijuana derived from such plants; or

(ii) 5 flowering plants and all Usable Marijuana derived from such plants for each Qualifying Patient who has designated the Nonprofit Dispensary to provide him with marijuana for Medical Use. A Nonprofit Dispensary

may also possess marijuana seeds, stalks, and unusable roots.

(f) The Department shall track the number of Qualifying Patients who have designated each Nonprofit Dispensary to cultivate marijuana for them and issue a monthly written statement to the Nonprofit Dispensary identifying the number of Qualifying Patients who have designated that Nonprofit Dispensary along with the registry identification numbers of each Qualifying Patient. This statement must be updated each time a new Qualifying Patient designates the Nonprofit Dispensary or ceases to designate the Nonprofit Dispensary and may be transmitted electronically if The Department's rules so provide. The Department may provide by rule that the updated written statements may not be issued more frequently than once each week.

(g) The Department shall issue each Nonprofit Dispensary Agent a Registry Identification Card within 10 days of receipt of the person's name, address and date of birth under section 108(b)(i)(B)(3), 109(b)(iv) or 105(f), and a fee in an amount established by The Department. Each card must specify that the Cardholder is an agent of the Nonprofit Dispensary and must contain:

(i) The name, address and date of birth of the Nonprofit Dispensary Agent;

(ii) The legal name of the Nonprofit Dispensary with which the Nonprofit Dispensary Agent is affiliated;

(iii) A random identification number that is unique to the Cardholder;

(iv) The date of issuance and expiration date of the Registry Identification Card; and

(v) A photograph, if The Department decides to require one.

(h) The Department may not issue a Registry Identification Card to any Nonprofit Dispensary Agent who has been convicted of an Excluded Felony Offense. The Department may conduct a background check of each Nonprofit Dispensary Agent in order to carry out this provision. The Department shall notify the Nonprofit Dispensary in writing of the purpose for denying the Registry Identification Card.

(i) Expiration. A Nonprofit Dispensary registration certificate and the Registry Identification Card for each Nonprofit Dispensary Agent expire one year after the date of issuance. The Department shall issue renewal

Nonprofit Dispensary registration certificates and renewal Registry Identification Cards within 10 days to any person or entity who complies with the requirements contained in this section. A Registry Identification Card of a Nonprofit Dispensary Agent expires upon notification by a Nonprofit Dispensary that such person ceases to work at the Nonprofit Dispensary.

Section 109. Nonprofit Dispensary inspections and requirements

(a) Inspection. Nonprofit Dispensaries are highly regulated by the state, and a Nonprofit Dispensary therefore is subject to reasonable inspection by The Department.

(b) Nonprofit Dispensary requirements. This subsection governs the operations of Nonprofit Dispensaries.

(i). A Nonprofit Dispensary must be operated on a not-for-profit basis for the mutual benefit of its members and patrons. A Nonprofit Dispensary need not be recognized as a tax-exempt organization under 26 United States Code, Section 501(c)(3) and is not required to, but may, incorporate pursuant to Title 4, Chapter 28.

(ii) A Nonprofit Dispensary may not be located in a residential district or within 1,000 feet of the property line of a preexisting public or private school or church.

(iii) A Nonprofit Dispensary shall notify The Department within 10 days of when a Nonprofit Dispensary Agent ceases to work at the Nonprofit Dispensary.

(iv) A Nonprofit Dispensary shall notify The Department in writing of the name, address and date of birth of any new Nonprofit Dispensary Agent and shall submit a fee in an amount established by The Department for a new Registry Identification Card before the new Nonprofit Dispensary Agent begins working at the Nonprofit Dispensary.

(v) A Nonprofit Dispensary shall implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana.

(vi) The operating documents of a Nonprofit Dispensary must include procedures for the oversight of the Nonprofit Dispensary and procedures to ensure accurate record keeping.

(vii) Each Nonprofit Dispensary shall keep the following records, dating back at least two years:

(A) Records of the disposal of marijuana that is not distributed by the Nonprofit Dispensary to Qualifying Patients who have designated the Nonprofit Dispensary to cultivate for them.

(B) A record of each transaction, including the amount of marijuana dispensed, the amount of compensation, and the registry identification number of the Qualifying Patient.

(viii) Each Nonprofit Dispensary shall:

(A) Conduct an initial comprehensive inventory of all medical marijuana, including Usable Marijuana available for dispensing, mature marijuana plants, and seedlings at each authorized location on the date the Nonprofit Dispensary first dispenses medical marijuana.

(B) Conduct a monthly comprehensive inventory of all medical marijuana, including Usable Marijuana available for dispensing, mature marijuana plants, and seedlings at each authorized location.

(ix) A Nonprofit Dispensary is prohibited from acquiring, possessing, cultivating, preparing, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to Assist Qualifying Patients with the Medical Use of marijuana.

(x) All cultivation of marijuana must take place in an indoor Enclosed, Locked Facility.

(xi) A Nonprofit Dispensary or a Nonprofit Dispensary Agent may not dispense more than 2 1/2 ounces of Usable Marijuana to a Qualifying Patient during a 15-day period. Each time a Nonprofit Dispensary Agent dispenses marijuana to a Qualifying Patient, he must consult the Nonprofit Dispensary's records to verify that the records do not indicate that the dispensing of marijuana would cause the Qualifying Patient to receive more marijuana than is permitted in a 15-day period. Each time marijuana is dispensed, the Nonprofit Dispensary Agent shall record the date the marijuana was dispensed and the amount dispensed. All marijuana must be dispensed by an individual. All records must be kept according to the registry identification number of the Qualifying Patient, if any.

(xii) The dispensary records with patient information shall be treated as

confidential medical record under The Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L.104-191).

Section 110. Immunity for Nonprofit Dispensaries

(a) No Nonprofit Dispensary shall be subject to the following:

(i) Prosecution for the Acquisition, possession, cultivation, preparation, manufacture, delivery, transfer, transport, sale, supply, or dispensing of marijuana and related supplies for medical purposes in accordance with the provisions of this chapter and any rule adopted by The Department pursuant to this chapter.

(ii) Inspection and search, except pursuant to section 109(a), or upon a search warrant issued by a court or judicial officer.

(iii) Seizure of marijuana, except upon any order issued by a court or judicial officer and with due process of law.

(iv) Imposition of any penalty or denied any right or privilege including, but not limited to, imposition of a civil penalty or disciplinary action by an occupational or professional licensing board or entity, solely for acting in accordance with this chapter to Assist Qualifying Patients with the Medical Use of marijuana.

(b) No Nonprofit Dispensary Agents shall be subject to arrest, prosecution, search, seizure, or penalty in any manner, or denied any right or privilege including, but not limited to, civil penalty or disciplinary action by a business, occupational, or professional licensing board or entity, solely for working for or with a Nonprofit Dispensary to engage in acts permitted by this chapter.

(i) Except when transporting marijuana in accordance with section 110(b)(ii), Nonprofit Dispensary Agents are allowed to possess and manufacture marijuana at the Nonprofit Dispensary location or locations for which the Nonprofit Dispensary Agent is registered. Nonprofit Dispensary Agents who are volunteers are only allowed to possess and manufacture marijuana at a Nonprofit Dispensary location. Nonprofit Dispensary Agents who are volunteers may not dispense or transport marijuana.

(ii) A Nonprofit Dispensary with a growing location in addition to the location of the Nonprofit Dispensary must label the marijuana that is being

moved between the growing location and Nonprofit Dispensary with a trip ticket that identifies the Nonprofit Dispensary by identification number, the time, date, origin, and destination of the material being transported, and the amount and form of marijuana and marijuana material that is being transported.

Section 111. Prohibitions for Nonprofit Dispensaries.

(a) A Nonprofit Dispensary may not dispense, deliver or otherwise transfer marijuana to a person other than a Qualifying Patient who has designated the Nonprofit Dispensary to cultivate marijuana for them.

(b) The Department shall immediately revoke the Registry Identification Card of a Nonprofit Dispensary Agent who is found to have violated section 111(a), and such a person shall be disqualified from serving as a Nonprofit Dispensary Agent.

(c) A person who has been convicted of an Excluded Felony Offense may not be a Nonprofit Dispensary Agent. A Nonprofit Dispensary Agent in violation of this paragraph commits a civil violation for which a fine of not more than \$1,000 may be adjudged and collected by The Department. A Nonprofit Dispensary Agent in violation of this paragraph and who at the time of the violation has been previously found to have violated this paragraph commits a Class C misdemeanor.

Section 112. Local regulation. This chapter does not prohibit a city, incorporated town or county of this State from limiting the number of Nonprofit Dispensaries that may operate in the political subdivision or from enacting reasonable zoning regulations applicable to Nonprofit Dispensaries.

Section 113. Prohibited conduct for Physicians. A Physician shall not:

(a) Accept, solicit, or offer any form of pecuniary remuneration from or to a Nonprofit Dispensary or other provider of medical marijuana.

(b) Offer a discount or other thing of value to a patient who uses or agrees to use a particular Nonprofit Dispensary.

(c) Examine a patient for purposes of diagnosing a Qualifying Medical Condition at a location where medical marijuana is sold or distributed.

(d) Hold an economic interest in a Nonprofit Dispensary if the Physician certifies the Qualifying Medical Condition of a patient for participation in

the medical marijuana program.

Section 114. Enforcement

(a) Department failure to adopt rules. If The Department fails to adopt rules to implement this chapter within the time prescribed, any person who would be a Qualifying Patient under this chapter may commence a mandamus action in Pulaski County Circuit Court to compel The Department to perform the actions mandated pursuant to the provisions of this chapter.

(b) Department failure to issue a valid Registry Identification Card. If The Department fails to issue a valid Registry Identification Card or a registration certificate in response to a valid application or renewal submitted pursuant to this chapter within 45 days of its submission, the Registry Identification Card or registration certificate is deemed granted, and a copy of the registry identification application or renewal is deemed a valid Registry Identification Card.

(c) Department failure to accept applications. If at any time after the effective date of this chapter, allowing time for adoption of rules, The Department is not accepting applications, a notarized statement by a Qualifying Patient containing the information required in an application, pursuant to section 105(a), is deemed a valid Registry Identification Card.

Section 115. Taxation. The sale of Usable Marijuana is subject to all state and local sales taxes.

Section 116. No implied repeal. By adoption of this Act, there is no implied repeal of the existing Arkansas laws criminalizing possession of marijuana for purposes not specified in this act. This act also acknowledges that marijuana use, possession, and distribution for any purpose remain illegal under Federal law.

Section 117. Severability. If any provision or section of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or application of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of the Act are declared to be severable.

Contact Information:

Mr. David Couch
Arkansans for Compassionate Care 2014
1501 North University Ave. Suite 228
Little Rock, Arkansas 72207