

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
MEDICAL MARIJUANA PROGRAM

PETITION FOR DECLARATORY STATEMENT OR IN THE ALTERNATIVE, PETITION FOR RULEMAKING BEFORE THE DEPARTMENT OF HEALTH ADDRESSING § 381.986(4)(8), FLORIDA STATUTES AND RULE NO. 64B8-9.018, ON BEHALF OF BENJAMIN BLANCHARD, HECTOR ROOS AND JODI JAMES, IN HER OFFICIAL CAPACITY AS CEO OF FLORIDA CANNABIS ACTION NETWORK (FLCAN)

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**PETITION FOR DECLARATORY STATEMENT**

COMES NOW Petitioners BLANCHARD, ROOS and JAMES (“Petitioners”) pursuant to § 120.54(7), Fla. Stat. and FAC Rule 28-105.002, hereby petition the Department of Health’s Medical Marijuana Program for a Declaratory Statement on whether the Medical Marijuana Consent Form DH-MQA-5026 is required to be signed by patients, given the “Voluntary” requirement described in § 381.986(4)(8), Fla. Stat, and the signature requirements are for minors only in Article X Section 29(9).; or in the alternative, a Petition for Rulemaking to the Department of Health’s (“Department”) Rule No. 64B8-9.018, “Mandatory Standardized Informed Consent for Medical Marijuana” to ensure the rule is “based on the best available evidence” and does not conflict with Florida law. In support thereof, Petitioners state:

1. The agency affected by this Petition is the Department of Health, located at 4052 Cypress Way, Tallahassee, Florida 32999. The Department is an executive branch of the State of Florida created pursuant to § 20.43, Florida Statutes.

2. After the passage of FL Constitution Amendment X, Section 29, Medical Marijuana Production and Use, the Florida Legislature directed the Department to license and regulate medical marijuana use via the Medical Marijuana Use Registry (MMUR) to ensure that

registered patients receive reasonable statewide accessibility and availability of medical marijuana. *See*, § 381.986 (5)(a), Fla. Stat.

3. The Florida Constitution only requires written consent, from a parent or legal guardian, when a minor is seeking a physician certification for medical marijuana. *See*, Article X, Section 29 (9), Fla. Const.

*“... In order for a physician certification to be issued to a minor, a parent or legal guardian of the minor must consent in writing.”*

4. The relevant portions of section 381.986, Fla. Stat. are: (4) Physician Certification (8) and (5) Medical Marijuana Registry (h) which states:

*(4) Physician Certification (8) Obtains the **voluntary** and informed, written consent of the patient for medical use of marijuana each time the qualified physician issues a physician certification for the patient, which **shall** be maintained in the patient’s medical record.*

*(5) Medical Marijuana Registry (h) The department shall adopt rules pursuant to § 120.536(1) and § 120.54 to implement this subsection.*

5. On October 18, 2017, the Board of Medicine proposed Rule 64B8-9.018, which endorsed the promulgated the **Mandatory** Medical Marijuana Consent Form (MMMCF), DH-MQA-5026 created on April 30, 2018. The form has received four edits since its creation, with the last being July 13, 2021, the remaining edits due to the addition of smokable medical marijuana to dispensary sales.

6. The current language for informed written consent is inherited from the requirements for “experimental treatment for terminal conditions” from the Compassionate Care Act, prior to the passage of Article X, Section 29 (9), Fla. Const. *See*, § 499.0295, Fla. Stat.

7. In response to the creation of § 381.986, Fla. Stat., the Department promulgated Rule 64B8-9.018, F.A.C. which establishes the Medical Marijuana Consent Form (MMCF) DH-MQA-5026 to be signed by the patient in order to receive medication.

8. Benjamin Blanchard is a petitioner who has a medical marijuana card. In his April 2024 renewal meeting, he will be required to re-sign the MMCF to keep his access to medication. Blanchard does not want to sign away certain potential rights or agree to implied restrictions and as such, has been told by his physician that he will lose his ability to access medical marijuana, which mitigates the non-malignant pain he feels, by his refusal to sign.

9. Petitioner Hector Roos is an interested party as he has an interest in acquiring a medical marijuana card under the current rules. Upon reviewing the MMCF, Roos decided that he did not feel comfortable losing his civil liberties and as such is unable to acquire medical marijuana for his personal medical needs.

10. Petitioner Jodi James, president of Florida Cannabis Action Network (FLCAN), a Florida Not for Profit Corporation representing members who are marijuana patients, a class of persons with substantial interest who are or may potentially be harmed by the rule. Mrs. James is also a subject matter expert and is the co-author of the *Comprehensive Overview of Contemporary Science: A White Paper on the Florida Medical Marijuana Consent Form*, Florida Cannabis Action Network, 2024. See, attached Exhibit A, FLCAN White Paper.

11. On several occasions, Petitioners have been informed by the courts and physicians that the proposed rule change would address the concerns regarding their civil liberties including the right to work, drive a vehicle and purchase a firearm.

A. “The form is prejudicial and is being used in Courts of Law against patients. Signing the form strips patients of rights and privileges. We have documented the use of this form to strip patients of the ability to drive a car during the course of treatment and the right to possess a firearm.” *See*, Exhibit A, pg. 10.

B. “If you choose not to sign the consent, then you will not have active orders placed in the registry and you will not be allowed to purchase medical marijuana, legally.” *See*, attached Exhibit B, “Future Card Renewal” email from Petitioner Blanchard’s physician.

12. The MMCF also deprives our citizens of several of their Constitutional rights. The implications of signing the consent form appear to violate the following sections of Article 1 of our Florida Constitution.

*SECTION 2. Basic rights. “No person shall be deprived of any right because of race, religion, national origin, or physical disability”*

When our citizens are sick, injured or otherwise indisposed, we become disabled. Not all disabilities are visible, such as Mr. Blanchard’s back injury. The inalienable right to life and happiness involves the right to heal from any injury including a mental injury. Being required to sign the form to receive medication can be construed as impairing the right to life and happiness.

*SECTION 6. Right to work.*

To pursue lives of happiness and liberty and be productive, our Constitution ensures we have the right to work. The consent form’s information appears to imply we will not be able to lead productive employable lives if we consume cannabis.

*SECTION 8. Right to bear arms.*

Due to the implications of psychosis, a patient's right to bear arms is threatened along with the right to be employed by a Person, utilizing their concealed weapons license, when they sign the form.

*SECTION 9. Due process*

The form creates the loss of Due Process by implying a medical marijuana license will lead to automatic arrest due to implications of being assumed “under the influence.”

Other prescription medications do not require a signature imposing penalties for using the medication while driving.

*SECTION 23. Right of privacy.*

There are no signed consent forms required by the Department for any other prescription drug that freely offers informational access to Law Enforcement to verify someone may hold the “drug.” Only the Medical Marijuana’s License Database is accessible to law enforcement, creating a potential invasion to the Right of privacy.

13. Petitioners are uncertain of their obligations to sign the MMCF informed consent form in order to acquire a Florida MMUR identification card.

14. Petitioners are further uncertain as to whether signing an agreement with statements contained in the MMCF informed consent form is a simple acknowledgement of the risks of cannabis consumption or an agreement of every statement contained therein.

15. Petitioners are requesting guidance as to their obligations under the law, to inquire about the existence (or need for) their signature on the MMCF informed consent form when they receive a copy from their examining physician to participate in Florida’s Medical Marijuana Program.

16. Petitioners respectfully submit that they have an actual, present, and practical need to receive the requested declaratory statement.

WHEREFORE, Petitioners respectfully request, pursuant to §120.565, Fla. Stat., that the Department of Health’s Medical Marijuana Program issue a Declaratory Statement clarifying Petitioners' obligations as requested in this Petition.

**ALTERNATIVE PETITION FOR RULEMAKING**

In the event that the Department of Health's Medical Marijuana Program ("Department") declines to issue a Declaratory Statement, Petitioners hereby file this Petition for Rulemaking pursuant to §120.54(7), Fla. Stat. and Rule 28-103.006, F.A.C. In support thereof, Petitioners state as follows:

17. Petitioners resubmit the allegations contained in paragraphs 1 through 16 above.

18. Petitioners request the amendment of rule, 64B8-9.018, F.A.C. which establishes the Medical Marijuana Consent Form (MMCF) DH-MQA-5026.

19. Petitioners specifically requests to strike the phrase "The qualified patient, or" from the second sentence in the first paragraph on page 1 of MMCF to modify sentence as follows:

~~The qualified patient, or~~ The patient's parent or legal guardian if the patient is a minor, must initial each section of this consent form to indicate that the physician explained the information and, along with the qualified physician, must sign and date the informed consent form.

20. Petitioner also specifically requests the creation of a new sentence under Part D, page 8 of the MMCF:

I understand that information contained is based on the best available evidence which is subject to change.

21. In addition, Petitioner also specifically requests the addition of a new disclaimer sentence above the signature box under Part D, page 8 of the MMCF:

The patient's parent or legal guardian if the patient is a minor along with the qualified physician, must sign and date the informed consent form below.

22. Petitioners respectfully submit that the proposed rule is consistent with the Legislative intent expressed in Article X, Section 29 (9), Fla. Const. and § 381.986, Fla. Stat. that the Department does not require the signature of an adult-aged medical marijuana patient on the

MMCF. Petitioners further submit that the Department has the authority to promulgate the requested rule pursuant to § 381.986, Fla. Sta.

23. Petitioners have a substantial interest in the action requested. The proposed rule would address the concern regarding their civil liberties including the right to work, drive a vehicle and purchase a firearm.

WHEREFORE, Petitioner respectfully requests that the Department of Health initiate rulemaking pursuant to § 120.54, F.S., for the purpose of amending Rule 64B8-9.018, F.A.C. as requested in this Petition.

Respectfully submitted this 14th day of February, 2024.

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