STATEMENT OF MAINE'S MEDICINAL MARIJUANA LAW
DHHS MMMP REGULATIONS SUMMARY

The following citations are taken from the Maine Department of Health and Human Services (DHHS) Regulation 10-144 CMR Chapter 122 entitled “Rules Governing the Maine Medical Use of Marijuana Program” (MMMP) as effective on August 4, 2010. This is not an all-inclusive list of DHHS regulations and does not contain or represent any amendments or alterations to DHHS regulations which have taken effect after November 1, 2010. This document does not constitute legal advice and MUST NOT be used as a substitute for the advice of a lawyer qualified to give advice in the particular areas of law to which this document relates. It is very "general" in form, and this ever-changing area of law must be considered in light of the facts, understandings, and circumstances relating to the parties in any given case. Qualified, registered patients should consult with an attorney to determine what requirements they are subject to and what legal liabilities – both civil and criminal – they may face through their use, possession, and cultivation of medicinal marijuana.

AS A QUALIFYING, REGISTERED MEDICINAL MARIJUANA PATIENT, you should be aware of the following:

1. A qualifying patient means "a person whose physician has provided written certification to the department [DHHS] for the patient's medical use of marijuana." MMMP 1.25.
2. Patients must have at least one of the following debilitating medical conditions to be a qualifying patient (MMMP 3.1):
   b. Intractable Pain defined as "a chronic or debilitating disease or medical condition or its treatment that produces intractable pain... which has not responded to ordinary medical or surgical measures for more than 6 months." MMMP 3.1.2.
   c. One of following Symptoms, caused by a medical condition, disease, or its treatment: cachexia or "wasting syndrome", severe nausea, seizures including but not limited to those characteristic of epilepsy, severe and persistent muscle spasms including but not limited to that characteristic of multiple sclerosis. MMMP 3.1.3.
3. DHHS MMMP requires that a physician provide written certification of the qualifying condition and such certification must be made in the course of a bona fide physician-patient relationship, demonstrated by physician monitoring, maintenance of records, and specific diagnosis. MMMP 4.5.
4. DHHS MMMP requires that all qualifying patients register with the department and be issued a department identification card. MMMP 4.1. Possession of or application for a registry identification card is not evidence of unlawful conduct or a basis for a search. MMMP 2.14. Patients are required to re-register each year with DHHS.
5. Prepared marijuana means "the dried leaves and flowers of the marijuana plant, and any mixtures or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the seeds or seedslings, stalks, and roots of the marijuana or other ingredients in goods prepared for human consumption or use." MMMP 1.28.
6. A usable amount of marijuana for medical use means "Two and One-Half" (2.5) ounces or less or prepared marijuana and a total of Six (6) marijuana plants. MMMP 1.36. A qualifying patient may not possess more than 2.5 ounces at any time. MMMP 4.8.1.
7. A seedling means a "marijuana plant that has no flowers, is less than 12 inches in height, and is less than 12 inches in diameter." MMMP 1.33
8. A marijuana plant means a "harvestable female marijuana plant that is flowering and is greater than" twelve inches in height and twelve inches in diameter." MMMP 1.17. A qualifying patient may only possess Six (6) marijuana plants at any one time. MMMP 4.8.2.
9. Marijuana, both prepared and plants, must be kept in an enclosed, locked facility. An enclosed, locked facility means a "closed, room, or other enclosed area within a building, or an enclosed locked facility within a greenhouse, that is equipped with locks or other security devices that permit access only by a cardholder." MMMP 1.11.
10. As a qualifying, registered patient, you are STILL PROHIBITED from the following behavior:
   a. Undertaking any task under the influence of marijuana when doing so would constitute negligence or professional malpractice or would otherwise violate any professional standard. MMMP 2.2.1.
   b. Possessing marijuana in a school bus, on the grounds of any [school] or in a correctional facility. MMMP 2.2.2.
   c. Smoking marijuana in any form of public transportation, in a public place, while operating, navigating, or in the actual physical control of any motorized vehicle, aircraft, motorboat, snowmobile, or all-terrain vehicle. MMMP 2.2.3. and 2.2.4.
11. Medicinal marijuana MAY NOT be transferred for value. MMMP 4.8.4. Unused, unadulterated marijuana may be disposed of in the following manner(s) (MMMP 2.5):
   a. Giving it to a registered patient;
   b. Giving it to a registered primary caregiver;
   c. Giving it to a registered dispensary;
   d. Giving it to a state or local law enforcement officer. Presentation of a valid registry i.d. card and a ME driver's license may be required.

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AS A REGISTERED, PRIMARY CAREGIVER, you should be aware of the following:

1. A patient may designate one primary caregiver to assist the qualifying patient with the patient’s medical use of marijuana. ANYONE may be a primary caregiver – a patient’s caregiver is determined by the patient’s preference. MMMP 5.1, 5.1.1.

2. Primary caregivers are required to possess a valid, DHHS issued registry identification card prior to assisting a registered patient with the medical use of marijuana. MMMP 5.2. A registry identification card is good for one year and must be renewed annually. MMMP 5.6.

3. A primary caregiver must obtain a food establishment license prior to preparing goods containing marijuana for medical use by a registered patient. MMMP 5.3. Strict food packaging and label requirements must be adhered to. MMMP 6.30.

4. Cultivation and Possession Regulations are IDENTICAL to those for a patient. By designating a caregiver a qualifying patient essentially transfers their right to cultivate to that caregiver. A patient may not cultivate if they have designated a caregiver. Note the following:
   a. A primary caregiver may possess up to 2 ½ ounces of prepared marijuana and an incidental amount of marijuana for each registered patient who has named the person as their caregiver. MMMP 5.8.1. This is in addition to the 2 ½ ounces of prepared marijuana a qualifying patient may lawfully possess. MMMP 4.8.1.
   b. A primary caregiver may cultivate up to Six (6) marijuana plants for each registered patient. MMMP 5.8.2.

5. A caregiver may assist up to Five (5) qualified, registered patients at any one time. Each registered patient must designate the individual through DHHS. MMMP 5.8.3.

6. If a caregiver provides assistance for Three (3) or more patients, DHHS may conduct onsite cultivation / possession assessments. DHHS must provide Twenty Four (24) hour notice of the inspection to the caregiver. MMMP 5.10.

7. Primary Caregiver Compensation. A caregiver may receive reasonable compensation for the following (MMMP 5.8.4.5):
   a. Costs associated with assisting a registered patient;
   b. Costs associated with cultivating marijuana for a registered patient.

8. Brief Discussion: What Does “Reasonable” Compensation Mean? Understand that the Maine Medicinal Marijuana Program is truly in its infancy: the regulations outlined above only took effect August 4, 2010; not one of the initial dispensaries granted licenses by the State of Maine has opened its doors or begun accepting patients; and patients and caregivers are not required to register with the Department of Health and Human Services until January 1, 2011. None of these regulations have been examined or challenged. Very few opinion letters have been issued and those that have deal almost exclusively with dispensaries and their operation. I strongly urge any individual interested in becoming a primary caregiver to seek legal counsel when determining what cultivation and/or business model to implement. Speaking generally, a caregiver should be cognizant of the following when determining what constitutes reasonable compensation:
   a. Consider the costs and benefits of operating as a not-for-profit enterprise.
   b. What price is customary in my area? What do other caregivers and dispensaries charge?
   c. Do you charge the same price to all customers? Do you charge differently for different varietals?
   d. Should I consider a flat fee for my services as opposed to a fee based on medicine quantity?
   e. Maintain detailed records of all expenses and implement the use of tracking sheets and identification when cultivating and distributing medicine.
   f. Is it prudent to implement compensation facts similar to those described in IRS Publication 557 Tax-Exempt Organizations.