



# The Texas Compassionate Use Program for Medical Marijuana

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Texas' Compassionate Use Program ("CUP") allows for certain people with qualifying medical and mental health issues to carry a card and be permitted to use otherwise illegal amounts of THC products. But what happens when our clients get arrested prior for possession and possession related offenses before being enrolled?

This article will take you through the CUP and discuss how to assist your client in attaining the card they need – and how to persuade the prosecutor or the court your client needs to use THC going forward and why they deserve mercy after the fact.

Let's go through a common scenario:

Mr. Jones is stopped for speeding. Officer Smith approaches his vehicle and tells him that he smells weed and asks when Jones last smoked. During the ensuing conversation, Mr. Jones admits to smoking and hands a baggie of grass or a blunt to the officer. Mr. Jones is arrested for a misdemeanor marijuana possession. The subsequent search of Mr. Jones' vehicle yields a handgun. This is Texas and everyone has the right to carry the Glock of their choice unless they're otherwise engaged in a criminal offense. So now Mr. Jones is charged with unlawful carrying of a weapon (UCW) and let's further suppose Mr. Jones is already on probation and will likely face a revocation.

Jones is not a drug dealer, not a thug, and not a bad

guy. He may be a veteran. Jones doesn't want to take a conviction because he's not a drug addict and doesn't want to lose his gun rights.

Many of us have clients who may be military veterans suffering from PTSD, anxiety or depression. They might be prescribed medication but hate the side effects. The medication may cause erectile dysfunction, fatigue, mental confusion, or impair the ability to focus. People might prefer using marijuana which eases their symptoms without the side effects.

But there is more to Mr. Jones' story and it's important to get the rest of it.

- Does Jones have a mental health diagnosis?
- Does he have a medical diagnosis?
- Does he have an active addiction or is he in recovery?
- What are his current relationships?
- Did he suffer past personal trauma?
- Did he actively serve in the military?

I find it is important to have this type of information so I can advise the client in building a mitigation packet that can lead to a dismissal, successful plea agreement, or to be used in open sentencing.

## Applying the CUP to Jones' Case

We know that marijuana has proven benefits for treating certain medical conditions and symptoms. The

Program, passed in 2015, gives patients lawful access to low-THC edibles. When the Act first passed, epilepsy was the only eligible condition, but the Act expanded in 2019 and 2021 to add more. Conditions now eligible under the CUP include:

- Epilepsy
- Seizure disorders
- Multiple sclerosis
- Spasticity
- Amyotrophic lateral sclerosis
- Autism
- Cancer
- Post-traumatic stress disorder
- Incurable neurodegenerative diseases

What if the client does not suffer from any of those conditions? **Apply anyway.** I have clients with other conditions who still qualify for the compassionate use program.

The client is eligible if they are:

- A permanent resident of Texas
- Have been diagnosed with any of the above conditions
- The physician believes medical use of low-THC cannabis will provide benefits

If your client is under 18, they may require a legal

guardian to participate in the Program. The majority of this process can be done online.

Going forward the card will excuse failed UAs for THC. If their bond conditions require random UAs then, again, a lab result positive for THC will not land them in trouble.

If the client does not have a diagnosis, I might make a lay decision that the client could benefit from the proper medical evaluation and advise them to obtain it. Most of us have developed skills to spot potential mental health issues though we're not professionals in that area. Be on the lookout with your clients in these instances.

Sometimes the client's insurance will pay for the evaluation. If they're military veterans, then they can apply to the Veterans Administration for mental health evaluation and treatment. If not, we refer them to a variety of sources such as MHMR or Bluebonnet Trails for the evaluation.

Applying to the program is easy and I have yet to have a client's application rejected or denied.

I will present the mitigation packet including the compassionate use card to the prosecutor and, if the client does not have much of a criminal history, I can usually negotiate a dismissal for the weed, and reduction to

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Class C deferred for the UCW with a weapon forfeiture. Depending on the client and the prosecutor, I might get both dismissed, but the weapon will be forfeited. You must give a little quid for the quo.

Applying what we know to Jone’s case, then we would apply for the card and present it to the prosecutor so that we can argue probation should be reinstated and the violations excused.

### Particulars about the CUP and Applying

Note: the Department of Defense prohibits the use of any marijuana-related substances, including CBD, hemp, and medical marijuana. As such, all active duty members of the U.S. Armed Forces are prohibited from participating in CUP, even if they are otherwise qualified. Veterans, however, can participate in the program.

Medical patients must utilize one of three dispensaries here in Texas. The client cannot grow his own or buy it from a friend:

- Fluent (formerly Cansortium Texas)  
info@fluenttx.com  
<https://texas.getfluent.com/>
- Compassionate Cultivation  
info@texasoriginal.com  
<https://texasoriginal.com/>
- Goodblend (Surterra Texas LLC, d/b/a goodblend)  
SupportTX@goodblend.com  
<https://tx.goodblend.com/support/>

These dispensaries can fill the prescription either in-person or online, and have the low-THC product delivered to your home. It’s also important to note that CUP will not fill prescriptions from other states.

Smoking is excluded from medical use. Texas’ low-THC products include edibles and drops. Texas does not recognize or accept medical marijuana cards from any other state. You can legally carry a handgun with a Texas medical marijuana card in Texas. Per the Texas Department of Public Safety:

A patient’s participation in CUP does not, in itself, disqualify the individual from obtaining or maintaining a License to Carry (LTC). Notwithstanding that certain medical marijuana programs have been determined by the FBI to disqualify an individual from possessing firearms, the department does not believe this determination applies to Texas’ CUP.

However, the individual’s underlying condition that is the basis for participation in CUP may under certain circumstances be disqualifying. If the medical condition potentially affects the individual’s ability to exercise sound judgment, the department may refer the matter to the Medical Advisory Board (DSHS) for their review and recommendation. Should the Board find the individual “incapable of exercising sound judgment with respect to the proper use and storage of a handgun,” the Department would deny an application or revoke a current LTC.

When applying for the program, ensure you have a government-issued photo ID (like a driver’s license), a passport-sized photo, proof of residency in Texas, and your signed Physician Certification Form.

The client must keep their registration card with them at all times and always carry their product in the labeled container it came in from the dispensary.

It’s important to keep in mind that Texas’s CUP is much more limited than medical marijuana programs in many other states. Patients should work closely with their healthcare providers to understand whether they qualify and whether low-THC cannabis products might be a suitable treatment option for their specific medical conditions.

Your client can start by applying online at:

Website: <https://docmj.com/states/texas/>

Hit the button “Book an Appointment”

It will then ask you to select an office location – select “Texas”

You will then select a payment option.

You will then select a provider.

You then select an available appointment date and time for a tele-visit that can be done from the comfort of your home with a smartphone, tablet or computer.



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