

## UPPAC NEWS

A BI-ANNUAL NEWSLETTER FROM THE UTAH PROFESSIONAL  
PRACTICES ADVISORY COMMISSION

### Utah's New Medical Marijuana Law: Implications for LEAs and Educators

Many states, including Utah, have recently altered their laws related to marijuana use. California, Nevada, Colorado, and seven other states have legalized both recreational and medical marijuana. Arizona, New Mexico, Utah, and nineteen other states have legalized medical marijuana. Although state laws and personal attitudes regarding marijuana use have been relaxing, possession of marijuana remains a federal crime under the federal Controlled Substances Act.

This issue has implications for educators, who must abide by the Utah Educator Professional Standards (UEPS). An “educator is responsible for compliance with federal, state, and local laws.” Utah Admin. Code R277-515-3(1). In addition, the UEPS prohibit educators from “possess[ing] or distribut[ing] an illegal drug,” Utah Admin. Code R277-515-3(4)(e), and “attend[ing] school or a school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or an illegal drug.” Utah Admin. Code R277-515-3(4)(i). Furthermore, the UEPS define “illegal drug” as “a substance included in . . . Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II Pub. L. No. 91-513.” Utah Admin. Code R277-515-2(6).

Notwithstanding the restrictions in federal law, the Utah Legislature recently passed the Utah Medical Cannabis Act. The following is a list of provisions in the newly enacted act that may be relevant to educators, public schools, and licensing discipline:

- A person may apply for a medical cannabis patient card after meeting with a qualified medical provider in that provider’s office.
- In order to receive the patient card, a person must have one of the qualifying medical conditions listed in Utah Code section 26-61a-104(2).
- A qualified medical provider may electronically recommend treatment with cannabis in a medicinal dosage form after a visit with the patient applying for the card.
- Medical cannabis will be available through the state central fill medical cannabis pharmacy or a licensed medical cannabis pharmacy.
- A medical cannabis cardholder must carry his or her card at all times.
- The cannabis in the cardholder’s possession must have a label that identifies two things: (1) the product as being sold from a licensed medical cannabis pharmacy or the state central fill medical cannabis pharmacy, and (2) the identification number that links the cannabis to the inventory control system developed by the State of Utah.
- A medical cannabis cardholder may not possess more than 113 grams of unprocessed cannabis or a cannabis product that contains more than 20 grams of total composite tetrahydrocannabinol.
- A medical cannabis cardholder cannot use cannabis or a cannabis product in public view.
- A medical cannabis cardholder cannot sell or give their medical cannabis to another person.
- Prior to January 1, 2021, patients meeting the criteria outlined in the Medical Cannabis Act may legally possess medical cannabis without a medical cannabis card while the Department of Health prepares to implement the new law.

- A patient’s use of medical cannabis “does not constitute the use of an illicit substance or otherwise disqualify [the] individual from needed medical care.” Utah Code Ann. § 26-61a-111(1)(b).
- The use of medical cannabis is decriminalized, as long as the medical cannabis user has complied with all the requirements in the Utah Medical Cannabis Act.
- State agencies may not discriminate in government employment, but “[T]he state or any political subdivision shall treat an employee’s use of medical cannabis in accordance with [the Utah Medical Cannabis Act] or [the medical cannabis decriminalization law] in the same way the state or political subdivision treats employee use of opioids and opiates.” Utah Code Ann. § 26-61a-111(2)(a). Schools districts are political subdivisions of the state.

It remains a violation of federal law and Board rule for an educator to use marijuana recreationally, even when the educator uses marijuana in a state where such use is

legalized. As a result, educators who test positive for marijuana may still be subject to some degree of licensing discipline depending on the circumstances unique to their case. As you read this newsletter, you will see cases in point. Additionally, it is still a violation of the UEPS to “intentionally exceed the prescribed dosage of a prescription medication while at school or a school-related activity,” Utah Admin. Code R277-515-3(4)(j), and to be under the influence of “drugs to a degree that renders the [educator] incapable of effectively working in a public school,” Utah Admin. Code R277-515-2(16)(a)(i).

If an educator chooses to use marijuana in accordance with the terms of the new law, an educator should discuss with a medical care provider the likely impairment that may result. Even if an educator uses the drug in accordance with the Utah statute, if an educator is impaired at work, the educator may face issues with employment and licensing. In addition, educators should be familiar with any policies implemented by their LEA in conjunction with the new law.

## **November 2018 Performance Audit: What it found and what it means for LEAs and UPPAC going forward**

In November 2018, the Office of the State Auditor completed a performance audit of educator misconduct reporting and discipline within the Utah system of public education. The audit team went to school districts and charter schools and reviewed personnel files for approximately 19% of all educators who worked for a Utah LEA between July 1, 2013 and June 30, 2018. Within that segment of Utah educators, the auditors examined any allegations of misconduct that occurred in the previous ten years, starting in August 2008. At the conclusion of its report, the State Auditor made four findings and numerous recommendations.

This article will summarize the audit’s findings, the audit’s recommendations, and the Utah State Board of Education’s (USB E) plans going forward related to educator misconduct and licensing discipline.

### The Audit’s Findings

The first finding in the audit was that LEAs failed to report cases of misconduct to UPPAC as required by law. The report noted that the law mandates that LEAs report certain types of misconduct to UPPAC, while it gives LEAs discretion to report other types. The report identified 58 cases of misconduct that LEAs failed to report to UPPAC even though the misconduct fell into the mandatory reporting category. The audit also identified 31 cases that LEAs did not report to UPPAC but could have used their discretion to do so. Finally, the report noted 19 cases of misconduct where the documentation was not sufficient to determine whether they fell into the mandatory reporting category.

The second finding was that educator licensing discipline has improved in Utah. In the past few years, UPPAC has implemented new rules that detail disciplinary presumptions for different categories of misconduct. According to the report, “[t]hese presumptions appear to provide both consistency and a higher degree of

discipline for certain categories of misconduct.” While these disciplines are more severe for certain categories than in the past, the audit concluded that they were “not excessive as compared with other states’ discipline.”

The third finding in the audit was that “failure to report misconduct may have allowed further misconduct in subsequent teaching job[s].” Of the educators reported to UPPAC, 20 of them involved teachers who had worked in another district prior to working in the reporting district. Further, it discovered at least one case where an educator, who was alleged to have engaged in misconduct with students, was allowed to resign without any report of the misconduct to UPPAC. The educator subsequently found a job with another LEA where new allegations of misconduct arose while the educator was working with the new LEA.

The final finding in the audit was that “information regarding past educator misconduct is not readily accessible to LEAs.”

### The Audit’s Recommendations

The audit made ten recommendations, which are as follows:

1. Investigate the previously unreported cases of educator misconduct identified in this audit that fall under the mandatory reporting requirements of Administrative Rule R277-515.
2. Randomly audit LEAs to oversee proper compliance with reporting requirements to UPPAC.
3. Impose appropriate penalties and discipline on LEAs and LEA personnel who do not adequately comply with reporting requirements.
4. Provide greater clarity in Administrative Rules regarding discretionary reporting.
5. Provide additional guidance on discretionary reporting to LEAs.
6. Educate LEAs regarding the importance of reporting educator misconduct to UPPAC and the types of misconduct required to be reported.
7. Encourage LEAs to include greater documentation in their personnel files, including applicable documentation at the school level of any educator misconduct.

8. Continue to evaluate and refine discipline to appropriately address teacher misconduct.
9. Make readily accessible a database which allows LEAs to check for prior discipline of educator candidates.
10. Inform LEAs of the importance of background checks and the resources available to perform these checks, such as the NASDTEC clearinghouse.

### Going Forward

UPPAC and the USBE are working to address the issues identified by the audit. First, after reviewing the cases identified by the audit as mandatory reports, UPPAC has opened new investigations in circumstances where the nature of the allegations and the availability of evidence warrant investigation.

Second, UPPAC staff are following up with LEAs to provide training and guidance regarding reporting requirements. Administrative Rules R277-515 and R277-516 outline the types of misconduct, which require licensing discipline by the Board, as well as those, which fall within an LEA’s discretion to report. An LEA should consider the severity of the misconduct, the frequency of the misconduct, and other factors the LEA considers relevant. If an LEA has any questions about whether to report, the LEA is welcome to contact UPPAC staff directly. And just as LEA administration should be familiar with Rule R277-515, it is incumbent upon each educator to annually review and be familiar with the educator standards.

<https://rules.utah.gov/publicat/code/r277/r277-515.htm>

Third, the USBE is in the process of appointing a task force to review UPPAC’s rules and procedures. This task force will include USBE members and other stakeholders. It will make recommendations to the Board for other improvements to be made to the licensing process.

Finally, anyone can consult the Educator Look-Up Tool on UPPAC’s website, to determine if an educator has had certain types of licensing discipline. While the tool does

not indicate whether an educator has received a previous letter of warning or a letter of reprimand, it does show whether the educator's license has been suspended, revoked, or reinstated. Additional information about an

educator's misconduct may be available through UPPAC. <https://www.schools.utah.gov/policy/uppac>

## QUESTIONS? PLEASE CONTACT US

Our UPPAC team is available if you need to report an ethical violation, have questions about the ethics of a situation, or if you would like us to provide training to your LEA regarding the educator standards. Please contact UPPAC at (801) 538-7745.

## UPPAC EDUCATOR DISCIPLINE

### A Summary of Utah State Board Licensing Actions from August-December 2018

#### **Revocation**

UPPAC case no. 16-1374

An educator pled guilty to two counts of sexual abuse of a minor, a third-degree felony. The educator's license was permanently revoked.

UPPAC case no. 17-1424

An educator pled guilty to four counts of Sexual Exploitation of a minor, a second-degree felony, and four counts of possession of pornography on school grounds, a class A misdemeanor. The educator's license was permanently revoked.

UPPAC case no. 18-1478

An educator pled guilty to enticing a minor, a second-degree felony. The educator's license was permanently revoked.

#### **Surrender**

UPPAC case no. 17-1435

An educator allegedly engaged in a sexual relationship with an 18-year-old female student. The educator permanently surrendered his license before UPPAC concluded its investigation.

UPPAC case no. 18-1487

An educator pled guilty to three counts of sexual battery after he had sexual intercourse with a 15-year-old. The educator permanently surrendered his license before UPPAC concluded its investigation.

#### **Suspension**

UPPAC case no. 17-1426

An educator was under the influence of alcohol at school and failed to respond to the complaint within the designated time. The educator's license was suspended for no less than three years.

UPPAC case no. 17-1429

An educator was suspected to be under the influence of alcohol when she arrived at school. A portable breath test showed the educator had a BAC of .22, and a police officer concluded that she was under the influence. The officer found a mug on top of her desk that smelled like alcohol. The educator was already subject to a letter of reprimand for multiple DUI convictions. The educator's license was suspended for no less than 2 years.

UPPAC case no. 17-1430

An educator pled guilty to wrongful appropriation, a class A misdemeanor, after she pawned school-issued electronic equipment several times. When the educator failed to repay the loan the final time, her school-issued iPad was turned over to the police as stolen property. The educator's license was suspended for no less than fifteen months.

UPPAC case no. 17-1431

An educator exchanged inappropriate messages with a 17-year-old student. The messages were not overtly sexual, but both the educator and the student indicated their desire for a romantic relationship. The educator also misled her principal by providing altered copies of the messages during the school's investigation. The educator's license was suspended for no less than four years.

UPPAC case no. 17-1444

An educator gave multiple gifts and attempted to contact an elementary school student outside of school notwithstanding the demands from the student's parents and administrators that the educator have no contact. The educator's license was suspended for no less than two years.

UPPAC case no. 17-1454

An educator was arrested for shoplifting and providing false information to police in 2017 and 2018. The educator had a history of similar charges, with five previous incidents. The educator's license was suspended for no less than one year.

UPPAC case no. 17-1461

An educator entered a plea in abeyance to child abuse, a class B misdemeanor, after self-disclosing four incidents involving his child to authorities. The educator's license was suspended for no less than one year.

UPPAC case no. 17-1464

An educator was repeatedly disciplined by his district for inappropriate language in the classroom. The educator's license was suspended for no less than one year.

UPPAC case no. 18-1481

An educator had pornographic images on his school computer, including pictures of himself nude and videos of himself masturbating. The educator also made students uncomfortable by touching them on the arm, back, waist, thigh or shoulder. The educator's license was suspended for no less than two years.

UPPAC case no. 18-1485

The educator dragged a student by the hood of his coat down a hallway approximately 70 feet in order to get the student to the counseling center. The educator's license was suspended for no less than one year.

UPPAC case no. 18-1489

An educator violated numerous district policies and had a pattern of boundary violations by giving students rides, money for a pregnancy test, over-the-counter medication, and by inviting students to his house. The educator also sent inappropriate messages to a recently graduated student through a Facebook messenger app. The educator's license was suspended for no less than two years.

UPPAC case no. 18-1527

An educator bullied a special needs student and prevented school staff from rendering legally required services to students with IEPs on multiple occasions. The educator's license was suspended for no less than one year.

### **Letter of Reprimand**

UPPAC case no. 17-1432

An educator did not report to the proper authorities a minor student sexting with an older man. The educator received a letter of reprimand to remain on his educator's license for two years.

UPPAC case no. 17-1437

An educator made comments to a female student in his automotive class that were sexual in nature. The educator also told the student inappropriate stories from his personal experiences. The educator received a letter of reprimand to remain on his educator's license for two years.

UPPAC case no. 17-1452

An educator engaged in boundary violations with students. The most serious of the violations involved Facebook communication with a current student and with a 16-year-old former student. The educator told the 16-year-old former student that he wanted her "sexy ass company," among other inappropriate comments. The educator received a letter of reprimand to remain on his educator's license for two years.

UPPAC case no. 18-1468

An educator was suspected of having alcohol on her breath during work hours and showed some signs of impairment, but there was no direct evidence of the educator's breath or blood alcohol concentration. The educator received a letter of reprimand to remain on the educator's license for two years.

UPPAC case no. 18-1473

An educator missed excessive work without warning and tested positive for use of multiple drugs upon her return to work. The educator received a letter of reprimand to remain on her educator's license until she successfully completes a drug rehabilitation program.

UPPAC case no. 18-1483

An educator behaved strangely at school during an assembly. Approximately two weeks later, the educator tested positive for marijuana. The educator received a letter of reprimand to remain on her educator's license for two years.

UPPAC case no. 18-1491

An educator sent an inappropriate Facebook message to a 17-year-old graduated student. He also dated two of his

former students after they graduated and engaged in overly personal conversations, including asking personal questions of female students. The educator received a letter of reprimand to remain on his educator's license for two years.

### **Letter of Warning**

UPPAC case no. 17-1441

An educator invited a high school student to come to her home and assist with housework while no one else was present. The student made uncorroborated accusations that the educator provided marijuana to the student. The educator received a letter of warning.

UPPAC case no. 17-1448

An educator met with a female student several times at a rock-climbing gym outside of school hours and went hiking with her after she graduated from high school. Additional allegations were uncorroborated. The educator received a letter of warning.

UPPAC case no. 18-1466

An educator engaged in some banter with students that included mild profanity. The educator also used a student's cell phone to send a text message to another student that included profanity. The educator received a letter of warning.

UPPAC case no. 18-1467

An educator physically moved several students as he attempted to get control of a rowdy classroom. Later in the day, the educator became upset at a misbehaving student, pushed the student's desk toward him and leaned on the top of the desk, causing a bar on the bottom of the desk to press down on the student's thigh. The educator received a letter of warning.

UPPAC case no. 18-1469

An educator restrained a difficult student while trying to retrieve stolen items out of the student's pockets. The educator then carried the student down the hall while the

student dragged his knees on the floor. The educator received a letter of warning.

UPPAC case no. 18-1470

An educator helped another teacher restrain a difficult student while the other teacher attempted to retrieve stolen items out of the student's pockets. The educator then assisted the other educator in carrying the student down the hall while the student dragged his knees on the floor. The educator received a letter of warning.

UPPAC case no. 18-1476

An educator stepped on a student's foot and pushed him to the ground after the student accidentally hit the educator in the head with a ball in a gym during free time. The educator received a letter of warning.

UPPAC case no. 18-1479

An educator bit a student's calf over her jeans to encourage her not to lay on the table. The educator also used inappropriate language with students. The educator received a letter of warning.

UPPAC case no. 18-1495

An educator accessed sexually suggestive written material on his school Chromebook at his home after contract hours. The educator received a letter of warning.

UPPAC case no. 18-1496

A news outlet reported to the Board that an educator allowed his class to engage in one-on-one wrestling and boxing matches six years ago. Two students sustained minor injuries. The educator received a letter of warning.

UPPAC case no. 18-1507

An educator released his class for lunch except for six misbehaving students. The students reported that the educator yelled at the students and pulled the chair up

from under one student, causing him to fall. They also alleged that the educator picked up another student's desk and slammed it back to the floor, striking the stomach and foot. The educator denied the student reports. The educator received a letter of warning.

UPPAC case no. 18-1509

An educator tested positive for marijuana after a workplace injury. The educator received a letter of warning.

UPPAC case no. 18-1519

An educator tested positive for marijuana after a workplace injury. The educator received a letter of warning.

### **Other**

UPPAC case no. 16-1370

An educator was arrested and charged with several felonies in connection with an inappropriate relationship with two female high school students. As the teacher was not fully licensed, he received a permanent flag on his CACTUS account.

UPPAC case no. 16-1378

An educator engaged in inappropriate communication with several students and athletes. The educator also showed them nude photos and a video of a woman he said was his girlfriend. As the teacher was not fully licensed, he received a permanent flag on his CACTUS account.

UPPAC case no. 17-1447

An educator was charged with sexual abuse of a minor, but the criminal case against the educator was stayed indefinitely because the educator was found to be mentally incompetent to proceed to trial. The educator received a permanent flag on his CACTUS account