# Cannabis Topicals: Can Professionals Apply Them to Clients?

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The legalization of cannabis and the enactment of the *Cannabis Act* and its regulations have transformed the healthcare landscape in Canada. In particular, topical cannabis substances have presented a unique set of considerations for "hands on" healthcare professionals.

A cannabis topical is defined in the regulations under the *Cannabis Act* as a substance (or mixture of substances) that contains any part of the cannabis plant and that is intended for use, directly or indirectly, exclusively on external body surfaces, including hair and nails. Examples include cannabis-infused creams, oils, lotions and balms.

The federal *Cannabis Act* came into force on October 17, 2018, legalizing recreational cannabis use for adults in Canada and replacing the former regulations governing the use of cannabis for medical purposes.

The introduction of the *Cannabis Act* also triggered amendments to the *Drug and Pharmacies Regulation Act* ("DPRA") in Ontario and other health legislation. In particular, the amended DPRA exempted cannabis – other than cannabis produced or obtained for medical purposes – from the definition of a "drug". As such, cannabis that is not produced or obtained for medical purposes is not considered a drug for the purposes of Ontario's *Regulated Health Professions Act* ("RHPA"), because the definition of "drug" in the RHPA refers to the DPRA. Cannabis that is produced or obtained for medical purposes is considered a drug for the purposes of the RHPA. This distinction is relevant to regulated health professionals because cannabis that is produced or obtained for medical purposes engages the controlled act of prescribing, dispensing, selling or compounding a drug under the RHPA.

**The Regulation of Cannabis Topicals**

In June 2019, the government expanded the regulations under the *Cannabis Act* to include the production and sale of three new categories of cannabis: edible cannabis, cannabis extracts, and cannabis topicals. Cannabis topicals in particular present a unique set of considerations for regulators of "hands on" professions.

Selling, distributing and producing cannabis remains strictly regulated under the *Cannabis Act* and its regulations, and these activities would be prohibited for most regulated health professionals. The term "distribute" encompasses a wide range of activities including administering, transferring, sending, delivering, giving, transporting, providing or otherwise making cannabis available in any manner. Most regulated health professionals are therefore prohibited from selling or distributing a cannabis topical under the *Cannabis Act* (unless they obtain the appropriate license to do so). However, even if a regulated health professional obtained a license to sell, distribute or produce cannabis pursuant to the *Cannabis*

*Act*, she/he would still be required to observe the restrictions in the RHPA (including the controlled act noted above), the standards of practice of the profession and any rules implemented by her/his regulator related to the sale, distribution or production of cannabis.

As mentioned above, only "health care practitioners" (defined as medical practitioners and nurse practitioners) are permitted, while practising in a hospital, to "prescribe" cannabis.[1]

The legislation also explicitly authorizes these health care practitioners to "administer" cannabis for medical use (although it does not define "administer"). Interestingly, the legislation does not clearly *prohibit* other regulated health professionals from doing the same. Nonetheless, because these other health professionals are not explicitly authorized to administer cannabis for medical use, it would be reasonable for their regulators to take the position that their members are in fact prohibited from doing so.

**The Grey Area – Applying a Client's *Own* Cannabis Topical**

While most regulated health professionals (again, excluding medical practitioners and nurse practitioners) are unable to sell or distribute a cannabis topical to anyone, a grey area arises around the question of whether regulated health professionals can apply a client's *own* cannabis topical to that client. This question is especially relevant in "hands on" professions.

In order to apply any substance to a client, a regulated health professional must be able to understand the risks and benefits of the product, explain these risks and benefits to the client, and obtain the client's informed consent to the application of it. The specific requirements for consent are outlined in provincial legislation; in Ontario, the elements of consent are set out in the *Health Care Consent Act.* While applying a cannabis topical provided by the client is not strictly prohibited under the *Cannabis Act* and its regulations, the question of whether to apply a client's own cannabis-infused cream, oil, lotion or balm would engage the individual professional's knowledge and understanding of cannabis topicals.

So what does the research say? Simply put, the answer is not much yet. Because cannabis topicals were prohibited until so recently, there is little research into their associated health risks and benefits.

The June 2019 amendments to the *Cannabis Act* and its regulations were published alongside a Regulatory Impact Analysis Statement (the "Statement"). The Statement provides guidance to the public and stakeholders and some background on the intended public health and safety goals of the amendments, including reducing the risks of overconsumption and accidental consumption of cannabis topicals. However, it also reveals how little is actually known about cannabis topicals. For instance, the Statement explains that the measure for the maximum amount of THC permitted per container of cannabis topicals (1,000 mg) is considered an important safeguard to mitigate the associated risks, but this measure appears to be drawn from lessons learned about cannabis edibles (not topicals). As such, it is difficult to know how this measure was established and, more importantly, what research there is to support it.

[1] Cannabis does not actually require a prescription, but a health care practitioner can provide a medical document to support its use for medical purposes or a written order authorizing a stated amount of cannabis to be dispensed.

Currently, the only information available on the Health Canada website specifically regarding the risks is a vague warning that there "may be health effects and risks associated with cannabis topicals that are not fully known or understood." The federal government's *Consumer Information – Cannabis* document is likewise silent on cannabis topicals.

Similarly, the Canadian Centre on Substance Use and Addiction's 2019 position is that the risks of cannabis topicals remain largely unknown. Therefore, despite the fact that cannabis topicals have been introduced into the federal cannabis scheme, little is known about the risks and benefits beyond anecdotal support for their purported effects.

**So What Now?**

Given the lack of information on the risks and benefits of cannabis topicals, a regulated health professional would be hard-pressed to find sufficient scientific research to allow her/him to properly inform a client about the potential effects and to obtain informed consent with respect to the application of cannabis topicals.

In light of this gap in knowledge, health regulators in several provinces have taken the position that there is simply insufficient research to determine the risk or benefit to clients and as such, they continue to publicly counsel members not to administer or apply cannabis topicals to their clients. Until more is known about these substances, this approach ensures that the public is protected from any potential negative effects of cannabis topicals, including overconsumption. Regulators should continue to monitor developments in the area (or engage in independent research) to ensure that this approach remains consistent with new and emerging science.