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## Medical Marijuana

### 452.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for handling and distinguishing between claims of medical marijuana use under California's Compassionate Use Act (Health & Safety Code § 11362.5) and criminal narcotics violations.

### 452.2 ENFORCEMENT

Although federal law does not currently permit possession of marijuana for medical use, California has created a limited defense (i.e. no penalty) for certain qualified individuals possessing small quantities of marijuana for medical use under strict conditions.

- (a) Notwithstanding California Medical Marijuana laws:
  1. California does not provide any exception for individuals driving under the influence of marijuana. All such cases should be handled with appropriate enforcement action (e.g., Vehicle Code § 23152, et seq.).
  2. Medical marijuana may not be smoked outside of a residence within 1000 feet of a school, recreation center, youth center or in a vehicle or boat (Health & Safety Code § 11362.79).
  3. No probationer or parolee may possess medical marijuana unless such possession is authorized in writing by court order or parole conditions (Health & Safety Code § 11362.795).
- (b) Possession, cultivation and sales of marijuana in quantities beyond that which might reasonably be construed as for personal use should be handled as criminal cases with appropriate enforcement action taken pursuant to Health & Safety Code §§ 11357, 11358 and 11359.
  1. The amount of marijuana possessed must be reasonably related to the medical needs of the qualified patient or person with valid ID card.
  2. The quantity and form of marijuana must also be reasonably related to the patient's current medical needs.
    - (a) Officers must carefully evaluate on a case-by-case basis:
      1. In the most recent California Supreme Court decision regarding medicinal marijuana (People v. Kelly, 2010 Cal. LEXIS 113 Jan. 21, 2010), the court dealt with the underlying issue that an officer should not assume that because an individual possesses, cultivates or transports marijuana in greater amounts than indicated by HS 11362.77, that an arrest is necessary. HS 11362.77 states that a qualified individual or primary caregiver may not possess more than eight ounces of dried marijuana per qualified patient and no more than six mature or twelve immature marijuana plants per qualified patient.
      2. In People v. Kelly the court essentially concluded that quantity limitations imposed by the Medical Marijuana Program Act (11362.77) impermissibly restricted the defenses provided by the Compassionate Users Act. As such, a criminal defendant could theoretically still introduce evidence from a physician which

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indicates that he/she requires more than the limits imposed by the Medical Marijuana Program Act.

3. The Compassionate Users Act and the elimination of maximum quantity issues are related to a criminal defense presented in court. They do not address existing minimum quantities which may or may not apply to an arrest in the field. It is still necessary for officers to articulate how any amount of marijuana was not reasonably necessary to meet an individual's current medical needs.
  4. Officers must carefully evaluate on a case-by-case basis as to whether or not an arrest, prosecution, and the recovery of evidence is worthwhile when an individual possesses a larger quantity than that previously set forth in the Medical Marijuana Program Act (11362.77) and who presents a seemingly valid medical marijuana claim.
- (b) In any case involving the possession or cultivation of marijuana, the handling officer should inquire whether the individual is claiming that the marijuana is for medicinal purposes.
1. If no such claim is made, the officer should proceed with normal enforcement action.
  2. If a claim of medicinal use is made, the officer should proceed as outlined below.

#### **452.3 MEDICINAL USE CLAIMS**

In order to qualify for a medicinal marijuana defense, any individual making such a claim must affirmatively establish the following information. If the individual cannot or will not provide all of the required information, the officer should note such fact in any related report and proceed with appropriate enforcement action.

##### **452.3.1 PATIENTS**

- (a) An individual may establish his/her status as a qualified patient by presenting a current and valid state issued identification card issued by the Department of Health (Health & Safety Code § 11362.735). Such identification cards shall contain the following information:

1. A unique serial number.
2. An expiration date.
3. The name and telephone number of the county health department approving the application.
4. A 24-hour toll-free number for law enforcement to verify the validity of the card (Verification can be checked at [www.calmmp.ca.gov](http://www.calmmp.ca.gov)).
5. A photograph of the cardholder.

No officer shall refuse to accept a properly issued identification card unless the officer has reasonable cause to believe that the information contained in the card is false or that the card is being used fraudulently (Health & Safety Code § 11362.78).

- (b) If the individual does not possess a valid state issued identification card, the individual claiming status as a qualified patient must minimally provide the following information:
1. Satisfactory identification establishing current residency in California.

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2. A current and valid medical marijuana ID card from a local governmental agency (e.g., county) or a current and verifiable, written recommendation for marijuana from a California licensed physician.
3. In the absence of a valid identification card, the handling officer should also obtain a written waiver from the involved individual authorizing the release of all related medical records.

#### **452.3.2 PRIMARY CAREGIVERS**

Primary caregivers are subject to the following requirements (Health & Safety Code 11362.765):

- (a) A primary caregiver is not authorized to use, sell, or possess marijuana for sale.
- (b) A primary caregiver must provide sufficient proof that he/she is responsible for the patient's housing, health and/or safety.
- (c) A primary caregiver must provide sufficient proof of personal knowledge of the patient's medical needs and the details of the attending physician's recommendation.
- (d) Upon proof that a qualified primary caregiver is caring for more than one qualified patient, he/she may aggregate possession and cultivation limits based on the reasonably related medical marijuana needs of each patient.
- (e) While qualified patients and primary caregivers may be permitted to collectively or cooperatively associate to cultivate medical marijuana, such individuals must strictly adhere to all non-profit and local business requirements (Health & Safety Code § 11362.775).

#### **452.3.3 CLAIM REQUIREMENTS MET**

Once the handling officer is satisfied that the individual making a medicinal marijuana use claim meets the above requirements, the officer should proceed as follows:

- (a) Marijuana left in the possession of a qualified individual for the limited purpose of medicinal use should be documented. Documentation should be determined on a case-by-case basis and may include an FI form.
- (b) If the handling officer has already taken the individual into custody (vs. detention only) prior to establishing qualification for a potential medicinal use defense and there are no other criminal charges pending or being investigated, the individual should be released pursuant to Penal Code § 849(b).
- (c) If the individual remains in custody on any charge(s), the individual will not be permitted to use marijuana while being detained or held in jail or other law enforcement facility (Health & Safety Code § 11362.785(c)).

#### **452.3.4 RETURN OF MARIJUANA**

Regardless of the prosecution status or disposition of any related criminal case, this department will not be responsible for the return of any marijuana seized as evidence except as may be required by a valid court order (Cal. Health and Safety Code § 11473.5 and 21 U.S.C. § 885(d)).