



San Diego County Sheriff

TRAINING BULLETIN

William D. Gore, Sheriff

October 2010



Medical Marijuana Investigations For Field Deputies

In 1996, California Voters approved **Proposition 215**, also known as the **Compassionate Use Act (CUA)**. The CUA (11362.5 HS) is an affirmative defense for the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. This list of illnesses included cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, or any other illness for which marijuana provides relief. Prop 215 is also an affirmative defense for possession and cultivation by a primary caregiver.

In 2003, **Senate Bill 420** was passed. SB420 is also known as the **Medical Marijuana Program (MMP)**. This expanded the list of illnesses to include seizures, severe nausea, and muscle spasms. It also included "any other chronic or persistent medical symptom that either substantially limits the ability of the person to conduct major life activities as defined by the Americans with Disabilities Act, or if not alleviated, may cause serious harm to the patient's safety of physical or mental health." SB420 also established the Medical Marijuana ID Card Program and expanded protection from prosecution.

Neither Prop 215, nor SB420 conflict with the Federal Controlled Substance Act because in adopting these laws, California did not legalize medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition.

In October 2009, the United States Attorney General's Office issued a policy statement advising U.S. Attorney's not to target medicinal marijuana patients and or cultivators that are abiding by state law.

Physician's Recommendation VS. State Issued ID card

Marijuana is not recognized by the FDA as a medical drug and therefore cannot be prescribed for a patient through the normal prescription drug process by an attending physician. A qualified patient merely obtains a doctor's recommendation for medical marijuana use. These recommendations are not given out by physicians at your HMO, but rather are provided by physicians running small medical marijuana clinics. These physicians must possess a license in good standing to practice in California, and have taken responsibility for some aspect of medical care, treatment, diagnosis, counseling or referral of a patient and has complied with accepted medical standards set by the medical board of California.

A person with a valid physician's recommendation or State issued ID card is known as a **Qualified Patient**. Another person who may possess marijuana but is not necessarily a user or patient is a **Primary Caregiver**. A primary caregiver must be designated by a qualified patient. They are allowed by law because some patients are too ill to obtain or grow medical marijuana on their own. A caregiver may provide for more than one patient, but the caregiver must consistently provide for the housing, health, and safety for each patient. **People v. Mentch (Cal. Supreme Ct. - Nov. 24, 2008)** If a primary caregiver is also using medical marijuana, they must have their own physician's recommendation or ID card.

Criminal defendants and probationers may request court approval to use medical marijuana while out on bail or probation. The court's decision and reasoning must be on the record and in the minutes of the court. **Parolees** may request to use medical marijuana, however the written conditions of parole must reflect if the request was granted or denied. If a physician recommends or approves the use of medical marijuana for a **minor**, the parents or legal guardians must be fully informed of the risks and benefits of such use and must consent to that use.

Physician's Recommendation:

A physician's recommendation to use medical marijuana may either be in written form or a verbal (*rare*) recommendation. Most physicians' recommendations will list an expiration date or a patient re-evaluation date. If a recommendation is expired, the subject may be arrested. However, even if the recommendation was expired, the recommendation may be ruled valid in court if the issuing physician is willing to testify on behalf of the patient that he/she is still in need of medical marijuana.

These recommendations can only be verified by calling the Physician's office to confirm that the Doctor did in fact issue the recommendation to that particular individual. The recommendations can take many forms such as a small paper or plastic card or a full size page.

Sample recommendation letters and ID cards (Not State issued)

Physician's Statement Regarding Medical Cannabis *As Per California Health and Safety Code §11362.3*

To Whom It May Concern:

This statement certifies that _____ (patient) is a patient under my care and supervision for the treatment of _____ (diagnosis).

I decline to state my patient's diagnosis to protect his or her confidentiality.

I have discussed the benefits and risks of cannabis use with my patient as a treatment for his or her condition. I recommend or approve cannabis use for my patient. If my patient chooses to use cannabis therapeutically, I will continue to monitor his or her condition and provide on his or progress.

I understand that I will be contacted to verify the content of this letter. My patient authorizes me to discuss this recommendation or approval for verification purposes only.

I am a physician licensed to practice medicine in California.

This statement is valid until _____ (expiration date).

Physician's Signature

CA License No.

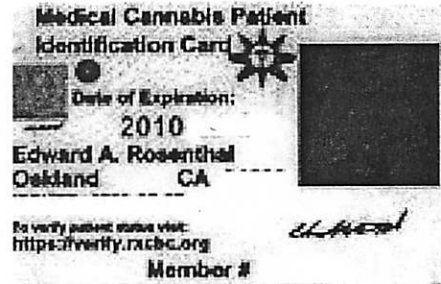
Physician's Name

Date

Address

City, State, Zip

Telephone



Confidential Medical Statement

These are samples of what you might encounter in the field.

These physician recommendations letters and cards can only be verified by contacting the issuing physician's office

Medicann, Inc. ID Card Program



Medical Marijuana Recommendation
D.O.

Hallowell, ME 04847

Patient Name: James Fowler Date: 2/9/10

Diagnosis:

- Persistent nausea, vomiting, wasting syndrome or loss of appetite as a result of
 - Acquired immune deficiency syndrome or the treatment thereof
 - Chemotherapy or radiation therapy used to treat cancer
 - Other: _____
- Heightened intraocular pressure as a result of glaucoma
- Seizures associated with a chronic, debilitating disease, such as epilepsy
- Persistent muscle spasms associated with a chronic, debilitating disease, such as multiple sclerosis
- Details: Degenerative disc disease

I, _____, D.O., recommend medical marijuana for the treatment of the above condition.

I have discussed with the patient the possible health risks and therapeutic or palliative benefits of the medical use of marijuana to relieve pain or alleviate symptoms of the patient's condition, based on information known to myself, including, but not limited to, clinical studies or anecdotal evidence reported in medical literature or observations or information concerning the use of marijuana by other patients with the same or similar conditions.

I have provided the patient with my professional opinion concerning the possible balance of risks and benefits of the medical use of marijuana related to this particular case.

I have advised the patient, on the basis of my knowledge of the person's medical history and condition, that the person might benefit from the medical use of marijuana to treat this medical condition.

This patient has disclosed to myself his/her medical use of marijuana, and he/she is under my continuing medical care.

D.O. _____ Date: 2/9/10 Patient's signature: [Signature] Date: 2/9/10
 Maine License # _____

State of California Identification card (Issued by Counties)

The card shown below is the State of California Medical Marijuana ID Card as provided for by SB420. This **VOLUNTARY** card is issued to patients and caregivers with a valid physician's recommendation through individual counties and is valid for one year. In San Diego County, the card is issued through the Department of Health and Human Services Agency (HHS). You should note that the State issued ID card will not show the recipient's name, but will identify the person it was issued to by photograph and whether he or she is a Patient or Caregiver.

Each ID card is given a random ID number, will list the county it was issued in, an expiration date, a telephone number, and web address to verify the card. The card will also display the State of California Seal and the California Department of Public Health logo as shown below. (*Earlier cards had a different logo depicting the State of California and have since expired*).

The verification web site will only confirm whether or not the card number is valid. It will not provide you with the name of the card holder nor will it provide a photograph for comparison. Counterfeit cards have been found using one valid number and many different photographs. The State issued ID card does however limit the holder to the possession limits as described in the Attorney General Guidelines, (8oz. dried or 6 mature or 12 immature plants).

As of May 2010 in California there have been 42,500 state medical marijuana cards issued with 614 of those were issued in San Diego County.

**State of California
Medical Marijuana Identification Card
Patient**



ID # 490470670

To verify: www.calmmp.ca.gov

Date of Expiration:

12/6/2009



Sonoma County

Dept. of Health Services

(707) 565-4407

0047307

Possession/Cultivation Limits

Initially, SB420/11362.77(a) HS set limits for the possession and cultivation of medical marijuana at 8 ounces of dried marijuana, 6 mature marijuana plants, or 12 immature marijuana plants. However, the California District Three Appellate Court on May 22, 2008 in the case **People V. Kelly** ruled that limitations in SB420 were unconstitutional for persons that do not possess a State of California Medical Marijuana ID card. Prop215 does not quantify the marijuana a patient may possess, but limits the amounts a patient may possess to be a reasonable amount for, "Personal medical purposes."

Note: Since a primary caregiver may provide care for more than one patient, a caregiver may possess amounts for each of the caregiver's patients provided the caregiver has the proper documentation and can identify the patient(s). Remember that the "Primary Caregiver" must also "Consistently assume responsibility for the housing, health or safety of that patient." Providing, delivering, or cultivating marijuana alone does not meet the definition of a caregiver.

The District Attorney's office is currently following the Attorney Generals guidelines for possession limits when considering whether to prosecute. What this means is, if a patient or caregiver had a valid physicians recommendation and they were in possession or were cultivating within the limitations of the AG guidelines, (8 ounces dried, 6 mature plants or 12 immature plants) that they will not be prosecuted. It is also unlikely that these same persons would be prosecuted if they possessed or cultivated a small amount above these limits. Being a medical marijuana patient or caregiver does not give an individual the right to possess or cultivate unlimited amounts of marijuana, but the District Attorney's office will likely decline to prosecute unless it is obvious that the quantities involved are not for personal use.

If a Deputy has reason to doubt the validity of a subject's medical marijuana claim based upon the facts and circumstances and can articulate these facts, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish their medical marijuana defense in court. Deputies are not obligated to accept a person's claim of having a verbal physician's recommendation that cannot be readily verified with the issuing physician at the time of detention.

Obviously, possession of any amount of marijuana along with indicia of illegal sales such as scales and packaging, pay and owe sheets, substantial sums of cash, or where illegal sales are determined through investigations, then an arrest can and should be made. Otherwise, if the amount possessed by a person is found to be reasonable and the doctor's recommendation or ID card is verified as valid, or is believed to be valid, discretion should be used when deciding whether to arrest.

Many provisions of Prop 215 and SB420 are still being interpreted in the courts therefore any strict enforcement guidelines would be impossible to create or to follow at this time. Deputies' should look at the totality of each individual circumstance they encounter when deciding whether or not to take enforcement action.

Field Investigations

A Deputy that encounters a subject in the course of their duties who possesses or is cultivating marijuana, should first ascertain if that subject is a medical marijuana patient or primary caregiver. If the subject is neither a patient nor a primary caregiver or if the subject cannot produce a physician's recommendation, state Medical Marijuana ID card or identify the source of his physician's verbal recommendation for verification, then normal and appropriate arrest procedures per Dept. P&P section 6.6 (Marijuana Citation Program) or applicable Health and Safety Codes should be utilized.

If the subject produces a physician's written recommendation or physician issued ID card, **other than a state issued Medical Marijuana ID card**, the Deputy should attempt to verify the validity of the recommendation or card by contacting the issuing physician's office when possible.

If a Deputy is provided with a valid **State of California Medical Marijuana ID card**, and the amount of marijuana possessed or being cultivated is within the limits described in the Attorney General Guidelines, (8oz. dried, 6 mature or 12 immature plants) then an arrest **should not** be made. The state issued Medical Marijuana ID card is the **only** identification card that grants immunity from arrest absent any other unlawful circumstances such as weapons, illicit drugs, sales, etc.

If a subject is found to be in possession of or cultivating marijuana and claims "Primary Caregiver" status, then the Deputy should determine which patient(s) the subject provides care for and attempt to verify that those persons are qualified patients with a valid recommendation or Medical Marijuana ID card. A legitimate caregiver should have this information available for Law Enforcement.

Keeping in mind that a "caregiver" must provide substantial and ongoing care for a patient beyond only supplying medical marijuana, the Deputy should ascertain from the caregiver what other functions they provide that is considered care giving. These could include transportation to and from medical appointments, housing, meal preparation, or other health and safety related activities.

Also, just because a subject claims protection under the CUA with a doctor's recommendation or Medical Marijuana ID card, Deputies need not abandon their search or investigation. Standard search and seizure rules apply to the enforcement of marijuana-related violations.

Recommended reading

Some court cases of importance regarding medical marijuana cases are listed below. Deputies should also familiarize themselves with the Attorney Generals Guidelines http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf and Health and Safety codes 11362.5 thru 11362.795.

City of Garden Grove v. Superior Court of Orange County (2007) - A medical marijuana patient was stopped and cited for possession of marijuana, despite showing the officers proper documentation for it. The charges against the patient were subsequently dismissed, and the court issued an order to return the medical marijuana to the patient.

County of Butte, et al. v. The Superior Court of Butte County (2009) – Plaintiff was a qualified medical marijuana patient. Plaintiff sued the County of Butte after a Sheriff's Deputy ordered plaintiff's medical marijuana plants destroyed under threat of arrest and prosecution even after being provided with a doctor's recommendation.

Chavez v. Superior Court of Orange County (2004) – The defendant is not entitled to the return of medical marijuana where the quantity exceeded the guidelines and the defendant did not qualify under the CUA.

People v Strasburg 148 Cal.App.4th 1052 (2007) - An officer with probable cause to search is not prevented from doing so by someone presenting a medical marijuana card or marijuana prescription.

This training bulletin was edited for distribution by the In Service Training Unit. If you have any information or expertise in a specific area and would like to write a training bulletin, please contact Deputy Darrel Weiss at the In-Service Training Unit at (858) 505-6594 or Darrel.Weiss@sdsheriff.org