



# TRAINING BULLETIN

ORANGE COUNTY SHERIFF'S DEPARTMENT

Issue: 02.10.10.1

## BULLETIN NO. 10-5

Replaces 09-18

### **"MARIJUANA FOR MEDICAL USE" PROPOSITION 215 AND THE MEDICAL MARIJUANA PROGRAM**

#### **Introduction**

Health and Safety Code, Section 11362.5 was enacted on November 6, 1996, as a result of passage of Proposition 215, or the *Compassionate Use Act of 1996*. In 2003, the Legislature supplemented section 11362.5 by enacting Health and Safety ("H&S") Code sections 11362.7 through 11362.83, the *Medical Marijuana Program* statutes ("MMP"). All members of the department involved in the enforcement of narcotic laws shall be familiar with the elements of these sections.

This training will provide you with guidelines so that you may adequately perform your duties in light of these laws. The final page of this bulletin consists of a Decision Tree to follow when confronted with a situation potentially affected by H&S Code sections 11362.5 and 11362.7-11362.83.

*When an enforcement member of this department contacts a person found to be in possession of marijuana, that department member will first ask the following question: Why do you have marijuana in your possession?*

If the person claims he/she uses or possesses marijuana to relieve symptoms of a medical condition or possesses the marijuana as a primary caregiver for a person who uses marijuana to relieve the symptoms of a medical condition, the department member will determine if: *1) that person has a valid identification card that identifies the person as a person authorized to engage in the medical use of marijuana, or 2) that person has a valid identification card that identifies the person as a primary caregiver authorized to possess marijuana for a person authorized to engage in the medical use of marijuana, or 3) the person meets the qualifications of Patient and/or Caregiver after the department member asks the appropriate questions by utilizing the information contained herein.*

*Remember, Miranda warnings shall be given to any person interrogated while in-custody.*

#### **Qualifications and Questions**

##### **Definitions**

1. The term "marijuana" as used in the CUA and MMP includes all parts of the plant *Cannabis sativa* L., whether growing or not, and concentrated cannabis or hashish.\*





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2. A "person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services.
3. A "qualified patient" means a person who is entitled to the protections of the CUA, but who does not have an identification card issued by the State Department of Health Services.
4. A "primary caregiver" means the individual, designated by qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.
5. An "identification card" means a document issued by the State Department of Health Services through a county health department that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

### What is a Valid Identification Card under the *Medical Marijuana Program*?

1. An identification card issued by a county health department shall be serially numbered and shall contain all of the following:
  - a) A unique user identification number of the cardholder
  - b) The date of expiration of the identification card
  - c) The name and telephone number of the county health department
  - d) A 24-hour, toll-free telephone number maintained by the Department of Health Services ("DHS"), that will enable law enforcement officers to have immediate access to information necessary to verify the validity of the card<sup>1</sup>
  - e) A photo identification of the cardholder
2. A separate identification card issued to the person's designated primary caregiver, if any, shall include a photo identification of the caregiver.

### What Qualifies Someone as a Patient Under the CUA and MMP?

1. The person must be diagnosed with a serious medical condition, including AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis, seizures, including, but not limited to, seizures associated with epilepsy, severe nausea and any other chronic or persistent medical symptom that either substantially limits the ability of the person to conduct one or more major life activities or if not alleviated, may cause serious harm to the patient's safety or physical or mental health.

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<sup>1</sup> The Department of Health Services also has an internet website, [www.calmmp.ca.gov](http://www.calmmp.ca.gov) for verifying the validity of an identification card.





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2. The person's physician must have determined that the specific patient's health would benefit from marijuana as a treatment for the specific illness.
3. A person cannot use as a defense a general recommendation by a doctor seen on television, heard on the radio, published in a magazine, etc. (i.e. a person with a particular illness may not use what he/she heard a doctor say on television, the radio, etc. as a valid recommendation to use marijuana). The physician must have examined the patient.
4. The person must not be engaged in behavior that endangers others, such as driving a vehicle or working with dangerous equipment.
5. The person cannot be involved in any diversion of marijuana for nonmedical purposes, such as furnishing to a friend or using strictly for recreational or commercial purposes.

### What Qualifies a Person as Primary Caregiver Under the CUA and MMP?

1. The person must be an individual specifically designated by a qualified patient.
2. The role must have been established prior to the designation to be valid. (See #3 below).
3. The person must have consistently assumed responsibility for the patient's housing, or health, or safety. This means that no other person, institution, or government agency is the primary provider of whichever of those needs has become the responsibility of the person claiming to be the primary caregiver.
4. In most instances, only one individual will qualify as the primary caregiver of a specific patient (although theoretically a patient could have a different primary caretaker responsible for each of his/her housing, health and safety needs). Secondary caregivers cannot assert the affirmative defense. A primary caregiver cannot assign his duty to another person.
5. The primary caregiver cannot himself/herself use marijuana unless he/she is also a qualified patient.
6. The person cannot be involved in diversion of marijuana for nonmedical purposes.

### What Amount of Marijuana is an Identification Card Holder, a Qualified Patient or a Primary Caregiver Authorized to Possess to Avoid Arrest?

1. To avoid arrest, an identification card holder, a qualified patient or a primary caregiver is entitled to possess no more than eight ounces of dried marijuana per qualified patient. In addition, they may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.





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2. If a qualified patient or primary caregiver possesses a doctor's recommendation that the above quantity does not meet the qualified patient's needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.
3. Counties or cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits.
4. Only the dried mature processed flowers of the female cannabis plant or plant conversion shall be considered when determining allowable quantities of marijuana.

### If a Person Presents an Identification Card or a Physician's Written Recommendation:

1. Review the identification card for validity and contact dispatch for access to the DHS toll free number or website to verify the validity of the card.
2. Review the physician's written recommendation for validity. The document may contain the physician's name, telephone number, address and physician license number.
3. If the identification card is valid, the individual is within the state limits (eight ounces of dried marijuana, or the plant conversion and no more than six mature or 12 immature marijuana plants), and the deputy has no probable cause to believe a violation of state law has occurred, the individual is to be released and the marijuana is not to be seized.
4. If the person possesses a written recommendation from a licensed physician, deputies shall use sound professional judgment to determine the validity of the person's medical claim based on the totality of the circumstances. Deputies may contact dispatch to assist in verifying the validity of the recommendation by contacting the physician.
5. If the person does not possess either a valid identification card or a physician's written recommendation, deputies shall use sound professional judgment to determine the validity of the person's medical claim based on the totality of the circumstances. Deputies may use the "Patient Questions" or "Caregiver Questions" in this Bulletin to assist in determining the validity of the medical claim. If the deputy does not believe the claim is valid; the deputy can write an Initial Crime Report (ICR), or the person can be arrested or cited and the marijuana seized.
6. Deputies should be particularly alert to, and document, indications of non-medical use of marijuana such as pay/owe sheets, large quantities of marijuana, packaging for sale, and large amounts of cash.

### Criminal Violations Affected by the CUA and MMP

1. No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery or cultivation of medical marijuana in an amount authorized by state law, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of the MMP.





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2. Subject to the requirements of the MMP, the following individuals are not subject, on that sole basis, to arrest under H&S Code sections 11357 (possession), 11358 (cultivating), 11359 (possession for sale), 11360 (transportation, furnishing or giving away), 11366 (maintaining a place for the sale or giving away or use of marijuana), 11366.5 (making available premises for the manufacture, storage or distribution of controlled substances), or 11570 (buildings used to sell drugs are public nuisances):
  - a) The qualified patient or person with an identification card who transports or processes marijuana for his or her own personal medical use.
  - b) A designated primary caregiver transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those allowed by subdivision (a) of Section 11362.77, *only* to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.
  - c) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.
3. A primary caregiver who receives compensation for *actual* expenses, including reasonable compensation *incurred for services* provided to the eligible qualified patient or person with an identification card to enable that person to use marijuana under the MMP, or for payment for *out-of-pocket expenses incurred* in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

### Criminal Violations Not Affected by the CUA or MMP

1. The CUA and MMP apply only to the medical use of marijuana. The non-medical use of marijuana remains illegal.
2. Section 11360 (Sale only). The CUA or MMP does not create a defense for the sale of marijuana.
3. Section 11359 (Possession for Sale). Section 11362.77 establishes the limit of eight ounces (or six mature or 12 immature marijuana plants) for a qualified patient, identification card holder or designated primary caregiver to avoid arrest. If an individual exceeds these limits, the deputy should investigate appropriately. Where large quantities of marijuana are observed, the deputy should further investigate for other indicia of sale, such as pay/owe sheets and packaging for sale.





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### PATIENT QUESTIONS

1. What is the nature of your serious illness: How long ago was it diagnosed and by whom?
2. Do you use marijuana to provide relief from this illness? Have you tried other drugs? If so, what drugs? Have you tried Marionol (a tablet containing THC)?
3. How many marijuana cigarettes do you smoke per day, because of your condition?
4. Do you have a written recommendation from a licensed California physician in your possession? May I see it? Do I have your permission to contact the physician to verify this recommendation?
5. Have you received an oral recommendation from a physician? Who? When did you obtain permission and what exactly did the doctor say? What is his/her address and telephone number? Do I have your permission to contact him/her to verify this recommendation?
6. Did the physician conduct an examination and make a determination that marijuana would be beneficial? If so, when and where?
7. How long have you been seeing this doctor? Has he/she done any follow up examinations to monitor your condition? How often are you examined by the physician?
8. Will you give permission to examine your medical records? Are you willing to sign an authorization allowing an examination of your medical records?

### CAREGIVER QUESTIONS

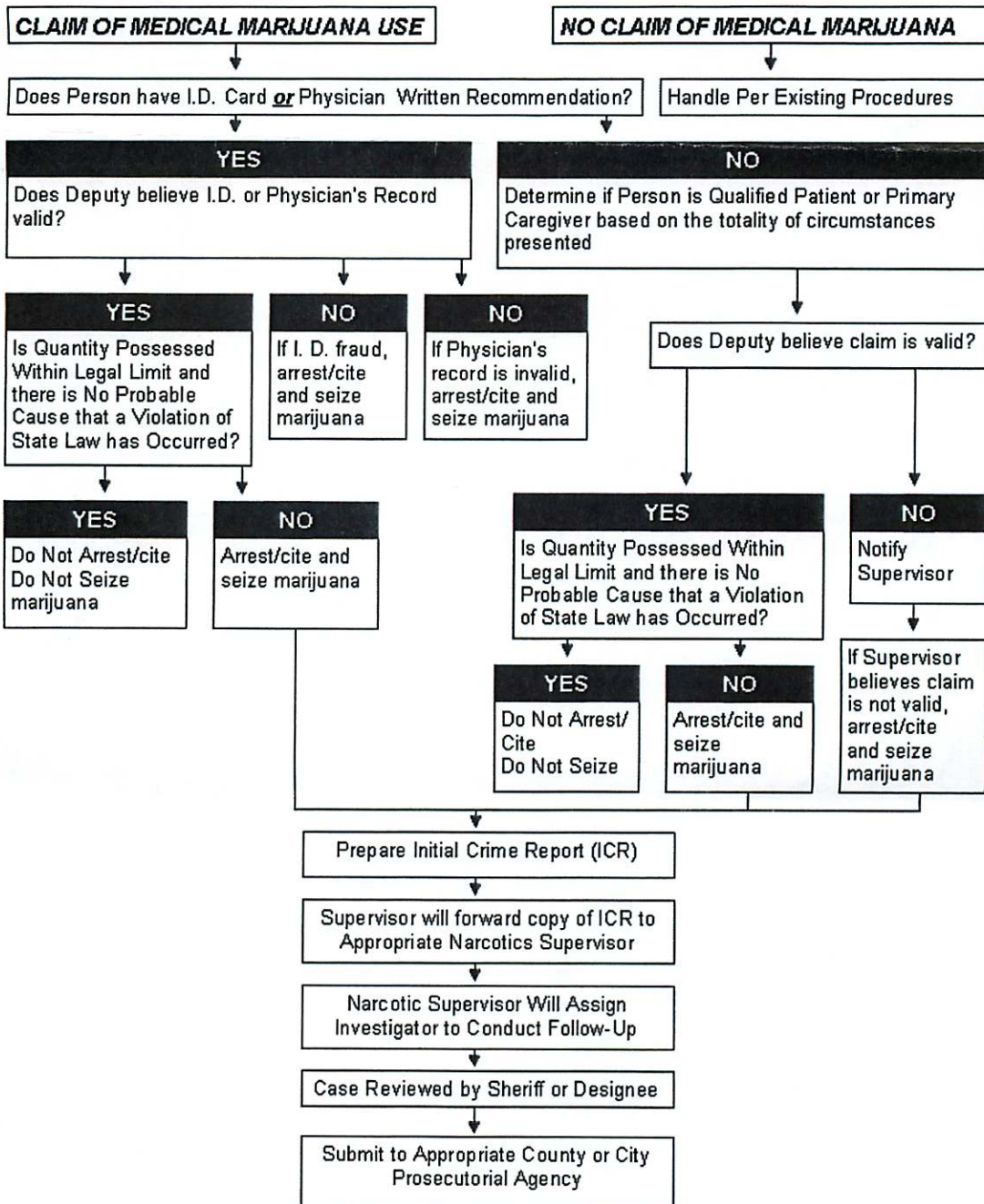
1. The name, address, and telephone number of the person for whom the individual is a caregiver and how the named patient can be contacted.
2. What is the caregiver's relationship to the patient? How long has this relationship existed? What has been the frequency of contact between the caregiver and the patient?
3. How long has the individual assumed the caregiver role?
4. What is the patient's serious illness?
5. What is the name of the doctor who made the recommendation? What is his/her address and telephone number? Does the caregiver have personal knowledge of the specific recommendation from the physician?
6. How much marijuana does the patient use and under what conditions?
7. Is the caregiver receiving any compensation for the service? If so, how much?
8. Who designated the individual as caregiver, how was designation given, and is the specific physician aware of the individual's status as caregiver?
9. What are the needs of the patient which the caregiver provides or for which the caregiver assumes responsibilities?
10. Describe the conditions that exist with the patient that make him/her unable to assume primary responsibility for his/her own housing, health, or safety.



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## CONTACT/DETENTION/ARREST







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## EXAMPLE

Medical Marijuana Identification Card

Card can read PATIENT or CAREGIVER

State of California Medical Marijuana Identification Card		
PATIENT		
<div>CARD HOLDER PHOTO APPEARS HERE</div>	ID# 583276182	
	To Verify: <a href="http://www.calmmp.ca.gov">www.calmmp.ca.gov</a>	
	Date of Expiration: 12-31-05	
	Golden Grove County Department of Public Health (213) 555-8258	
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