15-12 - Medical Cannabis (Marijuana)

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services, (323) 890-5411

MEDICAL CANNABIS (MARIJUANA)

The purpose of this newsletter is to familiarize personnel with the State of California medical cannabis (marijuana) laws.

History

In 1996, the voters of California passed Proposition 215, also known as the Compassionate Use Act. In 2003, the California State Legislature passed Senate Bill 420 (known as the Medical Marijuana Program Act) which clarified the scope and application of Proposition 215. In 2004, the Medical Marijuana Identification Program (MMIP) was established to facilitate the registration of qualified patients and their caregivers through a statewide identification system. We, as law enforcement, must ensure we abide by the law as well as our Department policies. Marijuana will be referred to as "cannabis" as most of the State statutes have changed to use the word "cannabis."

Common Questions and Concerns Regarding Medical Cannabis

Who may possess, grow, and transport medical cannabis?

What is a Medical Marijuana Identification Program (MMIP) card?

What amount of cannabis is legal for medical cannabis?

How much medical cannabis can one transport and to where?

Where can medical cannabis be used?

When is a suspect subject to detention, search, or arrest?

How does this relate to criminal defendants, probationers, and parolees?

When can medical cannabis seizures be returned?

Who may possess, grow, and transport medical cannabis?

A person may possess, grow, and transport medical cannabis if they possess a doctor's recommendation. This recommendation can be in writing or oral [11362.5(d) H&S], or possess a state-issued MMIP card (11362.77 H&S). In addition, a primary caregiver may possess, grow, and transport medical cannabis for a qualified patient or person who possesses a MMIP card (11362.77).

A "qualified patient" is defined as a person entitled to the protections of 11362.5 H&S, but who does not have a MMIP card [11362.7(e) H&S]. There is no age requirement for a qualified patient.

A "primary caregiver" is defined as a person, designated by the qualified patient, who has consistently assumed responsibility for the housing, health, or safety of the qualified patient. The primary caregiver must be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with a MMIP card or the primary caregiver is a person otherwise entitled to make medical decisions under state law of the qualified patient or person with a MMIP card (11362.7(d) H&S).

What is a Medical Marijuana Identification Program (MMIP) card?

A Medical Marijuana Identification Program (MMIP) card is defined in 11362.7(g) as a document issued by the State that identifies a person authorized to engage in the medical use of cannabis and the person designated as the primary caregiver of a qualified patient.

Participation in this program is voluntary for patients and the primary caregivers. If a qualified patient and/or caregiver does not have a MMIP card, they are still legally allowed to possess, grow, or transport medical cannabis with a doctor's recommendation. Through their county of residence, qualified patients and their

caregivers may apply for, and be issued, an identification card. This card will be used to verify those patients and caregivers that have authorization under state law to possess, grow, transport, and/or use medical cannabis. A MMIP card number can be verified it is valid at www.calmmp.ca.gov . This web site only indicates if the MMIP card is valid. It does not give any additional information, such as the name on the card. These MMIP cards are only valid for one year and the person must reapply each year to renew their MMIP card. The following information will be on the MMIP card:

- A unique user identification number of the cardholder;
- Date of expiration;
- Name and telephone number of the county program that has approved the card;
- Internet address used to validate the MMIP card;
- Photograph of cardholder; and
- If the cardholder is a patient or caregiver.

Pursuant to 11362.78 H&S, law enforcement shall not refuse acceptance of the MMIP card, unless they believe the card is fraudulent or the card is being used fraudulently.

It is a misdemeanor (11362.81 H&S) for a person to:

- Fraudulently represent a medical condition in connection to the MMIP card;
- To steal or fraudulently use another person's MMIP card to acquire, possess, cultivate, transport, use, produce, or distribute cannabis; or
- To counterfeit, tamper with, or fraudulently produce the MMIP card.

For detailed information on the MMIP card go to the California Department of Public Health web page at: https://www.cdph.ca.gov/Programs/CHSI/Pages/MMICP.aspx

What amount of cannabis is legal for medical cannabis?

A qualified patient or primary caregiver may possess eight ounces of dried, manicured cannabis, six mature cannabis plants, or 12 immature cannabis plants per qualified patient [11362.77(a) H&S].

Health and Safety section 11362.77(b) states a qualified person or a person who possess an MMIP card may possess and grow additional amounts of cannabis if the doctor's recommendation states the quantity in 11362.77(a) H&S does not meet the patient's needs. This is also true for primary caregivers.

How much medical cannabis may be transported and to where?

People v Trippet (1997, 56Cal.App1532, 1549) and 11362.765 H&S provides an affirmative defense to the crime of transporting cannabis. However, in *People v. Wayman* (2010, Cal.App.4th 215), the court placed limits on the amount that can be transported. The court concluded that the amount of cannabis must be transported for medical purposes. Deputies should consider whether the method, timing, and distance of the transportation are reasonably related to the patient's current medical needs. Therefore, because someone may be entitled to legally possess cannabis does not necessarily mean they are entitled to transport it.

Where can medical cannabis be used?

Medical cannabis may not be used on a school bus, while in a motor vehicle that is being operated, while operating a boat, or in any public place that prohibits smoking. This includes within 1000 feet of a school, recreation center, or youth center, unless medical use occurs within a private residence (11362.79 H&S).

When is a suspect subject to detention, search, or arrest?

A suspect is subject to a detention in order to conduct a thorough investigation. A search is valid as long as it is part of the investigation or incident to arrest. If probable cause exists that a qualified patient or caregiver is committing a crime, an arrest can be made.

How does this relate to criminal defendants, probationers, and parolees?

Defendants and probationers may request court approval to use medical cannabis while they are released on bail or probation. The decision must be stated in the court minutes. Parolees who are eligible to use medical

cannabis may request that they are allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied [11362.795(b)(1) H&S].

When can medical cannabis seizures be returns:

If a qualified patient or primary caregiver has what appears to be valid medical cannabis documentation but exceeds the applicable possession guidelines identified, all cannabis may be seized.

If a person established an affirmative defense to possess medical cannabis in court or the case is not prosecuted, he or she may file a motion for the return of the cannabis. If a court grants the motion and orders the return of the cannabis seized, the individual or entity subject to the order must return the cannabis. Narcotics Bureau Order 3-9 lists the proper protocol and notification in the event the court orders the return of seized cannabis. The same applies to any person who is arrested or remanded into custody by a court on a different charge, who is in possession of cannabis and has an affirmative defense for that possession of cannabis.

BOTTOMLINE:

The burden of proof regarding the use of cannabis for medical purposes rests largely on the patient and the caregiver. Use sound judgment. If any information cannot be readily verified and there is doubt of the validity of the person and their medical cannabis use, it is their responsibility to establish their medical cannabis defense in court. As in any investigation, ask questions and get specific statements that give a clearer idea if the patient is aware of their own medical needs.

This newsletter only address the issues of medical use of cannabis and does not address the legal adult use of cannabis. See Newsletter 16-20, Adult Use of Marijuana Act (Cannabis).

If you have any questions regarding the content of this newsletter, please call or email Field Operations Support Services, at (323) 890-5411 or foss@lasd.org.