

GENERAL ORDER

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EFFECTIVE: 1 December 2007

REVISED: 1 December 2008
1 January 2010
20 June 2011

SUBJECT: Medical Marijuana

ISSUED BY: Fernando Solorzano

I. BACKGROUND

In October 2003, new State Legislation (SB 420) was signed which clarified the scope and application of the Compassionate Use Act of 1996. Proposition 215 allows the medical use of marijuana by seriously ill Californians where such use would be beneficial in the treatment of any illness where marijuana would provide relief. The rights granted to “patients” also extend to persons identified as patient “caregivers”.

In addition, the State Department of Health Services (SDHS) must establish a voluntary program for issuance of medical marijuana cards to qualified patients. These ID cards and guidelines have yet to be developed; however, the laws are in effect.

II. PURPOSE

The purpose of this order is to provide officers with procedures related to enforcing marijuana laws when the issue of medical use has been presented.

This procedure is not intended to discourage illegal drug enforcement on the campus.

III. PROCEDURE

This procedure does not apply to those incidents where there is evidence of possession of marijuana for sale. This activity does not fall under the medical marijuana criteria. In these incidents, the suspects will be arrested and the contraband seized.

It is not incumbent on a police officer to inquire whether a suspect cultivating, possessing, or using marijuana is doing so for medicinal purposes. It is the responsibility of the suspect to claim an affirmative defense under the law as either a “qualified pa-

tient” or “caregiver”. Should the person make such a claim, the officer should detain the person and conduct an investigation.

It is a California State University system-wide position that campuses must adhere to Federal Laws which criminalize the cultivation, distribution, and possession of marijuana *regardless* of the defendants’ claim of medical exemption under California’s Compassionate Use Act. Campus officials must adhere to the federal law criminalizing the cultivation, possession, and/or use marijuana. The following case decision and federal laws apply to this decision:

- *United States vs. Oakland Cannabis Buyers’ Cooperative (2001)*. The Cannabis Buyers’ Cooperative was created to cultivate and provide medical marijuana to patients under the California Compassionate Use Act. The Supreme Court found that the Cooperative’s activities violated federal law regarding the cultivation and distribution of a controlled substance (marijuana). The court ruled that the *medical necessity defense was invalid* as possession of marijuana violates federal law, irrespective of any state law permitting its use.
- *Ross vs. RagingWire Telecommunications (2008)*. The California Supreme Court ruled that prescriptions obtained under the California Compassionate Use Act do not protect employees from action in the workplace regarding violations of drug policy. The fact the employee is claiming medical necessity for the marijuana is not a defense to disciplinary action.
- All CSU campuses are mandated by the federal Safe and Drug Free Communities Act to *discipline students and employees who unlawfully possess, use, or distribute illicit drugs on university property or at university activities*. The CSU General Council has interpreted this to mean that individual CSU campuses must prohibit the use of marijuana on campus. This discipline may take the form of criminal prosecution and/or internal disciplinary action, such as judicial citation. The fact that the student or employee is claiming medical necessity for the marijuana is not a defense to the disciplinary action.
 - Note: There is a current case before the Supreme Court (*Raich v Ashcroft*) that may modify this position in the future. However until the Supreme Court rules in this case it is the position of the CSU that all campuses may pursue criminal prosecution of cases involving possession and use of marijuana under the Federal Controlled Substance Act, even if the accused claims medical necessity.
- Failure to uphold federal laws, including the Safe and Drug Free Communities Act and those laws pertaining to controlled substances jeopardizes the ability of a university to qualify for federal funds such as financial aid.

In summary, based on Supreme Court decision and federal requirements the campuses of the California State University are to continue to pursue prosecution and/or disciplinary action against those who cultivate, possess, or use marijuana on the campus. Campus officials need not accept the medical necessity defense in deciding disciplinary action. Further University Police need not accept medical necessity as a defense when seeking criminal prosecution for incidents occurring on the campus.

If the person does not claim a medical affirmative defense, the investigation will be handled in the normal manner. Possession of marijuana is still illegal in the State of California.

Upon encountering a person claiming to be in possession of medical marijuana and the possession is questionable, officers shall follow the same investigative procedure as described for persons with oral or written authorization. If after a thorough investigation, officers and the supervisor determine that a person is not in possession of marijuana for medical reasons as described and authorized under the law, the officers will exercise the discretion required to resolve the incident in accordance with this order.

IV. HEALTH & SAFETY LAWS RELATED TO MEDICAL MARIJUANA

H&S §11362.5 – provides that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician. It also ensures that patients and their primary caregivers who cultivate, possess and use marijuana for medical purposes upon the oral or written recommendation of a physician are not subject to criminal prosecution or sanction.

H&S §11362.71(a) – requires the State Department of Health Services (SDHS) to establish a voluntary program for the issuance of medical marijuana identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes. However, a qualified patient need not possess such an identification card in order to claim protection under the act. The SDHS has yet to work out the procedures for issuing identification cards.

H&S §11362.71(e) – states that no person or designated primary caregiver in possession of a valid ID card shall be subject to arrest of possession, transportation, delivery or cultivation of medical marijuana in the established amount, unless there is reasonable cause to believe that the information contained in the card is false, falsified, the card has been obtained by fraud or the person is otherwise in violation of the provisions of this article. Subsection (f) states that it is not necessary for a person to obtain an ID in order to claim protection under H&S §11362.5

H&S §11362.77 – establishes the following:

- a) A qualified patient or primary caregiver may possess no more than eight (8) ounces of dried marijuana per qualified patient.
- b) A qualified patient or primary caregiver may also maintain no more than six (6) mature or twelve (12) immature marijuana plants per qualified patient.
- c) If the qualified patient or primary caregiver has a doctor's recommendation that this 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.

H&S §11362.785(a) – states the law does not require accommodation of medical use of marijuana at places of employment or during the hours of employment or on the premises of any jail.

H&S §11362.79 – states the law does not authorize the smoking of medical marijuana in any place where smoking is prohibited by law; within 1,000 feet of a school, recreation center or youth center unless the use occurs within a residence; on a school bus; while in a motor vehicle that is being operated; or while operating a boat.

V. DEFINITIONS

- (a) Qualified Patient (H&S §11362.7(f)) – to qualify as a patient, a person must be a seriously ill California resident and have been examined by a physician, where the physician has determined that the specific patient's health would benefit from marijuana as a treatment for a specific illness.
- (b) Serious Medical Condition (H&S §11362.7(h)) – means all of the following:
 - (1) Acquired immune deficiency syndrome (AIDS)
 - (2) Anorexia
 - (3) Cachexia
 - (4) Cancer
 - (5) Chronic pain
 - (6) Glaucoma
 - (7) Migraine
 - (8) Persistent muscle spasms including, but not limited to, spasm associated with multiple sclerosis
 - (9) Seizures including, but not limited to, seizures associated with epilepsy
 - (10) Severe nausea
 - (11) Any other chronic or persistent medical symptom that either:
 - a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 or,
 - b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

- (c) Primary Caregiver (H&S §11362.7(d)) – means the individual designated by the person exempted under H&S §11362.5 who has consistently assumed responsibility for the housing, health or safety of that person.
- (d) Written Documentation (H&S §11362.7(i)) – means accurate reproductions of those portions of a patient’s medical records that have been created by the attending physician stating that the subject has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

VI. EVIDENCE

In November of 2007, the California Fourth District Court of Appeal ruled in *The City of Garden Grove v. Superior Court (Kha)* that marijuana seized at the time of arrest must be returned to the suspect when charges are dropped pursuant to the medical marijuana laws.

Until such time as this decision is overturned, any marijuana seized from an individual who is later declared a qualified patient or primary caregiver will have to be returned.

APPROVED

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