

## **QUICK OVERVIEW OF ATTORNEY GENERAL MEDICAL MARIJUANA ENFORCEMENT GUIDELINES FOR POLICE<sup>1</sup>**

(December 6, 2012)

Patients and their primary caregivers who register with the Department of Health are authorized by the New Jersey Compassionate Use Medical Marijuana Act (“CUMMA”) to possess medical marijuana that had been dispensed to them by a New Jersey “Alternate Treatment Center.” The general policy set forth in the Attorney General’s Enforcement Guidelines for Police is that law enforcement officers in this State should not interfere with the CUMMA-authorized acquisition, possession, or use of medical marijuana. Nor should registered medical marijuana patients and primary caregivers be targeted for heightened police scrutiny.

CUMMA creates an “affirmative defense” to a charge of violating the Comprehensive Drug Reform Act. When a person in possession of marijuana claims to be a registered medical marijuana patient or primary caregiver, an officer should *not* make an arrest, file criminal charges, or seize marijuana or associated paraphernalia *unless the officer has specific and articulable reasons to believe that the CUMMA affirmative defense does not apply to this suspect or in this situation.* If an officer does make an arrest, file a complaint, or seize marijuana or marijuana-related paraphernalia, the officer should alert the prosecutor that the defendant had claimed to acting in accordance with CUMMA, and the police report should explain the specific reason(s) why the officer had determined that the affirmative defense does not apply.

As a general rule, a police officer dealing with a person who claims to be a medical marijuana patient or caregiver should follow the same investigative procedures and exercise the same type of charging restraint that would be used were the officer addressing the possession or use of oxycodone or any other controlled dangerous substance that can be lawfully dispensed, possessed, and used in accordance with State law. Police should not follow an “arrest first, let the court

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This summary highlights a few of the key provisions of the Attorney General Medical Marijuana Enforcement Guidelines For Police. Those Guidelines should be consulted for a more complete explanation of the statutory interpretations and recommended enforcement actions that are only briefly summarized in this document.

figure it out later” approach when a person in possession of marijuana claims to be exempt from criminal liability under CUMMA. Rather, the officer should, whenever feasible, conduct an on-scene investigation to try to confirm or dispel the basis for the affirmative defense, considering the following factors:

- Whether the person claiming the affirmative defense presents a valid, unaltered medical marijuana registry identification card bearing the person’s photograph, and whether, and to what extent, there is any uncertainty as to the identity of the person presenting the card and claiming the affirmative defense.
- Whether the officer is able to determine or verify a person’s claimed status as a qualifying patient or primary caregiver by making a query to the State Police Regional Operations Intelligence Center (ROIC).
- Whether, and to what extent, the person claiming the affirmative defense is cooperating in the investigation and, for example, permits the officer to examine the medical marijuana to verify that it is being possessed and/or used in compliance with CUMMA (*e.g.*, to inspect the packaging label to cross-check it with the patient’s registry identification number; to determine the amount of marijuana present to determine whether the person may be distributing/possessing with intent to distribute).
- Whether the marijuana is in its original packaging dispensed by an Alternate Treatment Center, and whether the original label is affixed to the packaging.
- Whether the label on the packaging indicates that the contents had been dispensed to the specific qualifying patient claiming the affirmative defense, or, where the affirmative defense is asserted by a person claiming to be a primary caregiver, whether the label on the packaging indicates that the contents had been dispensed for use by the specific qualifying patient to whom the primary caregiver is specifically authorized to provide assistance in obtaining and/or using medical marijuana.
- Whether the medical marijuana had been dispensed by two or more

different Alternate Treatment Centers, considering the rule that a qualifying patient may only be registered to one Alternate Treatment Center at a time.

- Whether, in the case of a person claiming to be a primary caregiver, the person is able to provide the name and address of the qualifying patient for whom the caregiver is authorized to provide assistance in obtaining and/or using medical marijuana.
- Whether there is reason to believe that marijuana was recently smoked in a vehicle that is not presently carrying a registered qualifying patient who might lawfully have consumed medical marijuana.
- Whether, and to what extent, the person claiming the affirmative defense is untruthful in any material respect, or is evasive, casting doubt on his or her veracity.

Although the Attorney General Enforcement Guidelines embrace the general policy that police officers should not do anything to disrupt or impede a qualifying patient's access to or use of lawfully-dispensed medical marijuana, police officers are still expected to remain vigilant in detecting drug law violations, including but not limited to the fraudulent or otherwise unlawful possession or illicit diversion of medical marijuana. It is especially important for police officers to understand that CUMMA does NOT authorize a person to "operate, navigate, or be in actual control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana." N.J.S.A. 24:6I-8(a). The statute expressly provides that in any of those circumstances, the defendant remains "subject to such penalties as are provided by law." Id. It is thus clear that the CUMMA affirmative defense does NOT apply to the charge of driving while intoxicated in violation of N.J.S.A. 39:4-50, or to any other motor vehicle offense, disorderly persons offense, or indictable crime related to the operation of the vehicle or vessel (e.g., death by auto or vessel, assault by auto or vessel, or leaving the scene of a motor vehicle accident resulting in death or serious bodily injury).

Accordingly, in order to protect the motoring public from the intoxicating effects of medical marijuana, whenever a police officer has reason to believe that

medical marijuana has recently been smoked in a motor vehicle (*e.g.*, a plain smell of burning marijuana), the officer is expected to investigate whether the vehicle had been or is being operated by a person while under the influence of marijuana. When an officer has reason to believe that marijuana has recently been smoked in a vehicle that is currently in operation (*e.g.*, when an officer detects recently-smoked marijuana during a motor vehicle stop), in order to ensure safe operation of the vehicle following the encounter, the officer is required by the Attorney General Enforcement Guidelines to pursue all reasonable and necessary investigative steps to determine whether the vehicle operator may be under the influence of marijuana, whether from direct inhalation or from second-hand smoke. This public safety investigation may entail, as the circumstances warrant, ordering the driver to exit the vehicle for sobriety testing, and subjecting the driver to on-scene drug recognition testing by a qualified drug recognition expert (DRE), when practicable.

CUMMA and regulations promulgated by the Department of Health have features designed to prevent the fraudulent acquisition and illegal diversion of medical marijuana. For example, all *bona fide* medical marijuana patients and primary caregivers will have been issued a registry identification card that includes the following information:

- a photograph of the patient or caregiver;
- the name of the patient or caregiver;
- a unique identification number;
- an ultraviolet imbedded picture of the cardholder viewable only under a black light;
- an expiration date (two years after issuance) after which the card is null and void;

Furthermore, medical marijuana can only be dispensed by an Alternate Treatment Center in heat-sealed packages that each hold no more than one-quarter ounce of useable marijuana. All individual packages of medical marijuana dispensed by an Alternate Treatment Center must bear a label that contains the following information:

- name and address of the Alternate Treatment Center;
- quantity of the medical marijuana contained within the package;
- THC level and whether the product is designated as low, medium, or high strength strain;
- date of dispensing to the qualifying patient or primary caregiver;
- patient's name and registry identification number.

More complete and detailed information about the medical marijuana affirmative defense can be found in the Attorney General Medical Marijuana Enforcement Guidelines for Police. Any questions by law enforcement officers or agencies concerning the enforcement and implementation of New Jersey's medical marijuana law should be addressed to the appropriate County Prosecutor, or to the Division of Criminal Justice Prosecutors Supervision Bureau.