

MEDICAL MARIJUANA USE

POLICY & PROCEDURE NO. 4.29	ISSUE DATE: 07/01/14
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MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: NONE	REVISION DATE:

I. GENERAL CONSIDERATIONS AND GUIDELINES

Massachusetts voters decided that this state should join a growing number of other states that currently have laws permitting and regulating the use of marijuana for so called “medical” purposes. Earlier, the voters “de-Criminalized” possession of an ounce or less of marijuana. Regardless of what Massachusetts voters did, however, under federal law, marijuana remains a controlled substance whose use, sale, and possession are federal crimes. In addition, possession of more than an ounce of marijuana by persons without a medical marijuana registration card or caregiver certificate, and possession of more than a 60-day supply even with a “medical marijuana” registration card or caregiver certificate, is still a crime under Massachusetts law. Growing and processing marijuana, except in connection with a medical marijuana facility, is also still illegal. Marijuana is listed as a Schedule I controlled substance under the federal Controlled Substances Act, 21 U.S.C. Sec. 812(b)(1). It is on the most restricted schedule, along with such drugs as heroin, LSD, or Ecstasy. Its sale, use, or possession is a Federal crime. Further, the U.S. Food and Drug Administration has determined that marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the U.S., and lacks an accepted level of safety for use under medical supervision. 66 Fed. Reg. 20052 (2001). Section 7 of the citizens’ petition adopted in November 2012 includes the following under “Limitations of Law”:

(D) Nothing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment... in any correctional facility, or of smoking medical marijuana in any public place.

II. POLICY

The consistent policy of this department has been that this department does not tolerate the violation of any state or federal law by employees. However, in order to avoid any confusion following the adoption of recent ballot initiatives, department members are reminded that it is the policy of this department that:

A. Employees shall not, on or off the job, ingest, use or otherwise consume marijuana or THC as defined in Chapter 94C of the General Laws. This prohibition applies to use of any form of such drugs, including but not limited to smoking, injecting or eating, by itself or in combination with other products.

B. The presence of any detectable amount of marijuana or THC in the employee's system while at work, while on the premises of the department, or municipal property, or while conducting or performing department business is prohibited.

C. While under the influence of marijuana or THC, Employees shall not:

1. Operate any department equipment, including but not limited to motor vehicles, computers, or breathalyzer machines;

2. Perform any law enforcement function, including but not limited to making arrests, stopping motor vehicles, interrogating suspects, booking prisoners, taking fingerprints, accessing files, performing CORI or other background checks, and dealing with the public.

3. Possess or use any firearm, electronic weapon (e.g., TASER), baton, OC Spray (or similar device), handcuffs or any weapon or device capable of inflicting pain on a subject.

D. Employees shall not apply for, possess or use a medical marijuana registration card for themselves or others.

E. Employees shall not apply for or serve as a caregiver for a person in possession of a medical marijuana certificate or registration card.

F. Employees are not permitted to own, operate, manage, invest or be financially involved in, or be otherwise involved in the operation or management in any way of any marijuana cooperative, dispensary, business or location that is used to manufacture, grow, process, use, sell or dispense marijuana for any reason, including but not limited to so-called medical purposes, or any location that is involved in the sale or distribution of any paraphernalia that can be used for any of the above.

III. DEFINITIONS

The following definitions are taken from the ballot initiative approved by Massachusetts voters in November 2012, effective January 1, 2013:

G. "Marijuana," has the meaning given "marihuana" in Chapter 94C of the General Laws.

H. "Medical marijuana treatment center" shall mean a not-for-profit entity, as defined by Massachusetts law only, registered under this law, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.

I. "Medical use of marijuana" shall mean the acquisition, cultivation, possession, processing, (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transportation, sale, distribution, dispensing, or administration of marijuana, for the benefit of qualifying patients in the treatment of debilitating medical conditions, or the symptoms thereof.

J. "Personal caregiver" shall mean a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use of the qualifying patient. An employee of a hospice provider, nursing, or medical facility providing care to a qualifying patient may also serve as a personal caregiver.

K. "Qualifying patient" shall mean a person who has been diagnosed by a licensed physician as having a debilitating medical condition.

L. "Registration card" shall mean a personal identification card issued by the Department to a qualifying patient, personal caregiver, or dispensary agent. The registration card shall verify that a physician has provided a

written certification to the qualifying patient, that the patient has designated the individual as a personal caregiver, or that a medical treatment center has met the terms of Section 9 and Section 10 of this law. The registration card shall identify for the Department and law enforcement those individuals who are exempt from Massachusetts criminal and civil penalties for conduct pursuant to the medical use of marijuana.

IV. PROCEDURES

Marijuana remains an illegal controlled substance by Federal Statute. As such, no member of the department, qualified or not by the so-called Massachusetts Medical Marijuana Act, shall be considered "fit for duty" regardless of their position if they are using, smoking or ingesting marijuana or THC, even for so-called medical purposes.

A. Any member of the department that has a detectable quantity of marijuana, THC or any other compound in their body or blood from using or ingesting Marijuana or THC, shall be considered "unfit for duty" and as such shall not be permitted to work or perform any job function.

B. Any employee or volunteer of the department that has applied for, intends to apply for, has received, or been denied a card as a "qualifying patient" under the Massachusetts Medical Marijuana Act, shall immediately notify the Chief of Police of any such action in writing.

C. Any employee or volunteer of the department that has applied for, intends to apply for, has received, or been denied a card as a "caregiver" under the so called Massachusetts Medical Marijuana Act, shall immediately notify the Chief of Police of any such action in writing.

D. Any employee or volunteer of the department that has any person living within their residence or in any property they own, manage or are under the control of that is considered under the so-called Massachusetts Medical Marijuana Act to be a "qualified patient" or "caregiver" shall immediately notify the Chief of Police in writing indicating the person's name, the location in question and what relationship the department member has with the person(s) and/or location.

E. Any member of the department who tests positive for marijuana, or any detectable amount of any prohibited or illegal substance shall be immediately relieved of duty, surrender any and all department owned

firearms, firearms license or identification cards, as well as any police identification cards, and shall not be permitted to perform any police function or possess any firearm in accordance with employment as a member of this department.

F. No member of the department shall be permitted to be a "caregiver" as defined by the so-called Massachusetts Medical Marijuana Act and/or the Massachusetts Department of Public Health for any person, unless so authorized in writing by the Chief of Police. Permission may be granted by the Chief of Police to allow a member to be a "caregiver" in extreme circumstances and only for a department member's immediate family who is residing with the department member. No precedent will be set if any such permission is granted and the department may alter, amend or revoke this provision at any time.

V. FIREARMS LICENSING

An open letter to all federal firearms licensees issued by the U.S. Dept. of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on Sept. 21, 2011, made it clear that those who are users of medical marijuana, including those doing so in compliance with state law, should not be allowed to purchase, possess or use firearms or ammunition.

A. Under 18 U.S.C. Sec. 922(g)(3), it is unlawful for any person who is an unlawful user of or addicted to any controlled substance" (as defined by the Controlled Substances Act) to ship, transport, receive or possess firearms or ammunition. Since marijuana is a Schedule I controlled substance, and there are no exceptions in federal law for marijuana purportedly used for medicinal purposes, even if such use is sanctioned by state law, medical marijuana users may not be sold or possess firearms or ammunition.

B. Federal law further makes it a crime to sell or otherwise dispose of a firearm or ammunition to anyone knowing "or having reasonable cause to believe" that the person unlawfully uses a controlled substance, such as marijuana. 18 U.S.C. Sec. 922(d)(3). A federal regulation, 27 C.F.R. Sec. 478.11 allows an inference of current illegal use of a controlled substance to be drawn from "evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time."

C. According to the ATF, a person who uses medical marijuana, even in

compliance with state law, should answer “yes” to question 11.e. (“Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?”) on ATF Form 4473, Firearms Transaction Record. And licensed firearms dealers may not transfer firearms or ammunition to them. Even if the person answers “no” to this question concerning the use of controlled substances, the ATF takes the position that it is a violation of federal law to transfer a weapon or ammunition to them if a person has “reasonable cause to believe” that they use medical marijuana, such as if they have a card authorizing them to possess medical marijuana under state law.

D. Since the ability to lawfully possess both firearms and ammunition is an essential function of the job, the use of marijuana by a member of this department is a legitimate basis for their termination. In fact, the ATF memo’s reasoning makes it highly questionable as to how a department could be legally justified in issuing a firearm or ammunition to a known user of medical marijuana. Similar issues have previously arisen concerning officers barred from possessing weapons because of prior convictions for domestic violence offenses. In 1996, the Congress passed a Defense Appropriations Act. Sec. 658 of that law made it unlawful for any person who has been convicted of a domestic violence misdemeanor to possess a firearm or ammunition. There is no exception for persons who must carry a firearm on their jobs: law enforcement officers, security guards, or members of the Armed Forces. Courts have upheld this restriction.