

## Medical Cannabis

### 424.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for investigating the acquisition, possession, transportation, delivery, production, and use of cannabis under Maryland's medical cannabis laws (Md. Code CR § 5-601(c)(3); Md. Code HG § 13-3301 et seq.).

#### 424.1.1 DEFINITIONS

Definitions related to this policy include (Md. Code HG § 13-3301; COMAR 10.62.01.01):

**30-day supply** - 120 grams of usable cannabis or 36 grams of tetrahydrocannabinol (THC).

**Caregiver** - A person who has agreed to assist with a qualifying patient's medical use of cannabis, including a parent or legal guardian, or a designee of a parent or legal guardian, of a qualified patient under the age of 18.

**Certifying provider** - A person licensed by the State Board of Physicians, the State Board of Dental Examiners, the State Board of Podiatric Medical Examiners, or the State Board of Nursing who has a state-controlled dangerous substances registration and is approved by the Commission to make cannabis available to patients for medical use.

**Commission** - The Natalie M. LaPrade Medical Cannabis Commission.

**Dispensary** - An entity licensed by the Commission that acquires, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers cannabis; products containing cannabis; related supplies; related products including food, tinctures, aerosols, oils, or ointments; or educational materials for use by a qualifying patient or caregiver.

**Dispensary agent** - An owner, member, employee, volunteer, officer, or director of a dispensary.

**Grower** - An entity licensed by the Commission that cultivates or packages medical cannabis and is authorized to provide cannabis to a processor, dispensary, or independent lab.

**Grower agent** - An owner, employee, volunteer, officer, or director of a grower.

**Identification card** - An identification card provided by the Commission to qualifying patients and caregivers.

**Processor** - An entity that transforms medical cannabis into another product or extract and packages medical cannabis.

**Processor agent** - An owner, member, employee, volunteer, officer, or director of a processor.

**Qualifying patient** - A person who possesses a written certification by a certifying provider with whom the person has a bona fide provider-patient relationship. If the person is under the age of 18, he/she must have a caregiver.

**Written certification** - Certification issued by a certifying provider which includes a written statement confirming that, in the certifying provider's professional opinion, the patient has a

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condition justifying the use of medical cannabis and, if appropriate, that a 30-day supply of medical cannabis is not sufficient to meet the patient's medical needs.

#### **424.2 POLICY**

It is the policy of the Washington Suburban Sanitary Commission Police Department to prioritize resources to avoid making arrests related to cannabis that the arresting officer reasonably believes would not be prosecuted by state or federal authorities.

Maryland medical cannabis laws are intended to provide protection from prosecution to those who possess a written certification by a certifying provider for the use of cannabis for medical use. However, Maryland medical cannabis laws do not affect federal laws, and there is no medical exception under federal law for the possession or distribution of cannabis. The Washington Suburban Sanitary Commission Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under Maryland law and the resources of the Department.

#### **424.3 INVESTIGATION**

Investigations involving the possession, delivery, production, or use of cannabis generally fall into the following categories:

- (a) Investigations when no person makes a medicinal claim.
- (b) Investigations when the person is a qualifying patient or caregiver.
- (c) Investigations when the person is otherwise authorized.

##### **424.3.1 INVESTIGATIONS WITH NO MEDICAL CLAIM**

In any investigation involving the possession, delivery, production, or use of cannabis or drug paraphernalia where no person claims that the cannabis is used for medicinal purposes, the officer should proceed with a criminal investigation. A medicinal claim may be raised at any time, so officers should document any statements and observations that may be relevant to whether the cannabis was possessed or used for medicinal purposes.

##### **424.3.2 INVESTIGATIONS INVOLVING A QUALIFYING PATIENT OR CAREGIVER**

A qualifying patient or caregiver shall not be arrested for the authorized medical use or possession of cannabis provided by a grower or dispensary, provided (Md. Code HG § 13-3304; Md. Code HG § 13-3313):

- (a) Any qualifying patient possesses no more than a 30-day supply, unless the patient's written certification allows for the possession of more.
- (b) In the case of a caregiver, he/she is in possession of the cannabis for a qualifying patient he/she has agreed to assist in the use of medical cannabis.

A patient or caregiver identification card should suffice as evidence that a written certification has been issued. Certification or lack of certification should be verified through the Commission's registry before making an arrest (COMAR 10.62.04.06; COMAR 10.62.06.01 et seq.). No arrest should be made if there is reason to believe that the individual has a valid claim to possess.

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#### 424.3.3 INVESTIGATIONS INVOLVING OTHER AUTHORIZED INDIVIDUALS

Any person falling into the following categories shall not be arrested for the authorized medical possession of cannabis (Md. Code HG § 13-3304; Md. Code HG § 13-3313):

- (a) Certifying providers.
- (b) Hospitals, medical facilities, and hospice programs where a qualifying patient is receiving treatment.
- (c) Academic research representatives authorized under Md. Code HG § 13-3304.1 to research the medical uses, properties, or composition of cannabis.
- (d) Authorized third-party vendors testing, transporting, or disposing of medical cannabis.
- (e) Designated school personnel authorized to administer cannabis to a student under Md. Code ED § 7-446.
- (f) Dispensaries and dispensary agents, growers and grower agents, and processors and processor agents.

#### 424.3.4 ADDITIONAL CONSIDERATIONS

Officers should consider the following when investigating an incident involving cannabis possession, delivery, production, or use:

- (a) Because enforcement of medical cannabis laws can be complex, time consuming, and call for resources unavailable at the time of initial investigation, officers may consider submitting a report to the prosecutor for review, in lieu of making an arrest. This can be particularly appropriate when:
  - 1. The suspect has been identified and can be easily located at another time.
  - 2. The case would benefit from review by a person with expertise in medical cannabis investigations.
  - 3. Sufficient evidence, such as photographs or samples, has been lawfully obtained.
  - 4. Any other relevant factors, such as available department resources and time constraints.
- (b) Whenever the initial investigation reveals an amount of marijuana greater than that specified by law, officers should consider and document, in anticipation of an affirmative defense:
  - 1. The amount of marijuana recommended by a medical professional to be ingested.
  - 2. The quality of the marijuana.
  - 3. The method of ingestion (e.g., smoking, eating, nebulizer).
  - 4. The timing of the possession in relation to a harvest (patient may be storing marijuana).
  - 5. Whether the marijuana is being cultivated indoors or outdoors.
  - 6. The climate.

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##### 424.3.5 EXCEPTIONS

This policy does not apply to the following offenses; officers may take enforcement action if the person is (Md. Code HG § 13-3313; Md. Code HG § 13-3314):

- (a) Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice.
- (b) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or boat while under the influence of cannabis.
- (c) Smoking cannabis in any public place.
- (d) Smoking cannabis in a motor vehicle.
- (e) Smoking, which for purposes of this exception does not include vaporizing, cannabis on private property that is:
  - 1. Rented from a landlord and subject to a policy that prohibits smoking cannabis on the property.
  - 2. Subject to a condominium or homeowners' association policy that prohibits the smoking of cannabis on the property of an attached dwelling.
- (f) Distributing, possessing, manufacturing, or using cannabis that has been diverted from a qualifying patient, caregiver, academic research representative, grower, or dispensary.
- (g) School personnel engaging in gross negligence or wanton or willful misconduct.

##### **424.4 FEDERAL LAW ENFORCEMENT**

Officers should provide information regarding a cannabis investigation to federal law enforcement authorities when it is requested by federal law enforcement authorities or whenever the officer believes those authorities would have a particular interest in the information.

##### **424.5 EVIDENCE**

###### 424.5.1 MEMBER RESPONSIBILITIES

The investigating member should notify the receiving Investigative Section member in writing when cannabis may be the subject of a medical cannabis claim.

###### 424.5.2 INVESTIGATIVE SECTION SUPERVISOR RESPONSIBILITIES

The Investigative Section supervisor should ensure that cannabis, drug paraphernalia, or other related property seized from a person engaged or assisting in the use of medical cannabis is not destroyed. The Investigative Section supervisor is not responsible for caring for live cannabis plants.

Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges or an acquittal, the Investigative Section supervisor should return to the person from whom it was seized any useable cannabis, plants, drug paraphernalia, or other related property.

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The Investigative Section supervisor should not destroy cannabis that was alleged to be for medical purposes except upon receipt of a court order.

The Investigative Section supervisor may release cannabis to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Investigative Bureau supervisor.