

MEDICINAL MARIJUANA

I. Overview

Marijuana may be possessed, cultivated, or transported in California for medicinal purposes. Pursuant to Health and Safety Code Section 11362.77(a), assuming the “patient” has the required authorization, the amounts are: No more than 8 ounces of dried marijuana *in addition to* no more than 6 mature or 12 immature plants per “patient.”

II. Authorization

To legally possess medicinal marijuana, the patient must have legal authorization. There are three types of legal authorization relevant to law enforcement actions. Peace officer response to each type should differ.

- 1. State of California Medical Marijuana Identification Card:** This is a card issued by the State Department of Health Services which is good for one year. Pursuant to H & S 11362.71(e), the holder of a valid card *shall not be subject to arrest* for possession, cultivation, or transportation of marijuana in medicinal amounts. A sample card is attached. The card should have a toll free number to verify the card’s validity (H & S 11362.735). Validity can also be ascertained online at www.calmmp.ca.gov by entering the card’s identification number.
- 2. A physician’s written recommendation:** Such a recommendation does not create immunity from arrest, but is instead an affirmative defense which the holder may present in court. Nonetheless, if it appears the recommendation is valid on its face (meaning a real doctor issued the recommendation and it is currently in effect, nothing more), a peace officer should contact dispatch and try to verify the validity of the recommendation. If based on the totality of the circumstances the peace officer is satisfied that the recommendation is valid, no enforcement action should take place. A sample of the marijuana can be seized if further investigation is contemplated.
- 3. A physician’s oral recommendation:** Pursuant to H & S 11362.5(d), such a recommendation is an affirmative defense which the holder may present in court. However, a peace officer should arrest a subject who does not have a *written* recommendation, seize the marijuana, and refer the case to the District Attorney.
- 4. A cannabis club/marijuana cooperative card:** Such cards have no legal force or effect.

III. Caveats Regarding Medicinal Amounts

Pursuant to H & S 11362.77(b), if the patient has a physician’s recommendation that the quantity set forth in H & S 11362.77(a) (above) does not meet the patient’s medical needs, the patient can possess more marijuana pursuant to the doctor’s recommendation. It is suggested that only a *verified* written physician’s recommendation should suffice to justify upward deviation from the amounts in

H & S 11362.77(a).

If an authorized patient has an amount of marijuana that exceeds the legal medicinal amount, a peace officer in his or her discretion may seize all the marijuana and forward the case to the District Attorney, or seize only the excess marijuana.

IV. Marijuana Sales and Possession for Sale

Such investigations and arrests are not affected by this memorandum.

V. Primary Caregivers

The law concerning “primary caregivers” set forth in H & S 11362.7(d), *et. sec.*, is beyond the scope of this memorandum. Law enforcement should consult the relevant statutory authority or contact the District Attorney’s Office concerning such individuals.¹ However, pursuant to H & S 11362.71(e), the holder of a valid state identification card identifying the holder as a primary caregiver shall not be subject to arrest for possession, transportation, delivery, or cultivation of medicinal marijuana in a legal amount.

¹ Cannabis clubs operate elsewhere in the state claiming to be primary caregivers. None currently operate in Monterey County.