

Memorandum

Date : January 16, 2007

To : All Staff

Subject: **MEDICAL MARIJUANA IN THE SUBSTANCE ABUSE TESTING PROGRAMS**

This memorandum is to provide clarity on the subject of the impact of the use of medical marijuana when an employee is subject to a departmental substance testing program. It is hoped that the following information is helpful to you and clears up any misconceptions that may exist on the subject of medical marijuana.

Background

On November 5, 1996, California voters passed Proposition 215, the Compassionate Use Act of 1996, also known as the Medical Marijuana Initiative, adding Sections 11362.7-11362.83 to California's Health and Safety Code. Pertinent information contained in the Health and Safety Code is considered under the succeeding heading, "Serious medical condition."

Departmental Substance Abuse Testing Program Governed in Part by Federal Law

Employees who are subject to substance testing are under federal Department of Transportation regulations (for commercial drivers) and/or the Department of Personnel Administration (DPA) Rules 599.960-599.966 either directly or via a Memorandum of Understanding. The DPA Rules state that drug testing must meet the standards in the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

While the Health and Safety Code allows the use of medical marijuana by a patient upon the approval of a physician, employees need to bear in mind that marijuana is listed in Schedule I of the Federal Controlled Substances Act which means that it has no accepted medical use under federal law. In addition, on June 6, 2005, the Supreme Court in *Gonzales v. Raich*, said that those who smoke marijuana because their doctors recommend it can be prosecuted for violating federal drug laws, overriding any State medical marijuana statutes.

The Medical Review Officer, the licensed physician under contract with the DPA to evaluate positive test results for the Department, must follow Federal law. Therefore, using medical marijuana is not an acceptable alternative medical explanation for a test result and such a test result will be ruled a positive.

No Legal Prescription for Medical Marijuana

DPA Rule 599,960(d) states:

No employee shall perform duties which, because of drugs taken under a legal prescription, the employee cannot perform without posing a threat to the health and safety of the employee or others. Employees whose job performance is so restricted may be subject to reassignment, medical examination or other actions specified by applicable statutes and regulations. (Underlining added.)

A State employee must not use drugs with a legal prescription, if it poses a threat to the health and safety of the employee and others. However, as stated in the Health and Safety Code, physicians cannot legally prescribe medical marijuana; they may only recommend its use. Therefore, there is no legal justification that will protect an employee from the consequences of a positive drug test for the presence of the metabolites of marijuana.

Definition of Serious Medical Condition

The basis for a physician to recommend the use of medical marijuana is having a "serious medical condition," as stated in the Health and Safety Code Section 11362.715(2) as follows:

Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

According to Section 11362.7(h) of the Health and Safety Code, "serious medical condition" includes the following medical conditions:

- (1) Acquired immune deficiency syndrome (AIDS).
- (2) Anorexia.
- (3) Arthritis.
- (4) Cachexia.
- (5) Cancer.
- (6) Chronic pain.
- (7) Glaucoma.
- (8) Migraine.
- (9) Persistent muscle spasms including but not limited to spasms associated with multiple sclerosis.

- (10) Seizures including but not limited to seizures associated with epilepsy.
- (11) Severe nausea.
- (12) 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 (Public Law 101-336).
 - (B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

It is, therefore, recommended that an employee who is taking marijuana for medical reasons discuss with their physician their ability to do their job safely and effectively. The essential functions of their job should be provided to their physician; the Return-to-Work Coordinator can assist in this regard.

Potential to Endanger the Health and Safety of Others

Consider these facts from the United States Health and Human Services, Substance Abuse and Mental Health Services Administration (www.samhsa.gov), especially in light of peace officers and other employees who are in positions in which a drug affected performance could endanger the health and safety of others:

Short-term effects of marijuana use (while high) include: relaxed, euphoric feelings; increased heart rate; poor balance and coordination; slow reaction time; disorientation and panic. After the high fades: sleepiness, depression, and distrust.

Long-term effects: impaired learning and memory, and poor work performance.

In conclusion, if an employee tests positive for marijuana as a result of a reasonable suspicion or random substance test, whether it is for alleged medical purposes or not, he or she will be subject to the disciplinary action outlined in the Employee Disciplinary Matrix under Controlled Substances.

If you have any questions regarding this subject, please contact Kathryn Manzer-Matsuo, Chief, Office of Employee Wellness, at (916) 327-8570.



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cc: K. Manzer-Matsuo