



Criminal Justice Standards and Training Commission

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CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION **TECHNICAL MEMORANDUM 2019-04**

DATE: April 11, 2019
TO: Criminal Justice Agency Administrators
Criminal Justice Training Center Directors
Criminal Justice Selection Center Directors
FROM: Director Dean Register *DR*
Criminal Justice Professionalism Division
SUBJECT: Medical Marijuana and Federal Firearms Prohibition

Section 381.986, Florida Statutes, authorizes the medical use of marijuana by an individual for many qualifying medical conditions that are outlined in the statute. As a result of this new legislation, Commission staff brought this issue to the 2019 Penalty Guidelines Task Force on January 16, 2019 to discuss potential consequences of certified officers possessing a valid certification to use medical marijuana pursuant to the statute referenced above.

One of the main issues of concern is that marijuana remains listed in the Controlled Substances Act as a Schedule I controlled substance, and there are no exceptions in federal law for marijuana that is being used for medicinal purposes, even if such use is sanctioned by state law. On September 21, 2011 the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives issued an open letter to all federal firearms licensees. (See Attached) The letter specifically addressed the federal law in 18 U.S. Code § 922(g)(3), which prohibits any person who uses or is addicted to marijuana from possessing firearms or ammunition. This prohibition presents a significant legal issue for all criminal justice agencies and Commission-certified officers in Florida. For this reason, staff recommends that you review your respective policies and procedures with your legal counsel regarding this issue.

Another issue is that the language in Rule 11B-27.0011(4)(d), Florida Administrative Code, only allows the Commission to discipline an officer's certification for testing positive for a controlled substance based on Florida statute, not federal law. At this time, it is not clear how federal law may change, with more and more states continuing to legalize both medical and recreational marijuana. With these issues in mind, the Commission will not be making changes to the officer discipline rule concerning positive drug tests at this time. However, staff will continue to monitor this issue and address any future concerns.

You can review all of the information provided to the Task Force and Commission regarding this discussion at <http://www.fdle.state.fl.us/CJSTC/Commission/CJSTC-Home.aspx>. Click on "1-16-19 Task Force Meeting". Then click on "Agenda Item 11 – Medical Marijuana Discussion & Supporting Information".

If you have any questions regarding this issue, please contact Bureau Chief Glen W. Hopkins, Bureau of Standards, at glenhopkins@fdle.state.fl.us or (850) 410-8660.

DR/gwh

cc: Criminal Justice Standards and Training Commission

Attachment: *Open Letter to All Federal Firearms Licensees*



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington DC 20226

September 21, 2011

www.atf.gov

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received a number of inquiries regarding the use of marijuana for medicinal purposes¹ and its applicability to Federal firearms laws. The purpose of this open letter is to provide guidance on the issue and to assist you, a Federal firearms licensee, in complying with Federal firearms laws and regulations.

A number of States have passed legislation allowing under State law the use or possession of marijuana for medicinal purposes, and some of these States issue a card authorizing the holder to use or possess marijuana under State law. During a firearms transaction, a potential transferee may advise you that he or she is a user of medical marijuana, or present a medical marijuana card as identification or proof of residency.

As you know, Federal law, 18 U.S.C. § 922(g)(3), prohibits any person who is an “unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))” from shipping, transporting, receiving or possessing firearms or ammunition. Marijuana is listed in the Controlled Substances Act as 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. Further, Federal law, 18 U.S.C. § 922(d)(3), makes it unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or **having reasonable cause to believe** that such person is an unlawful user of or addicted to a controlled substance. As provided by 27 C.F.R. § 478.11, “an inference of current use may 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.”

Therefore, any person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by Federal law from possessing firearms or ammunition. Such persons should answer “yes” to question 11.e. on ATF Form 4473 (August 2008), Firearms Transaction Record, and you may not transfer firearms or ammunition to them. Further, if you are aware that the potential transferee is in possession of a card authorizing the possession and use of marijuana under State law, then you have “reasonable cause to believe” that the person is an unlawful user of a controlled substance. As such, you may not transfer firearms or ammunition to the person, even if the person answered “no” to question 11.e. on ATF Form 4473.

ATF is committed to assisting you in complying with Federal firearms laws. If you have any questions, please contact ATF’s Firearms Industry Programs Branch at (202) 648-7190.

Arthur Herbert
Assistant Director
Enforcement Programs and Services

¹ The Federal government does not recognize marijuana as a medicine. The FDA has determined that marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks an accepted level of safety for use under medical supervision. See 66 Fed. Reg. 20052 (2001). This Open Letter will use the terms “medical use” or “for medical purposes” with the understanding that such use is not sanctioned by the federal agency charged with determining what substances are safe and effective as medicines.