


<b>NORTHAMPTON POLICE DEPARTMENT</b> <b>Administration &amp; Operations Manual</b>		
<b>Policy: Adult Use and Medical Marijuana</b>		<b>AOM: P-158</b>
Massachusetts Police Accreditation Standards Referenced:		Issuing Authority <hr/> Jody Kasper Chief of Police
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## I. General Considerations and Guidelines

Within set parameters, medical and adult use marijuana is legal in Massachusetts. However, under federal law, marijuana remains a controlled substance whose use, sale, and possession still conflict with federal law.

Marijuana is listed as a Schedule 1 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 currently a federal crime. Further, the US 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": Nothing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment, or of smoking medical marijuana in any public space.

## **II. Policy**

The consistent policy of the Northampton Police Department is that we do not tolerate the violation of any state or federal law by employees.

- A. Employees shall not, on or off the job, ingest, use or otherwise consume marijuana or THC as defined in MGL C 94C. 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 police department or municipal property, or while conducting or performing department business is prohibited.
- C. Employees shall not apply for, possess or use a medicinal marijuana card for themselves or others.
- D. Employees shall not apply for or serve as a caregiver for a person in possession of a medical marijuana certificate or registration card, except under permission granted by the Chief.
- E. Employees are not permitted to own, operate, manage, or invest in the operation or management 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, at any location that is involved in the sale and distribution of any paraphernalia that can be used for any of the above.

## **III. Definitions**

The following definitions are taken from Massachusetts 935 CMR 501.002: Medical Use of Marijuana.

- A. “Marijuana” has the meaning given “marihuana” in MGL C 94C
- B. “Medical Marijuana Treatment Center” shall mean a not-for-profit entity, as defined by MGL only, registered under this law, that acquires, cultivates, possesses, processes (including development of related projects such as foods, 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.
- C. “Medical Use of Marijuana” shall mean the acquisition, cultivation, possession, processing (including development of related projects such as foods, 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 conditions, or the symptoms thereof.
- D. “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.
- E. “Qualifying Patient” shall mean a person who has been diagnosed by a licensed physician as having a qualifying debilitating condition.
- F. “Registration Card” shall mean a personal identification card issued by the Mass Department of Public Health or other legitimate state agency to a qualifying patient, personal caregiver, or dispensary agent. The registration card shall verify that a physician has approved 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 Sec 9 & 10 of this MGL. The registration card shall identify clearly those individuals exempt from MGL criminal and civil penalties for conduct pursuant to the medical use of marijuana.

## **IV. Procedures**

Marijuana remains an illegal controlled substance by Federal Law. As such, no member of the Northampton Police 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 Northampton Police 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 Massachusetts Medical Marijuana Act, shall immediately notify the Chief of Police in writing.
- D. Any member of the Northampton Police 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 licenses, or departmental 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.
- E. No member of the department shall be permitted to be a “caregiver” as defined by the Massachusetts Medical Marijuana Act and/or the Mass Department of Public Health or other legitimate state agency for any person, unless so authorized in writing by the Chief of Police. Permission may be granted by the Chief 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 employee. No precedent will be set if any such permission is granted and the Chief may alter, amend, or revoke this permission at any time.

## **V. Firearms Licensing**

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

- A. Under 18 U.S.C. Sec. 922(g)(3), it is unlawful for any person who is a user of or addicted to any controlled substance (as defined by the U.S. Controlled Substances Act) to ship, transport, receive, or possess firearms or ammunition. Since currently, marijuana is a

Schedule 1 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 possess nor be sold 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 CFR 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. Further, for the purposes of firearms licensing, according to the BATF, users of medical marijuana should answer in the affirmative to any questions related to the use of medical marijuana, even if the question is phrased “unlawful user of a controlled substance” and qualify the statement with any documentation issued at the state level.
- 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 the Northampton Police Department is a legitimate basis for their termination. In fact, the BATF’s reasoning makes it highly questionable as to how a department could be legally justified in issuing a firearm or ammunition to an identified user of marijuana.
- E. Beyond the clear link between federal law and a police officer’s ability to carry a firearm and ammunition as an essential function of the job, there is ample other employer/employee case law that affirms the employer’s right to regulate and restrict employees conduct and use of controlled substances (in the workplace) whether expanded by certain state exceptions. These also apply to sworn, civilian, interns, and volunteers in the Northampton Police Department.