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**Garden State CLE Presents:**



**CUMMA: Medical**  
**Marijuana, Your Clients &**  
**The Cops**  
**Lesson Plan**

## Part I – Current Federal Law

- 1.) The possession, distribution, or cultivation of marijuana, even for medical purposes, violates the federal Controlled Substance Act (CSA) and Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970. See 21 U.S.C. § 841(a)(1)
- 2.) Under the CSA, controlled substances are categorized into five schedules based on their accepted medical uses, the potential for abuse, and their psychological and physical effects on the body. Marijuana is classified as a Schedule I controlled substance. 21 U.S.C. § 812 - Schedule I (c)(10) (classifying marijuana as a Schedule I controlled substance).
- 3.) Schedule I drugs are those considered to have a high potential for abuse, to lack currently accepted medical use in treatment, and to lack accepted safety for use under medical supervision. By classifying marijuana as a Schedule I drug, as opposed to listing it on a lesser schedule, the manufacture, distribution, or possession of marijuana became a criminal offense, with the sole exception being use of the drug as part of a Food and Drug Administration pre-approved research study. Additionally, as a Schedule I drug, physicians may not prescribe and pharmacists are precluded from dispensing marijuana. See *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 490 (2001).
- 4.) Simple possession of marijuana for personal use is a misdemeanor under federal law that carries a sentence of up to one year in federal prison and a maximum fine of \$100,000 for a first offense. See 21 U.S.C. § 844(a); 18 U.S.C. § 3571(b)(5). It is a disorderly persons offense under NJSA 2C:35-10(a)(4).

5.) Furthermore, the cultivation of marijuana is a felony under federal law; See 21 U.S.C. § 841(a)(1).

6.) The growth of just one plant carries up to five years in federal prison and a fine of up to \$250,000 for a first offense. 18 USC 841(b)(1)(D). Despite the widespread recognition of the potential therapeutic benefits of marijuana, repeated attempts to remove marijuana from the CSA or have it re-scheduled on the federal level have failed.

7.) While the federal government has authority to enforce its laws throughout the United States, it has no authority (apart from the taxing and spending powers) to require states to enforce federal law or to force states to have laws that are identical to federal law. State medical-marijuana laws are not preempted by the CSA because they do not conflict with the federal law, and states may continue to enact medical-marijuana legislation.

8.) The Supreme Court has never explicitly ruled that the CSA preempts state medical-marijuana laws. *Gonzales v. Raich*, 545 U.S. 1, (2005). The CSA does not preempt state medical-marijuana laws because Congress did not intend to occupy the field of drug regulation when it enacted the CSA, and it sought to leave regulation of the practice of medicine to the states. Further, thus far, no state law has been found to conflict with the federal law. In short, the state and federal governments simultaneously occupy the field of drug regulation. Thus, while Congress enacts criminal drug laws as an exercise of its Commerce Clause power, states do so also pursuant to their police powers to enact legislation for the protection of the health of their citizens.

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**9.) The Obama administration has vowed to refrain from prosecuting individuals who violate federal drug statutes if their actions are lawful under state law, a move that stands in stark contrast to the policies of both the Clinton and Bush administrations.**

**10.) State laws cannot protect individuals from federal prosecution, but they can offer considerable protection to patients. State and local law enforcement are responsible for about ninety-nine percent of marijuana-related arrests. The federal government has not prosecuted anyone living in the states with effective medical-marijuana laws for small amounts of marijuana. Thus, state lawmakers are in a position to afford patients almost absolute protection from prosecution related to medical-marijuana use.**

## Part II – Introduction to CUMMA

### NJSA 24:6I-1 – New Jersey

### Compassionate Use Medical

### Marijuana Act

(Effective October 1, 2010)

#### **Marijuana defined:**

**“Marijuana” means all parts of the plant Genus Cannabis L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant; but shall not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.**

See NJSA 2C:35-2.

## **A.) NJSA 24:6I-2 – Legislative Findings**

**The Legislature finds and declares that:**

**a. Modern medical research has discovered a beneficial use for marijuana in treating or alleviating the pain or other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999;**

**b. According to the U.S. Sentencing Commission and the Federal Bureau of Investigation, 99 out of every 100 marijuana arrests in the country are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marijuana;**

**c. Although federal law currently prohibits the use of marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington permit the use of marijuana for medical purposes, and in Arizona doctors are permitted to prescribe marijuana. New Jersey joins this effort for the health and welfare of its citizens;**

**d. States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law; therefore, compliance with this act does not put the State of New Jersey in violation of federal law; and**

**e. Compassion dictates that a distinction be made between medical and non-medical uses of marijuana. Hence, the purpose of this act is to protect from arrest, prosecution, property forfeiture, and criminal and other penalties, those patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers, and those who are authorized to produce marijuana for medical purposes.**

## **B.) Implementation – NJSA 24:6I-4**

- 1.) The Act requires the Department of Health and Senior Services (DHSS) to establish and maintain a confidential registry of qualifying patients and their primary caregivers.**
- 2.) The DHSS must also issue identification cards to qualifying individuals after a verification procedure. For a patient and his or her primary caregiver to obtain registry identification cards, which are valid for two years, the patient must submit a signed certification from the patient's physician that authorizes the patient to apply for registration to use marijuana medicinally.**
- 3.) The patient and physician must be in a bona fide physician-patient relationship, which the CUMMA defines as a relationship in which the physician has ongoing responsibility for the assessment, care and treatment of a patient's debilitating medical condition. A certification cannot be obtained from a physician with whom the patient consults solely for the purpose of obtaining authorization for the medical use of marijuana. Only physicians licensed to practice medicine in New Jersey may provide certifications.**
- 4.) To qualify under the CUMMA, patients and primary caregivers must be New Jersey citizens. Only those patients with a debilitating medical condition are eligible for protection under the CUMMA.**

**5.) The Legislature has defined debilitating medical condition to mean:**

**(1) one of the following conditions, if resistant to conventional medical therapy: seizure disorder, including epilepsy; intractable skeletal muscular spasticity; or glaucoma; (2) one of the following conditions, if severe or chronic pain, severe nausea or vomiting, cachexia, or wasting syndrome results from the condition or treatment thereof: positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or cancer; (3) amyotrophic lateral sclerosis, multiple sclerosis, terminal cancer, muscular dystrophy, or inflammatory bowel disease, including Crohn's disease; (4) terminal illness, if the physician has determined a prognosis of less than 12 months of life; or (5) any other medical condition or its treatment that is approved by the DHSS by regulation.**

**6.) Finally, CUMMA imposes heightened requirements when a qualifying patient is a minor. Specifically, the NJCMA requires written consent to the medical use of marijuana from a parent or legal guardian and a commitment from the parent to “control the acquisition and possession of the medical marijuana and any related paraphernalia.” NJSA 24:6I-5(b).**

## **C.) Alternative treatment centers – NJSA 24:6I-3**

**1.) Under the federal Controlled Substances Act, licensed pharmacies may not dispense or otherwise sell marijuana. Accordingly, the sale and distribution of marijuana for medical purposes in New Jersey is handled by way of so-called Alternative Treatment Centers.**

**2.) CUMMA does not conflict with federal law because it requires physicians to provide certifications rather than prescriptions, and it does not remove criminal penalties for violations of federal drug law. NJSA 24:6I-5.**

**3.) CUMMA authorizes patients and caregivers to obtain a patient's supply of marijuana from a dispensary, an alternative treatment center. A patient may only register at one alternative treatment center at a time. The Act requires the DHSS to issue permits to alternative treatment centers and to ensure that the number of dispensaries throughout the state is sufficient to meet demand, including a minimum of two facilities in northern, central, and southern New Jersey. The issuance of permits is subject to limitations related to prior criminal convictions as set forth under NJSA 24:6I-7.**

**4.) Under NJSA 24:6I-7, CUMMA authorizes the alternative treatment centers to acquire and maintain a reasonable” inventory, which the DHSS will determine, “of marijuana seeds or seedlings and paraphernalia and to grow, possess, and supply or sell the marijuana and related supplies to registered patients and their caregivers. Centers may charge for the reasonable costs associated with marijuana production and distribution, whether they operate on a nonprofit or for-profit basis.**

**5.) To obtain marijuana from a dispensary, NJSA 24:6I-10 of CUMMA, states that a patient or caregiver must provide the alternative treatment center with written instructions from the patient's certifying physician indicating the amount of marijuana that the patient requires over a thirty-day period, which cannot exceed two ounces. A patient or primary caregiver must also present his or her registry identification card, and the center must verify and log all of the documentation. The DHSS must adopt regulations requiring the dispensaries to document carefully any pickup or delivery for patients. See NJSA 24:6I-7(i)(1) and (2).**

**D.) Affirmative Defense to Criminal  
Prosecution – NJSA 24:6I-6  
and NJSA 2C:35-18.**

**Except for parents and guardians assisting minors (NJSA 24:6I-6(f), *CUMMA* provides no protection or immunity from arrest and prosecution for drug offenses. Rather, it simply references an affirmative defense under NJSA 2C:35-18.**

**24:6I-6. Exemption from application of controlled dangerous substances provisions under Title 2C; exclusion from other additional penalty provisions**

**a. The provisions of N.J.S.2C:35-18 shall apply to any qualifying patient, primary caregiver, alternative treatment center, physician, or any other person acting in accordance with the provisions of this act.**

**b. A qualifying patient, primary caregiver, alternative treatment center, physician, or any other person acting in accordance with the provisions of this act shall not be subject to any civil or administrative penalty, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a professional licensing board, related to the medical use of marijuana as authorized under this act.**

**c. Possession of, or application for, a registry identification card shall not alone constitute probable cause to search the person or the property of the person possessing or applying for the registry identification card, or otherwise subject the person or his property to inspection by any governmental agency.**

**d. The provisions of section 2 of P.L.1939, c. 248 (C.26:2-82), relating to destruction of marijuana determined to exist by the department, shall not apply if a qualifying patient or primary caregiver has in his possession a registry identification card and no more than the maximum amount of usable marijuana that may be obtained in accordance with section 10 of this act.**

**e. No person shall be subject to arrest or prosecution for constructive possession, conspiracy or any other offense for simply being in the presence or vicinity of the medical use of marijuana as authorized under this act.**

**f. No custodial parent, guardian, or person who has legal custody of a qualifying patient who is a minor shall be subject to arrest or prosecution for constructive possession, conspiracy or any other offense for assisting the minor in the medical use of marijuana as authorized under this act.**

**g.) Criminal prosecution can be undertaken for presentation of false cards and similar offenses. See NJSA 24:6I-9.**

## **2C:35-18. Exemption; burden of proof**

a. If conduct is authorized by the provisions of P.L.1970, c. 226 (C.24:21-1 et seq.) or P.L.2009, c. 307 (C.24:6I-1 et al.), that authorization shall, subject to the provisions of this section, constitute an exemption from criminal liability under this chapter or chapter 36, and the absence of such authorization shall not be construed to be an element of any offense in this chapter or chapter 36. It is an affirmative defense to any criminal action arising under this chapter or chapter 36 that the defendant is the authorized holder of an appropriate registration, permit or order form or is otherwise exempted or excepted from criminal liability by virtue of any provision of P.L.1970, c. 226 (C.24:21-1 et seq.) or P.L.2009, c. 307 (C.24:6I-1 et al.). The affirmative defense established herein shall be proved by the defendant by a preponderance of the evidence. It shall not be necessary for the State to negate any exemption set forth in this act or in any provision of Title 24 of the Revised Statutes in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this act.

b. No liability shall be imposed by virtue of this chapter or chapter 36 upon any duly authorized State officer, engaged in the enforcement of any law or municipal ordinance relating to controlled dangerous substances or controlled substance analogs.

**But see Humanik v. Beyer, 871 F. 2d 432 (CA 3) (1989) on burden of proof for affirmative defense.**

## **E.) Restrictions on usage – NJSA 24:6I-8**

### **24:6I-8. Conduct not permitted under the act; penalties**

**The provisions of this act shall not be construed to permit a person to:**

- a. operate, navigate, or be in actual physical control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana; or**
- b. smoke marijuana in a school bus or other form of public transportation, in a private vehicle unless the vehicle is not in operation, on any school grounds, in any correctional facility, at any public park or beach, at any recreation center, or in any place where smoking is prohibited pursuant to N.J.S.2C:33-13.**

**A person who commits an act as provided in this section shall be subject to such penalties as are provided by law.**

**Note – consumption may lawfully occur in a motor vehicle that is not being operated, thus leaving a distinct odor of marijuana in the vehicle.**

## Part III – Issues for Law Enforcement

**A.) Attorney General Medical Marijuana Enforcement Guidelines for Police” (Dec. 6, 2012) [See appendix] advises that:**

**1.) Where it reasonably appears to a police officer that the CUMMA affirmative defense applies (*e.g.*, the person in possession of marijuana presents a valid medical marijuana registry identification card and otherwise appears to be complying with all of the [CUMMA] statutory requirements), an officer should generally refrain from making an arrest, filing criminal charges, and/or seizing the marijuana or associated paraphernalia.**

**However, the Attorney General's guidelines also advise that “the officer need not assume that the marijuana is medical marijuana authorized by CUMMA, that it is the responsibility of the person to assert the affirmative defense, and that:**

**2.) when an officer develops reasonable articulable suspicion or probable cause to believe that a marijuana offense is being or has been committed (*e.g.*, a plain view observation or “plain smell” of marijuana), that reasonable articulable suspicion or probable cause does not dissipate merely because a suspect asserts that the detected marijuana is medical marijuana possessed in accordance with CUMMA.**

**The Attorney General advises officers in that situation to:**

**Make appropriate inquiries of the person, and access other available sources of information” such as a database query of the person's registry status, “to determine whether the possession or use is in fact authorized under State law.**

## **B.) Odor of marijuana in a motor vehicle**

**The fact that marijuana can now be both possessed and used in a motor vehicle that is not being operated does not change the law related to the smell of marijuana emanating from within an operated vehicle. See State v. Myers, \_\_\_ NJ Super. \_\_\_ (App. Div. 2015).**

**Generally speaking, the odor of burned or raw marijuana provides probable cause both to arrest the occupants of a motor vehicle (State v. Judge, 275 NJ Super. 194 (App. Div. 1994) and (for offenses occurring after September 24, 2015) search the interior of the vehicle to recover the contraband drugs without regard to exigency. State v. Witt, \_\_\_ NJ \_\_\_ (2015).**

## **C.) Advice to your clients**

- 1.) You may lawfully possess and use marijuana and related paraphernalia with a duly issued DHSS registry card. You should never possess marijuana outside of your personal residence without this card in your possession so it can be shown to the police.**
  
- 2.) You may not cultivate your own marijuana for medical or any other use. NJSA 2C:35-4 and 21 U.S.C. § 841(a)(1).**
  
- 3.) You may not operate a motor vehicle while smoking marijuana or operate a motor vehicle while under the influence of marijuana. NJSA 24:6I-8(a).**
  
- 4.) CUMMA provides no protection to actions by employers against employees who use or are under the influence of marijuana at work or test positive for marijuana.**

**5.) There is no provision for medical insurance reimbursement.**

**6.) You are prohibited from smoking marijuana on public transportation, in private cars while in operation, on school grounds, in public parks, beaches and recreational areas, in correctional facilities, and wherever New Jersey law otherwise prohibits smoking generally. NJSA 24:6I-8(b).**

**7.) To obtain marijuana from a dispensary under the Act, a you or caregiver must provide the alternative treatment center with written instructions from the patient's certifying physician indicating the amount of marijuana that the patient requires over a thirty-day period, which cannot exceed two ounces. A patient or primary caregiver must also present his or her registry identification card. NJSA 24:6I-10(a).**

## Acknowledgements

Much of the material used in this lesson plan was taken from Melissa Brown's excellent 2011 Law Review comment, *THE GARDEN STATE JUST GOT GREENER: NEW JERSEY IS THE FOURTEENTH STATE IN THE NATION TO LEGALIZE MEDICAL MARIJUANA*, which is published in the *Seton Hall Law Review* and can be cited as 41 Seton Hall L. Rev. 1519.

# ATTORNEY GENERAL MEDICAL MARIJUANA ENFORCEMENT GUIDELINES FOR POLICE

Issued: December 6, 2012

## PREFACE

The following Enforcement Guidelines<sup>1</sup> provide guidance and instruction to police officers on certain key provisions of the New Jersey Compassionate Use Medical Marijuana Act, N.J.S.A. 24:6I-1 et seq.,<sup>2</sup> (hereinafter: "CUMMA"), which supplements and incorporates by reference provisions of the Comprehensive Drug Reform Act of 1987, N.J.S.A. 2C:35-1 et seq. (A copy of CUMMA is attached as Appendix A.) State-licensed Alternate Treatment Centers will soon begin to dispense medical marijuana for use by patients who are registered with the New Jersey Department of Health. These patients are authorized under CUMMA to possess and use this controlled dangerous substance to treat certain specified debilitating medical conditions in accordance with certifications made by their physicians, who must also register with the Health Department's Medicinal Marijuana Program, and who must have an ongoing responsibility for the care and treatment of these patients.

It is reasonable to expect that the distinctive odor of raw or burning marijuana may attract law enforcement attention to the vehicular transport and out-of-home use of lawfully-dispensed medical marijuana. It is therefore important for police officers throughout the State to be able to distinguish the lawful use and possession of medical marijuana in accordance with CUMMA from the unlawful use and possession of this controlled dangerous substance. These Guidelines are intended to address legal and practical implementation questions that are likely to arise in the course of police-citizen encounters, and to promote the fair and uniform enforcement of our criminal drug laws in light of CUMMA.

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These Guidelines are issued by the Attorney General pursuant to the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., which provides that it is the responsibility of the Attorney General to ensure the uniform and efficient enforcement of the criminal laws. Nothing in these Guidelines should be construed in any way to establish or confer any rights, privileges, or immunities beyond those specifically established under the New Jersey Compassionate Use Medical Marijuana Act, N.J.S.A. 24:6I-1 et seq., or any other law. These Guidelines do not vest enforcement rights in any person claiming noncompliance with or deviation from the policies or recommended practices described herein, and nothing in these Guidelines should be construed or applied to invalidate an investigative detention, arrest, search, seizure, or charge that is made in accordance with applicable State law.

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These Guidelines focus on how a police officer – and especially an officer assigned to patrol duty – should deal with an individual who appears to be in possession of marijuana and who claims to be a medical marijuana patient (referred to in CUMMA as a "qualifying patient") or a primary caregiver (*i.e.*, an adult who helps a single specific qualifying patient to acquire or use medical marijuana). CUMMA also provides an exemption from criminal liability to physicians who register with the Department of Health, to employees of a Medical Marijuana Alternate Treatment Center, and to employees of the Department of Health Medicinal Marijuana Program. These persons are authorized in certain specified circumstances to manufacture/cultivate, transport, handle, authorize dispensing and/or dispense/distribute medical marijuana.

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**APPENDIX A:** Text of the New Jersey Compassionate Use Medical Marijuana Act, N.J.S.A. 24:6I-1 et seq. (L.2009, c. 307).

**APPENDIX B:** Representative Samples of CUMMA Registration Cards Issued by the Department of Health Medicinal Marijuana Program, *see* Section 4.1.

**APPENDIX C:** Sample of Approved Medical Marijuana Packaging and Dispensing Labels, *see* Section 4.3.

**APPENDIX D:** Text of N.J.S.A. 2C:33-13 (public places where smoking is prohibited), *see* Section 2.4.

## 1. OVERVIEW OF NEW JERSEY'S MEDICAL MARIJUANA ENFORCEMENT POLICY

### 1.1 Non-Interference with CUMMA-Authorized Medical Treatment

It shall be the law enforcement policy of this State that police officers should not interfere with the CUMMA-authorized possession or use of medical marijuana, and should not disrupt or impede a qualifying patient's access to lawfully-dispensed medical marijuana. Registered medical marijuana patients, primary caregivers,<sup>3</sup> and employees of an Alternate Treatment Center or the Department of Health Medicinal Marijuana Program should not be targeted for heightened police scrutiny, and whenever feasible, registered persons who reasonably appear to be acting in accordance with CUMMA should not be arrested for or charged with a marijuana or marijuana paraphernalia offense. Nor should police seize medical marijuana or associated paraphernalia from registered persons who reasonably appear to be acting in compliance with CUMMA.

This general policy to avoid interfering with authorized medical marijuana treatment in no way conflicts with a law enforcement officer's duty to investigate and enforce suspected violations of the New Jersey Comprehensive Drug Reform Act, N.J.S.A. 2C:35-1 et seq.<sup>4</sup> All law enforcement officers operating under the authority of State law are expected to remain vigilant in detecting and enforcing drug law violations, including but not limited to the fraudulent or otherwise unlawful possession or illicit diversion of medical marijuana.

### 1.2 Applying Past Law Enforcement Experience in Distinguishing Lawful Drug Use/Possession Conduct From Criminal Conduct

Police officers in this State have long been required to distinguish between the lawful and illicit possession of controlled dangerous substances, since many of the drugs that are classified as controlled dangerous substances can be lawfully prescribed when medically appropriate. In that event, a pharmacist or medical practitioner who dispenses the drug to the patient is exempted from

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A "primary caregiver" is a person who: is at least 18 years old; has agreed to assist with a registered qualifying patient's medical use of marijuana; is not currently serving as a primary caregiver for another qualifying patient; has satisfied a criminal history background check; is registered with the Department of Health; and has been designated as the primary caregiver for the specified registered medical marijuana qualifying patient. See N.J.S.A. 24:6I-3 and N.J.A.C. 8:64-1.2.

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As noted in the Preface to these Guidelines, CUMMA supplements and incorporates by reference the Comprehensive Drug Reform Act, which is the basic criminal drug statute used by police and prosecutors. These Guidelines explain and implement New Jersey's legislative drug enforcement policy as it is now codified in CUMMA. Because marijuana is classified as a Schedule I controlled dangerous substance, under *Federal* law, this drug cannot be lawfully cultivated, prescribed, dispensed, or possessed. However, States are free to enact their own criminal laws, and are under no obligation to make criminal under State law all conduct that is criminal under Federal law. See N.J.S.A. 24:6I-2(d). Accordingly, law enforcement agencies and officers who are acting under the authority of New Jersey law are duty-bound to enforce our State drug laws, and thus are expected and required to respect and dutifully implement the exemption from criminal liability that is established in CUMMA.

the drug distribution crime codified at N.J.S.A. 2C:35-5. See N.J.S.A. 2C:35-18. So too, the patient may, of course, lawfully possess and ingest the prescribed controlled substance, notwithstanding that possession or use of the very same medication by any other person would constitute a criminal offense under N.J.S.A. 2C:35-10.

When police officers confront an individual using or possessing marijuana who claims to be authorized by CUMMA, they should treat the situation the same way that they have historically handled an encounter during which a person in actual or constructive possession of a controlled dangerous substance claims that the drug had been lawfully prescribed by a physician. Consider, by way of example, a situation where an officer learns during a street encounter that a person is in actual or constructive possession of some form of oxycodone (*e.g.*, Percocet, or OxyContin) – a commonly-prescribed drug that is classified as a Schedule II controlled dangerous substance. While oxycodone can be lawfully prescribed, it is also a substance commonly subject to prescription fraud, abuse, and illicit diversion.

If the person claims that the oxycodone formulation had been lawfully prescribed to him or her, the officer would be expected to investigate the circumstances of that claim to determine whether the possession is in fact lawful. If, for example, the person was able to present proof of a *bona fide* prescription for the oxycodone, or the drug was in its original container and the label clearly showed that it had been dispensed to the suspect by a pharmacy, the officer would almost certainly refrain from seizing the oxycodone, and would not charge the person with unlawful possession of a controlled dangerous substance, unless there was specific and objective evidence of prescription fraud or abuse (*e.g.*, the officer found two or more prescription bottles of oxycodone that had been dispensed at about the same time by two or more different pharmacies, or that showed on their labels that the prescriptions had been issued by two or more different physicians).

The law enforcement community has long recognized that in those circumstances, in the absence of any proof of prescription fraud or diversion, no purpose would be served in expending police, prosecution, and judicial time and resources by making an arrest, seizing evidence, filing a criminal complaint and requiring the defendant at trial to prove the affirmative defense established in N.J.S.A. 2C:35-18. Henceforth, police officers should follow the same general investigative procedures and exercise the same type of charging restraint when confronted with what is claimed to be medical marijuana, treating medical marijuana as if it were oxycodone or any other controlled dangerous substances that can be lawfully dispensed, possessed, and used in accordance with State law, but that can also be subject to prescription fraud, abuse, and diversion.

### 1.3 Continuing Duty to be Vigilant in Detecting and Investigating Drug Law Violations

While it is the law enforcement policy of this State not to interfere with CUMMA-authorized marijuana possession or use, or interrupt a qualifying patient's access to lawfully-dispensed medical marijuana, police officers will be expected to guard against the illegal diversion or fraudulent use of medical marijuana. New Jersey's medical marijuana law and complementary regulations adopted by the Department of Health are designed to closely regulate the cultivation/growing, dispensing, and use of this controlled dangerous substance. The New Jersey Legislature in adopting CUMMA was

mindful of the laws in some other States that invite abuse. Those other statutory schemes allow dubious physicians to authorize marijuana use by patients with whom they have no *bona fide* physician-patient relationship, and those laws allow healthy persons to obtain marijuana to treat feigned medical conditions. Ultimately, those lax regulatory schemes allow marijuana to be used routinely if not predominantly for *non*-medical, recreational purposes.

To prevent similar abuses from occurring in New Jersey, police officers in the field need to be able to determine quickly and efficiently whether a person found to be in actual or constructive possession of marijuana is a registered medical marijuana qualifying patient, primary caregiver, or employee of an Alternate Treatment Center or the Department of Health Medicinal Marijuana Program, and if so, whether he or she is abusing CUMMA, either by illegally diverting lawfully-dispensed medical marijuana to others, or by trying to use CUMMA as a shield to conceal his or her own unlawful possession or personal use of marijuana (*e.g.*, by falsely claiming to be a registered patient or caregiver, or by possessing or using marijuana that had not been dispensed to the person by an Alternate Treatment Center in accordance with CUMMA). Accordingly, it is the general law enforcement policy of this State that when a person believed to be in actual or constructive possession of marijuana claims to be a medical marijuana patient or caregiver, or an employee of an Alternate Treatment Center or the Department of Health Medicinal Marijuana Program, the investigating officer should make appropriate inquiries of the person, and access other available sources of information (*e.g.*, a ROIC query pursuant to Section 1.5 when practicable), to determine whether the possession or use is in fact authorized under State law.

#### 1.4 Implementing a Fair and Efficient Process for Determining Whether Marijuana Use/Possession is Lawful

CUMMA creates what is known as an “affirmative defense” to charged violations of the Comprehensive Drug Reform Act. See N.J.S.A. 24:6I-6(a) and N.J.S.A. 2C:35-18. The statute makes clear that the burden of proving this affirmative defense rests with the defendant. Specifically, the provision of the Comprehensive Drug Reform Act that CUMMA incorporates by reference expressly provides that this defense must be proved by the defendant by a preponderance of the evidence. See N.J.S.A. 2C:35-18.

Ordinarily, the applicability of an affirmative defense is decided by a prosecutor, judge, or jury only after formal charges have been brought, rather than by a police officer at the scene of a possible offense. However, as a matter of sound law enforcement policy, and in order to conserve resources by avoiding unnecessary arrests, searches, seizures, and prosecutions, and consistent with the general policy not to interfere with CUMMA-authorized marijuana possession or use whenever feasible, where it reasonably appears to a police officer that the CUMMA affirmative defense applies (*e.g.*, the person in possession of marijuana presents a valid medical marijuana registry identification card and otherwise appears to be complying with all of the below-described statutory requirements), an officer should generally refrain from making an arrest, filing criminal charges, and/or seizing the marijuana or associated paraphernalia.

Police, in other words, should not follow an “arrest first, let the court figure it out later”

approach when a person in possession of marijuana claims to be exempt from criminal liability under CUMMA. Rather, the officer should, whenever feasible, conduct an on-scene investigation to try to confirm or dispel the basis for the affirmative defense. In conducting this on-scene investigation, the officer should consider all relevant circumstances, including especially the factors that are set forth in Section 5 of these Guidelines.

Although the statute unequivocally provides that the burden of proof rests with the defendant, as a matter of sound and efficient policy and so as to conserve law enforcement and prosecution resources, when a suspect asserts that he or she is authorized to possess medical marijuana under CUMMA, an officer should not make an arrest, file criminal charges, or seize marijuana or associated paraphernalia unless the officer has specific and articulable reasons to believe that the CUMMA affirmative defense does not apply to this suspect or to the current act of possession or use.

In the event that a police officer determines that there are specific and articulable reasons to believe that the affirmative defense asserted by the suspect does not apply or has not been satisfied, and, based upon that determination, the officer makes an arrest, files a complaint, or seizes marijuana or marijuana-related paraphernalia, the officer should alert the prosecutor that the defendant had claimed to be exempt under CUMMA. The officer in those circumstances should explain in the police report the specific reason(s) why the officer had determined that possession or use of the marijuana was not authorized under CUMMA, or why the officer could not verify or more fully investigate the affirmative defense (*e.g.*, the defendant was uncooperative). It should be noted in this regard that the officer's on-scene determination that the CUMMA affirmative defense does not apply in no way precludes a defendant from later asserting that defense in court. Whenever an arrest is made, charges are filed, and/or evidence is seized, the officer should carefully and fully document all of the relevant circumstances so that the prosecutor will be in a better position to address the affirmative defense raised at trial or in pretrial litigation.

#### 1.5 Procedures Available to Officers to Verify CUMMA Registry Status

A police officer, or a police dispatcher acting on behalf of the officer, will be able to verify a person's status as a *bona fide* registered qualifying patient, primary caregiver, or employee of an Alternate Treatment Center or the Department of Health Medicinal Marijuana Program by contacting the State Police Regional Operations Intelligence Center (ROIC). The ROIC will have secure access on a 24/7 basis to selected pieces of information from a database maintained by the Department of Health Medicinal Marijuana Program. The ROIC may be contacted by telephone.

The information available to an officer or dispatcher via the ROIC will include the name, date of birth, address, and registry identification number of a current medical marijuana qualifying patient, primary caregiver, or employee of an Alternate Treatment Center or the Medicinal Marijuana Program, the specific Alternate Treatment Center that is authorized to dispense medical marijuana to that specific patient and/or caregiver, and the name and address of the qualifying patient to whom a specific primary caregiver is authorized to provide assistance in obtaining and using medical marijuana.

In order to protect the confidentiality of a patient's medical history and information, the ROIC will not have access to information maintained in the Department of Health database regarding the underlying debilitating medical condition or diagnosis of the patient that permits the person to become a qualifying patient under CUMMA. The ROIC inquiry is intended to ascertain/verify that the person claiming an exemption from criminal liability is presently registered with the Department of Health Medicinal Marijuana Program. For purposes of the on-scene investigation pursuant to Section 1.4, verification of a patient's registration status shall constitute sufficient evidence that the person is a qualifying patient under CUMMA, and an officer during any such on-scene investigation shall not make inquiry as to the existence, nature, or severity of the person's debilitating medical condition. *See also* Section 3.4 (police officers conducting an on-scene investigation during an unplanned encounter should not investigate whether a person claiming a CUMMA exemption from criminal liability suffers from a debilitating medical condition recognized under CUMMA).

A police officer, or dispatcher acting on behalf of a police officer in the field, should only contact the ROIC to verify a person's registration status when the officer already has reason to believe that the person is in possession of marijuana (*e.g.*, a plain view observation or a "plain smell," an admission by the person or another that marijuana is present, etc.) and the person asserts the affirmative defense afforded by CUMMA. *See* Section 2.1 (it is the *suspect's* responsibility to assert the medical marijuana affirmative defense). An officer should not query the ROIC to obtain information for the purpose of determining whether there is reasonable suspicion or probable cause to believe that marijuana is present. *See* Section 3.1 (an officer should not infer from a person's registration status that he or she is presently in possession of marijuana). Rather, queries to the ROIC should only be used to confirm the validity of a medical marijuana registry identification card that was presented to the officer, or to confirm or dispel a person's claim that he or she is a registered patient, caregiver, or Alternate Treatment Center or Medicinal Marijuana Program employee, where the person is not able to present his or her registry identification card.

## 2. SCOPE AND LIMITATIONS OF THE MEDICAL MARIJUANA AFFIRMATIVE DEFENSE

### 2.1 "Affirmative" Assertion of Affirmative Defense by Claimant

When an officer has reasonable articulable suspicion or probable cause to believe that marijuana is present (*e.g.*, a plain view observation or "plain smell" of marijuana), the officer need not assume that the marijuana is medical marijuana authorized by CUMMA. Rather, it is the responsibility of the patient/caregiver/employee of an Alternate Treatment Center or the Department of Health Medicinal Marijuana Program to assert the affirmative defense. *See* N.J.S.A. 2C:35-18 ("it shall not be necessary for the State to negate any exemption...").

Depending on the circumstances, however, it may be appropriate for any officer to ask a suspect whether he or she is a qualifying medical marijuana patient, primary caregiver, or Alternate Treatment Center/Medicinal Marijuana Program employee, since the answer to that question may dictate the investigate steps that an officer should pursue. By way of example, a patient or caregiver

who is in lawful possession of medical marijuana may not realize that the officer has detected the odor of the medical marijuana, and thus may not know to volunteer information concerning his or her status as a registered qualifying patient or primary caregiver. Providing that information to an officer at the early stages of an investigative detention might change the course of the police-citizen encounter and obviate the need for the officer, for example, to make an arrest and conduct a contemporaneous search of the person incident thereto. *Cf.*, Section 7.2 (a person's assertion of the CUMMA affirmative defense does not automatically vitiate reasonable suspicion or probable cause to believe that an offense is being committed).

It should be noted that a police officer's investigation into the applicability of the CUMMA affirmative defense constitutes a *criminal* investigation. Accordingly, a citizen cannot be compelled by an officer to make a testimonial statement. Furthermore, the statute is not structured as an "implied consent" law that would require a person claiming an exemption to make vehicle-borne medical marijuana available for law enforcement inspection, or that would automatically authorize an officer to conduct a warrantless search to retrieve medical marijuana from the vehicle so that the officer can confirm that all of the requirements of the affirmative defense have been satisfied. *See* Section 7.1 (all regular search and seizure rules apply and must be followed).

However, because a person asserting the CUMMA affirmative defense ultimately bears the burden of proof pursuant to N.J.S.A. 2C:35-18, in the event that a person exercises his or her constitutional right to remain silent, or his or her constitutional right to refuse a consent search that would enable the officer to visually inspect the marijuana, the officer may in the exercise of his or her discretion proceed as if the affirmative defense does not apply or has not been proved, and may leave ultimate resolution of the applicability of the affirmative defense to the prosecutor and/or the court. *See also* Section 5c (the extent of cooperation is a relevant circumstance that an officer may consider in determining whether the CUMMA affirmative defense applies and has been satisfied).

## 2.2 Applicability of Affirmative Defense to Drug Paraphernalia

Although CUMMA does not specifically mention drug paraphernalia, the section of the Comprehensive Drug Reform Act that makes it an offense to use or possess drug paraphernalia defines that offense by referring to various items that are associated with the use of a "controlled dangerous substance, controlled substance analog or toxic chemical *in violation of the provisions of chapter 35 of this title.*" N.J.S.A. 2C:36-2 (emphasis added). Because the CUMMA-authorized possession and/or use of lawfully-dispensed medical marijuana is not a violation under chapter 35, items otherwise constituting "drug paraphernalia" that are used to administer or ingest medical marijuana would fall under the CUMMA affirmative defense. *See also* N.J.S.A. 2C:35-18 (which refers specifically to an exemption from criminal liability under both chapter 35 (controlled dangerous substances) and chapter 36 (drug paraphernalia) of Title 2C).

Accordingly, when an officer determines that the person is a registered medical marijuana patient or primary caregiver who reasonably appears to be acting in compliance with CUMMA, the officer should not make an arrest or file criminal charges under N.J.S.A. 2C:36-2 for possession or use of any item that might be used by the patient to administer or consume lawfully-dispensed

medical marijuana, notwithstanding that such item would clearly constitute marijuana-related “drug paraphernalia” were it not for the affirmative defense established in CUMMA (e.g., a “bong,” “smoking pipe,” or “roach clip”). Nor should an officer seize any such paraphernalia as contraband.

However, if the officer has probable cause to believe that any paraphernalia has been or is intended to be used to ingest *unlawfully*-possessed marijuana, or any other controlled dangerous substance, the officer may, of course, seize such paraphernalia and file charges, as appropriate. By way of example, if the officer determines that the medical marijuana had been dispensed to the patient in lozenge form for oral ingestion, nothing in these Guidelines should be construed to discourage an officer from seizing any drug paraphernalia of a type that is used to *smoke* marijuana, since in those circumstances, it would reasonably appear that the paraphernalia had been or would be used to consume marijuana that had *not* been lawfully dispensed to the registered patient pursuant to CUMMA. So too, if, for example, the officer has reason to believe that medical marijuana has been mixed with another controlled dangerous substance for which the suspect does not have a lawful prescription, any paraphernalia used to ingest the combination of drugs would fall outside the CUMMA affirmative defense. *See also* Section 2.10 (the affirmative defense does not apply when medical marijuana is mixed with another drug that is being unlawfully possessed).

### 2.3 Operating Vehicles, Vessels and Machinery While Under the Influence

CUMMA does NOT authorize a person to “operate, navigate, or be in actual control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana.” N.J.S.A. 24:6I-8(a). The statute expressly provides that in any of those circumstances, the defendant remains “subject to such penalties as are provided by law.” *Id.* **It is thus clear that the CUMMA affirmative defense does not apply to the charge of driving while intoxicated in violation of N.J.S.A. 39:4-50, or to any other motor vehicle offense, disorderly persons offense, or indictable crime related to the *operation* of the vehicle or vessel (e.g., death by auto or vessel, assault by auto or vessel, or leaving the scene of a motor vehicle accident resulting in death or serious bodily injury).**

#### a. *Thorough Investigation of Using/Being Under the Influence While Operating a Motor Vehicle*

Whenever a police officer has reason to believe that medical marijuana has recently been smoked in a motor vehicle (e.g., a plain smell of burning marijuana), the officer is expected to investigate whether the vehicle had been or is being operated by a person while under the influence of marijuana. *Cf.*, Section 2.4 (noting that CUMMA does not prohibit smoking in a private vehicle while the vehicle is not in operation). When an officer has reason to believe that marijuana has recently been smoked in a vehicle that is currently in operation (e.g., when an officer detects recently-smoked marijuana during a motor vehicle stop), in order to ensure safe operation of the vehicle following the encounter, the officer shall pursue all reasonable and necessary investigative steps to determine whether the vehicle operator may be under the influence of marijuana, whether from direct inhalation or from second-hand smoke.

Such investigation to assure the safety of the motoring public may entail, as the circumstances warrant, ordering the driver to exit the vehicle for sobriety testing, and subjecting the driver to on-scene drug recognition testing by a qualified drug recognition expert (DRE), when practicable. It should be noted, even at the risk of stating the obvious, that a registered primary caregiver is not authorized under CUMMA to consume medical marijuana, and in the event that the officer detects recently-smoked marijuana in a vehicle that is not carrying a registered qualifying patient, that circumstance would reasonably suggest, in the absence of an adequate explanation, that the recent marijuana consumption in the vehicle had been unlawful. *See* Section 5h.

Besides being inapplicable to a Title 39 driving-while-under-the-influence offense, the CUMMA affirmative defense would not apply to a charge under N.J.S.A. 2C:35-10(b) for using/being under the influence of marijuana in any case where the suspect had been operating a vehicle, vessel, or stationary heavy equipment. N.J.S.A. 24:6I-6 expressly provides that the affirmative defense set forth in N.J.S.A. 2C:35-18 applies to a qualifying patient or primary caregiver who is “acting in accordance with the provisions of this act [CUMMA].” To the extent that a person who operates a vehicle, vessel, or machinery while under the influence of medical marijuana is not “acting in accordance with CUMMA,” indeed, is engaged in conduct that CUMMA expressly exempts from its applicability,<sup>5</sup> the affirmative defense would not apply to the charge of using or being under the influence of a controlled dangerous substance in violation of N.J.S.A. 2C:35-10(b), notwithstanding that the person is a registered patient and the marijuana that the person consumed had been lawfully dispensed to him or her.

b. *Seizure of Unconsumed Medical Marijuana in Vehicle as Evidence of Intoxication*

Although a defendant who uses or is under the influence of medical marijuana while operating a vehicle may properly be charged and prosecuted for violation of both N.J.S.A. 39:4-50 and subsection (b) of N.J.S.A. 2C:35-10, he or she may still be able to successfully assert a CUMMA affirmative defense if he or she were also to be charged with the actual or constructive possession of unconsumed marijuana that may have been present in the vehicle or vessel. In other words, a defendant may assert an affirmative defense to a charged violation of subsection (a) of N.J.S.A. 2C:35-10, or to a violation of N.J.S.A. 39:4-49.1 (possessing drugs in a motor vehicle), notwithstanding that he or she had illegally used some of that medical marijuana by virtue of having operated the vehicle or vessel while under the influence. To the extent that the CUMMA affirmative defense may apply to the unconsumed medical marijuana present in the vehicle or vessel, that marijuana or associated paraphernalia should not be treated as contraband *per se*, and, pursuant to the general policy set forth in these Guidelines, a police officer should ordinarily refrain from seizing such medical marijuana or paraphernalia.

It is important to note, however, that in certain circumstances, even *bona fide* medical marijuana or marijuana-related paraphernalia found on the person or in the vehicle or vessel may be seized as relevant and admissible evidence in a prosecution, not as *per se* contraband (*i.e.*, the direct

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The caption to N.J.S.A. 24:6I-8 is “Inapplicability of act.”

evidence of a possessory marijuana offense), but rather as physical evidence to help prove a material element of the vehicle/vessel operation-related offense. For example, the presence of an opened package of medical marijuana and/or recently-used marijuana paraphernalia may be relevant in proving that the operator of the vehicle or vessel had recently consumed marijuana and thus was under the influence of some “narcotic, hallucinogenic or habit-producing drug” within the meaning of N.J.S.A. 39:4-50 at the time of the vehicle/vessel’s operation.<sup>6</sup> Such physical evidence is especially likely to be relevant to the State’s case when the qualifying patient is charged with aggravated manslaughter, manslaughter, death by auto or vessel, assault by auto or vessel, or leaving the scene of a motor vehicle accident resulting in death or serious bodily injury.

Accordingly, when a qualifying patient is charged with any such serious crime involving the operation of a vehicle or vessel, or is charged with driving while intoxicated under circumstances where marijuana or marijuana-related paraphernalia found on the person of the defendant or in the vehicle or vessel would constitute physical evidence that would help to prove at trial that the defendant was under the influence of a narcotic, hallucinogenic or habit-producing drug, the officer may seize the medical marijuana or paraphernalia, alert the prosecutor as to the defendant’s status as a medical marijuana qualifying patient, and leave any questions concerning evidence relevance and admissibility, applicability of the CUMMA affirmative defense, and return of lawfully-seized evidence to be resolved by the prosecutor and/or the court.

#### 2.4 Smoking Marijuana in Prohibited Locations

CUMMA expressly provides that it does NOT authorize a person to smoke marijuana “in a school bus or other form of public transportation, in a private vehicle unless the vehicle is not in operation, or on any school grounds, in any correctional facility, at any public park or beach, or at any recreation center, or any place where smoking is prohibited pursuant to N.J.S. 2C:33-13.”<sup>7</sup> N.J.S.A. 24:6I-8(b). As to smoking medical marijuana at such protected locations, CUMMA expressly provides that the patient “shall be subject to such penalties as are provided by law.” Id. In other words, when smoking occurs at a protected location, the CUMMA affirmative defense would be inapplicable, and the offender could be charged and convicted with a marijuana use/being under the influence offense, notwithstanding that the defendant is a qualifying patient and notwithstanding that the marijuana that was smoked had been lawfully dispensed to the patient.

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The same principle would apply in a situation involving a lawfully-prescribed drug such as oxycodone, or an over-the-counter medication that can produce an intoxicating effect or drowsiness. While possession of lawfully-dispensed oxycodone in a vehicle is not by itself an offense, and the drug therefore would not be considered to be *per se* contraband, the oxycodone pills could be relevant evidence of the defendant’s intoxication and state-of-mind, helping to prove, for example, that the driver had been intoxicated or had otherwise acted recklessly with respect to a motor vehicle crash. *See* Section 1.2 (suggesting that an officer should treat a medical marijuana investigation in the same way that he or she would handle an oxycodone investigation).

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N.J.S.A. 2C:33-13 is reproduced in Appendix D.

Note that this provision of CUMMA applies only to *smoking* marijuana in certain specified places, and thus does not prohibit a person from orally consuming or being under the influence of medical marijuana while at any of the protected locations. (Of course, as explained in Section 2.3, it remains unauthorized and illegal for a patient to use or be under the influence of medical marijuana while operating a vehicle, vessel, or certain heavy equipment, *regardless of the method of ingestion.*)

It should be noted that CUMMA does not prohibit a qualifying patient from smoking in a private vehicle while the vehicle is not in operation. See N.J.S.A. 24:6I-8(b). Cf., Section 2.3 (discussing the operation of vehicles, vessels, and heavy equipment, and requiring a thorough investigation to ensure public safety by determining whether a vehicle operator may be under the influence of marijuana). However, CUMMA makes clear that it does not allow a patient to smoke medical marijuana in a school bus or other form of public transportation regardless of whether such vehicle was in operation at the time that the medical marijuana was smoked.

It should also be noted that CUMMA only prohibits qualifying patients from smoking lawfully-dispensed medical marijuana at the specific protected locations listed above. It does not prohibit patients from smoking medical marijuana at other locations.

If a qualifying patient were to smoke medical marijuana while at any of the above-listed protected locations, the CUMMA affirmative defense would not apply to the charge of using a controlled dangerous substance in violation of subsection (b) of N.J.S.A. 2C:35-10. As noted in Section 2.3, N.J.S.A. 24:6I-6 expressly provides that the affirmative defense set forth in N.J.S.A. 2C:35-18 applies to a qualifying patient who is “acting in accordance with the provisions of this act [CUMMA].” By smoking marijuana at a prohibited location in direct contravention of N.J.S.A. 24:6I-8, the defendant would be acting outside of the legal protections afforded to him or her by CUMMA, and thus could be charged and prosecuted for unlawful marijuana use, notwithstanding that he or she is allowed to smoke lawfully-dispensed medical marijuana at other locations.

Although a qualifying patient who smokes at a prohibited location may properly be charged and prosecuted for using marijuana in violation of subsection (b) of N.J.S.A. 2C:35-10, he or she may still be able to successfully assert a CUMMA affirmative defense if he or she were also to be charged with the actual or constructive possession of marijuana in violation of subsection (a) of N.J.S.A. 2C:35-10. To the extent that the CUMMA affirmative defense may apply to the unconsumed medical marijuana present at the prohibited location, that marijuana or associated paraphernalia should not be treated as contraband *per se*, and, pursuant to the general policy set forth in these Guidelines, a police officer should ordinarily refrain from seizing such medical marijuana or paraphernalia.

## 2.5 Distinguishing “Simple Possession” From Distribution or Possession with Intent to Distribute

With respect to registered qualifying patients, CUMMA only authorizes *simple* possession and *personal use* of the lawfully-dispensed medical marijuana. It does NOT authorize a patient to share or in any other way distribute medical marijuana to any other person. If an officer has probable cause to believe that a qualifying patient is distributing or possessing with intent to distribute marijuana,

the CUMMA affirmative defense does not apply to a charge of violating N.J.S.A. 2C:35-5 or any other law concerning unlawful distribution/dispensing or possession with intent to distribute/dispense.

With respect to registered primary caregivers, CUMMA only authorizes them to distribute/dispense medical marijuana to the single, specific patient for whom the caregiver is authorized to provide assistance.<sup>8</sup> See N.J.A.C. 8:64-1.2 and 8:64-34. If an officer has probable cause to believe that a registered caregiver is providing marijuana to any other person, the affirmative defense does not apply to a charge of violating N.J.S.A. 2C:35-5 or any other law concerning unlawful distribution/dispensing or possession with intent to distribute/dispense.

Relatedly, a primary caregiver is not authorized to personally use medical marijuana that had been lawfully dispensed to him or her for the ultimate and intended use by the patient for whom the caregiver is registered to provide assistance. The personal use of the medical marijuana by the caregiver would thus fall outside the scope of affirmative defense, and he or she might be charged and prosecuted for use/being under the influence in violation of subsection (b) of N.J.S.A. 2C:35-10.

## 2.6 Prohibition Against Home Cultivation

CUMMA does NOT authorize a qualifying patient or primary caregiver to grow or cultivate marijuana, or to possess a marijuana plant. Under State law, medical marijuana may only be cultivated and harvested by a closely-regulated Alternate Treatment Center. Accordingly, the CUMMA affirmative defense does not apply to a charge of possessing marijuana that is in the form of a plant, in violation of N.J.S.A. 2C:35-10, or to a charge of growing/cultivating marijuana in violation of N.J.S.A. 2C:35-5 (manufacturing, distributing, dispensing, or possession with intent to manufacture, distribute or dispense) or N.J.S.A. 2C:35-4 (maintaining or operating a controlled dangerous substance production facility).

## 2.7 Statutory Limitation on Amount of Medical Marijuana That May Be Dispensed

CUMMA generally provides that an Alternate Treatment Center may only dispense two or less ounces of useable medical marijuana to a qualifying patient or primary caregiver at any one time. (The maximum amount that may be dispensed may be less than two ounces depending upon the written instruction of the patient's physician). This is the maximum amount of medical marijuana that may be lawfully dispensed to the patient or caregiver in a thirty-day period. See N.J.S.A. 24:6I-10. However, the statute does NOT impose a limit on the total amount of medical marijuana that the patient or caregiver may possess at any given time.

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An officer may query the ROIC pursuant to Section 1.5 for information regarding the name and address of the specific qualifying patient for whom a primary caregiver is authorized to provide assistance under CUMMA. An officer investigating the *bona fides* of a person's claimed status as a caregiver may consider whether, in response to the officer's questions, the person claiming the affirmative defense as a caregiver is able to accurately provide the name and address of the specific designated patient. See Section 5g. See also Section 5h(officer may consider whether a person claiming the affirmative defense was untruthful or evasive).

As with other medications, it is conceivable that a person obtaining a monthly supply from an Alternate Treatment Center may have left-over medical marijuana from a prior lawful acquisition, in which event the person might now be in actual or constructive possession of an aggregate amount well exceeding the two-ounce-per-month dispensing limit. Accordingly, the fact that an officer has reason to believe that a registered qualifying patient or primary caregiver is in actual or constructive possession of an amount of marijuana in excess of two ounces does not, by itself, mean that such possession falls outside the scope of the CUMMA affirmative defense.

In other words, a qualifying patient's or primary caregiver's possession of more than two ounces is not illegal *per se*, and should not result in an arrest or seizure unless there is probable cause to believe that some of the marijuana had been obtained from an illicit source, or there is probable cause to believe that the person possessed the marijuana with the intent to distribute it unlawfully. See Section 2.8 (the CUMMA affirmative defense does not apply to marijuana that had not been dispensed to the qualifying patient or primary caregiver by an Alternate Treatment Center), and Section 2.5 (the CUMMA affirmative defense does not apply when a qualifying patient is charged with distribution or possession with intent to distribute medical marijuana).

Furthermore, because CUMMA clearly contemplates the authorized possession of two ounces of lawfully-dispensed medical marijuana, the possession of that amount, by itself, would not constitute probable cause to believe that a person is distributing or possessing with intent to distribute, even if the officer's training and experience suggests that, based on local practices, the possession of that amount of non-medical marijuana is consistent with distribution rather than possession for personal use. Nothing in this Section or any other provision of these Guidelines should be construed, however, to prevent an officer from taking into account the aggregate quantity of marijuana in a suspect's actual or constructive possession as part of the totality of relevant circumstances in determining whether there is probable cause to believe that a patient or primary caregiver is unlawfully distributing or possessing with intent to distribute medical marijuana.

## 2.8 Marijuana That Was Not Dispensed to the Patient/Primary Caregiver by an Alternate Treatment Center

CUMMA only authorizes the possession or use of the actual marijuana product that had been lawfully dispensed to the qualifying patient or primary caregiver by a Medical Marijuana Alternate Treatment Center to which the person is registered. The affirmative defense does not apply to marijuana obtained from any other source. If an officer has articulable and specific reasons to believe that a person is in possession of marijuana that had not been lawfully dispensed specifically to him or her by the New Jersey-licensed Alternate Treatment Center to which he or she is registered (*e.g.*, a medical marijuana package bearing a label indicating that it had been dispensed to another qualifying patient), the officer should proceed as if the affirmative defense does not apply, notwithstanding that the defendant is a registered qualifying patient or primary caregiver and might have lawfully possessed marijuana had it been dispensed to him or her by an authorized Alternate Treatment Center.

## 2.9 Out-of-State Medical Marijuana

CUMMA does not authorize a qualifying patient or primary caregiver to possess or use marijuana obtained from an out-of-State medical marijuana source. The CUMMA affirmative defense applies only to a person who is a registered qualifying patient or primary caregiver under New Jersey law, and who is possessing or using marijuana that had been lawfully dispensed to him or her by one of New Jersey's Alternate Treatment Centers.

## 2.10 Contemporaneous Possession/Use of Other Controlled Dangerous Substances

The CUMMA affirmative defense does not apply to any other controlled dangerous substance. Nor does the affirmative defense apply to medical marijuana that has been physically mixed with any other substance the possession of which is independently unlawful (*e.g.*, marijuana laced with phencyclidine (PCP), also known as "wet").

If a person is found in possession of both medical marijuana and another controlled dangerous substance that has not been physically combined with the medical marijuana, the person in possession of these substances may be arrested and charged with respect to the possession/use of the other controlled substance, but should not be charged with possession of lawfully-dispensed medical marijuana that has not been adulterated with another controlled dangerous substance. The fact that medical marijuana may have been consumed at or about the same time that another controlled dangerous substance was ingested does not provide a basis to deny the CUMMA affirmative defense with respect to the possession or use of the medical marijuana. Accordingly, in the event of contemporaneous possession or use of medical marijuana and another controlled substance, unadulterated medical marijuana should not be seized, provided, however, that nothing herein should be construed to limit an officer's authority to seize medical marijuana where the officer has probable cause to believe, considering the totality of the circumstances and the officer's training and experience, that the marijuana has been physically mixed with another controlled substance.

## 3. SPECIFIC ADDITIONAL PROTECTIONS/LIMITATIONS ON INVESTIGATIONS

### 3.1 Drawing Inculpatory Inferences From CUMMA Registration Status

CUMMA provides that if an officer learns that a person has a medical marijuana registration card, that fact alone does not constitute probable cause to search the person or a vehicle in which the person is traveling. *See N.J.S.A. 24:6I-6(c).*

Although CUMMA is silent on when and in what circumstances an officer may investigate a possible marijuana offense by means other than a search (*e.g.*, by asking questions of detained motorists), for reasons of sound law enforcement policy, and consistent with the general policy not to interfere with lawful medical treatment, in the event that an officer learns that the person is a registered CUMMA cardholder but does not otherwise have reason to believe that marijuana is present (*e.g.*, there is no smell of raw or burning marijuana, no behavior consistent with marijuana

intoxication, etc.), the officer should not infer from the person's registration status that he or she is presently in possession of marijuana.

An officer should not initiate an investigative detention, or treat a routine motor vehicle stop as a criminal suspicion stop, based solely on the person's status as a registered medical marijuana cardholder. Nor should an officer query the ROIC to ascertain a person's status as a registered medical marijuana qualifying patient, primary caregiver, or employee of an Alternate Treatment Center or the Department of Health Medicinal Marijuana Program unless: 1) the officer already has reason to believe that the person is in possession of marijuana, and 2) the person claims to be a medical marijuana qualifying patient, primary caregiver, or Alternate Treatment Center or Medicinal Marijuana Program employee. *See* Section 1.5.

Nothing in these Guidelines should be construed in any way to limit the authority and discretion of an officer to investigate a possible marijuana possession offense based on facts or circumstances other than the person's registration status as a CUMMA qualifying patient or primary caregiver.

### 3.2 Drawing Inferences of Constructive Possession From Mere Proximity to Medical Marijuana Use or Possession

CUMMA provides that no person shall be subject to arrest or prosecution for constructive possession of marijuana, conspiracy, or any other offense simply because he or she is in the presence or vicinity of the authorized medical use or possession of marijuana as authorized by CUMMA. *See* N.J.S.A. 24:6I-6(e).

### 3.3 Constructive Possession by Parents/Guardians Assisting Minor Patients

CUMMA provides that, "no custodial parent, guardian, or person who has legal custody of a qualifying patient who is a minor shall be subject to arrest or prosecution for constructive possession, conspiracy, or any other offense for assisting the minor in the medical use of marijuana..." N.J.S.A. 24:6I-6(f).

### 3.4 Prohibition Against Investigating a Qualifying Patient's Debilitating Medical Condition During On-Scene Investigation

A law enforcement officer conducting an on-scene investigation pursuant to Section 1.4 should not investigate or inquire as to the underlying debilitating medical condition or diagnosis of the person claiming to be a qualifying patient. Rather, the on-scene investigation into whether a person is a registered qualifying patient should focus on examining the registry identification card presented by the person claiming the exemption, and making a query to the ROIC pursuant to Section 1.5 to determine or verify the person's current registration status with the Department of Health

## Medicinal Marijuana Program.

An officer during an on-scene investigation pursuant to Section 1.4 should not ask the patient, or any other person, to specify the patient's debilitating medical condition, and the officer should not otherwise attempt to investigate the existence, nature, or severity of any such qualifying medical condition. Any investigation of possible fraud or deception in obtaining a medical marijuana registry identification card or a physician's certification or written instructions to use medical marijuana (*e.g.*, feigning a debilitating medical condition recognized under CUMMA, or patronizing an unscrupulous physician who sells certifications/written instructions without complying with CUMMA) should only be conducted by or under the direction of the appropriate County Prosecutor's Office, or the Division of Criminal Justice, so as to ensure strict compliance with any applicable laws or regulations concerning the confidentiality of medical information/records and the physician-patient privilege.

### 4. SAFEGUARDS TO PREVENT ILLEGAL ACQUISITION AND DIVERSION OF MEDICAL MARIJUANA

CUMMA and regulations promulgated by the Department of Health are designed to prevent the fraudulent acquisition and illegal diversion of medical marijuana. These security safeguards include the following:

#### 4.1 State-Issued Registry Identification Cards

All *bona fide* qualifying patients, primary caregivers, and employees of an Alternate Treatment Center or the Department of Health Medicinal Marijuana Program will have been issued a registry identification card that includes a number of security features. Each card provides the following information:

- a photograph of the patient, caregiver, or employee;
- the name of the patient, caregiver, or employee;
- a unique identification number;
- an ultraviolet imbedded picture of the cardholder viewable only under a black light;
- an expiration date (two years after issuance) after which the card is null and void.

A representative sample of registry identification cards (Qualifying Patient/Adult; Qualifying Patient/Minor; Primary Caregiver; Alternate Treatment Center Employee; Medicinal Marijuana

Program Staff) is attached to these Guidelines as Appendix B.

Patients and caregivers will have been advised that they should be carrying their registry identification card at all times when they are not in their home and are in possession of medical marijuana. While the failure to present a registry identification card does not automatically mean that the CUMMA affirmative defense does not apply, the failure or inability to present a valid registry identification card is an important factor that an officer should consider in determining whether the person's possession of marijuana is lawful. *See* Section 5a.

As noted in Section 1.5, a police officer in the field, or a police dispatcher acting on behalf of the officer, will be able to contact the State Police Regional Operations Intelligence Center (ROIC) on a 24/7 basis to verify the registry status of a person who claims to be a medical marijuana qualifying patient, primary caregiver, or employee of an Alternate Treatment Center or the Department of Health Medicinal Marijuana Program. Accordingly, when a person in possession of marijuana who claims to be a patient, caregiver, or employee is unable to present a registry identification card, the officer should, when practicable, try to verify or dispel the person's claim by contacting the ROIC before making an arrest, filing charges, or seizing marijuana in any situation where the officer would not have made the arrest, filed charges, or seized marijuana had the person presented a valid registry identification card.

If the ROIC query or any other information learned during the course of the investigation provides reasonable and articulable suspicion to believe that a document purporting to be a registry identification card may be false, forged, or tampered with, the officer should seize the card, proceed as if the CUMMA affirmative defense is not applicable in the present situation, and notify the prosecutor of the reasons for suspecting that the card that had been presented to the officer may be false, forged, or altered. *See also* Section 6 (possessing or presenting false or forged registration cards).

#### 4.2 Medical Marijuana Dispensed in Sealed Packages Containing Small Amounts

Medical marijuana dispensed by an Alternate Treatment Center must be in packages that each hold no more than **one-quarter ounce** of useable marijuana (dried, well-cured and free of stems and seeds), or an equivalent dose when the medical marijuana is in a non-smokable form, such as oral lozenges, or a topical formulation. *See* N.J.A.C. 8:64-10.8(a). These small packages are heat-sealed so that the package cannot be opened without breaking the seal. These precautions are intended to make it impractical for a person to try to re-use these small, non-re-sealable packages to conceal or transport non-medical marijuana.

The fact that a person has removed medical marijuana from its original packaging does not mean that the CUMMA affirmative defense is unavailable to that person. However, patients and primary caregivers have been advised that when transporting or possessing medical marijuana outside their homes, they should keep their medical marijuana in its original packaging. The failure to do so

is a relevant factor that an officer may consider in determining whether the person's possession of marijuana is lawful. *See* Section 5d.

Each Alternate Treatment Center has or will develop distinctive packaging for their various marijuana products (*e.g.*, smokable medical marijuana, lozenges for oral consumption, and an ointment for topical administration). Photographs of the various packages and products will be provided to the law enforcement community as this information becomes available. As discussed in the next section, the labels that must be firmly affixed to each package are standardized.

#### 4.3 Standardized Packaging and Dispensing Labels

All individual packages of medical marijuana dispensed by an Alternate Treatment Center must bear a firmly-affixed label that contains specific information including but not limited to the following:

- name and address of the Alternate Treatment Center;
- quantity of the medical marijuana contained within the package;
- THC level and whether the product is designated as low, medium, or high strength strain;
- date of dispensing to the qualifying patient or primary caregiver;
- qualifying patient's name and registry identification number.

A sample of blank packaging and dispensing labels is attached as Appendix C.

Patients and primary caregivers have been advised not to remove the dispensing label. The removal or alteration of a dispensing label is a relevant factor that an officer should consider in determining whether the person's possession of marijuana is lawful. *See* Section 5d.

#### 4.4 Patient Registration to a Single Alternate Treatment Center

N.J.S.A. 24:6I-10(d) provides that a medical marijuana patient may be registered at only one Alternate Treatment Center at a time. Accordingly, possession of medical marijuana that had been dispensed by two or more different Alternate Treatment Centers would be a relevant factor that an officer should consider in determining whether the person's possession of marijuana is lawful. *See* Section 5f.

#### 4.5 Regulatory Limits on THC Level

Regulations promulgated by the Department of Health impose limits on the level of THC (delta-9-tetrahydrocannabinol) in marijuana that is produced and dispensed by licensed Alternate Treatment Centers. The State regulations that control the purity and potency of medical marijuana are consistent with regulations that strictly govern the production of all lawfully-manufactured controlled substances, prescription legend drugs (PLDs), and over-the-counter (OTC) medications. From a law enforcement perspective, the regulatory limitations on medical marijuana THC content, which must not exceed 10 percent, will help to reduce incentives to illegally divert medical marijuana, and will make medical marijuana products less vulnerable to theft and hijacking. As noted in Section 2.10, any efforts to enhance the psychotropic effects of medical marijuana by physically combining it with another controlled substance (*e.g.*, by lacing medical marijuana with phencyclidine) would render the adulterated marijuana subject to seizure, and the use or possession of such adulterated medical marijuana would not be exempt from criminal liability pursuant to the CUMMA affirmative defense.

#### 5. RELEVANT FACTORS IN DETERMINING WHETHER THE AFFIRMATIVE DEFENSE APPLIES

In determining whether the medical marijuana affirmative defense applies to a given suspect or situation, a police officer should consider all relevant facts and circumstances, and the reasonable inferences that can be drawn from those facts and circumstances, including but not limited to the following:

- a. Whether the person claiming the affirmative defense presents a valid, unaltered medical marijuana registry identification card bearing the person's photograph, and whether, and to what extent, there is any uncertainty as to the identity of the person presenting the card and claiming the affirmative defense.
- b. Whether the officer is able to determine or verify a person's claimed status as a qualifying patient, primary caregiver, or employee of an Alternate Treatment Center or the Medicinal Marijuana Program by making a query to the State Police Regional Operations Intelligence Center (ROIC). *See* Section 1.5.
- c. Whether, and to what extent, the person claiming the affirmative defense is cooperating in the investigation and, for example, permits the officer to examine the medical marijuana to verify that it is being possessed and/or used in compliance with CUMMA (*e.g.*, to inspect the packaging label to cross-check it with the patient's registry identification number; to assess the amount of marijuana present to determine whether the person may be distributing/possessing with intent to distribute, *see* Section 2.7, etc.).

- d. Whether the marijuana is in its original packaging dispensed by an Alternate Treatment Center, and whether the original label is affixed to the packaging.
- e. Whether the label on the packaging indicates that the contents had been dispensed to the specific qualifying patient claiming the affirmative defense, or, where the affirmative defense is asserted by a person claiming to be a primary caregiver, whether the label on the packaging indicates that the contents had been dispensed for use by the specific qualifying patient to whom the primary caregiver is specifically authorized to provide assistance in obtaining and/or using medical marijuana.
- f. Whether the medical marijuana had been dispensed by two or more different Alternate Treatment Centers, considering the rule that a qualifying patient may only be registered to one Alternate Treatment Center at a time.
- g. Whether, in the case of a person claiming to be a primary caregiver, the person is able to provide the name and address of the qualifying patient for whom the caregiver is authorized to provide assistance in obtaining and/or using medical marijuana.
- h. Whether there is reason to believe that marijuana was recently smoked in a vehicle that is not presently carrying a registered qualifying patient who might lawfully have consumed medical marijuana.
- i. Whether, and to what extent, the person claiming the affirmative defense is untruthful in any material respect, or is evasive, casting doubt on his or her veracity.

6. POSSESSING OR PRESENTING FALSE OR FORGED REGISTRATION CARDS

A section in CUMMA codified at N.J.S.A. 24:6I-9 makes it an indictable crime for any person to:

- sell or transfer, or possess with intent to sell or transfer, a document that falsely purports to be a medical marijuana registration card;
- present to a law enforcement officer a document that falsely purports to be a registration card;
- present to a law enforcement officer a registration card that has been altered.

If a law enforcement officer has reasonable articulable suspicion to believe that a person has committed a violation of any false/forged/altered document offense set forth in N.J.S.A. 24:6I-9, the

officer should proceed as if the CUMMA affirmative defense does not apply to any marijuana or marijuana-related paraphernalia that is in the actual or constructive possession of the person possessing/presenting the suspicious document. In those circumstances, the determination of the applicability of the CUMMA affirmative defense is best left to the prosecutor and/or the court. Whenever practicable, an officer should contact the ROIC pursuant to Section 1.5 to verify or dispel the validity of a registry identification card before concluding that there is reasonable articulable suspicion to believe that the card is false, forged, or altered. *See also* Section 3.4 (an officer during an on-scene investigation conducted pursuant to Section 1.4 should not investigate whether the person may have feigned a debilitating medical condition to obtain a registry identification card or a certification/written instructions from a physician, but rather should refer any such suspected fraud for investigation by or under the direction of the appropriate County Prosecutor or the Division of Criminal Justice).

## 7. SEARCH AND SEIZURE ISSUES

### 7.1 All Criminal Law Search and Seizure Rules Apply

When an officer is investigating whether the medical marijuana affirmative defense applies, the officer is conducting a *criminal* investigation, and the officer must at all times comply with all applicable rules governing investigative detentions, arrests, searches, and seizures by law enforcement, including but not limited to the rules governing “automobile exception” searches, *see, e.g., State v. Pena-Flores*, 198 N.J. 6 (2009), the rules governing the scope of a contemporaneous search incident to the arrest of a vehicle occupant, *see State v. Eckel*, 185 N.J. 523 (2006)(rejecting the authority to conduct a “Belton” search of the passenger cabin), and the rules governing consent searches. Except as noted in Sections 2.7, 3.1, 3.2, and 7.2, the specific requirements of the Fourth Amendment and Article I, paragraph 7 of the New Jersey Constitution are generally beyond the scope of these Guidelines.

### 7.2 Reasonable Articulable Suspicion or Probable Cause Not Dissipated by Mere Claim of Affirmative Defense

Because CUMMA establishes an affirmative defense that must be proved by the defendant by a preponderance of the evidence, *see N.J.S.A. 24:6I-6(a)* and *N.J.S.A. 2C:35-18*, when an officer develops reasonable articulable suspicion or probable cause to believe that a marijuana offense is being or has been committed (*e.g.*, a plain view observation or “plain smell” of marijuana), that reasonable articulable suspicion or probable cause does not dissipate merely because a suspect asserts that the detected marijuana is medical marijuana possessed in accordance with CUMMA. *Compare N.J.S.A. 2C:35-18* (“It shall not be necessary for the State to negate any exemption set forth in this act or in any provision of Title 24...”) and *N.J.S.A. 2C:1-13b(2)*(the presumption of innocence does not apply to any defense which the code [of Criminal Justice] or another statute requires the defendant to prove by a preponderance of the evidence). Rather, an officer continues to have reasonable

articulable suspicion or probable cause for purposes of conducting a criminal investigation unless and until the officer is reasonably satisfied from the on-scene investigation that the CUMMA affirmative defense is applicable.

An officer, in other words, is not required to rely on the suspect's representation of his or her status as a qualifying patient or primary caregiver, or his or her representation that marijuana that is present is being possessed in accordance with CUMMA. Rather, an officer is permitted to continue the criminal investigation so as to be able make his or her own determination of the validity of the suspect's claim and the applicability of the CUMMA affirmative defense to the suspect's present conduct. Any such on-scene investigation need not be limited to verifying that a person is registered with the Medicinal Marijuana Program, since a registered qualifying patient or primary caregiver may engage in marijuana-related conduct that falls outside the CUMMA exemption from criminal liability. The strict limitations set forth in CUMMA, coupled with the Legislature's decision to assign the burden of proof by a preponderance of the evidence to a defendant who claims to be exempt from criminal liability, make clear that the statute does not give license for registered patients or caregivers to transport non-medical marijuana or medical marijuana that has been unlawfully diverted, and that the statute must not be used to facilitate or conceal unauthorized possession of marijuana. An officer may therefore choose to make the determination of the applicability of the CUMMA affirmative defense after having an opportunity to visually inspect the medical marijuana to confirm that it is being possessed in compliance with CUMMA (e.g., that the information on the dispensing label matches the suspect's registry identification number, the total amount of marijuana is consistent with CUMMA compliance and does not suggest distribution or possession with intent to distribute, etc.).

Officers are reminded that under the State Constitution, probable cause by itself does not authorize a warrantless vehicle search under the "automobile exception." *See State v. Pena-Flores*, 198 N.J. 6 (2009)(requiring that there also be exigent circumstances that would justify dispensing with the warrant requirement). Thus, unless a motorist authorizes a lawful consent search, it may be necessary for the officer to apply for a search warrant if the officer decides that the validity of the asserted affirmative defense cannot be reliably determined without visually inspecting the marijuana.

## 8. POLICE INTERACTION WITH ALTERNATE TREATMENT CENTERS AND EMPLOYEES

### 8.1 Transport of Bulk Medical Marijuana To/From an Alternate Treatment Center

Regulations promulgated by the Department of Health impose restrictions on the transport of medical marijuana by employees of an Alternate Treatment Center. *See N.J.A.C. 8:64-10.11*. These rules are intended to minimize the risk that bulk supplies of medical marijuana might be hijacked or otherwise diverted. These special security rules and safeguards include the following:

- Transport from the cultivation site to the dispensing site must be done according to

a delivery plan submitted to the Department of Health;

- The dispensing site must be an Alternate Treatment Center. Home delivery by ATC staff is prohibited. See N.J.A.C. 8:64-10.12;
- Each transport vehicle must be staffed by at least two registered ATC employees, at least one of whom must remain with the vehicle at all times that it contains medical marijuana;
- Each delivery team member “shall possess his or her ATC employee identification card at all times *and shall produce it to* [Health] Department Staff or *law enforcement officials upon demand.*” N.J.A.C. 8:64-10.11(b)(3) (emphasis added);
- Transport vehicles must bear no markings that would either identify or indicate that the vehicle is being used to transport medical marijuana;
- Transported medical marijuana must be kept in a secure lockbox or locking cargo area;
- Transport vehicles must proceed from the departure point where medical marijuana was loaded directly to the destination point where the medical marijuana is unloaded *without intervening stops or delays.*

If a law enforcement officer has an unplanned encounter with an Alternate Treatment Center employee who appears to be in possession of marijuana, the officer should ask the person to produce his or her ATC identification card. If the officer has any doubts about the person’s identity or status as an Alternate Treatment Center employee, the officer should verify the person’s registration status by contacting the ROIC in accordance with Section 1.5. The officer may also inquire of the person as to the purpose and method of transport, and may determine whether the medical marijuana is being transported in compliance with the Department of Health regulations (*e.g.*, at least two Alternate Treatment Center employees bearing identification cards, vehicle with no identifying markings, direct and uninterrupted route from loading point to destination point, transported marijuana in a secure lockbox or locking cargo area, etc.).

It should be noted that deviation from these regulatory transport protocols does not necessarily make the affirmative defense inapplicable. In the absence of exigent circumstances, an officer during the course of an unplanned encounter with an Alternate Treatment Center-owned or leased vehicle should not make an arrest or file charges against an Alternate Treatment Center employee, or seize medical marijuana being transported by an Alternate Treatment Center, without first consulting with the appropriate County Prosecutor’s Office or the Division of Criminal Justice.

## 8.2 Investigation of Alternate Treatment Centers and Employees

A law enforcement officer or agency shall not conduct a criminal investigation of the activities of an Alternate Treatment Center or ATC employee, other than during the course of an unplanned road encounter, without first consulting with the appropriate County Prosecutor's Office, or the Division of Criminal Justice. When an officer or agency becomes aware of facts constituting a reasonable articulable suspicion to believe that an ATC or ATC employee has committed or is committing an offense, or the officer or agency is provided with a "tip" concerning any such offense where the information on its face does not constitute reasonable articulable suspicion, the officer or agency must promptly notify the County Prosecutor, or the Division of Criminal Justice.

## 9. REPORTING CUMMA VIOLATIONS TO THE DEPARTMENT OF HEALTH

A qualifying patient or primary caregiver who violates CUMMA may have his registration status revoked by the Department of Health. In order to maintain the integrity of the State's medical marijuana program and to encourage strict compliance with the law, where an officer determines that a registered patient or primary caregiver has violated any provision of CUMMA (*e.g.*, where a determination is made that the CUMMA affirmative defense does not apply or has not been satisfied), the officer or his or her department, or the prosecutor, should notify the Department of Health Medicinal Marijuana Program of the illegal conduct, of any arrest, and the final disposition of any charges.

An officer or his or her department should also report to the Department of Health if the officer learns that an employee of an Alternate Treatment Center failed to comply with any of the medical marijuana transport rules summarized in Section 8.1.

## 10. QUESTIONS

Any questions by law enforcement officers or agencies concerning the enforcement and implementation of CUMMA or these Guidelines should be addressed to the appropriate County Prosecutor, or to the Division of Criminal Justice Prosecutors Supervision Bureau.

## APPENDIX A

Text of the New Jersey Compassionate Use Medical Marijuana Act (CUMMA), N.J.S.A. 2C:6I-1  
et seq. (L. 2009, c. 307)

**CHAPTER 307**

**AN ACT** concerning the medical use of marijuana and revising parts of statutory law.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

**C.24:6I-1** Short title.

1. This act shall be known and may be cited as the "New Jersey Compassionate Use Medical Marijuana Act."

**C.24:6I-2** Findings, declarations relative to the medical use of marijuana.

2. The Legislature finds and declares that:

a. Modern medical research has discovered a beneficial use for marijuana in treating or alleviating the pain or other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999;

b. According to the U.S. Sentencing Commission and the Federal Bureau of Investigation, 99 out of every 100 marijuana arrests in the country are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marijuana;

c. Although federal law currently prohibits the use of marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington permit the use of marijuana for medical purposes, and in Arizona doctors are permitted to prescribe marijuana. New Jersey joins this effort for the health and welfare of its citizens;

d. States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law; therefore, compliance with this act does not put the State of New Jersey in violation of federal law; and

e. Compassion dictates that a distinction be made between medical and non-medical uses of marijuana. Hence, the purpose of this act is to protect from arrest, prosecution, property forfeiture, and criminal and other penalties, those patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers, and those who are authorized to produce marijuana for medical purposes.

**C.24:6I-3** Definitions relative to the medical use of marijuana.

3. As used in this act:

"Bona fide physician-patient relationship" means a relationship in which the physician has ongoing responsibility for the assessment, care and treatment of a patient's debilitating medical condition.

"Certification" means a statement signed by a physician with whom a qualifying patient has a bona fide physician-patient relationship, which attests to the physician's authorization for the patient to apply for registration for the medical use of marijuana.

"Commissioner" means the Commissioner of Health and Senior Services.

"Debilitating medical condition" means:

(1) one of the following conditions, if resistant to conventional medical therapy: seizure disorder, including epilepsy; intractable skeletal muscular spasticity; or glaucoma;

(2) one of the following conditions, if severe or chronic pain, severe nausea or vomiting, cachexia, or wasting syndrome results from the condition or treatment thereof: positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or cancer;

(3) amyotrophic lateral sclerosis, multiple sclerosis, terminal cancer, muscular dystrophy, or inflammatory bowel disease, including Crohn's disease;

(4) terminal illness, if the physician has determined a prognosis of less than 12 months of life; or

(5) any other medical condition or its treatment that is approved by the department by regulation.

"Department" means the Department of Health and Senior Services.

"Marijuana" has the meaning given in section 2 of the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-2).

"Medical marijuana alternative treatment center" or "alternative treatment center" means an organization approved by the department to perform activities necessary to provide registered qualifying patients with usable marijuana and related paraphernalia in accordance with the provisions of this act. This term shall include the organization's officers, directors, board members, and employees.

"Medical use of marijuana" means the acquisition, possession, transport, or use of marijuana or paraphernalia by a registered qualifying patient as authorized by this act.

"Minor" means a person who is under 18 years of age and who has not been married or previously declared by a court or an administrative agency to be emancipated.

"Paraphernalia" has the meaning given in N.J.S.2C:36-1.

"Physician" means a person licensed to practice medicine and surgery pursuant to Title 45 of the Revised Statutes with whom the patient has a bona fide physician-patient relationship and who is the primary care physician, hospice physician, or physician responsible for the ongoing treatment of a patient's debilitating medical condition, provided, however, that such ongoing treatment shall not be limited to the provision of authorization for a patient to use medical marijuana or consultation solely for that purpose.

"Primary caregiver" or "caregiver" means a resident of the State who:

- a. is at least 18 years old;
- b. has agreed to assist with a registered qualifying patient's medical use of marijuana, is not currently serving as primary caregiver for another qualifying patient, and is not the qualifying patient's physician;
- c. has never been convicted of possession or sale of a controlled dangerous substance, unless such conviction occurred after the effective date of this act and was for a violation of federal law related to possession or sale of marijuana that is authorized under this act;
- d. has registered with the department pursuant to section 4 of this act, and has satisfied the criminal history record background check requirement of section 4 of this act; and
- e. has been designated as primary caregiver on the qualifying patient's application or renewal for a registry identification card or in other written notification to the department.

"Qualifying patient" or "patient" means a resident of the State who has been provided with a certification by a physician pursuant to a bona fide physician-patient relationship.

"Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or primary caregiver.

"Usable marijuana" means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, and does not include the seeds, stems, stalks or roots of the plant.

C.24:6I-4 Registry of qualifying patients, primary caregivers.

4. a. The department shall establish a registry of qualifying patients and their primary caregivers, and shall issue a registry identification card, which shall be valid for two years, to a qualifying patient and primary caregiver, if applicable, who submits the following, in accordance with

regulations adopted by the department:

- (1) a certification that meets the requirements of section 5 of this act;
- (2) an application or renewal fee, which may be based on a sliding scale as determined by the commissioner;
- (3) the name, address and date of birth of the patient and caregiver, as applicable; and
- (4) the name, address and telephone number of the patient's physician.

b. Before issuing a registry identification card, the department shall verify the information contained in the application or renewal form submitted pursuant to this section. In the case of a primary caregiver, the department shall provisionally approve an application pending the results of a criminal history record background check, if the caregiver otherwise meets the requirements of this act. The department shall approve or deny an application or renewal within 30 days of receipt of the completed application or renewal, and shall issue a registry identification card within five days of approving the application or renewal. The department may deny an application or renewal only if the applicant fails to provide the information required pursuant to this section, or if the department determines that the information was incorrect or falsified or does not meet the requirements of this act. Denial of an application shall be a final agency decision, subject to review by the Superior Court, Appellate Division.

c. (1) The commissioner shall require each applicant seeking to serve as a primary caregiver to undergo a criminal history record background check. The commissioner is authorized to exchange fingerprint data with and receive criminal history record background information from the Division of State Police and the Federal Bureau of Investigation consistent with the provisions of applicable federal and State laws, rules, and regulations. The Division of State Police shall forward criminal history record background information to the commissioner in a timely manner when requested pursuant to the provisions of this section.

An applicant seeking to serve as a primary caregiver shall submit to being fingerprinted in accordance with applicable State and federal laws, rules, and regulations. No check of criminal history record background information shall be performed pursuant to this section unless the applicant has furnished his written consent to that check. An applicant who refuses to consent to, or cooperate in, the securing of a check of criminal history record background information shall not be considered for inclusion in the registry as a primary caregiver or issuance of an identification card. An applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check.

(2) The commissioner shall not approve an applicant seeking to serve as a primary caregiver if the criminal history record background information of the applicant reveals a disqualifying conviction. For the purposes of this section, a disqualifying conviction shall mean a conviction of a crime involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-10, or any similar law of the United States or of any other state.

(3) Upon receipt of the criminal history record background information from the Division of State Police and the Federal Bureau of Investigation, the commissioner shall provide written notification to the applicant of his qualification or disqualification for serving as a primary caregiver.

If the applicant is disqualified because of a disqualifying conviction pursuant to the provisions of this section, the conviction that constitutes the basis for the disqualification shall be identified in the written notice.

(4) The Division of State Police shall promptly notify the commissioner in the event that an individual who was the subject of a criminal history record background check conducted pursuant to this section is convicted of a crime or offense in this State after the date the background check was

performed. Upon receipt of that notification, the commissioner shall make a determination regarding the continued eligibility of the applicant to serve as a primary caregiver.

(5) Notwithstanding the provisions of subsection b. of this section to the contrary, no applicant shall be disqualified from serving as a registered primary caregiver on the basis of any conviction disclosed by a criminal history record background check conducted pursuant to this section if the individual has affirmatively demonstrated to the commissioner clear and convincing evidence of rehabilitation. In determining whether clear and convincing evidence of rehabilitation has been demonstrated, the following factors shall be considered:

(a) the nature and responsibility of the position which the convicted individual would hold, has held, or currently holds;

(b) the nature and seriousness of the crime or offense;

(c) the circumstances under which the crime or offense occurred;

(d) the date of the crime or offense;

(e) the age of the individual when the crime or offense was committed;

(f) whether the crime or offense was an isolated or repeated incident;

(g) any social conditions which may have contributed to the commission of the crime or offense; and

(h) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.

d. A registry identification card shall contain the following information:

(1) the name, address and date of birth of the patient and primary caregiver, if applicable;

(2) the expiration date of the registry identification card;

(3) photo identification of the cardholder; and

(4) such other information that the department may specify by regulation.

e. (1) A patient who has been issued a registry identification card shall notify the department of any change in the patient's name, address, or physician or change in status of the patient's debilitating medical condition, within 10 days of such change, or the registry identification card shall be deemed null and void.

(2) A primary caregiver who has been issued a registry identification card shall notify the department of any change in the caregiver's name or address within 10 days of such change, or the registry identification card shall be deemed null and void.

f. The department shall maintain a confidential list of the persons to whom it has issued registry identification cards. Individual names and other identifying information on the list, and information contained in any application form, or accompanying or supporting document shall be confidential, and shall not be considered a public record under P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.), and shall not be disclosed except to:

(1) authorized employees of the department and the Division of Consumer Affairs in the Department of Law and Public Safety as necessary to perform official duties of the department and the division, as applicable; and

(2) authorized employees of State or local law enforcement agencies, only as necessary to verify that a person who is engaged in the suspected or alleged medical use of marijuana is lawfully in possession of a registry identification card.

g. Applying for or receiving a registry card does not constitute a waiver of the qualifying patient's patient-physician privilege.<sup>2</sup>

C.24:6I-5 Certification authorizing medical use of marijuana.

5. a. Medical use of marijuana by a qualifying patient may be authorized pursuant to a certification which meets the requirements of this act. In order to provide such certification, a physician shall be licensed and in good standing to practice in the State.

The certification shall attest that the above criteria have been met.

b. The provisions of subsection a. of this section shall not apply to a qualifying patient who is a minor unless the custodial parent, guardian, or person who has legal custody of the minor, consents in writing that the minor patient has that person's permission for the medical use of marijuana and that the person will control the acquisition and possession of the medical marijuana and any related paraphernalia from the alternative treatment center.

#### C.24:6I-6 Applicability of N.J.S.2C:35-18.

6. a. The provisions of N.J.S.2C:35-18 shall apply to any qualifying patient, primary caregiver, alternative treatment center, physician, or any other person acting in accordance with the provisions of this act.

b. A qualifying patient, primary caregiver, alternative treatment center, physician, or any other person acting in accordance with the provisions of this act shall not be subject to any civil or administrative penalty, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a professional licensing board, related to the medical use of marijuana as authorized under this act.

c. Possession of, or application for, a registry identification card shall not alone constitute probable cause to search the person or the property of the person possessing or applying for the registry identification card, or otherwise subject the person or his property to inspection by any governmental agency.

d. The provisions of section 2 of P.L.1939, c.248 (C.26:2-82), relating to destruction of marijuana determined to exist by the department, shall not apply if a qualifying patient or primary caregiver has in his possession a registry identification card and no more than the maximum amount of usable marijuana that may be obtained in accordance with section 10 of this act.

e. No person shall be subject to arrest or prosecution for constructive possession, conspiracy or any other offense for simply being in the presence or vicinity of the medical use of marijuana as authorized under this act.

f. No custodial parent, guardian, or person who has legal custody of a qualifying patient who is a minor shall be subject to arrest or prosecution for constructive possession, conspiracy or any other offense for assisting the minor in the medical use of marijuana as authorized under this act.

#### C.24:6I-7 Applications for permits to operate as alternative treatment center; regulations.

7. a. The department shall accept applications from entities for permits to operate as alternative treatment centers, and may charge a reasonable fee for the issuance of a permit under this section. The department shall seek to ensure the availability of a sufficient number of alternative treatment centers throughout the State, pursuant to need, including at least two each in the northern, central, and southern regions of the State. The first two centers issued a permit in each region shall be nonprofit entities, and centers subsequently issued permits may be nonprofit or for-profit entities.

An alternative treatment center shall be authorized to acquire a reasonable initial and ongoing inventory, as determined by the department, of marijuana seeds or seedlings and paraphernalia, possess, cultivate, plant, grow, harvest, process, display, manufacture, deliver, transfer, transport, distribute, supply, sell, or dispense marijuana, or related supplies to qualifying patients or their primary caregivers who are registered with the department pursuant to section 4 of this act.

Applicants for authorization as nonprofit alternative treatment centers shall be subject to all applicable State laws governing nonprofit entities, but need not be recognized as a 501(c)(3)

organization by the federal Internal Revenue Service.

b. The department shall require that an applicant provide such information as the department determines to be necessary pursuant to regulations adopted pursuant to this act.

c. A person who has been convicted of a crime involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-10, or any similar law of the United States or any other state shall not be issued a permit to operate as an alternative treatment center or be a director, officer, or employee of an alternative treatment center, unless such conviction occurred after the effective date of this act and was for a violation of federal law relating to possession or sale of marijuana for conduct that is authorized under this act.

d. (1) The commissioner shall require each applicant seeking a permit to operate as an alternative treatment center to undergo a criminal history record background check. For purposes of this section, the term "applicant" shall include any owner, director, officer, or employee of an alternative treatment center. The commissioner is authorized to exchange fingerprint data with and receive criminal history record background information from the Division of State Police and the Federal Bureau of Investigation consistent with the provisions of applicable federal and State laws, rules, and regulations. The Division of State Police shall forward criminal history record background information to the commissioner in a timely manner when requested pursuant to the provisions of this section.

An applicant shall submit to being fingerprinted in accordance with applicable State and federal laws, rules, and regulations. No check of criminal history record background information shall be performed pursuant to this section unless the applicant has furnished his written consent to that check. An applicant who refuses to consent to, or cooperate in, the securing of a check of criminal history record background information shall not be considered for a permit to operate, or authorization to be employed at, an alternative treatment center. An applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check.

(2) The commissioner shall not approve an applicant for a permit to operate, or authorization to be employed at, an alternative treatment center if the criminal history record background information of the applicant reveals a disqualifying conviction as set forth in subsection c. of this section.

(3) Upon receipt of the criminal history record background information from the Division of State Police and the Federal Bureau of Investigation, the commissioner shall provide written notification to the applicant of his qualification for or disqualification for a permit to operate or be a director, officer, or employee of an alternative treatment center.

If the applicant is disqualified because of a disqualifying conviction pursuant to the provisions of this section, the conviction that constitutes the basis for the disqualification shall be identified in the written notice.

(4) The Division of State Police shall promptly notify the commissioner in the event that an individual who was the subject of a criminal history record background check conducted pursuant to this section is convicted of a crime or offense in this State after the date the background check was performed. Upon receipt of that notification, the commissioner shall make a determination regarding the continued eligibility to operate or be a director, officer, or employee of an alternative treatment center.

(5) Notwithstanding the provisions of subsection b. of this section to the contrary, the commissioner may offer provisional authority for an applicant to be an employee of an alternative treatment center for a period not to exceed three months if the applicant submits to the commissioner a sworn statement attesting that the person has not been convicted of any

disqualifying conviction pursuant to this section.

(6) Notwithstanding the provisions of subsection b. of this section to the contrary, no employee of an alternative treatment center shall be disqualified on the basis of any conviction disclosed by a criminal history record background check conducted pursuant to this section if the individual has affirmatively demonstrated to the commissioner clear and convincing evidence of rehabilitation. In determining whether clear and convincing evidence of rehabilitation has been demonstrated, the following factors shall be considered:

- (a) the nature and responsibility of the position which the convicted individual would hold, has held or currently holds;
- (b) the nature and seriousness of the crime or offense;
- (c) the circumstances under which the crime or offense occurred;
- (d) the date of the crime or offense;
- (e) the age of the individual when the crime or offense was committed;
- (f) whether the crime or offense was an isolated or repeated incident;
- (g) any social conditions which may have contributed to the commission of the crime or offense; and
- (h) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.

e. The department shall issue a permit to a person to operate as an alternative treatment center if the department finds that issuing such a permit would be consistent with the purposes of this act and the requirements of this section are met and the department has verified the information contained in the application. The department shall approve or deny an application within 60 days after receipt of a completed application. The denial of an application shall be considered a final agency decision, subject to review by the Appellate Division of the Superior Court. The department may suspend or revoke a permit to operate as an alternative treatment center for cause, which shall be subject to review by the Appellate Division of the Superior Court.

f. A person who has been issued a permit pursuant to this section shall display the permit at the premises of the alternative treatment center at all times when marijuana is being produced, or dispensed to a registered qualifying patient or the patient's primary caregiver.

g. An alternative treatment center shall report any change in information to the department not later than 10 days after such change, or the permit shall be deemed null and void.

h. An alternative treatment center may charge a registered qualifying patient or primary caregiver for the reasonable costs associated with the production and distribution of marijuana for the cardholder.

i. The commissioner shall adopt regulations to:

(1) require such written documentation of each delivery of marijuana to, and pickup of marijuana for, a registered qualifying patient, including the date and amount dispensed, to be maintained in the records of the alternative treatment center, as the commissioner determines necessary to ensure effective documentation of the operations of each alternative treatment center;

(2) monitor, oversee, and investigate all activities performed by an alternative treatment center; and

(3) ensure adequate security of all facilities 24 hours per day, including production and retail locations, and security of all delivery methods to registered qualifying patients.

C.24:6I-8 Inapplicability of act.

8. The provisions of this act shall not be construed to permit a person to:

a. operate, navigate, or be in actual physical control of any vehicle, aircraft, railroad train, stationary heavy equipment or vessel while under the influence of marijuana; or

b. smoke marijuana in a school bus or other form of public transportation, in a private vehicle unless the vehicle is not in operation, on any school grounds, in any correctional facility, at any public park or beach, at any recreation center, or in any place where smoking is prohibited pursuant to N.J.S.2C:33-13.

A person who commits an act as provided in this section shall be subject to such penalties as are provided by law.

#### C.24:6I-9 Falsification of registration card, degree of crime.

9. A person who knowingly sells, offers, or exposes for sale, or otherwise transfers, or possesses with the intent to sell, offer or expose for sale or transfer a document that falsely purports to be a registration card issued pursuant to this act, or a registration card issued pursuant to this act that has been altered, is guilty of a crime of the third degree. A person who knowingly presents to a law enforcement officer a document that falsely purports to be a registration card issued pursuant to this act, or a registration card that has been issued pursuant to this act that has been altered, is guilty of a crime of the fourth degree. The provisions of this section are intended to supplement current law and shall not limit prosecution or conviction for any other offense.

#### C.24:6I-10 Written instructions to patient, caregiver.

10. a. A physician shall provide written instructions for a registered qualifying patient or his caregiver to present to an alternative treatment center concerning the total amount of usable marijuana that a patient may be dispensed, in weight, in a 30-day period, which amount shall not exceed two ounces. If no amount is noted, the maximum amount that may be dispensed at one time is two ounces.

b. A physician may issue multiple written instructions at one time authorizing the patient to receive a total of up to a 90-day supply, provided that the following conditions are met:

(1) Each separate set of instructions shall be issued for a legitimate medical purpose by the physician, as provided in this act;

(2) Each separate set of instructions shall indicate the earliest date on which a center may dispense the marijuana, except for the first dispensation if it is to be filled immediately; and

(3) The physician has determined that providing the patient with multiple instructions in this manner does not create an undue risk of diversion or abuse.

c. A registered qualifying patient or his primary caregiver shall present the patient's or caregiver's registry identification card, as applicable, and these written instructions to the alternative treatment center, which shall verify and log the documentation presented. A physician may provide a copy of a written instruction by electronic or other means, as determined by the commissioner, directly to an alternative treatment center on behalf of a registered qualifying patient. The dispensation of marijuana pursuant to any written instructions shall occur within one month of the date that the instructions were written or the instructions are void.

d. A patient may be registered at only one alternative treatment center at any time.

#### C.45:1-45.1 Information required for monitoring; rules, regulations.

11. a. A physician who provides a certification or written instruction for the medical use of marijuana to a qualifying patient pursuant to P.L.2009, c.307 (C.24:6I-1 et al.) and any alternative treatment center shall furnish to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety such information, in such a format and at such intervals, as the director shall prescribe by regulation, for inclusion in a system established to monitor the dispensation of

marijuana in this State for medical use as authorized by the provisions of P.L.2009, c.307 (C.24:6I-1 et al.), which system shall serve the same purpose as, and be cross-referenced with, the electronic system for monitoring controlled dangerous substances established pursuant to section 25 of P.L.2007, c.244 (C.45:1-45).

b. The Director of the Division of Consumer Affairs, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in consultation with the Commissioner of Health and Senior Services, shall adopt rules and regulations to effectuate the purposes of subsection a. of this section.

c. Notwithstanding any provision of P.L.1968, c.410 to the contrary, the Director of the Division of Consumer Affairs shall adopt, immediately upon filing with the Office of Administrative Law and no later than the 90th day after the effective date of P.L.2009, c.307 (C.24:6I-1 et al.), such regulations as the director deems necessary to implement the provisions of subsection a. of this section. Regulations adopted pursuant to this subsection shall be effective until the adoption of rules and regulations pursuant to subsection b. of this section and may be amended, adopted, or readopted by the director in accordance with the requirements of P.L.1968, c.410.

12. N.J.S.2C:35-18 is amended to read as follows:

Exemption, burden of proof.

2C:35-18. Exemption; Burden of Proof. a. If conduct is authorized by the provisions of P.L.1970, c.226 (C.24:21-1 et seq.) or P.L.2009, c.307 (C.24:6I-1 et al.), that authorization shall, subject to the provisions of this section, constitute an exemption from criminal liability under this chapter or chapter 36, and the absence of such authorization shall not be construed to be an element of any offense in this chapter or chapter 36. It is an affirmative defense to any criminal action arising under this chapter or chapter 36 that the defendant is the authorized holder of an appropriate registration, permit or order form or is otherwise exempted or excepted from criminal liability by virtue of any provision of P.L.1970, c.226 (C.24:21-1 et seq.) or P.L.2009, c.307 (C.24:6I-1 et al.). The affirmative defense established herein shall be proved by the defendant by a preponderance of the evidence. It shall not be necessary for the State to negate any exemption set forth in this act or in any provision of Title 24 of the Revised Statutes in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this act.

b. No liability shall be imposed by virtue of this chapter or chapter 36 upon any duly authorized State officer, engaged in the enforcement of any law or municipal ordinance relating to controlled dangerous substances or controlled substance analogs.

C.24:6I-11 Grants, contributions, use of fees.

13. a. The commissioner may accept from any governmental department or agency, public or private body or any other source grants or contributions to be used in carrying out the purposes of this act.

b. All fees collected pursuant to this act, including those from qualifying patients and alternative treatment centers' initial, modification and renewal applications, shall be used to offset the cost of the department's administration of the provisions of this act.

C.24:6I-12 Report to Governor, Legislature.

14. a. The commissioner shall report to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1):

(1) no later than one year after the effective date of this act, on the actions taken to implement the provisions of this act; and

(2) annually thereafter on the number of applications for registry identification cards, the number of qualifying patients registered, the number of primary caregivers registered, the nature of the debilitating medical conditions of the patients, the number of registry identification cards revoked, the number of alternative treatment center permits issued and revoked, and the number of physicians providing certifications for patients.

b. The reports shall not contain any identifying information of patients, caregivers, or physicians.

c. Within two years after the effective date of this act and every two years thereafter, the commissioner shall: evaluate whether there are sufficient numbers of alternative treatment centers to meet the needs of registered qualifying patients throughout the State; evaluate whether the maximum amount of medical marijuana allowed pursuant to this act is sufficient to meet the medical needs of qualifying patients; and determine whether any alternative treatment center has charged excessive prices for marijuana that the center dispensed.

The commissioner shall report his findings no later than two years after the effective date of this act, and every two years thereafter, to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1).

#### C.24:6I-13 Exchange of data, information.

15. a. The Department of Health and Senior Services is authorized to exchange fingerprint data with, and receive information from, the Division of State Police in the Department of Law and Public Safety and the Federal Bureau of Investigation for use in reviewing applications for individuals seeking to serve as primary caregivers pursuant to section 4 of P.L.2009, c.307 (C.24:6I-4), and for permits to operate as, or to be a director, officer, or employee of, alternative treatment centers pursuant to section 7 of P.L.2009, c.307 (C.24:6I-7).

b. The Division of State Police shall promptly notify the Department of Health and Senior Services in the event an applicant seeking to serve as a primary caregiver or an applicant for a permit to operate as, or to be a director, officer, or employee of, an alternative treatment center, who was the subject of a criminal history record background check conducted pursuant to subsection a. of this section, is convicted of a crime involving possession or sale of a controlled dangerous substance.

#### C.24:6I-14 Construction of act.

16. Nothing in this act shall be construed to require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana, or an employer to accommodate the medical use of marijuana in any workplace.

#### C.24:6I-15 Additional immunity.

17. In addition to any immunity or defense provided by law, the State and any employee or agent of the State shall not be held liable for any actions taken in accordance with this act or for any deleterious outcomes from the medical use of marijuana by any registered qualifying patient.

#### C.24:6I-16 Rules, regulations.

18. a. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall promulgate rules and regulations to effectuate the purposes of this act, in consultation with the Department of Law and Public Safety.

b. Notwithstanding any provision of P.L.1968, c.410 to the contrary, the commissioner shall adopt, immediately upon filing with the Office of Administrative Law and no later than the 90th day after the effective date of this act, such regulations as the commissioner deems necessary to

implement the provisions of this act. Regulations adopted pursuant to this subsection shall be effective until the adoption of rules and regulations pursuant to subsection a. of this section and may be amended, adopted, or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410.

19. This act shall take effect on the first day of the sixth month after enactment, but the commissioner and the Director of the Division of Consumer Affairs may take such anticipatory administrative action in advance thereof as may be necessary to effectuate the provisions of this act.

Approved January 18, 2010.