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**MEDICINAL CANNABIS  
OPERATIONAL GUIDANCE  
STATE CRIME COMMAND**

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## Summary

- This guidance aims to provide members of the NSW Police Force with information on medicinal cannabis and best practice for matters involving medicinal cannabis.
- 'Medicinal Cannabis' refers to the use of cannabis-derived products for therapeutic purposes. It doesn't include the recreational use of cannabis products, which remains illegal in NSW.
- In Australia, medicinal cannabis pharmaceutical products can be prescribed by doctors authorised under the Special Access or Authorised Prescriber Scheme administered by the Commonwealth Therapeutic Goods Administration (TGA).
- NSW medical practitioners can legally prescribe a cannabis medicine for a patient if they believe it is an appropriate treatment option for their patient's health condition and they have obtained the relevant authorities.
- If a person claims a product to be medicinal cannabis – conduct your investigation as you would with any other prescription medication to prove lawful possession.
- If the person is not lawfully entitled to possess the cannabis, then the person could be charged with possession of a prohibited drug under Section 10 of the *Drug Misuse and Trafficking Act 1985* or officers can use their discretion to issue a Cannabis Caution, if appropriate.
- There is no medical defence to the offences specified in the *Road Transport Act 2013* (NSW) for using a prescribed cannabis medicine.
- Smoking or vaping cannabis is classified as a non-tobacco smoking product (see s.4 of the *Smoke Free Environment Act 2000*). Accordingly, NSW smoke-free laws apply to smoking or vaping medicinal cannabis. In a situation where the person is smoking in an area that is not a smoke-free area, and the person is lawfully permitted to possess the cannabis as they have a prescription, there is no offence.
- Officers are reminded of the NSW Government Medicinal Cannabis Compassionate Use Scheme which was developed to extend compassion to adults with a terminal illness. The *Medicinal Cannabis Compassionate Use Scheme Guidelines* are available on the intranet and should be consulted alongside this document as needed.

# Document Control Sheet

## Document Properties

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## Modification History

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1.0	05/2023	Crime Prevention Command	Original document
2.0	12/2023	Crime Prevention Command	Update of guidelines and formatting to reflect Corporate Procedures template

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## Purpose

This guidance aims to provide members of the NSW Police Force with information on medicinal cannabis and best practice for matters involving medicinal cannabis.

## Scope

This document is provided for the information and guidance of all NSW Police Force officers.

## Roles & responsibilities

Assistant Commissioner – State Crime Command	Document approval
Commander – Drug & Firearms Squad	Document sponsor
Commander – Drug & Firearms Squad	Document owner
Drugs, Alcohol & Mental Health Team – Crime Prevention Command	<ul style="list-style-type: none"><li>• Review these procedures prior to the scheduled review date and ensure content remains up to date</li><li>• Support sworn staff by answering queries relating to this guidance as they arise</li></ul>
All Sworn staff	Are encouraged to familiarise themselves with this guidance and follow it when attending matters involving medicinal cannabis

## Guidance

### Overview

‘Medicinal Cannabis’ refers to the use of cannabis-derived products for therapeutic purposes. It doesn’t include the recreational use of cannabis products, which remains illegal in NSW.

The cannabis plant produces chemical compounds called cannabinoids, including delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD).

In Australia, medicinal cannabis pharmaceutical products can be prescribed by doctors authorised under the Special Access or Authorised Prescriber Scheme administered by the Commonwealth Therapeutic Goods Administration (TGA).

NSW medical practitioners can legally prescribe a cannabis medicine for a patient if they believe it is an appropriate treatment option for their patient’s health condition and they have obtained the relevant authorities.

Medicinal cannabis products can be prescribed as

- Cannabidiol (CBD)
- Tetrahydrocannabinol (THC)

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**Please note:** to be in Schedule 4, the cannabidiol product:

- must be for therapeutic use (that is, to alleviate a disease, etc), and
- be comprised of **98% or more** of cannabidiol (of the total cannabinoid content of the preparation), and
- must only contain cannabinoids naturally found in cannabis (if cannabinoids other than cannabidiol are present), and
- must contain **2% or less** of any cannabinoids other than cannabidiol, if present (of the total cannabinoid content of the preparation)

Thus, for example, a preparation containing 40 mg per mL of cannabidiol and a total of 1 mg per mL of all other cannabinoids is in Schedule 8 (if compliant with the *Narcotic Drugs Act 1967* and the *Therapeutic Goods Act 1989*), or else a Prohibited Drug<sup>1</sup>.

**There is no possession offence for Schedule 4 medicines.**

A person in possession of those products is required to demonstrate they are authorised to possess them by having a valid prescription.

Patients can be prescribed a variety of forms of medicinal cannabis including - oils, dried flowers/leaf, capsules and sprays.

The arrangements in place for access to and supply of cannabis medicines are only for the purpose of human therapeutic use and when approved to be prescribed by a doctor.

Possession, supply, manufacture, production and cultivation of cannabis for **any purpose that is not authorised, including for recreational use, remains prohibited** under the *Drug Misuse and Trafficking Act 1985*.

If a person claims the product to be medicinal cannabis – **conduct your investigation as you would with any other prescription medication to prove lawful possession.**

### What does medicinal cannabis look like?

Patients may be prescribed different forms of medicinal cannabis.

This includes **liquid concentrate, oil filled capsules, lozenges and wafers for oral administration, dried flower/leaf or liquid cartridges for inhalation via a vapouriser and creams/oils for external application.**

**Medicinal cannabis presenting as green leaf material is prescribed to be administered via a dry material vapouriser. There is no offence for smoking the dried leaf rather than vapourising it** (other than in certain places as outlined on page 9).

Like any other prescription medicine, the product must be labelled by the dispensing pharmacist, which will include patient name, dosage requirements and prescribing doctor.

### How do police identify legitimately prescribed medicinal cannabis products?

Based on advice from Police Prosecutions and Licensing Enforcement Command, if a person claims to possess cannabis lawfully, **apply your skills as you would to any other investigation for medications/pharmaceuticals** (e.g., methadone, Valium, tramadol).

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Check the legitimacy of medicinal cannabis products by:

- Ensuring the product is correctly labelled with a legitimate pharmacy label affixed to the container that correctly states the patient's name and dosage instructions.
- Checking the label is dated within a reasonable timeframe considering the dosage instructions.
- An individual may not be able to produce a doctor's prescription as proof of the legitimacy of the product as pharmacies retain prescriptions after dispensing if it is not a repeat prescription.
- Contact the pharmacy that dispensed the product to confirm the prescription; and/or contact the prescribing doctor.

There is no forensic testing that enables differentiation of medicinal cannabis to illegally obtained cannabis. Therefore, your investigations will need to establish the lawfulness of the possession via prescribing (doctor), dispensing (pharmacy) and dosage (likelihood the contents have since been replaced with illicit cannabis).

**If the person is not lawfully entitled to possess the cannabis, then the person could be charged with possession of a prohibited drug under Section 10 of the *Drug Misuse and Trafficking Act 1985* or officers can use their discretion to issue a Cannabis Caution, if appropriate.**

What if the cannabis isn't in the original packaging?

Packaging and labelling legislation is targeted at manufactures and not the end consumer. Consider this in the context of people who remove their medication from the packaging and place it into the week-day pill boxes as an example.

A person is permitted to remove and repackage their medication.

Can I seize the medicinal cannabis?

If the circumstances permit a s.21(1)(d) LEPRA search as you suspect on reasonable grounds that the person has in his or her possession or under his or her control, in contravention of the *Drug Misuse and Trafficking Act 1985*, a prohibited plant or drug and you find medicinal cannabis, you may seize it pursuant to 21(2)(a) if you suspect on reasonable grounds that the medicine is stolen or unlawfully obtained as the person cannot produce a prescription.

**Please be mindful, however, that you may be restricting a person's access to lawfully prescribed medication and make all relevant enquiries. If the person does have a valid prescription, return the medicinal cannabis to the person as they are lawfully permitted to be in possession of it.**

### Interstate prescriptions

Possession of cannabis which has not been obtained legally is an offence. A pharmacy can dispense cannabis medicines using a prescription obtained in another State or Territory as long as the prescription is valid<sup>1</sup>.

NSW Health advises people coming from interstate to carry a prescription or letter from their doctor describing the cannabis medicine being taken. Investigate possession as you would if the person was from NSW.

Possession is not lawful if it is prescribed by an overseas doctor.

There may be circumstances where possession is lawful for travellers from overseas under the Therapeutic and Goods Administration **traveller's exemption**. Please refer to the **TGA website** for more information.

## **Other products that may contain THC**

### Cannabis based lollies/confectionary

There have been detections of lollies containing delta-9-tetrahydrocannabinol (THC) from countries where cannabis has been legalised. Consumption of cannabis in edible form poses a much greater risk of severe intoxication when ingested.

The packaging and form of the edible cannabis products poses a significant risk to children. It is highly likely edible cannabis products are attractive to cannabis users as they do not have the same distinctive odour as cannabis leaf and are more discreet due to their packaging.

THC is listed in Schedule 1 of the *Drugs Misuse and Trafficking Act 1985*. Forensic and Analytical Science Service (FASS) can test confectionary for the presence of THC.

If, on confirmation, THC is present in confectionary, police may lay charges for possession or supply as appropriate. Individuals in possession of cannabis-based confectionary are not eligible for a Cannabis Caution as the drug is not present in leaf form.

Based on advice from Police Prosecutions and Licensing Enforcement Command, police who believe they have detected cannabis-based confectionary should:

- Note and record any comments or information provided by the individual from whom the items are seized.
- Submit the seized exhibit to FASS to determine whether THC is present, noting FASS will only test for the presence of THC, not for purity. Where multiple identical packets are seized, only one sample is required for testing.
- If THC is identified contact Operational Legal Advice to determine appropriate charges (possession or supply) under the *DMTA*.

## **Driving considerations**

In NSW, it is an offence to drive:

- a. with the presence of THC in oral fluid, blood or urine; or
- b. under the influence of THC.

Roadside drug testing in NSW tests for THC in saliva. Some medicinal cannabis products do not contain high levels of THC (products containing CBD only are unlikely to result in a positive roadside drug test).

There is no medical defence to the offences specified in the *Road Transport Act 2013* (NSW) for using a prescribed cannabis medicine.

## **Possession of medicinal cannabis in licensed premises**

Section 74(2) and (4) of the *Liquor Act 2007* provides that a licensee, employee or a person in charge of a licensed premises must not permit the possession or use on the licensed premises of any substance that the licensee suspects of being a prohibited plant or a prohibited drug.



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Based on advice from Police Prosecutions and Licensing Command, if a person is in possession of medicinal cannabis in a licensed premises, a licensee does not have the responsibility to accept a person's prescription as being a valid prescription as the licensee is unable to confirm that the prescription is valid.

The licensee should treat the cannabis as a prohibited drug and ask the person to leave the licensed premises and the licensee should contact police. Police may conduct relevant enquiries to determine if the prescription is valid.

A licensee would not be in breach of s.74 if they knew that the person was in possession of lawfully prescribed cannabis following enquiries made by police.

### **Smoking or vaping medicinal cannabis in enclosed and outdoor public areas**

Smoking and using e-cigarettes are banned in all enclosed public areas and certain outdoor public areas, under the *Smoke-free Environment Act 2000* and the *Smoke-free Environment Regulation 2016*.

Smoking or vaping cannabis is classified as a non-tobacco smoking product (see s.4 of the *Smoke Free Environment Act 2000*). Accordingly, NSW smoke-free laws apply to smoking or vaping medicinal cannabis.

**In a situation where the person is smoking in an area that is not a smoke-free area, and the person is lawfully permitted to possess the cannabis as they have a prescription, there is no offence.**

Refer to the NSW Health website for more information:

<https://www.health.nsw.gov.au/tobacco/Pages/smoke-free-laws.aspx>

### **Medicinal Cannabis Compassionate Use Scheme**

Officers are reminded of the NSW Government Medicinal Cannabis Compassionate Use Scheme (MCCUS) which was developed to extend compassion to adults with a terminal illness.

*MCCUS Guidelines for NSW Police* have been developed to provide assistance to police in determining under which circumstances it would be appropriate to exercise their discretion in not taking legal action against terminally ill adults who use cannabis to alleviate their symptoms, or against their nominated carers who are in possession of an eligible quantity of cannabis for the purposes of the MCCUS.

### **Further information**

For further information, contact the **NSW Health Pharmaceutical Regulatory Unit:**

General Queries (including calls for the Duty Pharmaceutical Officer)

**Telephone:** (02) 9391 9944 (select Option 1)

**Fax:** (02) 9424 5860

**Email:** [MOHPharmaceuticalServices@health.nsw.gov.au](mailto:MOHPharmaceuticalServices@health.nsw.gov.au)

Other NSW Police Force documents that may be referred to include the 'Policy on the Use of Medicinal Cannabis by NSWPF staff', the 'Cannabis Cautioning Scheme Guidelines', the 'MCCUS Guidelines' and the 'Guidelines for the Illegal Supply of Pharmaceuticals', all available on the intranet.

## **Endnote References**

1. NSW Health website. (2023). Cannabis medicines – frequently asked questions. Retrieved from [Cannabis medicines - frequently asked questions - Cannabis medicines \(nsw.gov.au\)](#)