

Transportation of Marijuana and the Law



By Bruce Margolin

The transportation of marijuana by patients and their caregiver is legal in California under Senate Bill 420 and Proposition 215. Senate Bill 420 legislation (Health and Safety Code 11362.7) specifically provides that patients are protected from arrest and seizure while transporting 8 ounces or less of their medication. However, the medicinal herb must, of course, be for the patient's current medical needs. The most common arrests are in vehicles, and therefore it is best to avoid traveling with your medication as much as possible.

The California Supreme Court is about to rule on whether the apparent 8-ounce limit set by SB 420 is constitutional or in violation of the protections afforded by Prop. 215. Stay tuned.

Be cautious, as the best way to avoid getting busted is to avoid having the police find your medication. Remember that the law is only as good as those who interpret it and those who enforce it. When leaving your dispensary, do not carry out large containers or backpacks. Police may be watching the location and are looking for those who may be moving weight (large quantities). Many dispensaries provide small brown bags, which is probably the least suspicious container.

The best place to keep the medication is in the trunk. Make sure your car and your person do not smell of marijuana. Additionally, do not leave paraphernalia in the vehicle passenger's compartment and especially in plain view. Otherwise, the potential for being investigated for driving under the influence of marijuana becomes more likely.

I recently spoke to the leading prosecutor of marijuana dispensaries in Los Angeles County, and he concurs that patients can transport. However, he recommends they obtain a county health department-issued ID card. Unfortunately, such cards cost about \$150, but they do provide greater protection. First of all, and most importantly, the cards are not subject to being ignored by the police—unlike the doctor's letters. Police routinely take the

medication and often arrest patients who present *only* their doctor's letters. The police claim that they have no way to verify that the doctor's letters are not forged.

Additionally, there are 24-hour numbers police can access to verify county health department-issued ID cards.

The Compassionate Use Act (Prop. 215 of 1996) did not specify that transportation was included in the protected acts, only growing and possessing. In 1997, the Court of Appeals in *People v. Trippet*—(1997) 56 Cal. App.4th, 634—held that transportation was implied by the law but cautioned that the “quantity possessed by the patient or the primary caregiver, and the form and manner in which it is possessed, must be reasonably related to the patient's current medical needs.” The case of the *People v. Wright*—(2006) 40 Cal. 4th 81—also held that transportation for personal medical use is protected.

Wright denied that he had any marijuana in the car, but the cop found numerous baggies totaling slightly more than a pound, a scale and no smoking devices. Wright was charged with possession for sale and transportation. His doctor testified that he approved self-regulating doses and that a pound every two or three months was consistent with his patient's medical needs. The defendant testified that the marijuana was for his own medicinal use. The court held that the defendant was entitled to assert the medical defense under 11362.77b H&S and was not limited to any particular amount under the Compassionate Use Act.

Also note that another appellate court confirmed that patients are also protected from the charge of possession of marijuana in a vehicle (Vehicle Code 23222).

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