Medical Cannabis and Driving:

The recent change in legislation for medical cannabis prescriptions has caused great confusion to many police officers, defence and prosecution solicitors and even judges as they are used to processing drivers who are either over the limit for illicit drugs (usually not prescribed) or medical patients who are over the limit for prescribed drugs. Securing evidence of exceeded limits in blood samples is their standard evidential process that they rely on in securing a conviction and they have become comfortable and reliant on this process. Few officers have been trained in conducting Field Impairment Tests to provide evidence of impairment since the change in legislation in 2015 and more concerning, many police officers are not aware that legal medical cannabis prescriptions exist in the UK, especially considering cannabis contributes to approx. 75% of all drug related investigations in England and Wales.

For Sections 6 and 7 of the Road traffic Act 1988, it is a criminal offence to refuse or fail to provide a preliminary sample (swab - Section 6) or a sample for analysis (blood - Section 7) without a reasonable excuse. Often, the reasonable excuses used to avoid prosecution are medical reasons (mental health reasons (extreme stress and confusion) or needle phobias) but in the case of medical cannabis patients, potential new reasonable excuses exist.

Once a patient has explained that they are legally prescribed cannabis and use it daily and they have provided evidence of this (prescription), there is no reasonable reason for an officer to insist on a roadside swab to be used and the fact that they have provided evidence that they legally use cannabis, this is a reasonable excuse to refuse a swab from being taken.

Furthermore, unless the officer has a reasonable suspicion that the driver is impaired and that they conducted a FIT test which they believe identifies evidence of impairment, there is no reasonable suspicion of a criminal offence, no lawful justification to arrest the driver and no reason to insist on a blood sample which will inevitably show over the zero-tolerance limit and have no purpose as evidence due to the statutory medical defence under Section 5A of the Act.

The above explanation shows that Section 5A of the Act is not fit for purpose when it comes to medical cannabis patients as there is little chance of securing a conviction. Only Section 4 of the Act is a suitable route for prosecution, and this requires evidence of impairment, and this must be collected before progressing to arrest and/or preliminary tests and blood tests.

If the police do not have reasonable justification for arrest (suspicion that a criminal offence has occurred) and evidence procedures (PACE) have not been followed, the arrest is unlawful, and any subsequent detention is false imprisonment.

Finally, it is important to know that if the police do not follow procedures correctly or they make an unlawful arrest, the case will be dropped as there will be ‘no case to answer’.

It is strongly recommended that you print this document and keep it in your motor vehicle with a copy of your prescription and a photo of the labels on your medicines (make sure the labels on your medication state: Do not drive if impaired or similar).

It is good practice, and it is lawful for you to film your encounters with the police. If you have your phone with you, record the interactions as this could provide essential evidence for your defence or if you intend to take civil action against the police in the future. The police may do the same as many have bodycam equipment on their person.

Notice for Police:

Legal medical cannabis prescriptions have been available in the UK for a range of conditions since 1st November 2018. Patients with a legal prescription can drive a motor vehicle as long as they follow their medical practitioner's / manufacturer's guidance, the standard of which is:

'Like any other medications that may cause impairment, do not drive or operate a vehicle if feel impaired or are unsure if you feel impaired and follow your physician's advice.'

Please note that unlike other prescribed medicines within Section 5A of the RTA 1988, cannabis patients have a statutory medical defence to exceed the specified *per se* zero tolerance limit of 2µg/L so long as they are not impaired.

MG DD/B (B14 & B15) states:

Officers should note that Sec 5A (3)(4) and (5) RTA provide a statutory defence to any offence of excess specified drugs contrary to Sec 5A (1) and (2) RTA. It is for the subject to raise the defence and, if not raised elsewhere, opportunity to do so is provided at MG DD/B15. Such a defence is not available to the subject where the offence is one of driving etc whilst unfit through drugs contrary to Sec 4 RTA. Consequently, evidence of impairment should always be made, it will be for the officer to decide which offence to pursue and to what degree to investigate the claim being made. Where there is no evidence of impairment and the charge can only be one of excess specified drugs, it will be essential to thoroughly enquire into the circumstances and accuracy of the claim. See note at B15 concerning PACE **(below***).*

If the answer alleges drug consumption which may provide a statutory defence to Excess Specified Drugs, no further questioning should be undertaken other than in accordance with the PACE. It will however be wise to interview the subject and investigate the claim thoroughly before any decision is made about charge / prosecution. The statutory defence is for the subject to raise and applies where a drug is being used in accordance the prescriber's, supplier's or manufacturer's directions (sec 5A(3)(4)&(5))

This police notice accompanied with the patient's prescription and manufacturer's guidance should be sufficient evidence to prevent any further investigation towards a charge /prosecution for Section 5A of the RTA. It also provides the subject with a sufficient 'reasonable excuse' to refuse a preliminary drug test (Section 6) and a blood or urine sample (Section 7) unless you have reasonable suspicion of impaired driving, you should then conduct a drug impairment test and follow PACE to secure a Section 4 offence.

MG DD/B (21) states:

Where a subject is unable to provide a specimen of blood for medical reasons and is being investigated for both excess specified drugs (sec 5A RTA) and impairment through drugs (sec 4 RTA), it will be usual to pursue the impairment through drugs and require specimens of urine and abandon any investigation into the excess specified drugs. Where the subject fails to provide a specimen of blood without reasonable excuse it will be usual to consider a charge of failure to provide. The reason for failing to provide should be thoroughly investigated and the subject interviewed in accordance with PACE when fit to do so. Where the subject has a reasonable excuse for not providing, the investigation into excess specified drugs contrary to sec 5A RTA will have to be abandoned as NFA

but the officer may have a change of mind and require specimens of urine for impairment through drugs contrary to sec 4 RTA.

Reasonable excuse to refuse a preliminary drug test:

If the subject has raised the statutory defence for excess specified drugs and provided evidence of a prescription and manufacturer's guidance, there is no reasonable suspicion to suspect that the subject has acted contrary to Section 5A RTA nor is there any valid purpose in carrying out a preliminary drug test as this is to identify if the subject has an unauthorised controlled drug (cannabis) in their system. This would clearly be an abuse of power with no probable cause not to mention a waste of police resources paid for by the taxpayer.

Reasonable excuse to refuse a sample of blood for analysis:

Similarly, a medical cannabis patient who uses cannabis on a daily basis and who has a statutory defence for excess specified drugs will in every instance exceed the *per se* zero tolerance limit of 2 µg/L. Again, there is no valid purpose in subjecting a medical cannabis patient to the invasive procedure of taking blood whereby there is insufficient suspicion of an offence as per Section 5A RTA.

If however, you have reasonable suspicion that the subject has not followed their prescriber's or manufacturer's guidance or if you suspect that the subject is impaired, you should collect evidence of impairment and consider the less invasive option of a urine sample due to the level of THC in blood or urine being arbitrary as any level analysed (above or below 2 µg/L combined with sufficient evidence of impairment is satisfactory for a Section 4 conviction).

FAILURE TO ADHERE TO THIS NOTICE MAY LEAD TO CIVIL ACTION AGAINST YOU/YOUR DEPARTMENT FOR UNLAWFUL ARREST AND FALSE IMPRISONMENT AND/OR A PROSECUTION MAY FAIL FOR NOT FOLLOWING PROCEDURE.

Government Guidance:

This group includes certain medicines that will be taken by only a small proportion of drivers. Given the low limits set, a patient prescribed one of these medicines who chooses to drive could test above the specified limit but would still be entitled to raise the statutory "medical defence". This 'zero tolerance' group currently includes:

- ***Cannabis (THC)***
- *Cocaine (and a cocaine metabolite, BZE)*
- *MDMA (Ecstasy)*
- *Lysergic Acid Diethylamide (LSD)*
- *Ketamine*
- *Heroin/diamorphine metabolite (6-MAM)*
- *Methylamphetamine*

It remains the responsibility of all drivers, including patients, to consider whether they believe their driving is, or might be, impaired on any given occasion, for example if they feel sleepy. ***It will remain***

an offence, as now, to drive whilst their driving is impaired by drugs; and, if in doubt, drivers should not drive. *The statutory "medical defence" will not be extended to be available for the existing 'impairment' offence* **(Section 4)** *because even if legitimately taking a medicine, the patient should not be driving if actually impaired.*

Drug driving: guidance for healthcare professionals (2014)

Statutory Medical Defence:

"It is a defence for a person ("D") charged with an offence under this section to show that: -

(a) the specified controlled drug had been prescribed or supplied to D for medical or dental purposes,

(b) took the drug in accordance with any directions given by the person by whom the drug was prescribed or supplied, and with any accompanying instructions (so far as consistent with any such directions) given by the manufacturer or distributor of the drug, and -

(c) D's possession of the drug immediately before taking it was not unlawful under section 5(1) of the Misuse of Drugs Act 1971 (restriction of possession of controlled drugs) because of an exemption in regulations made under section 7 of that Act (authorisation of activities otherwise unlawful under foregoing provisions).

(4) The defence in subsection (3) is not available if D's actions were—

(a) contrary to any advice, given by the person by whom the drug was prescribed or supplied, about the amount of time that should elapse between taking the drug and driving a motor vehicle, or

(b) contrary to any accompanying instructions about that matter (so far as consistent with any such advice) given by the manufacturer or distributor of the drug.

(5) If evidence is adduced that is sufficient to raise an issue with respect to the defence in subsection (3), the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not."

The new offence does not change the existing legal position whereby those who legitimately take their medication may be guilty of a road traffic offence ***(under Section 4 of the Road Traffic Act 1988)*** *if they are impaired or 'unfit' to drive due to the effects of that drug.*