



**NORTH CAROLINA DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE STANDARDS DIVISION**

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TO: Law Enforcement Officers Certified by the CJETS Commission

FROM: Jeffrey Smythe, Director

SUBJECT: Drug Use and Positive Drug Test Outcomes

DATE: June 23, 2025

Statement

The North Carolina Criminal Justice Education and Training Standards (CJETS) Commission has voted to reinforce a zero-tolerance stance for positive marijuana testing. This position is based on the fact that, consistent with the definition contained in N.C. Gen. Stat. §90-87 (16), marijuana in all forms is illegal in North Carolina. There is also a need to clarify to law enforcement officers (LEO) that cannabidiol (CBD) or tetrahydrocannabinol products (including Delta 8 and Delta 10 edibles, oils, drinks or other products) may cause a positive test result for marijuana. One purpose of this letter is to put every certified officer on notice that a positive test, reported pursuant to 12 NCAC 09C .0310, due to any of these substances will result in an administrative process that is likely to cause the suspension of your certification as an LEO under 12 NCAC 09A .0204.

Additionally, any statements of ingestion of lawfully purchased CBD, Delta 8, or Delta 10 products that could be used to mask the illegal use of marijuana, or used standing alone, will not be accepted as a defense for a positive marijuana test.

Background

During the latter part of 2022, the Criminal Justice Standards Division staff investigated and brought forward allegations of positive drug tests for action by the Probable Cause Committee and subsequent ratification of suspensions of officers' certifications by the full Commission. The review of these cases has revealed the need for a clarified position from the Commission in order to improve consistency, increase compliance and achieve the best outcomes for the law enforcement profession.

THC is the primary psychoactive component of marijuana. Hemp-derived products containing a concentration of up to 0.3% THC are not controlled substances. Any product, including CBD products, with a concentration of more than 0.3% THC remain classified as marijuana, which is regulated under both the Federal and North Carolina Controlled Substances Acts.

The Criminal Justice Standards staff have researched the position of other regulatory agencies and learned that several well-respected entities are dealing with the same issues.

- The U.S. Department of Defense has issued clear guidance to members of the military that they are prohibited from using any items derived from hemp, including cannabidiol (CBD), regardless of the product's tetrahydrocannabinol (THC) concentration, claimed or actual, and regardless of whether such product may lawfully be bought, sold, and used under the law applicable to civilians. This has resulted in Army Regulation 600-85 for soldiers and similar regulations for each branch of military service.
- The U.S. Department of Transportation (USDOT) has established protocols and requirements regarding CBD for Medical Review Officers (MRO) who are responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results. The USDOT regulates safety-sensitive employees such as pilots, school bus drivers, truck drivers, train engineers, etc. Much like law enforcement in North Carolina, the USDOT requires testing for marijuana and not CBD.

The CJ Commission maintains that the labeling of many CBD products may be misleading because the product could contain higher levels of THC than the product label states. There is no federal oversight to ensure that the labels are accurate. The Federal Drug Administration (FDA) has cautioned the public that: "Consumers should beware purchasing and using any [CBD] products." Also, the FDA has issued several warning letters to companies because their products contained more CBD than indicated on the product label. Additionally, even if the products are correctly labeled, and contain less than 0.3% THC, they may **still cause a positive test.**

For all of these reasons, Delta 8 and Delta 10 products will also not be a legitimate medical explanation.

Finally, the USDOT says CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana-positive result. Therefore, Medical Review Officers will verify a drug test confirmed at the appropriate cutoffs as positive, even if an employee claims they only used a CBD product.

Therefore, persons certified through the Criminal Justice Education and Training Standards Commission who use a CBD, Delta 8 or Delta 10 product run the risk that the product may contain an illegal amount of THC. All LEOs should be clear that cannabidiol (CBD) or tetrahydrocannabinol products (including Delta 8 and Delta 10 products) are often mislabeled or lack sufficient testing and controls to ensure the person ingesting the substance is not actually ingesting an unlawful amount of tetrahydrocannabinol (THC).

A positive drug screen, even if based on the use of a CBD or other THC product, to include edibles, oils, drinks, and other common hemp or THC products, will subject the person to action by the Commission which includes denial, revocation or suspension of the officer's certification.