



back-bar inspection

Trends, tips, and useful information . . .

The “back-bar inspection” portion of our newsletter is designed to provide law enforcement personnel, and our stakeholders, with up-to-date information on alcohol-related crime trends, enforcement tips, and additional information that may be useful in enhancing ABC investigations. Although this section is specifically written for the purpose of increasing officer awareness and reducing alcohol-related crimes, it will also enlighten all readers as to what is new in terms of our response to irresponsible alcoholic beverage sales, service, and consumption.

Drug Paraphernalia Basics

■ Novelty Roses Become a Budding Problem

The sale of drug paraphernalia continues to be an issue at some Los Angeles area Alcoholic Beverage Control (ABC) licensed retailers. As both the Department of ABC and the Los Angeles Police Department (LAPD) have made concerted efforts to alert licensees to the criminal and administrative liabilities of selling drug paraphernalia, it is likely that all off-sale retailers are aware that this activity is illegal. Therefore, retailers who continue to stock items of drug paraphernalia and offer these items for sale do so at their own risk and should be the subject of law enforcement attention.

In order to ensure that cases pertaining to drug paraphernalia are criminally and administratively sound, officers must familiarize themselves with the elements of several sections of the Business and Professions Code (BP). This edition of the “back-bar inspection” will provide officers involved in ABC investigations with insight into drug paraphernalia violations. It will also alert our stakeholders and any newly ABC licensed individuals as to the need to ensure that these items do not become part of their inventory or they will undoubtedly face criminal and administrative sanctions.

In reviewing laws pertaining to drug paraphernalia, it appears clear that the legislative intent is to prevent retailers from selling all items which can be used to promote the possession, consumption, or sales of any controlled substance. This intent is so clear that Section 24200.6 BP (January 1, 2003) gives the Department of ABC the authority to revoke or suspend an ABC license for violating Section 11364.7 of the Health and Safety Code (HS). Aspects of drug paraphernalia possession and use are addressed in Section 24200.6 BP, including: items used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

Section 11364.5 HS also delineates items which can be classified as drug paraphernalia and is consistent with the verbiage of Section 24200.6 BP. Additionally, Section 11364.5 HS specifically identifies items which are classified by this section as “Drug Paraphernalia.” These items include, but are not limited to:

- Scales and balances intended for the use or designed for use in weighing or measuring drugs.
- Diluents and adulterants, such as quinine hydrochloride, mannitol mannite, dextrose, and lactose, intended for use in cutting illicit drugs.
- Separation gins and sifters intended for use or designed for use in cleaning or refining marijuana.
- Blenders, bowls, containers, spoons, and mixing devices used, or designed for use in compounding controlled substances.
- Capsules, balloons, envelopes, and other containers intended for use in the packing, storing or concealing small quantities of illegal drugs.

Note: This also includes small plastic zip-lock baggies (typically measuring 1 ¼ x 1 ¼ inches) designed to hold jewelry or beads, but can also hold illegal drugs.

- Hypodermic syringes, needles, and other objects intended for use or designed for use in injecting controlled substances into the human body.

Note: This also includes items intended for diabetic patients, but become drug paraphernalia when made available to non-diabetic individuals.

- Objects intended for use or designed for use in ingesting or inhaling marijuana, cocaine, hashish, or hashish oil.

Note: Specific reference is made to metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens. Additionally, water pipes, roach clips (items used to hold burning marijuana cigarettes), bongs, miniature cocaine spoons and vials is also identified as drug paraphernalia by this section.

An item of drug paraphernalia which seems pervasive within the City of Los Angeles is a small glass vial, approximately four to five inches in length, containing a miniature ornamental flower. The item is often sold for a nominal price under the brand name of "Love Roses." Occasionally, an ink cartridge is substituted for the flower and the item is marketed and sold under the "Fancy Pens" trade name. In either case, once purchased, the interior contents are discarded and replaced with a small piece of copper scouring pad (typical sold under the "Chore Boy" trade name). The item is then transformed into a free-base smoking device, typically used to ingest rock cocaine.

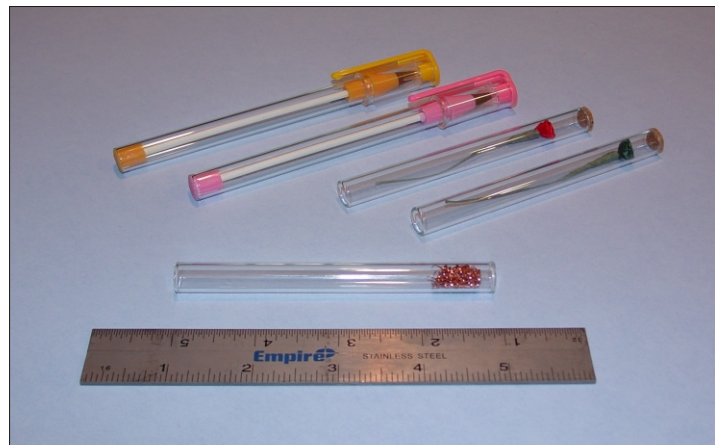
Knowledge that the item is drug paraphernalia is a critical element of the violation, however a licensee, or employee, is deemed to have this knowledge if the Department of ABC or any other law enforcement agency notifies the licensee in writing that the items are commonly sold or marketed for that purpose. The Department of ABC has alerted all off-sale ABC licensees through the dissemination of a written notice addressing drug paraphernalia (ABC-546-A 12/03). During the past three years, this notice has been mailed to all ABC licensees with their annual ABC license renewal notification. Additionally, Operation ABC disseminates the drug paraphernalia notice during all Informed Merchants Preventing Alcohol-Related Crime Tendencies (IMPACT) inspections and during every Standardize Training for Alcohol Retailers (STAR) presentation. Drug paraphernalia violations are also addressed in the lecture portion of all STAR training presentations to ensure that we, as an agency, curtail the sale of these products at the ABC retail level.

The Health and Safety Code (§11364.7 a) establishes misdemeanor criminal liability for persons who **knowingly** sell (deliver, furnish, transfer or possess with the intent to do the same) drug paraphernalia. To establish a violation, investigating officers must be able to articulate that the seller had **reasonable knowledge** that the item was to be used as drug paraphernalia. There are obviously a number of methods that can be employed to establish seller knowledge and can be as simple as asking the involved retailer, "If they have a glass pipe to smoke rock cocaine?" Undercover officers should avoid the use of street vernacular in describing illegal drugs and should remain cognizant of language barriers on the part of potential suspect(s).

Operation ABC often receives inquiries regarding the possession of the above items in non-ABC licensed locations. It is not uncommon to observe "Love Roses" or "Fancy Pens" openly displayed for sale at self-serve gas stations, neighborhood markets or smoke shops. Due to the potential "novelty factor," the mere possession of these items is **not** illegal. Because these locations do not have ABC license privileges, local law enforcement cannot regulate the legitimate sale of these items. However, to reiterate, it is a misdemeanor for any person to knowingly sell an item he believes is to be used as drug paraphernalia. It is obvious that the sale of these items attract a criminal element. Many times responsible retailers will remove them from their inventory once they become aware of their intended purpose.

Drugs and drug paraphernalia have a deferential affect on our communities. Officers must remain cognizant of the laws governing the illegal use of these items and maintain familiarity with the ever changing drug trends. By working in

partnership with the ABC retail community to remove these items from the retail market place, officers will continue to reduce the negative impact illegal drug use has on the communities we serve. Responsible retailers will look to you for guidance regarding the placement of potentially illegal items into their inventory and you must be ready to provide appropriate answers.



ENHANCING YOUR EXPERTISE: *Although openly displayed, these innocuous looking novelty roses and pens (Left) can be transformed in items used to ingest controlled substances. (Right) Discarding the contents and inserting a small piece of a Chore Boy copper scouring pad completes the transformation and quickly turns the novelty items into drug paraphernalia.*