

Crackdown on Spice Hinges on Marines Outing Marines

By Lisa M. Windsor

A U.S. Marine Corps initiative intended to overcome the cultural negativity attached to “snitching” is being tested in Japan and is being eyed as a model for the force in its fight against rampant use of designer drugs such as spice. The 1st

Marine Aircraft Wing campaign, dubbed “Not in My Corps,” aims to embolden Marines into turning in fellow service members who use spice and other synthetic forms of marijuana, according to a Marine Times

report

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With no random testing currently available for detecting the ingestion of chemicals used in spice, the “Not in My Corps” initiative could furnish military prosecutors with some evidence needed to identify and punish spice users, according to Marine Times

. However, Marines outed for alleged spice use or possession need to remember that the Uniform Code of Military Justice protects them against certain unlawful search and seizures that could result from this campaign.

With the January 2010 issuance of MARFORCOM Order 5355.1

, the Corps prohibited the ingestion, sale, distribution, possession, and introduction into military installations of certain substances that were then legally obtainable, such as spice (“Spice Gold”), salvia divinoru and savinorin A (“Maria Pastora,” “Sally-D,” “Magic Mints”), Lysergic Acid Amide (“Morning Glory”) and Datura (“Devil’s Apple”, “Stinkweed”).

Subsequently, in March 2011, the U.S. Drug Enforcement Administration classified “fake pot” products such as spice Schedule I substances, the most restrictive federally controlled substances.

Marine Times

noted that the three-star general in charge of Marines in Japan views “Not in My Force” as something all commanders should embrace. This initiative is important because Marines should not hesitate about reporting wrongdoing for fear of retaliation or being branded as a “snitch” or a “rat.” However, it is equally important that service members’ rights against unlawful searches and seizures are honored.

What Service Members Need to Know

Commanders need probable cause to conduct a search or seizure, including a

command-directed urinalysis;

One Marine's report that another was seen ingesting or possessing spice does not necessarily establish probable cause for a search or seizure;

In order to have probable cause for a command-directed urinalysis, the authority conducting the search must have reliable information

that the illegal item

(chemical/biological evidence of drug use), is in the location

being searched (e.g. the body), at the time

the search is being conducted.

In a case where a Marine says he or she saw a fellow service member ingesting spice at a party, the informant's credibility could be shadowed by the fact that he or she attended an event at which drugs were used (i.e. the source of the information may not be reliable);

Commanders do not have probable cause to demand a urinalysis if an informant reports that a Marine was seen ingesting a designer drug a month ago because traces of it may no longer be in his or her system (i.e. information may be stale as to time and the drug is no longer located in the body in sufficient concentrations).

Eyewitness testimony that a Marine was seen ingesting a designer drug the previous day could amount to probable cause (i.e. reliability, location, time);

Commanders cannot conduct a sweeping barracks check or random urinalysis as a means to circumvent the probable cause requirement in order to search a specific individual.

According to the Marine Times

article, more than 3,100 Marines have been separated from the military for alleged drug use. Marines accused of wrongfully possessing

, selling

or ingesting controlled substances should refrain from impulsively accepting non-judicial punishment under Article 15

of the Uniform Code of Military Justice.

Before making any statements to a commanding or law enforcement officer, Marines should assert their right to speak to an attorney.

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