



Board of Supervisors Memorandum

October 5, 2010
Proposition 203
Arizona Medical Marijuana Act

Proposition 203, also known as the Arizona Medical Marijuana Act, is a citizen's initiative that will be on the ballot for the Arizona general election on November 2, 2010. If passed, the initiative will enable a "qualifying patient," who is registered with the Arizona Department of Health Services (ADHS) to legally obtain an "allowable amount of usable marijuana" from a "nonprofit medical marijuana dispensary" and possess and use the marijuana to treat or alleviate symptoms associated with a "debilitating medical condition."

In this context, marijuana refers to the dried flowers, leaves, stems, and seeds of the *Cannabis sativa* plant. When smoked or ingested, tetrahydrocannabinol (THC) and other cannabinoids in marijuana attach to two types of receptors on cells in the body. CB1 receptors are found mainly in the brain, especially in areas that control body movement, memory, and vomiting. The other type of receptor, CB2, is found in small numbers elsewhere in the body, mainly in tissue of the immune system, and the function of these receptors is not well understood.

Medical or medicinal marijuana is marijuana that is used for medical purposes. There is no chemical difference between illegal marijuana and medical marijuana. Marijuana is termed medical marijuana if it is used for a legal medical purpose under the law.

Marijuana Used for Medical Purposes

In January 1997, the White House Office of National Drug Control Policy (ONDCP) asked the Institute of Medicine (IOM) to conduct a review of the scientific evidence to assess the potential health benefits and risks of marijuana. The IOM report found that the data on the adverse effects of marijuana were more extensive than the data on its effectiveness. Clinical studies of marijuana are difficult to conduct due to limited research funds and a myriad of federal and state regulations. Consequently, there have been numerous studies on cannabinoids while less than 20 small randomized trials have been conducted in the last 35 years on the medical benefits of smoked marijuana.

The IOM's report published in 1999, "Marijuana and Medicine: Assessing the Science Base," contained recommendations on the medical use of marijuana from the American Medical Association (AMA) House of Delegates, the National Institutes of Health (NIH), as well as international health agencies such as the British Medical Association and the World Health Organization (WHO). The AMA House of Delegates concluded that until studies are done using scientifically acceptable clinical trial design and subjected to appropriate statistical analysis, the questions concerning the therapeutic utility of

marijuana will likely remain largely unanswered.

Currently marijuana lacks acceptance for any medical use by the Food and Drug Administration (FDA) and is therefore listed in Schedule I of both the federal and Arizona Controlled Substances Acts. The American Medical Association's Council on Science and Public Health concluded in 2009 that disagreements persist about the long term consequences of marijuana use for medicinal purposes. They recommended that "marijuana's status as a federal Schedule I controlled substance be reviewed with the goal of facilitating the conduct of clinical research and development of cannabinoid-based medicines, and alternative methods." They also stated that "this recommendation should not be viewed as an endorsement of the legalization of marijuana or that the scientific evidence on the therapeutic doses of cannabis meet current standards for a prescription drug product." Furthermore, the Council urged the NIH to facilitate research on the medical utility of marijuana.

Marijuana as a Pain Reliever

The AMA House of Delegates noted in the 1999 report that controlled evidence did not support the view that THC or smoked marijuana offers clinically effective pain relief without causing significant adverse events when used alone and that further research into the use of cannabinoids in neuropathic pain was warranted. However, in 2009 the AMA Council on Science and Public Health concluded that the results of short term, controlled trials indicate that smoked cannabis sativa reduces neuropathic pain; may relieve pain and spasticity in patients with multiple sclerosis; and called for further well-controlled studies of marijuana and related cannabinoids. There have been no peer-reviewed studies published on the effects of marijuana as a pain reliever since November 2009.

Marijuana to Control Nausea

The National Institutes of Health (NIH) suggested in the IOM report that further studies to define the potential appetite-stimulating properties of marijuana for the amelioration of loss of appetite, muscle wasting and weight loss associated with advanced stage cancer be conducted. The AMA concluded in 2009 that THC improves the appetite and caloric intake of patients with reduced muscle mass such as that found in AIDS wasting or advanced stages of cancer and reiterated the need for further research for use in patients with serious conditions.

Many other trials have been conducted on the FDA approved oral preparations containing synthetic THC. The National Cancer Institute's study in the early 1980's on the effectiveness of THC in relieving nausea, vomiting and loss of appetite in cancer patients led to the registration and regulatory support by the Drug

Enforcement Administration of pharmaceuticals such as Marinol®, a Class III controlled substance containing a marijuana derivative.

Marijuana to Treat Glaucoma

The Academy Task Force on Complementary Therapies, American Academy of Ophthalmology, noted in 2003 that it “believes no scientific evidence has been found that demonstrates increased benefits and/or diminished risks of marijuana use to treat glaucoma compared with the wide variety of pharmaceutical agents now available. These agents include topical miotics, epinephrine derivatives and several others as well as surgical treatments.” The NIH recommended in 1999 that investigation into the mechanism of action and the effectiveness of marijuana in the treatment of glaucoma is justified, as are areas of study for smoked marijuana and should be held to standards equivalent to other medications for efficacy and safety considerations. The AMA Council on Science and Public Health also supported additional studies on the role of cannabinoids in the treatment of glaucoma in its 2009 report. There have been no peer-reviewed studies published on the effects of marijuana to treat glaucoma since the AMA Council report.

Medical Marijuana in Arizona and Other States

On November 5, 1996, Arizona voters approved Proposition 200 that would have changed sentencing for drug offenders, requiring those who commit violent crimes to serve full sentences without parole, and diverting non-violent drug offenders into treatment. Proposition 200 also permitted doctors to prescribe Schedule I controlled substances, including marijuana, to treat disease or relieve pain in seriously and terminally ill patients. Under federal law, marijuana is considered an illegal drug and physicians are prohibited from writing prescriptions for illegal drugs. House Bill 2518, signed by the governor on April 21, 1997, sought to repeal Proposition 200’s medical marijuana provision by requiring the Food and Drug Administration (FDA) to first approve marijuana before allowing state physicians to prescribe it. On November 3, 1998, the bill was placed on the ballot as a referendum where voters rejected it.

At present, 14 states and the District of Columbia have enacted laws that legalize medical marijuana. Another six states are considering changes in legislation regarding medical marijuana, and two states (including Arizona) are considering medical marijuana ballot measures.

Legal Changes Should Proposition 203 Pass

Proposition 203 would prevent an individual, who acts in conformity with the requirements of the proposition, from being subject to any governmentally imposed sanction relating to the medical use of marijuana.

This proposition would prohibit certain discriminatory practices, including:

- A school or landlord would not be able to refuse to enroll or lease to a person registered pursuant to this proposition unless failing to do so would cause the school or landlord to lose a monetary or licensing benefit under federal law.
- An employer would not be able to discriminate against a person registered pursuant to this proposition in hiring, terminating, or imposing employment conditions unless failing to do so would cause the employer to lose a monetary or licensing benefit under federal law.
- An employer would not be able to penalize a qualifying patient registered pursuant to this proposition for a positive drug test for marijuana, unless the patient used, possessed, or was impaired by marijuana on the employment premises or during hours of employment.

Proposition 203 would not:

- Authorize a person to undertake any task under the influence of marijuana that constituted negligence or professional malpractice.
- Authorize possessing or using medical marijuana on a school bus, on the grounds of a preschool, primary school, or high school, or in a correctional facility.
- Authorize smoking marijuana on public transportation or in a public place.
- Authorize operating, navigating, or being in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana. A registered qualifying patient would not be considered to be under the influence of marijuana solely because of the presence of marijuana in the person's system that appears in a concentration insufficient to cause impairment.
- Require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana.
- Require an owner of private property to allow the use of marijuana on that property.
- Require an employer to allow the ingestion of marijuana in the workplace.
- Prevent a nursing care or other residential or inpatient healthcare facility from adopting reasonable restrictions on the provision, storage and use of marijuana by residents or patients.

Qualifying Patient

A "qualifying patient" is defined in Proposition 203 as a person who has been diagnosed by a physician (a doctor of medicine, osteopathy, naturopathic medicine, or homeopathy) as having one of the following debilitating medical conditions:

- Cancer
- Glaucoma
- Positive status for human immunodeficiency virus
- Acquired immune deficiency syndrome
- Hepatitis C
- Amyotrophic lateral sclerosis
- Crohn's disease
- Agitation of Alzheimer's disease

- A chronic or debilitating disease or medical condition that produces any of the following:
- Cachexia or wasting syndrome
- Severe and chronic pain
- Severe nausea
- Seizures (including those characteristic of epilepsy) or
- Severe and persistent muscle spasms (including those characteristic of multiple sclerosis)

A qualifying patient registered with ADHS (or a registered designated caregiver on behalf of the qualifying patient) would be able to obtain up to 2.5 ounces of marijuana in a 14-day period from a registered nonprofit medical marijuana dispensary. If the qualifying patient's home were located more than 25 miles from the nearest nonprofit medical marijuana dispensary, the patient or designated caregiver would be able to cultivate up to 12 marijuana plants in an enclosed, locked facility.

A qualifying patient would have to submit a signed written certification issued by a physician that stated the patient would likely receive therapeutic or symptom-relieving benefits from the medical use of marijuana to treat or alleviate a debilitating medical condition. The certification would have to specify the debilitating medical condition and be made after the physician had completed a full assessment of the patient's medical history. If the qualifying patient is under 18 years of age, the patient's custodial parent or legal guardian would have to submit written certifications from two physicians, and the custodial parent or legal guardian would have to consent in writing to control the patient's medical use of the marijuana.

Community Dispensaries

A medical marijuana dispensary registered with ADHS would have to be operated on a not-for-profit basis, but could receive payment for all expenses incurred in its operation. ADHS would not be able to issue more than one nonprofit medical marijuana dispensary registration certificate for every ten pharmacy permits issued by the Arizona State Board of Pharmacy under current law. The dispensary would be able to cultivate marijuana only in an enclosed, locked facility and would be able to acquire marijuana from other registered nonprofit dispensaries or from a registered qualifying patient or designated caregiver if the patient or caregiver were not compensated for the marijuana. Proposition 203 specifies various security, record-keeping, and verification requirements a registered dispensary would have to follow relating to the operation of the dispensary.

Next Steps for the State and Pima County

If Proposition 203 passes, ADHS would begin a rulemaking process (including public hearings) to develop the processes related to applications and application fees for dispensaries and the issuance of patient registry cards. This process would likely take about 120 days. Since the election will be on November 2, and the election will likely be certified around the end of November, the criteria for applying for cards and dispensaries would be established around April 1, 2011. At that point, ADHS would begin accepting applications for cards and to operate dispensaries with the process specified in the rules.

Pima County, and other counties and municipalities, may enact zoning regulations regarding the location of dispensaries in the community. The Pima County Planning & Zoning Commission is preparing a Zoning Code Text Amendment for review and approval by the Board.

On September 22, 2010, the Pima County Board of Health voted to recommend to the Board of Supervisors that Pima County Code Title 8 Health and Safety be amended to add Chapter 8.80 Medical Marijuana. This proposed Ordinance would require that persons who wish to manufacture, distribute, prescribe or dispense marijuana for medical uses possess a current license or permit as a medical practitioner and register under the federal controlled substances act. This amendment also requires dispensaries, their employees, and qualifying patients to maintain and provide upon request by authorized Pima County personnel, evidence of compliance with rules and regulations established. Failure to do so may result in a Class I Misdemeanor.

Recommendation

Staff recommends that the Board of Supervisors approve the ordinance as endorsed by the Pima County Board of Health.