

PIMA COUNTY DEVELOPMENT SERVICES DEPARTMENT  
PLANNING DIVISION  
STAFF REPORT TO THE PLANNING AND ZONING COMMISSION

PUBLIC HEARING  
September 29, 2010

ZONING CODE TEXT AMENDMENT Co8-10-07, MEDICAL MARIJUANA

<b>STATUS / AGENDA ITEMS</b>	Planning and Zoning Commission Public Hearing Zoning Code Amendment
<b>DESCRIPTION</b>	AN ORDINANCE OF THE PIMA COUNTY BOARD OF SUPERVISORS, RELATING TO ZONING (TITLE 18); AMENDING THE PIMA COUNTY CODE BY ADDING DEFINITIONS FOR MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATION, MEDICAL MARIJUANA DISPENSARY, MEDICAL MARIJUANA DISPENSARY OFFSITE CULTIVATION LOCATION AND MEDICAL MARIJUANA QUALIFYING PATIENT CULTIVATION LOCATION TO CHAPTER 18.03 (DEFINITIONS) AND ADDING MEDICAL MARIJUANA DISPENSARY, MEDICAL MARIJUANA DISPENSARY OFFSITE CULTIVATION LOCATION AND MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATION TO CHAPTER 18.45 (CB-2 GENERAL BUSINESS ZONE), SECTION 18.45.040 (CONDITIONAL USES) AS CONDITIONAL USES AND ADDING DEVELOPMENT STANDARDS, CONDITIONS, APPLICATION REQUIREMENTS AND IDENTIFYING THE EXISTING APPLICABLE FEE FOR MEDICAL MARIJUANA DISPENSARIES, MEDICAL MARIJUANA DISPENSARY OFFSITE CULTIVATION LOCATIONS AND MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATIONS TO CHAPTER 18.45, SECTION 18.45.040 (ALL DISTRICTS)
<b>INITIATION</b>	Board of Supervisors
<b>PUBLIC COMMENT</b>	Staff has received one letter addressed to the Commissioners requesting fewer limitations on dispensaries.

## **STAFF RECOMMENDATION**

Staff recommends **APPROVAL** of the proposed zoning code text amendments. Staff's report

## **STAFF REPORT**

Proposition 203 is an initiative appearing on the November 2, 2010 general election ballot that would generally decriminalize possession, sale and cultivation of medical marijuana under State law. The same initiative recognizes and authorizes jurisdictions to zone for Medical Marijuana Dispensaries and cultivation sites. If the initiative passes, the proposed text amendments will establish development standards and regulations for 1) Medical Marijuana Dispensaries and their associated Cultivation locations 2) Cultivation Locations operated by Designated Caregivers and 3) Cultivation Locations owned by Qualified Patients.

The proposed amendments are intended to regulate the secondary effects of Medical Marijuana Dispensaries and Medical Marijuana Cultivation locations. The regulations will not prohibit the uses; rather they will regulate location and manner of use.

## **KEY DEFINITIONS FROM INITIATIVE (SUMMARIZED AS RELEVANT TO ZONING-REFER TO ATTACHED INITIATIVE FOR COMPLETE LANGUAGE)**

"CARDHOLDER" A qualifying patient, a designated caregiver, or a nonprofit medical marijuana dispensary agent.

"DESIGNATED CAREGIVER" Assists no more than five patients with the medical use of marijuana.

"ENCLOSED, LOCKED FACILITY" A closet, room, greenhouse or other enclosed area equipped with locks or other security devices that only permit access by a cardholder.

"NONPROFIT MEDICAL MARIJUANA DISPENSARY" Entity that distributes marijuana to cardholders.

"QUALIFYING PATIENT" A person who has been diagnosed by a physician as having a debilitating medical condition.

## **SUMMARY OF PROPOSED ZONING REGULATIONS**

Medical Marijuana Dispensaries: The proposed amendment shall limit the locations of Dispensaries to the CB-2 zone. The uses shall be setback 2,000 feet from any other

Dispensaries, 1,000 feet from any school, library, church, or substance abuse facility. There shall be no drive-through or outdoor seating, and the use shall be limited to 2,000 square feet. Additionally, every Dispensary shall also require a Type 3 Conditional Use Permit that will allow further site specific scrutiny.

Dispensary Off-Site Cultivation Locations: The cultivation locations associated with dispensaries shall also be located in the CB-2 zone. They will require setbacks of 2,000 feet from dispensaries and other cultivation locations, 1,000 feet from any schools, libraries, churches, substance abuse facilities, and shall be limited to 2,000 feet in area. Additionally, they also require a Type 3 Conditional Use Permit.

Designated Caregiver Cultivation Location: The standards shall be consistent with Dispensary Off-site locations except the use shall be limited to 250 sq ft

Qualified Patient Cultivation: Shall be located either at the patient's primary address and limited to 50 sq ft, or if at an off-site location, shall be in CB-2 and would require a Type 3 Conditional Use Permit.

## CONSIDERATIONS

- The CB-2 zone was specifically selected because of its intense retail use, its general geographic locations near major urbanized streets, and lineal footprint. This zone features sites that are generally of high visibility. There is also available CB-2 in Western Pima County which of course must be fully served as well. (See attached maps).
- The industrial zones were not chosen because they contain large areas of land away from major streets and are less visible.
- The intent of these amendments are to promote the location of these uses in highly visible zones, which should lead to easier law enforcement and safer and easier access for ill patients.
- The initiative allows Qualifying Patients the ability to cultivate up to 12 marijuana plants of their own if they do not live within 25 miles of a dispensary. The initiative also allows Designated Caregivers to grow for up to five Qualifying Patients (who do not live within the 25 miles of a dispensary) for a total of sixty plants. As a result, allowing dispensaries in the proper locations should reduce the amount of patients and caregivers who need to cultivate their own marijuana plants.

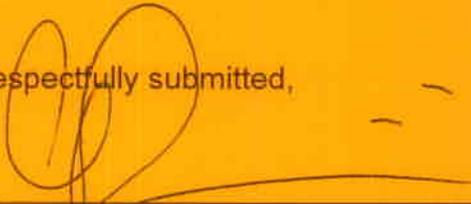
As part of any motion, staff is requesting that the Planning and Zoning Commission and Board of Supervisors direct staff to re-evaluate the amendment and if necessary, initiate and bring forth recommended changes in 6 months. The development of this

proposed zoning code amendment has been quite rapid, and staff would expect the likely need for modification after implementation.

The secondary effects of Marijuana Dispensaries are highlighted in the attached "White Paper on Marijuana Dispensaries" by the California Police Chiefs Association's Task Force on Marijuana Dispensaries and the "Medical Marijuana Dispensaries and Associated Issues" presented to the California Chief of Police Association. The paper and report demonstrate high rates of crime near the Dispensaries. The proposed amendments promote the locations of the uses in high visibility zoning which should be easier to monitor and deter crime. Furthermore, by requiring Type 3 Conditional Use Permits, very site specific evaluation can occur.

Also attached as backup material to this report, among other items, is the text of the initiative itself, and an evaluation of the number of potential sites in each county submitted by one of the initiative proponents.

Respectfully submitted,



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Chris Poirier, Assistant Planning Director

C: Co8-10-07 file

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ORDINANCE NO. 2010-\_\_\_\_

AN ORDINANCE OF THE PIMA COUNTY BOARD OF SUPERVISORS, RELATING TO ZONING (TITLE 18); AMENDING THE PIMA COUNTY CODE BY ADDING DEFINITIONS FOR MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATION, MEDICAL MARIJUANA DISPENSARY, MEDICAL MARIJUANA DISPENSARY OFFSITE CULTIVATION LOCATION AND MEDICAL MARIJUANA QUALIFYING PATIENT CULTIVATION LOCATION TO CHAPTER 18.03 (DEFINITIONS) AND ADDING MEDICAL MARIJUANA DISPENSARY, MEDICAL MARIJUANA DISPENSARY OFFSITE CULTIVATION LOCATION AND MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATION TO CHAPTER 18.45 (CB-2 GENERAL BUSINESS ZONE), SECTION 18.45.040 (CONDITIONAL USES) AS CONDITIONAL USES AND ADDING DEVELOPMENT STANDARDS, CONDITIONS, APPLICATION REQUIREMENTS AND IDENTIFYING THE EXISTING APPLICABLE FEE FOR MEDICAL MARIJUANA DISPENSARIES, MEDICAL MARIJUANA DISPENSARY OFFSITE CULTIVATION LOCATIONS AND MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATIONS TO CHAPTER 18.45, SECTION 18.45.040 (ALL DISTRICTS)

**THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA FINDS THAT:**

1. Proposed provisions of Proposition 203 in the November 2, 2010 election, the Arizona Medical Marijuana Act, A.R.S. § 36-2806.01 allow counties to enact zoning regulations of medical marijuana dispensaries.
2. The possession, delivery, manufacture, cultivation and sale of marijuana is illegal under the both the federal Controlled Substances Act and the Arizona Controlled Substances Act.
3. If adopted Proposition 203, the Arizona Medical Marijuana Act, may be preempted or limited by the federal Controlled Substances Act or preempted or limited by the Arizona Controlled Substances Act.
4. Marijuana is a Schedule I drug under both federal law and Arizona law.
5. Although some illegal drugs may be prescribed under the Controlled Substances Act, federal law prohibits the prescription of marijuana because it is a Schedule I drug.
6. Nothing in this ordinance is intended to permit or assist in the violation of either the federal Controlled Substances Act or the Arizona Controlled Substances Act.
7. Medical marijuana dispensaries are not currently a permitted use of land in Pima County.

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8. Medical marijuana cultivation is not currently a permitted use of land in Pima County.
9. Other jurisdictions have experienced mobile distribution of marijuana and a proliferation of marijuana dispensaries after adoption of state laws permitting their operation.
10. Many jurisdictions, including: Los Angeles, California; Denver, Colorado; and Montana, have reported significant nuisances and violent crime associated with medical marijuana cultivation locations and dispensaries opened subsequent to the adoption of state laws permitting their operation.
11. The amendments in this ordinance will allow for the use of property as a medical marijuana dispensary or an affiliated medical marijuana dispensary offsite cultivation location if the provisions of Proposition 203, the Arizona Medical Marijuana Act, are approved and remain in full force and effect.
12. This ordinance does not create new restrictions on the use of property, and this ordinance is not intended to, nor should it be construed to, reduce any existing rights to use, divide, sell or possess private real property.

**BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:**

Section 1. Amend Pima County Code Chapter 18.03, Section 18.03.020(M) to insert the definition of “medical marijuana designated caregiver cultivation location”, “medical marijuana dispensary”, “medical marijuana dispensary offsite cultivation location” and “medical marijuana qualifying patient cultivation location” and renumber subsequent subsections as follows:

Chapter 18.03 General Definitions

18.03.020 – Definitions "M."

5. Medical Marijuana Designated Caregiver Cultivation Location: Means an enclosed facility, that does not exceed 250 square feet of cultivation space, where a designated caregiver, as defined by A.R.S. § 36-2801(5), cultivates marijuana if the designated caregiver’s registry identification card provides that the designated caregiver is authorized to cultivate marijuana. The location must comply with the security requirements of A.R.S. Title 36, Chapter 28.1.
6. Medical Marijuana Dispensary: Means a not-for-profit entity, defined in A.R.S. § 36-2801(11), that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to cardholders.
7. Medical Marijuana Dispensary Offsite Cultivation Location: Means the additional location where marijuana is cultivated by a medical marijuana dispensary as referenced in A.R.S. § 36-2804(B)(1)(b)(ii).
8. Medical Marijuana Qualifying Patient Cultivation Location: Means an enclosed facility, that does not exceed 50 square feet of cultivation space for each location, where a qualifying patient, as defined by A.R.S. § 36-2801(13), cultivates marijuana if the qualifying patient’s registry identification card states that the qualifying patient is authorized to cultivate marijuana. The qualifying patient cultivation location must be

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located in the CB-2 zone as a Type III conditional use or as an accessory use to the qualifying patient's primary residence. Medical Marijuana cultivation as an accessory use to the qualifying patient's primary residence must not be detectable from the exterior of the building in which the cultivation takes place. The qualifying patient cultivation location must comply with the security requirements of A.R.S. Title 36, Chapter 28.1.

9. ~~5~~. Metallurgical: Includes ....

Section 2. Amend Pima County Code Chapter 18.45, Section 18.45.040 as follows:

Chapter 18.45 – CB-2 General Business Zone

18.45.040 - Conditional uses.

C. Adult activities facility: Type III conditional use in accordance with Section 18.07.030I.

D. Medical Marijuana Dispensary. If the Arizona Revised Statutes are amended to allow medical marijuana dispensaries, as long as the law remains in full force and effect, a medical marijuana dispensary is permitted as a Type III conditional use subject to the following conditions.

1. Minimum Notification Area. The minimum notification area for a conditional use permit for a medical marijuana dispensary is 2,640 feet.
2. Supplemental Application. In addition to the application required by Chapter 18.97, an applicant for a conditional use permit for a medical marijuana dispensary must complete a supplemental application that includes all of the following information:
  - a. If the application is by an agent for the owner the authorization must include an explicit acknowledgment from the owner that the owner knows that the proposed use of the property is as a medical marijuana dispensary.
  - b. The legal name of the medical marijuana dispensary.
  - c. The name address and date of birth of each principal officer and board member of the nonprofit medical marijuana dispensary and the name, address, and date of birth of each medical marijuana dispensary agent.
  - d. A copy of the operating procedures adopted in compliance with A.R.S. §36-2804(B)(1)(c).
  - e. A notarized certification that none of the principal officers or board members has been convicted of one of the following offenses:
    - i. A violent crime as defined in A.R.S. § 13-901.03(B) that was classified as a felony in the jurisdiction where the person was convicted;
    - ii. A violation of state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted except an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten or more years earlier or an offense involving conduct that would be immune from arrest, prosecution or penalty under A.R.S. §36-2811 except that the conduct

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occurred before the effective date of that statute or was prosecuted by an authority other than the state of Arizona.

- f. A notarized certification that none of the principal officers or board members has served as a principal officer or board member for a registered nonprofit medical marijuana dispensary that has had its registration certificate revoked.
  - g. A floor plan showing the location, dimensions and type of security measures demonstrating that the medical marijuana dispensary will meet the definition of enclosed locked facility contained in A.R.S.§36-2801(6).
3. Prohibited Locations: A medical marijuana dispensary is not permitted in the Gateway Overlay Zone, Buffer Overlay Zone or a historic zone.
4. Community Impacts. The Board may not approve a medical marijuana dispensary at a site if substantial evidence is presented that locating the dispensary at the proposed site will negatively impact neighboring property values or if substantial evidence is presented that shows that locating the dispensary at the proposed site will create an unreasonable risk to the health, safety or general welfare in the area.
5. Development Standards.
- a. A medical marijuana dispensary must be located in a permanent building and may not be located in a trailer, cargo container or motor vehicle.
  - b. A medical marijuana dispensary shall be setback a minimum of 2,000 feet from all other medical marijuana dispensaries measured from the parcel boundaries;
  - c. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a public, private, parochial, charter, dramatic, dancing, music, or other similar school or educational or activity facility where children may be enrolled, measured from the parcel boundaries.
  - d. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a public, private, parochial, or charter school bus stop.
  - e. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a childcare center, measured from the parcel boundaries.
  - f. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a library or public park.
  - g. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a church.
  - h. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.
  - i. A medical marijuana dispensary may not have a drive-through service.
  - j. A medical marijuana dispensary may not have outdoor seating areas.
  - k. The maximum floor area of a medical marijuana dispensary is 2,000 square feet.
  - l. The secure storage area for the medical marijuana stored at the medical marijuana dispensary shall not exceed 400 square feet.

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- m. The permitted hours of operation of a medical marijuana dispensary are between the hours of 9:00a.m. and 5:00p.m.
6. Permit Conditions. The Board may include any conditions it finds necessary to conserve and promote the public health, safety, convenience and general welfare. The board must include the following permit conditions for issuance of the conditional use permit for a medical marijuana dispensary:
- a. An expiration date for the conditional use permit that requires re-application or renewal of the permit after a specified period of time.
  - b. A requirement that the medical marijuana dispensary meets security requirements adopted by the Arizona Department of Health Services.
  - c. A requirement that the storage facilities for the medical marijuana stored or grown on site prevent the emission of dust, fumes, vapors or odors into the environment.
  - d. A requirement that the owner secure a certification from the State Fire Marshall or from another acceptable entity responsible for fire safety in the area in which the medical marijuana dispensary is to be located stating that the structure complies with all fire code requirements and supply that certification to the Development Services Department.
  - e. A prohibition on the medical marijuana dispensary offering a service that provides offsite delivery of the medical marijuana.
  - f. A requirement that the medical marijuana dispensary is prohibited from permitting anyone to consume marijuana on the premises.
  - g. A requirement for a reasonable setback from a zoning district other than CB-2, CI-1, CI-2, and CI-3 or any existing, established, residential use in those zones.
  - h. A requirement for a reasonable setback feet from a zoning district in a city or town other than classifications that permit densities and uses greater than or equal to those permitted CB-2, CI-1, CI-2, and CI-3.
  - i. A requirement that the medical marijuana dispensary comply with applicable sections of Title 8 of the Pima County Code.
7. Enforcement. The provisions of this subsection may be enforced through the use of the civil penalty procedure provided for by Section 18.95.030 or by injunction or other civil proceeding as provided by A.R.S §11-808(H). Notwithstanding any other provision of this code, this subsection shall not be enforced under A.R.S §11-808(C) as a misdemeanor.
8. Fees. The fee for application and hearing is a combination of the existing fees for Conditional Use Permit application filing fee, the site analysis submittal fee and the notice of public hearing fee included in the most current Development Services Department fee schedule.

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E. . Medical Marijuana Dispensary Offsite Cultivation Location: If the Arizona Revised Statutes are amended to allow medical marijuana dispensary offsite cultivation locations, as long as the law remains in full force and effect, a medical marijuana dispensary offsite cultivation location is permitted as a Type III conditional use subject to the following conditions:

1. Minimum Notification Area. The minimum notification area for a conditional use permit for a medical marijuana dispensary is 2,640 feet.
2. Supplemental Application. In addition to the application required by Chapter 18.97, an applicant for a conditional use permit for a medical marijuana dispensary offsite cultivation location shall complete and application that includes all of the following information.
  - a. If the application is by an agent for the owner the authorization must include an explicit acknowledgment from the owner that the owner knows that the proposed use of the property is as a medical marijuana dispensary offsite cultivation location.
  - b. The legal name and address of the affiliated medical marijuana dispensary.
  - c. The name address and date of birth of each principal officer and board member of the medical marijuana dispensary affiliated with the offsite cultivation location and the name, address, and date of birth of each medical marijuana dispensary agent.
  - d. A copy of the operating procedures adopted in compliance with A.R.S. §36-2804(B)(1)(c).
  - e. A notarized certification that none of the principal officers or board members for the medical marijuana dispensary affiliated with the offsite cultivation location has been convicted of one of the following offenses:
    - i. A violent crime as defined in A.R.S. § 13-901.03(B) that was classified as a felony in the jurisdiction where the person was convicted;
    - ii. A violation of state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted except an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten or more years earlier or an offense involving conduct that would be immune from arrest, prosecution or penalty under A.R.S. §36-2811 except that the conduct occurred before the effective date of that statute or was prosecuted by an authority other than the state of Arizona.
  - f. A notarized certification that none of the principal officers or board members for the medical marijuana dispensary affiliated with the offsite cultivation location has served as a principal officer or board member for a registered nonprofit medical marijuana dispensary that has had its registration certificate revoked.
  - g. A floor plan showing the location, dimensions of and type of security measures demonstrating that the medical marijuana dispensary offsite cultivation location will meet the definition of enclosed locked facility contained in A.R.S. §36-2801(6).

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3. Prohibited Locations: A medical marijuana dispensary offsite cultivation location is not permitted in the Gateway Overlay Zone, Buffer Overlay Zone or a historic zone.
4. Community Impacts. The Board may not approve a medical marijuana dispensary offsite cultivation location at a location if substantial evidence is presented that locating the cultivation location at the proposed site will negatively impact neighboring property values or if substantial evidence is presented that shows that locating the cultivation location at the proposed site will create an unreasonable risk to the health, safety or general welfare in the area.
5. Development Standards.
  - a. A medical marijuana dispensary offsite cultivation location must be located in a permanent building and may not be located in a trailer, cargo container or motor vehicle.
  - b. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 2,000 feet from all medical marijuana dispensaries measured from the parcel boundary to the parcel boundary;
  - c. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 2,000 feet from all other medical marijuana dispensary offsite cultivation locations measured from the parcel boundaries;
  - d. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 1,000 feet from a public, private, parochial, charter, dramatic, dancing, music, or other similar school or educational or activity facility where children may be enrolled;
  - e. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 1,000 feet from a public, private, parochial, charter school bus stops.
  - f. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 1,000 feet from a childcare center.
  - g. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 1,000 feet from a library or public park.
  - h. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 1,000 feet from a church.
  - i. A medical marijuana dispensary offsite cultivation location shall be setback a minimum of 1,000 feet from a residential substance abuse diagnostic and treatment facility or other drug or alcohol rehabilitation facility.
  - j. A medical marijuana dispensary offsite cultivation location may not have outdoor seating areas.
  - k. The maximum floor area of a medical marijuana dispensary offsite cultivation location is 2,000 square feet.
  - l. The secure storage area for the medical marijuana stored at the medical marijuana dispensary offsite cultivation location shall not exceed 1,000 square feet.
6. Permit Conditions. The Board may include any conditions it finds necessary to conserve and promote the public health, safety, convenience and general welfare. The board must

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include the following permit conditions for issuance of the conditional use permit for a medical marijuana dispensary offsite cultivation location:

- a. An expiration date for the conditional use permit that requires re-application or renewal of the permit after a specified period of time.
  - b. A requirement that the medical marijuana dispensary offsite cultivation location meets security requirements adopted by the Arizona Department of Health Services.
  - c. A requirement that the storage facilities for the medical marijuana stored or grown on site prevent the emission of dust, fumes, vapors or odors into the environment.
  - d. A requirement that the owner secure a certification from the State Fire Marshall or from another acceptable entity responsible for fire safety in the area in which the medical marijuana dispensary offsite cultivation location is to be located stating that the structure complies with all fire code requirements and supply a copy of that certification to the Development Services Department.
  - e. A requirement that the medical marijuana dispensary offsite cultivation location is prohibited from permitting anyone to consume marijuana on the premises.
  - f. A requirement for a reasonable setback from a zoning district other than CB-2, CI-1, CI-2, and CI-3 or any existing, established, residential use in those zones.
  - g. A requirement for a reasonable setback from a zoning district in a city or town other than classifications that permit densities and uses greater than or equal to those permitted CB-2, CI-1, CI-2, and CI-3.
  - h. A requirement that the medical marijuana dispensary offsite cultivation location comply with applicable sections of Title 8 of the Pima County Code.
7. Enforcement. The provisions of this subsection may be enforced through the use of the civil penalty procedure provided for by Section or 18.95.030 or by injunction or other civil proceeding as provided by A.R.S §11-808(H). Notwithstanding any other provision of this code, this subsection shall not be enforced under A.R.S §11-808(C) as a misdemeanor.
8. Fees. The fee for application and hearing is a combination of the existing fees for Conditional Use Permit application filing fee, the site analysis submittal fee and the notice of public hearing fee included in the most current Development Services Department fee schedule.
- F. . Designated Caregiver Cultivation Location: If the Arizona Revised Statutes are amended to allow medical marijuana cultivation by designated caregivers, as long as the law remains in full force and effect, a designated caregiver cultivation location is permitted as a Type III conditional use subject to the following conditions:
1. All conditions and restrictions for Medical Marijuana Dispensary Offsite Cultivation locations except that the Designated Caregiver Cultivation Location cultivation area is limited to 250 square feet.
  2. More than one designated caregiver may co-locate cultivation locations as long as the total cultivation area does not exceed 250 square feet.

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D. G. Racetrack or sports stadium, provided ....

Section 3. This ordinance is effective 31 days after its adoption by the Board only if Proposition 203, in the November 2, 2010 election, the Arizona Medical Marijuana Act, is adopted and effective.

PASSED AND ADOPTED by the Board of Supervisors of Pima County, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**ATTEST:**

**BOARD OF SUPERVISORS**

\_\_\_\_\_  
Clerk, Board of Supervisors

\_\_\_\_\_  
Chairman, Board of Supervisors

**APPROVED AS TO FORM:**

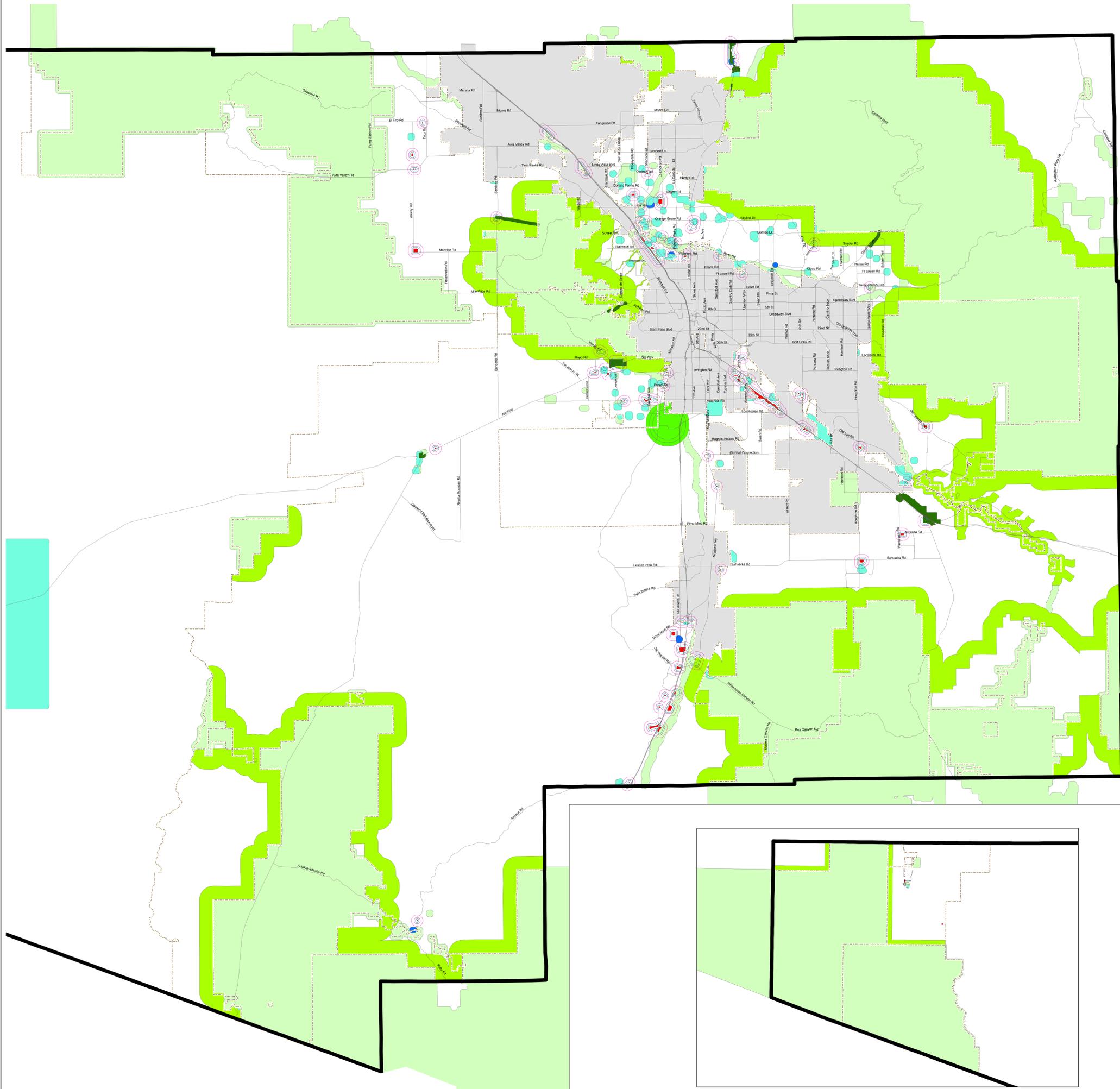
**APPROVED:**

\_\_\_\_\_  
Deputy County Attorney

\_\_\_\_\_  
Executive Secretary  
Planning and Zoning Commission

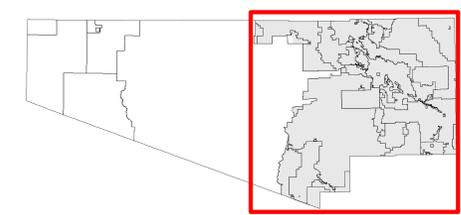
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-  CB-2 Zoning
- CB-2 Multiple Ring Buffer**
-  500 ft
-  1000 ft
-  2000 ft
-  Incorporated Areas
-  Gateway Overlay Zone
-  San Xavier Mission Historic Zone
-  Parks with 1,000 Buffer
-  Schools with 1,000 Buffer
-  Libraries with 1,000 Buffer
-  Administrative Boundary

Pima County Index Map

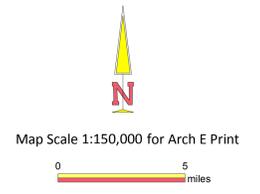


Index Map Scale 1:1,500,000 for Arch E Print

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8/30/2010



PROPOSITION 203



OFFICIAL TITLE

AN INITIATIVE MEASURE

AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 28.1; AMENDING SECTION 43-1201, ARIZONA REVISED STATUTES; RELATING TO THE MEDICAL USE OF MARIJUANA; PROVIDING FOR CONDITIONAL REPEAL.

TEXT OF PROPOSED AMENDMENT

Be it enacted by the people of the state of Arizona:

Section 1. Title.

This act may be cited as the "Arizona Medical Marijuana Act."

Sec. 2. Findings.

The People of the State of Arizona find and declare the following:

A. Marijuana's recorded use as a medicine goes back nearly 5,000 years, and modern medical research has confirmed beneficial uses for marijuana in treating or alleviating the pain, nausea and other symptoms associated with a variety of debilitating medical conditions, including cancer, multiple sclerosis and HIV/AIDS, as found by the National Academy of Sciences' Institute of Medicine in March 1999.

B. Studies published since the 1999 Institute of Medicine report have continued to show the therapeutic value of marijuana in treating a wide array of debilitating medical conditions. These include relief of neuropathic pain caused by multiple sclerosis, HIV/AIDS and other illnesses that often fail to respond to conventional treatments and relief of nausea, vomiting and other side effects of drugs used to treat HIV/AIDS and hepatitis C, increasing the chances of patients continuing on life-saving treatment regimens.

C. Marijuana has many currently accepted medical uses in the United States, having been recommended by thousands of licensed physicians to at least 260,000 patients in the states with medical marijuana laws. Marijuana's medical utility has been recognized by a wide range of medical and public health organizations, including the American Academy of HIV Medicine, American College of Physicians, American Nurses Association, American Public Health Association, Leukemia & Lymphoma Society and many others.

D. Data from the Federal Bureau of Investigation's Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marijuana arrests in the U.S. are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill patients who have a medical need to use marijuana.

E. Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island and Washington have removed state-level criminal penalties for the medical use and cultivation of marijuana. Arizona joins in this effort for the health and welfare of its citizens.

F. States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this act does not put the state of Arizona in violation of federal law.

G. State law should make a distinction between the medical and nonmedical uses of marijuana. Hence, the purpose of this act is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana.

Sec. 3. Title 36, Arizona Revised Statutes, is amended by adding Chapter 28.1 to read:

CHAPTER 28.1

ARIZONA MEDICAL MARIJUANA ACT

36-2801. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ALLOWABLE AMOUNT OF MARIJUANA"

(a) WITH RESPECT TO A QUALIFYING PATIENT, THE "ALLOWABLE AMOUNT OF MARIJUANA" MEANS:

(i) TWO-AND-ONE-HALF OUNCES OF USABLE MARIJUANA; AND

(ii) IF THE QUALIFYING PATIENT'S REGISTRY IDENTIFICATION CARD STATES THAT THE QUALIFYING PATIENT IS AUTHORIZED TO CULTIVATE MARIJUANA, TWELVE MARIJUANA PLANTS CONTAINED IN AN ENCLOSED, LOCKED FACILITY EXCEPT THAT THE PLANTS ARE NOT REQUIRED TO BE IN AN ENCLOSED, LOCKED FACILITY IF THE PLANTS ARE BEING TRANSPORTED BECAUSE THE QUALIFYING PATIENT IS MOVING.

(b) WITH RESPECT TO A DESIGNATED CAREGIVER, THE "ALLOWABLE AMOUNT OF MARIJUANA" FOR EACH PATIENT ASSISTED BY THE DESIGNATED CAREGIVER UNDER THIS CHAPTER MEANS:

(i) TWO-AND-ONE-HALF OUNCES OF USABLE MARIJUANA; AND

(ii) IF THE DESIGNATED CAREGIVER'S REGISTRY IDENTIFICATION CARD PROVIDES THAT THE DESIGNATED CAREGIVER IS AUTHORIZED TO CULTIVATE MARIJUANA, TWELVE MARIJUANA PLANTS CONTAINED IN AN ENCLOSED, LOCKED FACILITY EXCEPT THAT THE PLANTS ARE NOT REQUIRED TO BE IN AN ENCLOSED, LOCKED FACILITY IF THE PLANTS ARE BEING TRANSPORTED BECAUSE THE DESIGNATED CAREGIVER IS MOVING.

(c) MARIJUANA THAT IS INCIDENTAL TO MEDICAL USE, BUT IS NOT USABLE MARIJUANA AS DEFINED IN THIS CHAPTER, SHALL NOT BE COUNTED TOWARD A QUALIFYING PATIENT'S OR DESIGNATED CAREGIVER'S ALLOWABLE AMOUNT OF MARIJUANA.

2. "CARDHOLDER" MEANS A QUALIFYING PATIENT, A DESIGNATED CAREGIVER OR A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT WHO HAS BEEN ISSUED AND POSSESSES A VALID REGISTRY IDENTIFICATION CARD.

3. "DEBILITATING MEDICAL CONDITION" MEANS ONE OR MORE OF THE FOLLOWING:

(a) 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 OR THE TREATMENT OF THESE CONDITIONS.

(b) A CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION OR ITS TREATMENT THAT PRODUCES ONE OR MORE 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.

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- (c) ANY OTHER MEDICAL CONDITION OR ITS TREATMENT ADDED BY THE DEPARTMENT PURSUANT TO SECTION 36-2801.01.
- 4. "DEPARTMENT" MEANS THE ARIZONA DEPARTMENT OF HEALTH SERVICES OR ITS SUCCESSOR AGENCY.
- 5. "DESIGNATED CAREGIVER" MEANS A PERSON WHO:
  - (a) IS AT LEAST TWENTY-ONE YEARS OF AGE.
  - (b) HAS AGREED TO ASSIST WITH A PATIENT'S MEDICAL USE OF MARIJUANA.
  - (c) HAS NOT BEEN CONVICTED OF AN EXCLUDED FELONY OFFENSE.
  - (d) ASSISTS NO MORE THAN FIVE QUALIFYING PATIENTS WITH THE MEDICAL USE OF MARIJUANA.
  - (e) MAY RECEIVE REIMBURSEMENT FOR ACTUAL COSTS INCURRED IN ASSISTING A REGISTERED QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA IF THE REGISTERED DESIGNATED CAREGIVER IS CONNECTED TO THE REGISTERED QUALIFYING PATIENT THROUGH THE DEPARTMENT'S REGISTRATION PROCESS. THE DESIGNATED CAREGIVER MAY NOT BE PAID ANY FEE OR COMPENSATION FOR HIS SERVICE AS A CAREGIVER. PAYMENT FOR COSTS UNDER THIS SUBDIVISION SHALL NOT CONSTITUTE AN OFFENSE UNDER TITLE 13, CHAPTER 34 OR UNDER TITLE 36, CHAPTER 27, ARTICLE 4.
- 6. "ENCLOSED, LOCKED FACILITY" MEANS A CLOSET, ROOM, GREENHOUSE OR OTHER ENCLOSED AREA EQUIPPED WITH LOCKS OR OTHER SECURITY DEVICES THAT PERMIT ACCESS ONLY BY A CARDHOLDER.
- 7. "EXCLUDED FELONY OFFENSE" MEANS:
  - (a) A VIOLENT CRIME AS DEFINED IN SECTION 13-901.03, SUBSECTION B, THAT WAS CLASSIFIED AS A FELONY IN THE JURISDICTION WHERE THE PERSON WAS CONVICTED.
  - (b) A VIOLATION OF A STATE OR FEDERAL CONTROLLED SUBSTANCE LAW THAT WAS CLASSIFIED AS A FELONY IN THE JURISDICTION WHERE THE PERSON WAS CONVICTED BUT DOES NOT INCLUDE:
    - (i) AN OFFENSE FOR WHICH THE SENTENCE, INCLUDING ANY TERM OF PROBATION, INCARCERATION OR SUPERVISED RELEASE, WAS COMPLETED TEN OR MORE YEARS EARLIER.
    - (ii) AN OFFENSE INVOLVING CONDUCT THAT WOULD BE IMMUNE FROM ARREST, PROSECUTION OR PENALTY UNDER SECTION 36-2811 EXCEPT THAT THE CONDUCT OCCURRED BEFORE THE EFFECTIVE DATE OF THIS CHAPTER OR WAS PROSECUTED BY AN AUTHORITY OTHER THAN THE STATE OF ARIZONA.
- 8. "MARIJUANA" MEANS ALL PARTS OF ANY PLANT OF THE GENUS CANNABIS WHETHER GROWING OR NOT, AND THE SEEDS OF SUCH PLANT.
- 9. "MEDICAL USE" MEANS THE ACQUISITION, POSSESSION, CULTIVATION, MANUFACTURE, USE, ADMINISTRATION, DELIVERY, TRANSFER OR TRANSPORTATION OF MARIJUANA OR PARAPHERNALIA RELATING TO THE ADMINISTRATION OF MARIJUANA TO TREAT OR ALLEVIATE A REGISTERED QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE PATIENT'S DEBILITATING MEDICAL CONDITION.
- 10. "NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT" MEANS A PRINCIPAL OFFICER, BOARD MEMBER, EMPLOYEE OR VOLUNTEER OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY WHO IS AT LEAST TWENTY-ONE YEARS OF AGE AND HAS NOT BEEN CONVICTED OF AN EXCLUDED FELONY OFFENSE.
- 11. "NONPROFIT MEDICAL MARIJUANA DISPENSARY" MEANS A NOT-FOR-PROFIT ENTITY THAT ACQUIRES, POSSESSES, CULTIVATES, MANUFACTURES, DELIVERS, TRANSFERS, TRANSPORTS, SUPPLIES, SELLS OR DISPENSES MARIJUANA OR RELATED SUPPLIES AND EDUCATIONAL MATERIALS TO CARDHOLDERS. A NONPROFIT MEDICAL MARIJUANA DISPENSARY MAY RECEIVE PAYMENT FOR ALL EXPENSES INCURRED IN ITS OPERATION.
- 12. "PHYSICIAN" MEANS A DOCTOR OF MEDICINE WHO HOLDS A VALID AND EXISTING LICENSE TO PRACTICE MEDICINE PURSUANT TO TITLE 32, CHAPTER 13 OR ITS SUCCESSOR, A DOCTOR OF OSTEOPATHIC MEDICINE WHO HOLDS A VALID AND EXISTING LICENSE TO PRACTICE OSTEOPATHIC MEDICINE PURSUANT TO TITLE 32, CHAPTER 17 OR ITS SUCCESSOR, A NATUROPATHIC PHYSICIAN WHO HOLDS A VALID AND EXISTING LICENSE TO PRACTICE NATUROPATHIC MEDICINE PURSUANT TO TITLE 32, CHAPTER 14 OR ITS SUCCESSOR OR A HOMEOPATHIC PHYSICIAN WHO HOLDS A VALID AND EXISTING LICENSE TO PRACTICE HOMEOPATHIC MEDICINE PURSUANT TO TITLE 32, CHAPTER 29 OR ITS SUCCESSOR.
- 13. "QUALIFYING PATIENT" MEANS A PERSON WHO HAS BEEN DIAGNOSED BY A PHYSICIAN AS HAVING A DEBILITATING MEDICAL CONDITION.
- 14. "REGISTRY IDENTIFICATION CARD" MEANS A DOCUMENT ISSUED BY THE DEPARTMENT THAT IDENTIFIES A PERSON AS A REGISTERED QUALIFYING PATIENT, REGISTERED DESIGNATED CAREGIVER OR A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
- 15. "USABLE MARIJUANA" MEANS THE DRIED FLOWERS OF THE MARIJUANA PLANT, AND ANY MIXTURE OR PREPARATION THEREOF, BUT DOES NOT INCLUDE THE SEEDS, STALKS AND ROOTS OF THE PLANT AND DOES NOT INCLUDE THE WEIGHT OF ANY NON-MARIJUANA INGREDIENTS COMBINED WITH MARIJUANA AND PREPARED FOR CONSUMPTION AS FOOD OR DRINK.
- 16. "VERIFICATION SYSTEM" MEANS A SECURE, PASSWORD-PROTECTED, WEB-BASED SYSTEM ESTABLISHED AND MAINTAINED BY THE DEPARTMENT THAT IS AVAILABLE TO LAW ENFORCEMENT PERSONNEL AND NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS ON A TWENTY-FOUR HOUR BASIS FOR VERIFICATION OF REGISTRY IDENTIFICATION CARDS.
- 17. "VISITING QUALIFYING PATIENT" MEANS A PERSON:
  - (a) WHO IS NOT A RESIDENT OF ARIZONA OR WHO HAS BEEN A RESIDENT OF ARIZONA LESS THAN THIRTY DAYS.
  - (b) WHO HAS BEEN DIAGNOSED WITH A DEBILITATING MEDICAL CONDITION BY A PERSON WHO IS LICENSED WITH AUTHORITY TO PRESCRIBE DRUGS TO HUMANS IN THE STATE OF THE PERSON'S RESIDENCE OR, IN THE CASE OF A PERSON WHO HAS BEEN A RESIDENT OF ARIZONA LESS THAN THIRTY DAYS, THE STATE OF THE PERSON'S FORMER RESIDENCE.
- 18. "WRITTEN CERTIFICATION" MEANS A DOCUMENT DATED AND SIGNED BY A PHYSICIAN, STATING THAT IN THE PHYSICIAN'S PROFESSIONAL OPINION THE PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF MARIJUANA TO TREAT OR ALLEVIATE THE PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE DEBILITATING MEDICAL CONDITION. THE PHYSICIAN MUST:
  - (a) SPECIFY THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION IN THE WRITTEN CERTIFICATION.
  - (b) SIGN AND DATE THE WRITTEN CERTIFICATION ONLY IN THE COURSE OF A PHYSICIAN-PATIENT RELATIONSHIP AFTER THE PHYSICIAN HAS COMPLETED A FULL ASSESSMENT OF THE QUALIFYING PATIENT'S MEDICAL HISTORY.

**36-2801.01. Addition of debilitating medical conditions.**

THE PUBLIC MAY PETITION THE DEPARTMENT TO ADD DEBILITATING MEDICAL CONDITIONS OR TREATMENTS TO THE LIST OF DEBILITATING MEDICAL CONDITIONS SET FORTH IN SECTION 36-2801, PARAGRAPH -3-. THE DEPARTMENT SHALL CONSIDER PETITIONS IN THE MANNER REQUIRED BY DEPARTMENT RULE, INCLUDING PUBLIC NOTICE AND HEARING. THE DEPARTMENT SHALL APPROVE OR DENY A PETITION WITHIN ONE-HUNDRED-EIGHTY DAYS OF ITS SUBMISSION. THE APPROVAL OR DENIAL OF A PETITION IS A FINAL DECISION OF THE DEPARTMENT SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. JURISDICTION AND VENUE ARE VESTED IN THE SUPERIOR COURT.

**36-2802. Arizona Medical Marijuana Act: limitations**

THIS CHAPTER DOES NOT AUTHORIZE ANY PERSON TO ENGAGE IN, AND DOES NOT PREVENT THE IMPOSITION OF ANY CIVIL, CRIMINAL OR OTHER PENALTIES FOR ENGAGING IN, THE FOLLOWING CONDUCT:

- A. UNDERTAKING ANY TASK UNDER THE INFLUENCE OF MARIJUANA THAT WOULD CONSTITUTE NEGLIGENCE OR PROFESSIONAL MALPRACTICE.
- B. POSSESSING OR ENGAGING IN THE MEDICAL USE OF MARIJUANA:
  1. ON A SCHOOL BUS.
  2. ON THE GROUNDS OF ANY PRESCHOOL OR PRIMARY OR SECONDARY SCHOOL.
  3. IN ANY CORRECTIONAL FACILITY.
- C. SMOKING MARIJUANA:
  1. ON ANY FORM OF PUBLIC TRANSPORTATION.
  2. IN ANY PUBLIC PLACE.
- D. OPERATING, NAVIGATING OR BEING IN ACTUAL PHYSICAL CONTROL OF ANY MOTOR VEHICLE, AIRCRAFT OR MOTORBOAT WHILE UNDER THE INFLUENCE OF MARIJUANA, EXCEPT THAT A REGISTERED QUALIFYING PATIENT SHALL NOT BE CONSIDERED TO BE UNDER THE INFLUENCE OF MARIJUANA SOLELY BECAUSE OF THE PRESENCE OF METABOLITES OR COMPONENTS OF MARIJUANA THAT APPEAR IN INSUFFICIENT CONCENTRATION TO CAUSE IMPAIRMENT.
- E. USING MARIJUANA EXCEPT AS AUTHORIZED UNDER THIS CHAPTER.

**36-2803. Rulemaking**

A. NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS CHAPTER, THE DEPARTMENT SHALL ADOPT RULES:

1. GOVERNING THE MANNER IN WHICH THE DEPARTMENT SHALL CONSIDER PETITIONS FROM THE PUBLIC TO ADD DEBILITATING MEDICAL CONDITIONS OR TREATMENTS TO THE LIST OF DEBILITATING MEDICAL CONDITIONS SET FORTH IN SECTION 36-2801, PARAGRAPH 3, INCLUDING PUBLIC NOTICE OF, AND AN OPPORTUNITY TO COMMENT IN A PUBLIC HEARING UPON, PETITIONS.
2. ESTABLISHING THE FORM AND CONTENT OF REGISTRATION AND RENEWAL APPLICATIONS SUBMITTED UNDER THIS CHAPTER.
3. GOVERNING THE MANNER IN WHICH IT SHALL CONSIDER APPLICATIONS FOR AND RENEWALS OF REGISTRY IDENTIFICATION CARDS.
4. GOVERNING NONPROFIT MEDICAL MARIJUANA DISPENSARIES, FOR THE PURPOSE OF PROTECTING AGAINST DIVERSION AND THEFT WITHOUT IMPOSING AN UNDUE BURDEN ON NONPROFIT MEDICAL MARIJUANA DISPENSARIES OR COMPROMISING THE CONFIDENTIALITY OF CARDHOLDERS, INCLUDING:
  - (a) THE MANNER IN WHICH THE DEPARTMENT SHALL CONSIDER APPLICATIONS FOR AND RENEWALS OF REGISTRATION CERTIFICATES.
  - (b) MINIMUM OVERSIGHT REQUIREMENTS FOR NONPROFIT MEDICAL MARIJUANA DISPENSARIES.
  - (c) MINIMUM RECORDKEEPING REQUIREMENTS FOR NONPROFIT MEDICAL MARIJUANA DISPENSARIES.
  - (d) MINIMUM SECURITY REQUIREMENTS FOR NONPROFIT MEDICAL MARIJUANA DISPENSARIES, INCLUDING REQUIREMENTS FOR PROTECTION OF EACH REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY LOCATION BY A FULLY OPERATIONAL SECURITY ALARM SYSTEM.
  - (e) PROCEDURES FOR SUSPENDING OR REVOKING THE REGISTRATION CERTIFICATE OF NONPROFIT MEDICAL MARIJUANA DISPENSARIES THAT VIOLATE THE PROVISIONS OF THIS CHAPTER OR THE RULES ADOPTED PURSUANT TO THIS SECTION.
5. ESTABLISHING APPLICATION AND RENEWAL FEES FOR REGISTRY IDENTIFICATION CARDS AND NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATES, ACCORDING TO THE FOLLOWING:
  - (a) THE TOTAL AMOUNT OF ALL FEES SHALL GENERATE REVENUES SUFFICIENT TO IMPLEMENT AND ADMINISTER THIS CHAPTER EXCEPT THAT FEE REVENUE MAY BE OFFSET OR SUPPLEMENTED BY PRIVATE DONATIONS.
  - (b) NONPROFIT MEDICAL MARIJUANA DISPENSARY APPLICATION FEES MAY NOT EXCEED \$5,000.
  - (c) NONPROFIT MEDICAL MARIJUANA DISPENSARY RENEWAL FEES MAY NOT EXCEED \$1,000.
  - (d) THE TOTAL AMOUNT OF REVENUE FROM NONPROFIT MEDICAL MARIJUANA DISPENSARY APPLICATION AND RENEWAL FEES AND REGISTRY IDENTIFICATION CARD FEES FOR NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS SHALL BE SUFFICIENT TO IMPLEMENT AND ADMINISTER THE NONPROFIT MEDICAL MARIJUANA DISPENSARY PROVISIONS OF THIS CHAPTER, INCLUDING THE VERIFICATION SYSTEM, EXCEPT THAT THE FEE REVENUE MAY BE OFFSET OR SUPPLEMENTED BY PRIVATE DONATIONS.
  - (e) THE DEPARTMENT MAY ESTABLISH A SLIDING SCALE OF PATIENT APPLICATION AND RENEWAL FEES BASED UPON A QUALIFYING PATIENT'S HOUSEHOLD INCOME.
  - (f) THE DEPARTMENT MAY CONSIDER PRIVATE DONATIONS UNDER SECTION 36-2817 TO REDUCE APPLICATION AND RENEWAL FEES.

B. THE DEPARTMENT IS AUTHORIZED TO ADOPT THE RULES SET FORTH IN SUBSECTION A AND SHALL ADOPT THOSE RULES PURSUANT TO TITLE 41, CHAPTER 6.

**36-2804. Registration and certification of nonprofit medical marijuana dispensaries**

- A. NONPROFIT MEDICAL MARIJUANA DISPENSARIES SHALL REGISTER WITH THE DEPARTMENT.
- B. NOT LATER THAN NINETY DAYS AFTER RECEIVING AN APPLICATION FOR A NONPROFIT MEDICAL MARIJUANA DISPENSARY, THE DEPARTMENT SHALL REGISTER THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AND ISSUE A REGISTRATION CERTIFICATE AND A RANDOM 20-DIGIT ALPHANUMERIC IDENTIFICATION NUMBER IF:
  1. THE PROSPECTIVE NONPROFIT MEDICAL MARIJUANA DISPENSARY HAS SUBMITTED THE FOLLOWING:
    - (a) THE APPLICATION FEE.
    - (b) AN APPLICATION, INCLUDING:
      - (i) THE LEGAL NAME OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY.
      - (ii) THE PHYSICAL ADDRESS OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AND THE PHYSICAL ADDRESS OF ONE ADDITIONAL LOCATION, IF ANY, WHERE MARIJUANA WILL BE CULTIVATED, NEITHER OF WHICH MAY BE WITHIN FIVE HUNDRED FEET OF A PUBLIC OR PRIVATE SCHOOL EXISTING BEFORE THE DATE OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY APPLICATION.
      - (iii) THE NAME, ADDRESS AND DATE OF BIRTH OF EACH PRINCIPAL OFFICER AND BOARD MEMBER OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY.
      - (iv) THE NAME, ADDRESS AND DATE OF BIRTH OF EACH NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
    - (c) OPERATING PROCEDURES CONSISTENT WITH DEPARTMENT RULES FOR OVERSIGHT OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY, INCLUDING PROCEDURES TO ENSURE ACCURATE RECORD-KEEPING AND ADEQUATE SECURITY MEASURES.
    - (d) IF THE CITY, TOWN OR COUNTY IN WHICH THE NONPROFIT MEDICAL MARIJUANA DISPENSARY WOULD BE LOCATED HAS ENACTED ZONING RESTRICTIONS, A SWORN STATEMENT CERTIFYING THAT THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IS IN COMPLIANCE WITH THE RESTRICTIONS.
  2. NONE OF THE PRINCIPAL OFFICERS OR BOARD MEMBERS HAS BEEN CONVICTED OF AN EXCLUDED FELONY OFFENSE.

- 3. NONE OF THE PRINCIPAL OFFICERS OR BOARD MEMBERS HAS SERVED AS A PRINCIPAL OFFICER OR BOARD MEMBER FOR A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT HAS HAD ITS REGISTRATION CERTIFICATE REVOKED.
- 4. NONE OF THE PRINCIPAL OFFICERS OR BOARD MEMBERS IS UNDER TWENTY-ONE YEARS OF AGE.
- C. THE DEPARTMENT MAY NOT ISSUE MORE THAN ONE NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATE FOR EVERY TEN PHARMACIES THAT HAVE REGISTERED UNDER SECTION 32-1929, HAVE OBTAINED A PHARMACY PERMIT FROM THE ARIZONA BOARD OF PHARMACY AND OPERATE WITHIN THE STATE EXCEPT THAT THE DEPARTMENT MAY ISSUE NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATES IN EXCESS OF THIS LIMIT IF NECESSARY TO ENSURE THAT THE DEPARTMENT ISSUES AT LEAST ONE NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATE IN EACH COUNTY IN WHICH AN APPLICATION HAS BEEN APPROVED.
- D. THE DEPARTMENT MAY CONDUCT A CRIMINAL RECORDS CHECK IN ORDER TO CARRY OUT THIS SECTION.
- 36-2804.01. Registration of nonprofit medical marijuana dispensary agents; notices; civil penalty; classification**
  - A. A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT SHALL BE REGISTERED WITH THE DEPARTMENT BEFORE VOLUNTEERING OR WORKING AT A MEDICAL MARIJUANA DISPENSARY.
  - B. A NONPROFIT MEDICAL MARIJUANA DISPENSARY MAY APPLY TO THE DEPARTMENT FOR A REGISTRY IDENTIFICATION CARD FOR A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT BY SUBMITTING:
    - 1. THE NAME, ADDRESS AND DATE OF BIRTH OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
    - 2. A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT APPLICATION.
    - 3. A STATEMENT SIGNED BY THE PROSPECTIVE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT PLEDGING NOT TO DIVERT MARIJUANA TO ANYONE WHO IS NOT ALLOWED TO POSSESS MARIJUANA PURSUANT TO THIS CHAPTER.
    - 4. THE APPLICATION FEE.
  - C. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL NOTIFY THE DEPARTMENT WITHIN TEN DAYS AFTER A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT CEASES TO BE EMPLOYED BY OR VOLUNTEER AT THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY.
  - D. NO PERSON WHO HAS BEEN CONVICTED OF AN EXCLUDED FELONY OFFENSE MAY BE A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
  - E. THE DEPARTMENT MAY CONDUCT A CRIMINAL RECORDS CHECK IN ORDER TO CARRY OUT THIS SECTION.
- 36-2804.02. Registration of qualifying patients and designated caregivers**
  - A. A QUALIFYING PATIENT MAY APPLY TO THE DEPARTMENT FOR A REGISTRY IDENTIFICATION CARD BY SUBMITTING:
    - 1. WRITTEN CERTIFICATION ISSUED BY A PHYSICIAN WITHIN THE NINETY DAYS IMMEDIATELY PRECEDING THE DATE OF APPLICATION.
    - 2. THE APPLICATION FEE.
    - 3. AN APPLICATION, INCLUDING:
      - (a) NAME, MAILING ADDRESS, RESIDENCE ADDRESS AND DATE OF BIRTH OF THE QUALIFYING PATIENT EXCEPT THAT IF THE APPLICANT IS HOMELESS NO ADDRESS IS REQUIRED.
      - (b) NAME, ADDRESS AND TELEPHONE NUMBER OF THE QUALIFYING PATIENT'S PHYSICIAN.
      - (c) NAME, ADDRESS AND DATE OF BIRTH OF THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER, IF ANY.
      - (d) A STATEMENT SIGNED BY THE QUALIFYING PATIENT PLEDGING NOT TO DIVERT MARIJUANA TO ANYONE WHO IS NOT ALLOWED TO POSSESS MARIJUANA PURSUANT TO THIS CHAPTER.
      - (e) A SIGNED STATEMENT FROM THE DESIGNATED CAREGIVER, IF ANY, AGREEING TO BE THE PATIENT'S DESIGNATED CAREGIVER AND PLEDGING NOT TO DIVERT MARIJUANA TO ANYONE WHO IS NOT ALLOWED TO POSSESS MARIJUANA PURSUANT TO THIS CHAPTER.
      - (f) A DESIGNATION AS TO WHO WILL BE ALLOWED TO CULTIVATE MARIJUANA PLANTS FOR THE QUALIFYING PATIENT'S MEDICAL USE IF A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IS NOT OPERATING WITHIN TWENTY-FIVE MILES OF THE QUALIFYING PATIENT'S HOME.
  - B. THE APPLICATION FOR A QUALIFYING PATIENT'S REGISTRY IDENTIFICATION CARD SHALL ASK WHETHER THE PATIENT WOULD LIKE THE DEPARTMENT TO NOTIFY HIM OF ANY CLINICAL STUDIES NEEDING HUMAN SUBJECTS FOR RESEARCH ON THE MEDICAL USE OF MARIJUANA. THE DEPARTMENT SHALL NOTIFY INTERESTED PATIENTS IF IT IS NOTIFIED OF STUDIES THAT WILL BE CONDUCTED IN THE UNITED STATES.
- 36-2804.03. Issuance of registry identification cards**
  - A. EXCEPT AS PROVIDED IN SUBSECTION B AND IN SECTION 36-2804.05, THE DEPARTMENT SHALL:
    - 1. VERIFY THE INFORMATION CONTAINED IN AN APPLICATION OR RENEWAL SUBMITTED PURSUANT TO THIS CHAPTER AND APPROVE OR DENY AN APPLICATION OR RENEWAL WITHIN TEN DAYS OF RECEIVING A COMPLETED APPLICATION OR RENEWAL.
    - 2. ISSUE A REGISTRY IDENTIFICATION CARD TO A QUALIFYING PATIENT AND HIS DESIGNATED CAREGIVER, IF ANY, WITHIN FIVE DAYS OF APPROVING THE APPLICATION OR RENEWAL. A DESIGNATED CAREGIVER MUST HAVE A REGISTRY IDENTIFICATION CARD FOR EACH OF HIS QUALIFYING PATIENTS.
    - 3. ISSUE EACH NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT A REGISTRY IDENTIFICATION CARD AND LOG-IN INFORMATION FOR THE VERIFICATION SYSTEM WITHIN FIVE DAYS OF APPROVING THE APPLICATION OR RENEWAL.
  - B. THE DEPARTMENT MAY NOT ISSUE A REGISTRY IDENTIFICATION CARD TO A QUALIFYING PATIENT WHO IS UNDER THE AGE OF EIGHTEEN UNLESS:
    - 1. THE QUALIFYING PATIENT'S PHYSICIAN HAS EXPLAINED THE POTENTIAL RISKS AND BENEFITS OF THE MEDICAL USE OF MARIJUANA TO THE CUSTODIAL PARENT OR LEGAL GUARDIAN RESPONSIBLE FOR HEALTH CARE DECISIONS FOR THE QUALIFYING PATIENT.
    - 2. A CUSTODIAL PARENT OR LEGAL GUARDIAN RESPONSIBLE FOR HEALTH CARE DECISIONS FOR THE QUALIFYING PATIENT SUBMITS A WRITTEN CERTIFICATION FROM TWO PHYSICIANS.
    - 3. THE CUSTODIAL PARENT OR LEGAL GUARDIAN WITH RESPONSIBILITY FOR HEALTH CARE DECISIONS FOR THE QUALIFYING PATIENT CONSENTS IN WRITING TO:
      - (a) ALLOW THE QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA.
      - (b) SERVE AS THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER.
      - (c) CONTROL THE ACQUISITION OF THE MARIJUANA, THE DOSAGE AND THE FREQUENCY OF THE MEDICAL USE OF MARIJUANA BY THE QUALIFYING PATIENT.
  - C. A REGISTRY IDENTIFICATION CARD, OR ITS EQUIVALENT, THAT IS ISSUED UNDER THE LAWS OF ANOTHER STATE, DISTRICT, TERRITORY, COMMONWEALTH OR INSULAR POSSESSION OF THE UNITED STATES THAT ALLOWS A VISITING QUALIFYING PATIENT TO POSSESS OR USE MARIJUANA FOR MEDICAL PURPOSES IN THE JURISDICTION OF ISSUANCE HAS THE SAME FORCE AND EFFECT WHEN HELD BY A VISITING QUALIFYING PATIENT AS A REGISTRY IDENTIFICATION CARD ISSUED BY THE DEPARTMENT,

EXCEPT THAT A VISITING QUALIFYING PATIENT IS NOT AUTHORIZED TO OBTAIN MARIJUANA FROM A NONPROFIT MEDICAL MARIJUANA DISPENSARY.

**36-2804.04. Registry identification cards**

A. REGISTRY IDENTIFICATION CARDS FOR QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS SHALL CONTAIN ALL OF THE FOLLOWING:

1. NAME, ADDRESS AND DATE OF BIRTH OF THE CARDHOLDER.
2. A STATEMENT OF WHETHER THE CARDHOLDER IS A QUALIFYING PATIENT OR A DESIGNATED CAREGIVER.
3. THE DATE OF ISSUANCE AND EXPIRATION DATE OF THE REGISTRY IDENTIFICATION CARD.
4. A RANDOM 20-DIGIT ALPHANUMERIC IDENTIFICATION NUMBER, CONTAINING AT LEAST FOUR NUMBERS AND AT LEAST FOUR LETTERS, THAT IS UNIQUE TO THE CARDHOLDER.
5. IF THE CARDHOLDER IS A DESIGNATED CAREGIVER, THE RANDOM IDENTIFICATION NUMBER OF THE REGISTERED QUALIFYING PATIENT THE DESIGNATED CAREGIVER IS ASSISTING.
6. A PHOTOGRAPH OF THE CARDHOLDER.
7. A CLEAR INDICATION OF WHETHER THE CARDHOLDER HAS BEEN AUTHORIZED BY THIS CHAPTER TO CULTIVATE MARIJUANA PLANTS FOR THE QUALIFYING PATIENT'S MEDICAL USE.

B. REGISTRY IDENTIFICATION CARDS FOR NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS SHALL CONTAIN THE FOLLOWING:

1. THE NAME, ADDRESS AND DATE OF BIRTH OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
2. A STATEMENT THAT THE CARDHOLDER IS A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
3. THE LEGAL NAME OF THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY WITH WHICH THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT IS AFFILIATED.
4. A RANDOM 20-DIGIT ALPHANUMERIC IDENTIFICATION NUMBER THAT IS UNIQUE TO THE CARDHOLDER.
5. THE DATE OF ISSUANCE AND EXPIRATION DATE OF THE REGISTRY IDENTIFICATION CARD.
6. A PHOTOGRAPH, IF THE DEPARTMENT DECIDES TO REQUIRE ONE.
7. IF THE REGISTRY IDENTIFICATION CARD OF EITHER A QUALIFYING PATIENT OR THE PATIENT'S DESIGNATED CAREGIVER DOES NOT STATE THAT THE CARDHOLDER IS AUTHORIZED TO CULTIVATE MARIJUANA PLANTS, THEN THE DEPARTMENT MUST GIVE WRITTEN NOTICE TO THE REGISTERED QUALIFYING PATIENT, WHEN THE QUALIFYING PATIENT'S REGISTRY IDENTIFICATION CARD IS ISSUED, OF THE NAME AND ADDRESS OF ALL REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES.

**36-2804.05. Denial of registry identification card**

A. THE DEPARTMENT MAY DENY AN APPLICATION OR RENEWAL OF A QUALIFYING PATIENT'S REGISTRY IDENTIFICATION CARD ONLY IF THE APPLICANT:

1. DOES NOT MEET THE REQUIREMENTS OF SECTION 36-2801, PARAGRAPH 13.
2. DOES NOT PROVIDE THE INFORMATION REQUIRED.
3. PREVIOUSLY HAD A REGISTRY IDENTIFICATION CARD REVOKED FOR VIOLATING THIS CHAPTER.
4. PROVIDES FALSE INFORMATION.

B. THE DEPARTMENT MAY DENY AN APPLICATION OR RENEWAL OF A DESIGNATED CAREGIVER'S REGISTRY IDENTIFICATION CARD IF THE APPLICANT:

1. DOES NOT MEET THE REQUIREMENTS OF SECTION 36-2801, PARAGRAPH 5.
2. DOES NOT PROVIDE THE INFORMATION REQUIRED.
3. PREVIOUSLY HAD A REGISTRY IDENTIFICATION CARD REVOKED FOR VIOLATING THIS CHAPTER.
4. PROVIDES FALSE INFORMATION.

C. THE DEPARTMENT MAY DENY A REGISTRY IDENTIFICATION CARD TO A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT IF:

1. THE AGENT APPLICANT DOES NOT MEET THE REQUIREMENTS OF SECTION 36-2801(10).
2. THE APPLICANT OR DISPENSARY DID NOT PROVIDE THE REQUIRED INFORMATION.
3. PREVIOUSLY HAD A REGISTRY IDENTIFICATION CARD REVOKED FOR VIOLATING THIS CHAPTER.
4. THE APPLICANT OR DISPENSARY PROVIDES FALSE INFORMATION.

D. THE DEPARTMENT MAY CONDUCT A CRIMINAL RECORDS CHECK OF EACH DESIGNATED CAREGIVER OR NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT APPLICANT TO CARRY OUT THIS SECTION.

E. THE DEPARTMENT SHALL GIVE WRITTEN NOTICE TO THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY OF THE REASON FOR DENYING A REGISTRY IDENTIFICATION CARD TO A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.

F. THE DEPARTMENT SHALL GIVE WRITTEN NOTICE TO THE QUALIFYING PATIENT OF THE REASON FOR DENYING A REGISTRY IDENTIFICATION CARD TO THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER.

G. DENIAL OF AN APPLICATION OR RENEWAL IS CONSIDERED A FINAL DECISION OF THE DEPARTMENT SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. JURISDICTION AND VENUE FOR JUDICIAL REVIEW ARE VESTED IN THE SUPERIOR COURT.

**36-2804.06. Expiration and renewal of registry identification cards and registration certificates: replacement**

A. ALL REGISTRY IDENTIFICATION CARDS AND REGISTRATION CERTIFICATES EXPIRE ONE YEAR AFTER DATE OF ISSUE.

B. A REGISTRY IDENTIFICATION CARD OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT SHALL BE CANCELLED AND HIS ACCESS TO THE VERIFICATION SYSTEM SHALL BE DEACTIVATED UPON NOTIFICATION TO THE DEPARTMENT BY A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT IS NO LONGER EMPLOYED BY OR NO LONGER VOLUNTEERS AT THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY.

C. A RENEWAL NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATE SHALL BE ISSUED WITHIN TEN DAYS OF RECEIPT OF THE PRESCRIBED RENEWAL APPLICATION AND RENEWAL FEE FROM A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IF ITS REGISTRATION CERTIFICATE IS NOT UNDER SUSPENSION AND HAS NOT BEEN REVOKED.

D. IF A CARDHOLDER LOSES HIS REGISTRY IDENTIFICATION CARD, HE SHALL PROMPTLY NOTIFY THE DEPARTMENT. WITHIN FIVE DAYS OF THE NOTIFICATION, AND UPON PAYMENT OF A TEN DOLLAR FEE, THE DEPARTMENT SHALL ISSUE A NEW REGISTRY IDENTIFICATION CARD WITH A NEW RANDOM IDENTIFICATION NUMBER TO THE CARDHOLDER AND, IF THE CARDHOLDER IS A REGISTERED QUALIFYING PATIENT, TO THE REGISTERED QUALIFYING PATIENT'S REGISTERED DESIGNATED CAREGIVER, IF ANY.

**36-2805. Facility restrictions**

A. ANY NURSING CARE INSTITUTION, HOSPICE, ASSISTED LIVING CENTER, ASSISTED LIVING FACILITY, ASSISTED LIVING HOME, RESIDENTIAL CARE INSTITUTION, ADULT DAY HEALTH CARE FACILITY OR ADULT FOSTER CARE HOME LICENSED UNDER TITLE 36, CHAPTER 4, MAY ADOPT REASONABLE RESTRICTIONS ON THE USE OF MARIJUANA BY THEIR RESIDENTS OR PERSONS RECEIVING INPATIENT SERVICES, INCLUDING:

1. THAT THE FACILITY WILL NOT STORE OR MAINTAIN THE PATIENT'S SUPPLY OF MARIJUANA.
2. THAT THE FACILITY, CAREGIVERS OR HOSPICE AGENCIES SERVING THE FACILITY'S RESIDENTS ARE NOT RESPONSIBLE FOR PROVIDING THE MARIJUANA FOR QUALIFYING PATIENTS.

- 3. THAT MARIJUANA BE CONSUMED BY A METHOD OTHER THAN SMOKING.
- 4. THAT MARIJUANA BE CONSUMED ONLY IN A PLACE SPECIFIED BY THE FACILITY.
- B. NOTHING IN THIS SECTION REQUIRES A FACILITY LISTED IN SUBSECTION A TO ADOPT RESTRICTIONS ON THE MEDICAL USE OF MARIJUANA.
- C. A FACILITY LISTED IN SUBSECTION A MAY NOT UNREASONABLY LIMIT A REGISTERED QUALIFYING PATIENT'S ACCESS TO OR USE OF MARIJUANA AUTHORIZED UNDER THIS CHAPTER UNLESS FAILING TO DO SO WOULD CAUSE FACILITY TO LOSE A MONETARY OR LICENSING-RELATED BENEFIT UNDER FEDERAL LAW OR REGULATIONS.

**36-2806. Registered nonprofit medical marijuana dispensaries: requirements**

- A. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL BE OPERATED ON A NOT-FOR-PROFIT BASIS. THE BYLAWS OF A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL CONTAIN SUCH PROVISIONS RELATIVE TO THE DISPOSITION OF REVENUES AND RECEIPTS TO ESTABLISH AND MAINTAIN ITS NONPROFIT CHARACTER. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY NEED NOT BE RECOGNIZED AS TAX-EXEMPT BY THE INTERNAL REVENUE SERVICE AND IS NOT REQUIRED TO INCORPORATE PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 1.
- B. THE OPERATING DOCUMENTS OF A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL INCLUDE PROCEDURES FOR THE OVERSIGHT OF THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY AND PROCEDURES TO ENSURE ACCURATE RECORDKEEPING.
- C. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL HAVE A SINGLE SECURE ENTRANCE AND SHALL IMPLEMENT APPROPRIATE SECURITY MEASURES TO DETER AND PREVENT THE THEFT OF MARIJUANA AND UNAUTHORIZED ENTRANCE INTO AREAS CONTAINING MARIJUANA.
- D. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IS PROHIBITED FROM ACQUIRING, POSSESSING, CULTIVATING, MANUFACTURING, DELIVERING, TRANSFERRING, TRANSPORTING, SUPPLYING OR DISPENSING MARIJUANA FOR ANY PURPOSE EXCEPT TO ASSIST REGISTERED QUALIFYING PATIENTS WITH THE MEDICAL USE OF MARIJUANA DIRECTLY OR THROUGH THE REGISTERED QUALIFYING PATIENTS' DESIGNATED CAREGIVERS.
- E. ALL CULTIVATION OF MARIJUANA MUST TAKE PLACE IN AN ENCLOSED, LOCKED FACILITY AT A PHYSICAL ADDRESS PROVIDED TO THE DEPARTMENT DURING THE REGISTRATION PROCESS, WHICH CAN ONLY BE ACCESSED BY REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS ASSOCIATED IN THE REGISTRY WITH THE NONPROFIT MEDICAL MARIJUANA DISPENSARY.
- F. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY MAY ACQUIRE USABLE MARIJUANA OR MARIJUANA PLANTS FROM A REGISTERED QUALIFYING PATIENT OR A REGISTERED DESIGNATED CAREGIVER ONLY IF THE REGISTERED QUALIFYING PATIENT OR REGISTERED DESIGNATED CAREGIVER RECEIVES NO COMPENSATION FOR THE MARIJUANA.
- G. A NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL NOT PERMIT ANY PERSON TO CONSUME MARIJUANA ON THE PROPERTY OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY.
- H. REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES ARE SUBJECT TO REASONABLE INSPECTION BY THE DEPARTMENT. THE DEPARTMENT SHALL GIVE REASONABLE NOTICE OF AN INSPECTION UNDER THIS SUBSECTION.

**36-2806.01. Dispensary locations**

CITIES, TOWNS AND COUNTIES MAY ENACT REASONABLE ZONING REGULATIONS THAT LIMIT THE USE OF LAND FOR REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES TO SPECIFIED AREAS IN THE MANNER PROVIDED IN TITLE 9, CHAPTER 4, ARTICLE 6.1, AND TITLE 11, CHAPTER 6, ARTICLE 2.

**36-2806.02. Dispensing marijuana for medical use**

- A. BEFORE MARIJUANA MAY BE DISPENSED TO A REGISTERED DESIGNATED CAREGIVER OR A REGISTERED QUALIFYING PATIENT, A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT MUST ACCESS THE VERIFICATION SYSTEM AND DETERMINE FOR THE REGISTERED QUALIFYING PATIENT FOR WHOM THE MARIJUANA IS INTENDED AND ANY REGISTERED DESIGNATED CAREGIVER TRANSPORTING THE MARIJUANA TO THE PATIENT, THAT:
  - 1. THE REGISTRY IDENTIFICATION CARD PRESENTED TO THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IS VALID.
  - 2. EACH PERSON PRESENTING A REGISTRY IDENTIFICATION CARD IS THE PERSON IDENTIFIED ON THE REGISTRY IDENTIFICATION CARD PRESENTED TO THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
  - 3. THE AMOUNT TO BE DISPENSED WOULD NOT CAUSE THE REGISTERED QUALIFYING PATIENT TO EXCEED THE LIMIT ON OBTAINING NO MORE THAN TWO-AND-ONE-HALF OUNCES OF MARIJUANA DURING ANY FOURTEEN-DAY PERIOD.
- B. AFTER MAKING THE DETERMINATIONS REQUIRED IN SUBSECTION A, BUT BEFORE DISPENSING MARIJUANA TO A REGISTERED QUALIFYING PATIENT OR A REGISTERED DESIGNATED CAREGIVER ON A REGISTERED QUALIFYING PATIENT'S BEHALF, A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT MUST ENTER THE FOLLOWING INFORMATION IN THE VERIFICATION SYSTEM:
  - 1. HOW MUCH MARIJUANA IS BEING DISPENSED TO THE REGISTERED QUALIFYING PATIENT.
  - 2. WHETHER IT WAS DISPENSED DIRECTLY TO THE REGISTERED QUALIFYING PATIENT OR TO THE REGISTERED QUALIFYING PATIENT'S REGISTERED DESIGNATED CAREGIVER.
  - 3. THE DATE AND TIME THE MARIJUANA WAS DISPENSED.
  - 4. THE REGISTRY IDENTIFICATION CARD NUMBER OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AND OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT WHO DISPENSED THE MARIJUANA.

**36-2807. Verification system**

- A. WITHIN ONE HUNDRED TWENTY DAYS OF THE EFFECTIVE DATE OF THIS CHAPTER, THE DEPARTMENT SHALL ESTABLISH A SECURE, PASSWORD-PROTECTED, WEB-BASED VERIFICATION SYSTEM FOR USE ON A TWENTY-FOUR HOUR BASIS BY LAW ENFORCEMENT PERSONNEL AND NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS TO VERIFY REGISTRY IDENTIFICATION CARDS.
- B. THE VERIFICATION SYSTEM MUST ALLOW LAW ENFORCEMENT PERSONNEL AND NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS TO ENTER A REGISTRY IDENTIFICATION NUMBER AND VERIFY WHETHER THE NUMBER CORRESPONDS WITH A CURRENT, VALID IDENTIFICATION CARD.
- C. THE SYSTEM SHALL DISCLOSE:
  - 1. THE NAME OF THE CARDHOLDER, BUT MUST NOT DISCLOSE THE CARDHOLDER'S ADDRESS.
  - 2. THE AMOUNT OF MARIJUANA THAT EACH REGISTERED QUALIFYING PATIENT RECEIVED FROM NONPROFIT MEDICAL MARIJUANA DISPENSARIES DURING THE PAST SIXTY DAYS.
- D. THE VERIFICATION SYSTEM MUST INCLUDE THE FOLLOWING DATA SECURITY FEATURES:
  - 1. ANY TIME AN AUTHORIZED USER ENTERS FIVE INVALID REGISTRY IDENTIFICATION NUMBERS WITHIN FIVE MINUTES, THAT USER CANNOT LOG IN TO THE SYSTEM AGAIN FOR TEN MINUTES.
  - 2. A USERS LOG-IN INFORMATION SHALL BE DEACTIVATED AFTER 5 INCORRECT LOGIN ATTEMPTS UNTIL THE AUTHORIZED USER CONTACTS THE DEPARTMENT AND VERIFIES HIS IDENTITY.
  - 3. THE SERVER MUST REJECT ANY LOG-IN REQUEST THAT IS NOT OVER AN ENCRYPTED CONNECTION.

**36-2808. Notifications to department; civil penalty**

- A. A REGISTERED QUALIFYING PATIENT SHALL NOTIFY THE DEPARTMENT WITHIN TEN DAYS OF ANY CHANGE IN THE REGISTERED QUALIFYING PATIENT'S NAME, ADDRESS, DESIGNATED CAREGIVER OR PREFERENCE REGARDING WHO MAY CULTIVATE MARIJUANA FOR THE REGISTERED QUALIFYING PATIENT OR IF THE REGISTERED QUALIFYING PATIENT CEASES TO HAVE HIS DEBILITATING MEDICAL CONDITION.
- B. A REGISTERED DESIGNATED CAREGIVER OR NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT SHALL NOTIFY THE DEPARTMENT WITHIN TEN DAYS OF ANY CHANGE IN HIS NAME OR ADDRESS.
- C. WHEN A CARDHOLDER NOTIFIES THE DEPARTMENT OF ANY CHANGES LISTED IN SUBSECTION A BUT REMAINS ELIGIBLE UNDER THIS CHAPTER, THE DEPARTMENT SHALL ISSUE THE CARDHOLDER A NEW REGISTRY IDENTIFICATION CARD WITH NEW RANDOM 20-DIGIT ALPHANUMERIC IDENTIFICATION NUMBERS WITHIN TEN DAYS OF RECEIVING THE UPDATED INFORMATION AND A TEN-DOLLAR FEE. IF THE PERSON NOTIFYING THE DEPARTMENT IS A REGISTERED QUALIFYING PATIENT, THE DEPARTMENT SHALL ALSO ISSUE HIS REGISTERED DESIGNATED CAREGIVER, IF ANY, A NEW REGISTRY IDENTIFICATION CARD WITHIN TEN DAYS OF RECEIVING THE UPDATED INFORMATION.
- D. IF THE REGISTERED QUALIFYING PATIENT'S CERTIFYING PHYSICIAN NOTIFIES THE DEPARTMENT IN WRITING THAT EITHER THE REGISTERED QUALIFYING PATIENT HAS CEASED TO SUFFER FROM A DEBILITATING MEDICAL CONDITION OR THAT THE PHYSICIAN NO LONGER BELIEVES THE PATIENT WOULD RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF MARIJUANA, THE CARD IS VOID UPON NOTIFICATION BY THE DEPARTMENT TO THE QUALIFYING PATIENT.
- E. WHEN A REGISTERED QUALIFYING PATIENT CEASES TO BE A REGISTERED QUALIFYING PATIENT OR CHANGES REGISTERED DESIGNATED CAREGIVER, THE DEPARTMENT SHALL PROMPTLY NOTIFY THE FORMER DESIGNATED CAREGIVER THAT HIS DUTIES AND RIGHTS UNDER THIS CHAPTER AS TO THAT QUALIFYING PATIENT EXPIRE FIFTEEN DAYS AFTER NOTIFICATION BY THE DEPARTMENT IS SENT.
- F. A REGISTERED QUALIFYING PATIENT, DESIGNATED CAREGIVER OR NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT WHO FAILS TO COMPLY WITH SUBSECTION A OR B IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN ONE HUNDRED FIFTY DOLLARS.

**36-2809. Annual report**

THE DEPARTMENT SHALL SUBMIT TO THE LEGISLATURE AN ANNUAL REPORT THAT DOES NOT DISCLOSE ANY IDENTIFYING INFORMATION ABOUT CARDHOLDERS, NONPROFIT MEDICAL MARIJUANA DISPENSARIES OR PHYSICIANS BUT CONTAINS AT LEAST ALL OF THE FOLLOWING INFORMATION:

1. THE NUMBER OF REGISTRY IDENTIFICATION CARD APPLICATIONS AND RENEWALS.
2. THE NUMBER OF QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS APPROVED IN EACH COUNTY.
3. THE NATURE OF THE DEBILITATING MEDICAL CONDITIONS OF THE QUALIFYING PATIENTS.
4. THE NUMBER OF REGISTRY IDENTIFICATION CARDS REVOKED.
5. THE NUMBER OF PHYSICIANS PROVIDING WRITTEN CERTIFICATIONS FOR QUALIFYING PATIENTS.
6. THE NUMBER OF REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES.
7. THE NUMBER OF NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS IN EACH COUNTY.

**36-2810. Confidentiality**

A. THE FOLLOWING INFORMATION RECEIVED AND RECORDS KEPT BY THE DEPARTMENT FOR PURPOSES OF ADMINISTERING THIS CHAPTER ARE CONFIDENTIAL, EXEMPT FROM TITLE 39, CHAPTER 1, ARTICLE 2, EXEMPT FROM SECTION 36-105 AND NOT SUBJECT TO DISCLOSURE TO ANY INDIVIDUAL OR PUBLIC OR PRIVATE ENTITY, EXCEPT AS NECESSARY FOR AUTHORIZED EMPLOYEES OF THE DEPARTMENT TO PERFORM OFFICIAL DUTIES OF THE DEPARTMENT PURSUANT TO THIS CHAPTER.

1. APPLICATIONS OR RENEWALS, THEIR CONTENTS AND SUPPORTING INFORMATION SUBMITTED BY QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS, INCLUDING INFORMATION REGARDING THEIR DESIGNATED CAREGIVERS AND PHYSICIANS.
2. APPLICATIONS OR RENEWALS, THEIR CONTENTS AND SUPPORTING INFORMATION SUBMITTED BY OR ON BEHALF OF NONPROFIT MEDICAL MARIJUANA DISPENSARIES IN COMPLIANCE WITH THIS CHAPTER, INCLUDING THE PHYSICAL ADDRESSES OF NONPROFIT MEDICAL MARIJUANA DISPENSARIES.
3. THE INDIVIDUAL NAMES AND OTHER INFORMATION IDENTIFYING PERSONS TO WHOM THE DEPARTMENT HAS ISSUED REGISTRY IDENTIFICATION CARDS.

B. ANY DISPENSING INFORMATION REQUIRED TO BE KEPT UNDER SECTION 36-2806.02, SUBSECTION B, OR DEPARTMENT REGULATION SHALL IDENTIFY CARDHOLDERS BY THEIR REGISTRY IDENTIFICATION NUMBERS AND NOT CONTAIN NAMES OR OTHER PERSONALLY IDENTIFYING INFORMATION.

C. ANY DEPARTMENT HARD DRIVES OR OTHER DATA RECORDING MEDIA THAT ARE NO LONGER IN USE AND THAT CONTAIN CARDHOLDER INFORMATION MUST BE DESTROYED. THE DEPARTMENT SHALL RETAIN A SIGNED STATEMENT FROM A DEPARTMENT EMPLOYEE CONFIRMING THE DESTRUCTION.

D. DATA SUBJECT TO THIS SECTION SHALL NOT BE COMBINED OR LINKED IN ANY MANNER WITH ANY OTHER LIST OR DATABASE AND IT SHALL NOT BE USED FOR ANY PURPOSE NOT PROVIDED FOR IN THIS CHAPTER.

E. NOTHING IN THIS SECTION PRECLUDES THE FOLLOWING NOTIFICATIONS:

1. DEPARTMENT EMPLOYEES MAY NOTIFY LAW ENFORCEMENT ABOUT FALSIFIED OR FRAUDULENT INFORMATION SUBMITTED TO THE DEPARTMENT IF THE EMPLOYEE WHO SUSPECTS THAT FALSIFIED OR FRAUDULENT INFORMATION HAS BEEN SUBMITTED HAS CONFERRED WITH HIS SUPERVISOR AND BOTH AGREE THAT THE CIRCUMSTANCES WARRANT REPORTING.
2. THE DEPARTMENT MAY NOTIFY STATE OR LOCAL LAW ENFORCEMENT ABOUT APPARENT CRIMINAL VIOLATIONS OF THIS CHAPTER IF THE EMPLOYEE WHO SUSPECTS THE OFFENSE HAS CONFERRED WITH HIS SUPERVISOR AND BOTH AGREE THAT THE CIRCUMSTANCES WARRANT REPORTING.
3. NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS MAY NOTIFY THE DEPARTMENT OF A SUSPECTED VIOLATION OR ATTEMPTED VIOLATION OF THIS CHAPTER OR DEPARTMENT RULES.

F. NOTHING IN THIS SECTION PRECLUDES SUBMISSION OF THE SECTION 36-2809 REPORT TO THE LEGISLATURE. THE ANNUAL REPORT SUBMITTED TO THE LEGISLATURE IS SUBJECT TO TITLE 39, CHAPTER 1, ARTICLE 2.

**36-2811. Presumption of medical use of marijuana; protections; civil penalty**

A. THERE IS A PRESUMPTION THAT A QUALIFYING PATIENT OR DESIGNATED CAREGIVER IS ENGAGED IN THE MEDICAL USE OF MARIJUANA PURSUANT TO THIS CHAPTER.

1. THE PRESUMPTION EXISTS IF THE QUALIFYING PATIENT OR DESIGNATED CAREGIVER:
  - (a) IS IN POSSESSION OF A REGISTRY IDENTIFICATION CARD.
  - (b) IS IN POSSESSION OF AN AMOUNT OF MARIJUANA THAT DOES NOT EXCEED THE ALLOWABLE AMOUNT OF MARIJUANA.
2. THE PRESUMPTION MAY BE REBUTTED BY EVIDENCE THAT CONDUCT RELATED TO MARIJUANA WAS NOT FOR THE PURPOSE OF TREATING OR ALLEVIATING THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION PURSUANT TO THIS CHAPTER.

B. A REGISTERED QUALIFYING PATIENT OR REGISTERED DESIGNATED CAREGIVER IS NOT SUBJECT TO ARREST, PROSECUTION OR

PENALTY IN ANY MANNER, OR DENIAL OF ANY RIGHT OR PRIVILEGE, INCLUDING ANY CIVIL PENALTY OR DISCIPLINARY ACTION BY A COURT OR OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU:

1. FOR THE REGISTERED QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA PURSUANT TO THIS CHAPTER, IF THE REGISTERED QUALIFYING PATIENT DOES NOT POSSESS MORE THAN THE ALLOWABLE AMOUNT OF MARIJUANA.

2. FOR THE REGISTERED DESIGNATED CAREGIVER ASSISTING A REGISTERED QUALIFYING PATIENT TO WHOM HE IS CONNECTED THROUGH THE DEPARTMENT'S REGISTRATION PROCESS WITH THE REGISTERED QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA PURSUANT TO THIS CHAPTER IF THE REGISTERED DESIGNATED CAREGIVER DOES NOT POSSESS MORE THAN THE ALLOWABLE AMOUNT OF MARIJUANA.

3. FOR OFFERING OR PROVIDING MARIJUANA TO A REGISTERED QUALIFYING PATIENT OR A REGISTERED DESIGNATED CAREGIVER FOR THE REGISTERED QUALIFYING PATIENT'S MEDICAL USE OR TO A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IF NOTHING OF VALUE IS TRANSFERRED IN RETURN AND THE PERSON GIVING THE MARIJUANA DOES NOT KNOWINGLY CAUSE THE RECIPIENT TO POSSESS MORE THAN THE ALLOWABLE AMOUNT OF MARIJUANA.

C. A PHYSICIAN SHALL NOT BE SUBJECT TO ARREST, PROSECUTION OR PENALTY IN ANY MANNER OR DENIED ANY RIGHT OR PRIVILEGE, INCLUDING BUT NOT LIMITED TO CIVIL PENALTY OR DISCIPLINARY ACTION BY THE ARIZONA BOARD OF MEDICAL EXAMINERS OR BY ANY OTHER BUSINESS, OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU, BASED SOLELY ON PROVIDING WRITTEN CERTIFICATIONS OR FOR OTHERWISE STATING THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, A PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF MARIJUANA TO TREAT OR ALLEVIATE THE PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE DEBILITATING MEDICAL CONDITION, BUT NOTHING IN THIS CHAPTER PREVENTS A PROFESSIONAL LICENSING BOARD FROM SANCTIONING A PHYSICIAN FOR FAILING TO PROPERLY EVALUATE A PATIENT'S MEDICAL CONDITION OR OTHERWISE VIOLATING THE STANDARD OF CARE FOR EVALUATING MEDICAL CONDITIONS.

D. NO PERSON MAY BE SUBJECT TO ARREST, PROSECUTION OR PENALTY IN ANY MANNER, OR DENIED ANY RIGHT OR PRIVILEGE, INCLUDING ANY CIVIL PENALTY OR DISCIPLINARY ACTION BY A COURT OR OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU, FOR:

1. PROVIDING A REGISTERED QUALIFYING PATIENT, A REGISTERED DESIGNATED CAREGIVER OR A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY WITH MARIJUANA PARAPHERNALIA FOR PURPOSES OF A QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA.

2. BEING IN THE PRESENCE OR VICINITY OF THE MEDICAL USE OF MARIJUANA AUTHORIZED UNDER THIS CHAPTER.

3. ASSISTING A REGISTERED QUALIFYING PATIENT WITH ADMINISTERING MARIJUANA AS AUTHORIZED BY THIS CHAPTER.

E. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IS NOT SUBJECT TO PROSECUTION; SEARCH OR INSPECTION, EXCEPT BY THE DEPARTMENT PURSUANT TO SECTION 36-2806, SUBSECTION H; SEIZURE OR PENALTY IN ANY MANNER AND MAY NOT BE DENIED ANY RIGHT OR PRIVILEGE, INCLUDING CIVIL PENALTY OR DISCIPLINARY ACTION BY A COURT OR BUSINESS LICENSING BOARD OR ENTITY, FOR ACTING PURSUANT TO THIS CHAPTER AND DEPARTMENT REGULATIONS TO ACQUIRE, POSSESS, CULTIVATE, MANUFACTURE, DELIVER, TRANSFER, TRANSPORT, SUPPLY, SELL OR DISPENSE MARIJUANA OR RELATED SUPPLIES AND EDUCATIONAL MATERIALS TO REGISTERED QUALIFYING PATIENTS, TO REGISTERED DESIGNATED CAREGIVERS ON BEHALF OF REGISTERED QUALIFYING PATIENTS OR TO OTHER REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES.

F. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT IS NOT SUBJECT TO ARREST, PROSECUTION, SEARCH, SEIZURE OR PENALTY IN ANY MANNER AND MAY NOT BE DENIED ANY RIGHT OR PRIVILEGE, INCLUDING CIVIL PENALTY OR DISCIPLINARY ACTION BY A COURT OR OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR ENTITY, FOR WORKING OR VOLUNTEERING FOR A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY PURSUANT TO THIS CHAPTER AND DEPARTMENT REGULATIONS TO ACQUIRE, POSSESS, CULTIVATE, MANUFACTURE, DELIVER, TRANSFER, TRANSPORT, SUPPLY, SELL OR DISPENSE MARIJUANA OR RELATED SUPPLIES AND EDUCATIONAL MATERIALS TO REGISTERED QUALIFYING PATIENTS, TO REGISTERED DESIGNATED CAREGIVERS ON BEHALF OF REGISTERED QUALIFYING PATIENTS OR TO OTHER REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES.

G. PROPERTY, INCLUDING ALL INTERESTS IN THE PROPERTY, OTHERWISE SUBJECT TO FORFEITURE UNDER TITLE 13, CHAPTER 39, THAT IS POSSESSED, OWNED OR USED IN CONNECTION WITH THE MEDICAL USE OF MARIJUANA AUTHORIZED UNDER THIS CHAPTER OR ACTS INCIDENTAL TO THE MEDICAL USE OF MARIJUANA AUTHORIZED UNDER THIS CHAPTER, IS NOT SUBJECT TO SEIZURE OR FORFEITURE. THIS SUBSECTION DOES NOT PREVENT CIVIL FORFEITURE IF THE BASIS FOR THE FORFEITURE IS UNRELATED TO THE MEDICAL USE OF MARIJUANA.

H. MERE POSSESSION OF, OR APPLICATION FOR, A REGISTRY IDENTIFICATION CARD MAY NOT CONSTITUTE PROBABLE CAUSE OR REASONABLE SUSPICION, NOR MAY IT BE USED TO SUPPORT THE SEARCH OF THE PERSON OR PROPERTY OF THE PERSON POSSESSING OR APPLYING FOR THE REGISTRY IDENTIFICATION CARD. THE POSSESSION OF, OR APPLICATION FOR, A REGISTRY IDENTIFICATION CARD DOES NOT PRECLUDE THE EXISTENCE OF PROBABLE CAUSE IF PROBABLE CAUSE EXISTS ON OTHER GROUNDS.

I. NO SCHOOL, LANDLORD OR EMPLOYER MAY BE PENALIZED OR DENIED ANY BENEFIT UNDER STATE LAW FOR ENROLLING, LEASING TO OR EMPLOYING A REGISTERED QUALIFYING PATIENT OR A REGISTERED DESIGNATED CAREGIVER.

**36-2812. Affirmative defense**

A. EXCEPT AS PROVIDED IN SECTION 36-2802, A QUALIFYING PATIENT AND A QUALIFYING PATIENT'S DESIGNATED CAREGIVER, IF ANY, MAY ASSERT THE MEDICAL PURPOSE FOR USING MARIJUANA AS A DEFENSE TO ANY PROSECUTION OF AN OFFENSE INVOLVING MARIJUANA INTENDED FOR A QUALIFYING PATIENT'S MEDICAL USE, AND THIS DEFENSE SHALL BE PRESUMED VALID WHERE THE EVIDENCE SHOWS THAT:

1. A PHYSICIAN STATES THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, AFTER HAVING COMPLETED A FULL ASSESSMENT OF THE QUALIFYING PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION MADE IN THE COURSE OF A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP, THE QUALIFYING PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF MARIJUANA TO TREAT OR ALLEVIATE THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION.

2. THE QUALIFYING PATIENT AND THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER, IF ANY, WERE COLLECTIVELY IN POSSESSION OF A QUANTITY OF MARIJUANA THAT WAS NOT MORE THAN WAS REASONABLY NECESSARY TO ENSURE THE UNINTERRUPTED AVAILABILITY OF MARIJUANA FOR THE PURPOSE OF TREATING OR ALLEVIATING THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION.

3. ALL MARIJUANA PLANTS WERE CONTAINED IN AN ENCLOSED LOCKED FACILITY.

4. THE QUALIFYING PATIENT AND THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER, IF ANY, WERE ENGAGED IN THE ACQUISITION, POSSESSION, CULTIVATION, MANUFACTURE, USE OR TRANSPORTATION OF MARIJUANA, PARAPHERNALIA OR BOTH, RELATING TO THE ADMINISTRATION OF MARIJUANA SOLELY TO TREAT OR ALLEVIATE THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION.

B. A PERSON MAY ASSERT THE MEDICAL PURPOSE FOR USING MARIJUANA IN A MOTION TO DISMISS, AND THE CHARGES SHALL BE DISMISSED FOLLOWING AN EVIDENTIARY HEARING WHERE THE PERSON SHOWS THE ELEMENTS LISTED IN SUBSECTION (A).

C. IF A QUALIFYING PATIENT OR A QUALIFYING PATIENT'S DESIGNATED CAREGIVER DEMONSTRATE THE QUALIFYING PATIENT'S MEDICAL PURPOSE FOR USING MARIJUANA PURSUANT TO THIS SECTION, THE QUALIFYING PATIENT AND THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER SHALL NOT BE SUBJECT TO THE FOLLOWING FOR THE QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA:

1. DISCIPLINARY ACTION BY A COURT OR OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU.
2. FORFEITURE OF ANY INTEREST IN OR RIGHT TO NON-MARIJUANA, LICIT PROPERTY.

**36-2813. Discrimination prohibited**

A. NO SCHOOL OR LANDLORD MAY REFUSE TO ENROLL OR LEASE TO AND MAY NOT OTHERWISE PENALIZE A PERSON SOLELY FOR HIS STATUS AS A CARDHOLDER, UNLESS FAILING TO DO SO WOULD CAUSE THE SCHOOL OR LANDLORD TO LOSE A MONETARY OR LICENSING RELATED BENEFIT UNDER FEDERAL LAW OR REGULATIONS.

B. UNLESS A FAILURE TO DO SO WOULD CAUSE AN EMPLOYER TO LOSE A MONETARY OR LICENSING RELATED BENEFIT UNDER FEDERAL LAW OR REGULATIONS, AN EMPLOYER MAY NOT DISCRIMINATE AGAINST A PERSON IN HIRING, TERMINATION OR IMPOSING ANY TERM OR CONDITION OF EMPLOYMENT OR OTHERWISE PENALIZE A PERSON BASED UPON EITHER:

1. THE PERSON'S STATUS AS A CARDHOLDER.
2. A REGISTERED QUALIFYING PATIENT'S POSITIVE DRUG TEST FOR MARIJUANA COMPONENTS OR METABOLITES, UNLESS THE PATIENT USED, POSSESSED OR WAS IMPAIRED BY MARIJUANA ON THE PREMISES OF THE PLACE OF EMPLOYMENT OR DURING THE HOURS OF EMPLOYMENT.

C. FOR THE PURPOSES OF MEDICAL CARE, INCLUDING ORGAN TRANSPLANTS, A REGISTERED QUALIFYING PATIENT'S AUTHORIZED USE OF MARIJUANA MUST BE CONSIDERED THE EQUIVALENT OF THE USE OF ANY OTHER MEDICATION UNDER THE DIRECTION OF A PHYSICIAN AND DOES NOT CONSTITUTE THE USE OF AN ILLICIT SUBSTANCE OR OTHERWISE DISQUALIFY A REGISTERED QUALIFYING PATIENT FROM MEDICAL CARE.

D. NO PERSON MAY BE DENIED CUSTODY OF OR VISITATION OR PARENTING TIME WITH A MINOR, AND THERE IS NO PRESUMPTION OF NEGLECT OR CHILD ENDANGERMENT FOR CONDUCT ALLOWED UNDER THIS CHAPTER, UNLESS THE PERSON'S BEHAVIOR CREATES AN UNREASONABLE DANGER TO THE SAFETY OF THE MINOR AS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.

**36-2814. Acts not required; acts not prohibited**

A. NOTHING IN THIS CHAPTER REQUIRES:

1. A GOVERNMENT MEDICAL ASSISTANCE PROGRAM OR PRIVATE HEALTH INSURER TO REIMBURSE A PERSON FOR COSTS ASSOCIATED WITH THE MEDICAL USE OF MARIJUANA.
2. ANY PERSON OR ESTABLISHMENT IN LAWFUL POSSESSION OF PROPERTY TO ALLOW A GUEST, CLIENT, CUSTOMER OR OTHER VISITOR TO USE MARIJUANA ON OR IN THAT PROPERTY.
3. AN EMPLOYER TO ALLOW THE INGESTION OF MARIJUANA IN ANY WORKPLACE OR ANY EMPLOYEE TO WORK WHILE UNDER THE INFLUENCE OF MARIJUANA, EXCEPT THAT A REGISTERED QUALIFYING PATIENT SHALL NOT BE CONSIDERED TO BE UNDER THE INFLUENCE OF MARIJUANA SOLELY BECAUSE OF THE PRESENCE OF METABOLITES OR COMPONENTS OF MARIJUANA THAT APPEAR IN INSUFFICIENT CONCENTRATION TO CAUSE IMPAIRMENT.

B. NOTHING IN THIS CHAPTER PROHIBITS AN EMPLOYER FROM DISCIPLINING AN EMPLOYEE FOR INGESTING MARIJUANA IN THE WORKPLACE OR WORKING WHILE UNDER THE INFLUENCE OF MARIJUANA.

**36-2815. Revocation**

A. THE DEPARTMENT SHALL IMMEDIATELY REVOKE THE REGISTRY IDENTIFICATION CARD OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT WHO VIOLATES SECTION 36-2804.01, SUBSECTION D, OR SECTION 36-2816, SUBSECTION B. THE DEPARTMENT SHALL SUSPEND OR REVOKE THE REGISTRY IDENTIFICATION CARD OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT FOR OTHER VIOLATIONS OF THIS CHAPTER.

B. THE DEPARTMENT SHALL IMMEDIATELY REVOKE THE REGISTRATION CERTIFICATE OF A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT VIOLATES SECTION 2816, SUBSECTIONS B OR C, AND ITS BOARD MEMBERS AND PRINCIPAL OFFICERS MAY NOT SERVE AS THE BOARD MEMBERS OR PRINCIPAL OFFICERS FOR ANY OTHER REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY.

C. ANY CARDHOLDER WHO SELLS MARIJUANA TO A PERSON WHO IS NOT ALLOWED TO POSSESS MARIJUANA FOR MEDICAL PURPOSES UNDER THIS CHAPTER SHALL HAVE HIS REGISTRY IDENTIFICATION CARD REVOKED, AND SHALL BE SUBJECT TO OTHER PENALTIES FOR THE UNAUTHORIZED SALE OF MARIJUANA AND OTHER APPLICABLE OFFENSES.

D. THE DEPARTMENT MAY REVOKE THE REGISTRY IDENTIFICATION CARD OF ANY CARDHOLDER WHO KNOWINGLY VIOLATES THIS CHAPTER, AND THE CARDHOLDER SHALL BE SUBJECT TO OTHER PENALTIES FOR THE APPLICABLE OFFENSE.

E. REVOCATION IS A FINAL DECISION OF THE DEPARTMENT SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. JURISDICTION AND VENUE ARE VESTED IN THE SUPERIOR COURT.

**36-2816. Violations; civil penalty; classification**

A. A REGISTERED QUALIFYING PATIENT MAY NOT DIRECTLY, OR THROUGH HIS DESIGNATED CAREGIVER, OBTAIN MORE THAN TWO-AND-ONE-HALF OUNCES OF MARIJUANA FROM REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES IN ANY FOURTEEN-DAY PERIOD.

B. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY OR AGENT MAY NOT DISPENSE, DELIVER OR OTHERWISE TRANSFER MARIJUANA TO A PERSON OTHER THAN ANOTHER REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY, A REGISTERED QUALIFYING PATIENT OR A REGISTERED QUALIFYING PATIENT'S REGISTERED DESIGNATED CAREGIVER.

C. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY MAY NOT ACQUIRE USABLE MARIJUANA OR MATURE MARIJUANA PLANTS FROM ANY PERSON OTHER THAN ANOTHER REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY, A REGISTERED QUALIFYING PATIENT OR A REGISTERED DESIGNATED CAREGIVER. A KNOWING VIOLATION OF THIS SUBSECTION IS A CLASS 2 FELONY.

D. IT IS A CLASS 1 MISDEMEANOR FOR ANY PERSON, INCLUDING AN EMPLOYEE OR OFFICIAL OF THE DEPARTMENT OR ANOTHER STATE AGENCY OR LOCAL GOVERNMENT, TO BREACH THE CONFIDENTIALITY OF INFORMATION OBTAINED PURSUANT TO THIS CHAPTER.

E. MAKING FALSE STATEMENTS TO A LAW ENFORCEMENT OFFICIAL ABOUT ANY FACT OR CIRCUMSTANCE RELATING TO THE MEDICAL USE OF MARIJUANA TO AVOID ARREST OR PROSECUTION IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS, WHICH SHALL BE IN ADDITION TO ANY OTHER PENALTIES THAT MAY APPLY FOR MAKING A FALSE STATEMENT OR FOR THE USE OF MARIJUANA OTHER THAN USE UNDERTAKEN PURSUANT TO THIS CHAPTER.

**36-2817. Medical marijuana fund; private donations**

A. THE MEDICAL MARIJUANA FUND IS ESTABLISHED CONSISTING OF FEES COLLECTED, CIVIL PENALTIES IMPOSED AND PRIVATE DONATIONS RECEIVED UNDER THIS CHAPTER. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED.

B. THE DIRECTOR OF THE DEPARTMENT MAY ACCEPT AND SPEND PRIVATE GRANTS, GIFTS, DONATIONS, CONTRIBUTIONS AND DEVISES TO ASSIST IN CARRYING OUT THE PROVISIONS OF THIS CHAPTER.

C. MONIES IN THE MEDICAL MARIJUANA FUND DO NOT REVERT TO THE STATE GENERAL FUND AT THE END OF A FISCAL YEAR.

**36-2818. Enforcement of this act; mandamus**

A. IF THE DEPARTMENT FAILS TO ADOPT REGULATIONS TO IMPLEMENT THIS CHAPTER WITHIN ONE HUNDRED TWENTY DAYS OF THE EFFECTIVE DATE OF THIS CHAPTER, ANY CITIZEN MAY COMMENCE A MANDAMUS ACTION IN SUPERIOR COURT TO COMPEL THE DEPARTMENT TO PERFORM THE ACTIONS MANDATED UNDER THIS CHAPTER.

B. IF THE DEPARTMENT FAILS TO ISSUE A REGISTRY IDENTIFICATION CARD WITHIN FORTY-FIVE DAYS OF THE SUBMISSION OF A VALID APPLICATION OR RENEWAL, THE REGISTRY IDENTIFICATION CARD SHALL BE DEEMED ISSUED, AND A COPY OF THE REGISTRY IDENTIFICATION CARD APPLICATION OR RENEWAL IS DEEMED A VALID REGISTRY IDENTIFICATION CARD.

C. IF AT ANY TIME AFTER THE ONE HUNDRED FORTY DAYS FOLLOWING THE EFFECTIVE DATE OF THIS CHAPTER THE DEPARTMENT IS NOT ACCEPTING APPLICATIONS OR HAS NOT PROMULGATED RULES ALLOWING QUALIFYING PATIENTS TO SUBMIT APPLICATIONS, A NOTARIZED STATEMENT BY A QUALIFYING PATIENT CONTAINING THE INFORMATION REQUIRED IN AN APPLICATION PURSUANT TO SECTION 36-2804.02, SUBSECTION A, PARAGRAPH 3, TOGETHER WITH A WRITTEN CERTIFICATION ISSUED BY A PHYSICIAN WITHIN THE NINETY DAYS IMMEDIATELY PRECEDING THE NOTARIZED STATEMENT, SHALL BE DEEMED A VALID REGISTRY IDENTIFICATION CARD.

**36-2819. Fingerprinting requirements**

EACH PERSON APPLYING AS A DESIGNATED CAREGIVER, A PRINCIPAL OFFICER, AGENT OR EMPLOYEE OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY OR A MEDICAL MARIJUANA DISPENSARY AGENT SHALL SUBMIT A FULL SET OF FINGERPRINTS TO THE DEPARTMENT FOR THE PURPOSE OF OBTAINING A STATE AND FEDERAL CRIMINAL RECORDS CHECK PURSUANT TO SECTION 41-1750 AND PUBLIC LAW 92-544. THE DEPARTMENT OF PUBLIC SAFETY MAY EXCHANGE THIS FINGERPRINT DATA WITH THE FEDERAL BUREAU OF INVESTIGATION WITHOUT DISCLOSING THAT THE RECORDS CHECK IS RELATED TO THE MEDICAL MARIJUANA ACT AND ACTS PERMITTED BY IT. THE DEPARTMENT SHALL DESTROY EACH SET OF FINGERPRINTS AFTER THE CRIMINAL RECORDS CHECK IS COMPLETED.

**Sec. 4.** Section 43-1201, Arizona Revised Statutes, is amended to read:

**43-1201. Organizations exempt from tax**

A. Organizations that are exempt from federal income tax under section 501 of the internal revenue code are exempt from the tax imposed under this title. In addition, the following organizations are exempt from the taxes imposed under this title, except as otherwise provided in this chapter:

1. Labor, agricultural or horticultural organizations, other than cooperative organizations.
2. Fraternal beneficiary societies, orders or organizations both:
  - (a) Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system.
  - (b) Providing for the payment of life, sick, accident or other benefits to the members of such society, order or organization or their dependents.
3. Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit or any corporation chartered for burial purposes and not permitted by its charter to engage in any business not necessarily related to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual member thereof.
4. Corporations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.
5. Business leagues, chambers of commerce, real estate boards or boards of trade, not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
6. Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare or local organizations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.
7. Clubs organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.
8. Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount of such income, less expenses, to an organization which itself is exempt from the tax imposed by this title.
9. Voluntary employees' beneficiary organizations providing for the payment of life, sick, accident or other benefits to the members of such organizations or their dependents, if both of the following apply:
  - (a) No part of their net earnings inures, other than through such payments, to the benefit of any private shareholder or individual.
  - (b) Eighty-five per cent or more of the income consists of amounts collected from members and amounts contributed to the organization by the employer of the members for the sole purpose of making such payments and meeting expenses.
10. Teachers' or public employees' retirement fund organizations of a purely local character, if both of the following apply:
  - (a) No part of their net earnings inures to the benefit of any private shareholder or individual, other than through payment of retirement benefits.
  - (b) The income consists solely of amounts received from public taxation, amounts received from assessments upon the salaries of members and income in respect of investments. For the purposes of this paragraph, "public employees" means employees of the state and its political subdivisions.
11. Religious or apostolic organizations or corporations, if such organizations or corporations have a common treasury or community treasury, even if such corporations or organizations engage in business for the common benefit of the members, but only if the members thereof include, at the time of filing their returns, in their Arizona gross income their pro rata shares, whether distributed or not, of the net income of the organizations or corporations for such year. Any amount so included in the Arizona gross income of a member shall be treated as a dividend received.
12. Voluntary employees' beneficiary organizations providing for the payment of life, sick, accident or other benefits to the members of such organization, their dependents or their designated beneficiaries, if both of the following apply:
  - (a) Admission to membership in such organization is limited to individuals who are officers or employees of the United States government.
  - (b) No part of the net earnings of such organization inures, other than through such payments, to the benefit of any private shareholder or individual.
13. Corporations classified as diversified management companies under section 5 of the federal investment company act of 1940 and registered as provided in that act.
14. Insurance companies paying to the state tax upon premium income derived from sources within this state.
15. Mutual ditch, irrigation or water companies or similar nonprofit organizations if eighty-five per cent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

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16. Workers' compensation pools established pursuant to section 23-961.01.

B. NONPROFIT MEDICAL MARIJUANA DISPENSARIES UNDER TITLE 36, CHAPTER 28.1, ARE EXEMPT FROM THE TAXES IMPOSED UNDER THIS TITLE.

**Sec. 5.** Conditional repeal; notice

A. Section 36-2812, Arizona Revised Statutes, as added by this act, is repealed as of the date the Arizona department of health services begins to issue registry identification cards to qualifying patients and designated caregivers.

B. The Arizona department of health services shall notify, in writing, the director of the Arizona legislative council of this date.

**Sec. 6.** Exemption from rule making

For the purposes of this act, the Department is exempt from the rule making requirements of Title 41, Chapter 6, Arizona Revised Statutes, for one year after the effective date of this act except that the Department shall provide the public with an opportunity to comment on proposed rules and shall publish otherwise exempted rules.

**Sec. 7.** Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**WHITE PAPER ON MARIJUANA DISPENSARIES**

**by**

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S  
TASK FORCE ON MARIJUANA DISPENSARIES**

## ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

George Anderson, California Department of Justice  
Jacob Appelsmith, Office of the California Attorney General  
John Avila, California Narcotics Officers Association  
Phebe Chu, Office of San Bernardino County Counsel  
Scott Collins, Los Angeles County District Attorney's Office  
Cathy Coyne, California State Sheriffs' Association  
Lorrac Craig, Trinity County Sheriff's Department  
Jim Denney, California State Sheriffs' Association  
Thomas Dewey, California State University—Humboldt Police Department  
Dana Filkowski, Contra Costa County District Attorney's Office  
John Gaines, California Department of Justice/Bureau of Narcotics Enforcement  
Craig Gundlach, Modesto Police Department  
John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

Nate Johnson, California State University Police  
Mike Kanalakis, Monterey County Sheriff's Office  
Bob Kochly, Contra Costa County Office of District Attorney  
Tommy LaNier, The National Marijuana Initiative, HIDTA  
Carol Leveroni, California Peace Officers Association  
Kevin McCarthy, Los Angeles Police Department  
Randy Mendoza, Arcata Police Department  
Mike Nivens, California Highway Patrol  
Rick Oules, Office of the United States Attorney  
Mark Pazin, Merced County Sheriff's Department  
Michael Regan, El Cerrito Police Department  
Melissa Reisinger, California Police Chiefs Association  
Kimberly Rios, California Department of Justice, Conference Planning Unit  
Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement  
Crystal Spencer, California Department of Justice, Conference Planning Unit  
Sam Spiegel, Folsom Police Department  
Valerie Taylor, ONDCP  
Thomas Toller, California District Attorneys Association  
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

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# WHITE PAPER ON MARIJUANA DISPENSARIES

by

## CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

### EXECUTIVE SUMMARY

#### INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

#### FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

## **CALIFORNIA LAW**

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

## **PROBLEMS POSED BY MARIJUANA DISPENSARIES**

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthy mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

## **LOCAL GOVERNMENTAL RESPONSES**

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

## **LIABILITY**

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

## **ENFORCEMENT OF MARIJUANA LAWS**

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

# WHITE PAPER ON MARIJUANA DISPENSARIES

by

## CALIFORNIA POLICE CHIEFS ASSOCIATION

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### INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

### FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9<sup>th</sup> Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (*See Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.<sup>1</sup> The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”<sup>2</sup>

*Gonzales v. Raich* addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.<sup>3</sup> “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”<sup>4</sup> (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.<sup>5</sup> California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.<sup>6</sup>

## **CALIFORNIA LAW**

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.<sup>7</sup> The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician . . . .”<sup>8</sup> The codified section is known as the Compassionate Use Act of 1996.<sup>9</sup> Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.<sup>10</sup> This act expanded the definitions of “patient” and “primary caregiver”<sup>11</sup> and created guidelines for identification cards.<sup>12</sup> It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.<sup>13</sup> It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,<sup>14</sup> as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

## **1. Conduct**

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.<sup>15</sup> If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.<sup>16</sup>

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

## 2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.<sup>17</sup> A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

## 3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.<sup>18</sup> He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.<sup>19</sup> (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).)

“Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: “One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party ‘who has consistently assumed responsibility for the housing, health, or safety’ of that purchaser as section 11362.5(e) requires.”)

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as “primary caregivers.” Those included in the list clearly show the Legislature’s intent to restrict the definition to one involving a significant and long-term commitment to the patient’s health, safety, and welfare. The only facilities which the Legislature authorized to serve as “primary caregivers” are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

#### **4. Cooperatives and Collectives**

According to the California Attorney General’s recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that “Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions” for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California’s marijuana laws.

Further, the common dictionary definition of “collectives” is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”<sup>20</sup> Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal **or** state law.

## **LAWS IN OTHER STATES**

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.<sup>21</sup>

## **STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES**

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.<sup>22</sup> Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.<sup>23</sup> Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.<sup>24</sup> These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.<sup>25</sup> Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.<sup>26</sup> Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”<sup>27</sup> Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.<sup>28</sup> Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

## HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.<sup>29</sup>

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their “primary caregiver” (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the “contribution” will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so “contributions” are made to reimburse the dispensary for its time and care in making “product” available. However, if a calculation is made based on the available evidence, it is clear that these “contributions” can easily add up to millions of dollars per year. That is a very large cash flow for a “non-profit” organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the “primary caregivers” of patients. This is a spurious claim. As discussed above, the term “primary caregiver” has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has “consistently assumed responsibility for the housing, health, or safety of a patient.”<sup>30</sup> The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it “**consistently** had assumed responsibility for [a patient’s] **housing, health, or safety**.”<sup>31</sup> The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health: the responsibility for the patient’s health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business’s relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant “primary caregiver” relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient’s act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

## **ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES**

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

### **ANCILLARY CRIMES**

#### **A. ARMED ROBBERIES AND MURDERS**

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.<sup>32</sup> And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”<sup>33</sup>

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.<sup>34</sup> And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout.<sup>35</sup> He did not survive.<sup>36</sup>

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.<sup>37</sup>

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.<sup>38</sup> Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.<sup>39</sup>

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.<sup>40</sup>

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.<sup>41</sup>

## **B. BURGLARIES**

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.<sup>42</sup> And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.<sup>43</sup>

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.<sup>44</sup> Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.<sup>45</sup> After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise . . . .”<sup>46</sup>

## **C. TRAFFIC, NOISE, AND DRUG DEALING**

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,<sup>47</sup> as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.<sup>48</sup> Sharing just purchased marijuana outside dispensaries also regularly takes place.<sup>49</sup>

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,<sup>50</sup> “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.<sup>51</sup> Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old . . . .”<sup>52</sup> Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”<sup>53</sup>

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.<sup>54</sup> And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.<sup>55</sup> It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

#### **D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS**

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.<sup>56</sup> The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.<sup>57</sup> Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,<sup>58</sup> which seem to go hand in hand with medical marijuana cultivation and dispensaries.<sup>59</sup>

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.<sup>60</sup> The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.<sup>61</sup> Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.<sup>62</sup>

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.<sup>63</sup> Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,<sup>64</sup> and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.<sup>65</sup>

#### **E. POISONINGS**

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.<sup>66</sup> The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.<sup>67</sup>

## **OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES**

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.<sup>68</sup>

## **SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE**

### **A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS**

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."<sup>69</sup> Other individuals just make up their own phony doctor recommendations,<sup>70</sup> which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.<sup>71</sup> Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.<sup>72</sup>

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

## **B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS**

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to “high priced McMansions . . . .”<sup>73</sup> Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.<sup>74</sup> In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.<sup>75</sup> Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the “THC-rich ‘B.C. bud’ strain” of marijuana originally produced in British Columbia “can be grown only in controlled indoor environments,” and the Canadian market is now reportedly saturated with the product of “competing Canadian gangs,” often Asian in composition or outlaw motorcycle gangs like the Hells Angels.<sup>76</sup> Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.<sup>77</sup> With a street value of \$3,000 to \$5,000 per pound” for high-potency marijuana, and such multiple harvests, “a successful grow house can bring in between \$4.5 million and \$10 million a year . . . .”<sup>78</sup> The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.<sup>79</sup>

## **C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES**

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift “no code” electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, “Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord.” Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.<sup>80</sup> Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, “We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints.” House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.<sup>81</sup>

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.<sup>82</sup> Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.<sup>83</sup> To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.<sup>84</sup>

#### **D. INCREASED ORGANIZED GANG ACTIVITIES**

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.<sup>85</sup> In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.<sup>86</sup>

#### **E. EXPOSURE OF MINORS TO MARIJUANA**

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.<sup>87</sup> Dispensaries also sell marijuana to minors.<sup>88</sup>

#### **F. IMPAIRED PUBLIC HEALTH**

Indoor marijuana grow operations emit a skunk-like odor,<sup>89</sup> and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,<sup>90</sup> all of which are dangerous to any children or adults who may be living in the residence,<sup>91</sup> although many grow houses are uninhabited.

## **G. LOSS OF BUSINESS TAX REVENUE**

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

## **H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL**

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,<sup>92</sup> and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.<sup>93</sup>

## **ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS**

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

## **POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES**

### **A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS**

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.<sup>94</sup>

## **B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS**

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.<sup>95</sup> Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.<sup>96</sup>

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.<sup>97</sup> And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.<sup>98</sup> It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.<sup>99</sup> To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.<sup>100</sup>

## **C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS**

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

**“Categories:**

1. Personal Use
2. Cooperatives or Collectives

**Medical Marijuana for Personal Use:** An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
  - a. Cultivation lighting shall not exceed 1200 watts;
  - b. Gas products (CO<sub>2</sub>, butane, etc.) for medical marijuana cultivation or processing is prohibited.
  - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
  - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
  - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
  - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
  - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
  - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
  - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
  - b. Include written permission from the property owner.
  - c. City Building Official must inspect for California Building Code and Fire Code.
  - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
  - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

**Medical Marijuana Cooperatives or Collectives.**

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
  - a. A 300 foot radius from any existing residential zoning district,
  - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
7. Source of medical marijuana.
- a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
  - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
  - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
- a. Staff screening process including appropriate background checks.
  - b. Operating hours.
  - c. Site, floor plan of the facility.
  - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
  - e. Screening, registration and validation process for qualified patients.
  - f. Qualified patient records acquisition and retention procedures.
  - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
  - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
  - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
- a. No dispensing medical marijuana more than twice a day.
  - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
  - c. Display the client rules and/or regulations at each building entrance.
  - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
  - e. Persons under the age of eighteen (18) are precluded from entering the premises.
  - f. No on-site display of marijuana plants.
  - g. No distribution of live plants, starts and clones on through Use Permit.
  - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
  - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
  - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
  - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

## LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

## **A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES**

### **1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY**

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a “sin no more” view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

## The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

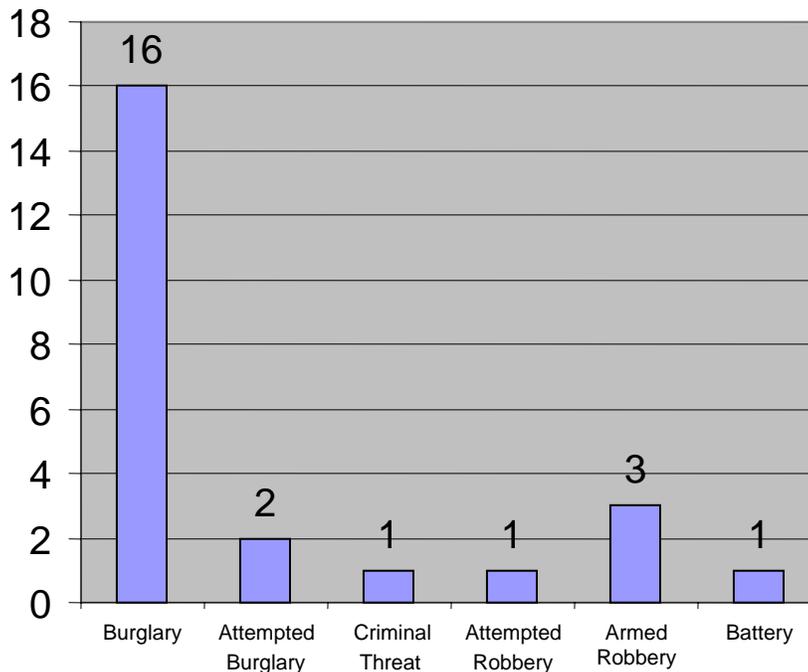
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law and California law.

**Press Materials:**

**Reported Crime at Marijuana Dispensaries  
From January 1, 2005 through June 23, 2006**



**Information showing the dispensaries attracted crime:**

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

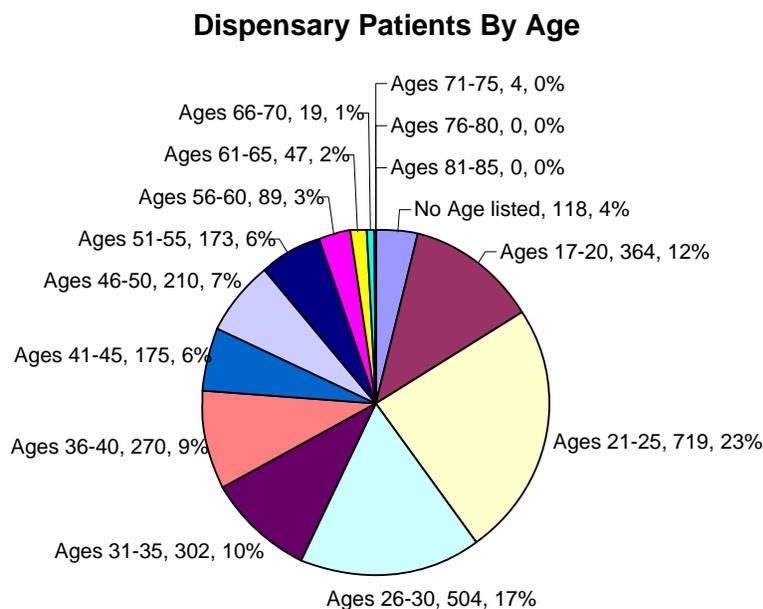
Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician’s recommendation



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician’s recommendation for AIDS, glaucoma, or cancer.

**Why these businesses were deemed to be criminal--not compassionate:**

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

## **2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY**

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

## **3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES**

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

#### **A. Alameda County**

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

#### **B. Santa Clara County**

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

#### **C. San Francisco County**

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

#### **D. Crime Rates in the Vicinity of MariCare**

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

#### **E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante**

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

#### **F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County**

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars “as a joke.” They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend “Brandon,” who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a “blunt” (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician’s recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing “honey oil” for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special “honey oil” extractor tube. The butane extraction operation *exploded* with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the “honey oil” with marijuana and butane that they brought up from one of Estes’ San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the “designated driver.” When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12<sup>th</sup> Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.<sup>101</sup> A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

#### **4. SANTA BARBARA COUNTY**

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

#### **5. SONOMA COUNTY**

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

## **6. ORANGE COUNTY**

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

## PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

### QUESTION

- 1. Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

### ANSWER

- 1. Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

### ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.<sup>1</sup> Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

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<sup>1</sup> As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."<sup>2</sup> If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

## QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

## ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.<sup>3</sup>

## ANALYSIS

### A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

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<sup>2</sup> A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

<sup>3</sup> Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.<sup>4</sup>

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

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<sup>4</sup> Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

## B. State Law

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)<sup>5</sup> Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

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<sup>5</sup> Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

## QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

## ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

## ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

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1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

## QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

## ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

## ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.") By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

## QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

## ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

## ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

## OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.<sup>6 102</sup>

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

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<sup>6</sup> Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

## CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.<sup>103</sup> Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

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## ENDNOTES

<sup>1</sup> U.S. Const., art. VI, cl. 2.

<sup>2</sup> U.S. Const., art. I, sec. 8, cl. 3.

<sup>3</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.

<sup>4</sup> *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.

<sup>5</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.

<sup>6</sup> Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at <http://www.latimes.com/news/local/la-me-medpot19-2009mar19.0.4987571.story>

<sup>7</sup> See *People v. Mower* (2002) 28 Cal.4th 457, 463.

<sup>8</sup> Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.

<sup>9</sup> H&S Code sec. 11362.5(a).

<sup>10</sup> H&S Code sec. 11362.7 *et. seq.*

<sup>11</sup> H&S Code sec. 11362.7.

<sup>12</sup> H&S Code secs. 11362.71–11362.76.

<sup>13</sup> H&S Code sec. 11362.77.

<sup>14</sup> H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.

<sup>15</sup> H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.

<sup>16</sup> H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.

<sup>17</sup> H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.

<sup>18</sup> *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.

<sup>19</sup> *Id.* Emphasis added.

<sup>20</sup> Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.

<sup>21</sup> Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.

<sup>22</sup> For a statewide list, see <http://canorml.org/prop/cbclist.html>.

<sup>23</sup> Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.

<sup>24</sup> H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4th 747 at p. 764.

<sup>25</sup> *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.

<sup>26</sup> *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.

<sup>27</sup> Israel Packel, 4-5. Italics added.

<sup>28</sup> H&S Code sec. 11362.7(d)(1).

<sup>29</sup> See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.

<sup>30</sup> H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2), (3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.

<sup>31</sup> *People v. Mower*, 28 Cal.4th at 476. Emphasis added.

<sup>32</sup> Glenda Anderson, "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home; No Suspects but Officials Believe Killing Related to Pot Growing," *Santa Rosa Press Democrat*, 19 November 2005, available at <http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/1033/>

<sup>33</sup> "Medical Marijuana Shop Robbed," *Santa Barbara Independent*, 10 August 2006, available at <http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/>

<sup>34</sup> Mark Scaramella, "No Good Deed Goes Unpunished," *Anderson Valley Advertiser*, 16 June 2004, available at <http://www.theava.com/04/0616-cerelli.html>

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- <sup>35</sup> Ricci Graham, "Police Arrest Suspect in Deadly San Leandro Pot Club Robbery," *Oakland Tribune*, 8 August 2006, available at [http://findarticles.com/p/articles/mi\\_qn4176/is\\_20060808/ai\\_n16659257](http://findarticles.com/p/articles/mi_qn4176/is_20060808/ai_n16659257)
- <sup>36</sup> Ricci Graham, "Man Faces Murder Charge in Pot Robbery," *Oakland Tribune*, 24 August 2005, available at <http://www.highbeam.com/doc/1P2-7021933.html>
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- <sup>40</sup> Mark Scaramella, "The Mendo Pot Chronicles," *Anderson Valley Advertiser*, 3 October 2007, available at <http://www.theava.com/04/0616-cerelli.html>
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- <sup>42</sup> Tami Abdollah & Richard Winton, "Pot Theft Claimed in Boy's Shooting Death," *Los Angeles Times*, 23 January 2007, available at [http://www.californiapolicechiefs.org/nav\\_files/marijuana\\_files/bellflower\\_shooting\\_death.pdf](http://www.californiapolicechiefs.org/nav_files/marijuana_files/bellflower_shooting_death.pdf)
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- <sup>44</sup> Planning Commission Agenda, available at <http://www.el-cerrito.org>; see also Alan Lopez, "El Cerrito Moves to Ban Dispensaries," *Contra Costa Times*, 24 June 2006, available at <http://www.thc-ministry.net/forum/archive/el-cerrito-moves-to-ban-cannabis-clubs-6974.htm>
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- <sup>46</sup> Ortega.
- <sup>47</sup> Greg Beato, "Pot Clubs in Peril: Are San Francisco Zoning Boards a Bigger Threat to Medical Marijuana Than the DEA?" *Reason Magazine*, February 2007, available at <http://www.reason.com/news/show/118314.html>; Craig T. Steckler, *City of Fremont Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts*, 20 June 2006; Tim Miller, *City of Anaheim Police Department: Special Operations Division Memorandum re Medical Marijuana Dispensary (MMD) Ban Ordinance*, 13 June 2007.
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- <sup>51</sup> Ethan Stewart, "The Medical Marijuana Movement Grows in Santa Barbara: Emerald Dreams and Smoky Realities," *Santa Barbara Independent*, 3 May 2007, available at <http://independent.com/news/2007/may/03/medical-marijuana-movement-grows-santa-barbara/>; see also Adam Ashton, "DEA Busts Pot Store Day After Council Talk," *Modesto Bee*, 28 September 2006.
- <sup>52</sup> McDonald.
- <sup>53</sup> Stewart.
- <sup>54</sup> Stewart.
- <sup>55</sup> Stewart.
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- <sup>61</sup> National Drug Intelligence Center, *Marijuana*, January 2001, available at <http://www.usdoj.gov>
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- <sup>69</sup> Stewart.
- <sup>70</sup> Johnson.
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- <sup>101</sup> See "Does Marijuana Contribute to Psychotic Illnesses?" *Current Psychiatry Online* 6(2), February 2007.
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## **Medical Marijuana Dispensaries and Associated Issues**

**Presented to the California Chiefs of Police Association**

This report is respectfully presented to you with the following disclaimers;

- This report does not attempt to address the merits of Medical Marijuana or the concept of its use as an alternative medicine as discussed or proposed in Proposition 215.
- This report contains compilations of data collected by others in Law Enforcement as well as media coverage and this data is identified as such.

This report contains information on three topics;

- Reported Crimes Associated with Medical Marijuana
- Doctor's Involvement in the Medical Marijuana Equation
- One Example of a Medical Marijuana Entrepreneur

Areas that currently act as a hindrance to a true study of this topic are;

Under Reporting: With few exceptions, agencies contacted stated that they felt that the crimes related to Medical Marijuana Dispensaries were under reported, if reported at all. Confidential Informants have provided information that these additional crimes (Robberies, Assaults and Burglaries involving Marijuana or large amounts of cash) are not reported so as to not draw additional Law Enforcement and Media scrutiny to this very lucrative trade. This is not unlike the thought processes employed by Organized Crime as well as street gangs here in California.

Crime Classification: Another barrier to collection of this data is the lack of classification of this data as Medical Marijuana related. In years past, statistical analysis of domestic violence and hate crimes was difficult. These crimes now receive their own classification so tracking them is much easier. However until such time as Medical Marijuana crimes receive their own classification, separating these crimes from non Medical Marijuana related crimes is very difficult.

Over Reliance on Typical Statistical Data: Gathering statistical data on this topic would appear to be a simple task. One would imagine that you would look at crime in a given location prior to the arrival of a Medical Marijuana Dispensary and then look at crime after its arrival. This presents several difficulties. First, based on Internet research, there appears to be approximately 240 publicized Medical Marijuana Dispensaries ([www.canorml.org](http://www.canorml.org)) located in almost as many jurisdictions. No one agency can access data from all these locations and not all agencies compile this data. I spoke with several agency representatives and each had information regarding this issue, however few had specific crime statistics. Secondly, not all crimes related to Medical Marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees or patrons. Lastly, not all the "secondary issues" related to Medical Marijuana Dispensaries are crimes.

Loitering, additional vehicle and pedestrian traffic, use of Medical Marijuana at or near the facilities are described as quality of life issues and are only really quantified when they appear in the newspaper or the complainants appear at a City Council meeting.

Prior to discussing the reports of other Law Enforcement agencies, I would like to present some information from our Department. While our City does not currently have a Medical Marijuana Dispensary, this does not mean that we are immune from their effects.

On January 7, 2004 a resident of El Cerrito was arrested for possession of marijuana for sale. The subject was found to be in possession of 133 grams (4.6 ounces) of marijuana, a small amount of cash, a “replica handgun” pellet gun and three Medical Marijuana Dispensary cards (Oakland Cannabis Buyers Collective, Cannabis Buyers Collective of Marin and “Compassionate Caregivers” of Oakland)

On February 25, 2005, the same subject mentioned above was discovered to be growing marijuana in his house. He was found to be in possession of 15 adult plants, 72 starter plants, 505 grams (1.10 lbs) of processed marijuana, 50 grams (1.75 oz) of hashish packaged for sale and two assault rifles as well as \$6,000.00 in cash. The subject claimed that these plants were Medical Marijuana. An investigation was conducted with the assistance of the West Contra Costa County Narcotic Enforcement Team and resulted in the conviction of the resident for Unauthorized Possession of Cannabis and Possession of an Assault Weapon.

On July 9, 2005, during a suspicious vehicle check, one of our Officers determined that a resident (Who is a member of the Oakland Cannabis Buyers Cooperative) possessed 55 immature plants with the intent of cultivating them and selling them to a Medical Marijuana Dispensary. The District Attorney has filed a complaint containing two felony charges of possession and cultivation of Marijuana. This case is awaiting adjudication as the subject has failed to appear in court (it is believed he has fled to the state of Oregon) and a bench warrant has been issued for his arrest.

On December 11, 2005, a traffic stop for speeding resulted in the arrest of the occupants for the possession on Marijuana packaged for sale and \$3,365.00 in cash.

On March 8, 2006 our School Resource Officer received information that several students were ill after eating cookies distributed by another student. Further investigation revealed that a student had made the cookies with a butter obtained outside (secondary sale) a Medical Marijuana Dispensary containing a highly concentrated form of Tetrahydrocannabinol (THC the active ingredient in Marijuana). The student used the “butter” to bake and then sell these cookies to other students. After the student discovered that the cookies were so potent that some of his fellow students had to be treated at local hospitals, instead of throwing them away, he gave them to other students without telling them what they were laced with. This incident resulted in at least four students requiring hospitalization and it is suspected at least two or three others were intoxicated to the point of sickness.

From March of 2004 to May of 2006, this Department has conducted seven investigations at our High School and Junior High School resulting in the arrest of eight juveniles for selling or possessing with intent to sell Marijuana on or around the school campuses.

Gathering the data from these incidents required hours of research and examination. Many agencies have neither the available resources nor the inclination to gather data of this kind. This makes presenting the data for consideration in this matter very difficult. Another area of importance is the possession of firearms in conjunction with large quantities of cash and marijuana. Those who have the money and drugs want to keep them and arm themselves to prevent robberies. Those who wish to relieve those in possession of cash and drugs use firearms and other deadly weapons to accomplish their task. When speaking to those involved in the drug trade, they will tell you violence and greed are “all just part of the game.”

With the exception of those entries identified from other sources, I contacted and interviewed representatives from each of the listed agencies. I have included newspaper articles that either further describe events or provide additional information regarding some of the “secondary issues”.

#### **ANAHEIM**

May 19, 2004 a Medical Marijuana Dispensary “420 Primary Caregivers” obtained a business license and began operations.

Fall 2004, The Police Department began to receive complaints from neighboring businesses in the complex. The complaints centered around the ongoing sales of Marijuana to subjects who did not appear to be physically ill, the smell of Marijuana inside the ventilation system off the building and the repeated interruption to neighboring businesses.

January 2005, The Medical Marijuana Dispensary was robbed at gunpoint by three masked subjects who took both money and marijuana from the business.

April 5, 2005, The Department met with the property Management Company, owners and representatives from the businesses in the complex which housed the Medical Marijuana Dispensary. The meeting focused on the safety of the employees and patrons of adjacent businesses. Many neighboring businesses complained of Marijuana use on the premises and in the surrounding area as well as a loss of business based on the clientele of the Medical Marijuana Dispensary “hanging around the area”.

Since this meeting, two businesses have ended their lease with the property management company. A law firm that had been in that location for ten years left citing “Marijuana smoke had inundated their office....and they can no longer continue to provide a safe, professional location for their clientele and employees.” A health oriented business terminated their lease after six years and moved out of the complex citing “their business is repeatedly interrupted and mistaken multiple times a day for “the store that has the marijuana.”

The owner fears that “he or his employees may be shot if they are robbed by mistake and the suspects do not believe they do not have Marijuana.” The Property Management Company indicated “at least five other businesses have inquired about terminating their lease for reasons related to 420 Primary Caregivers.” Arrests have been made supporting the belief that some “qualifying patients” purchase Marijuana with a doctor’s recommendation, then supply it to their friends for illicit use. Criminal investigations have revealed the business is obtaining its Marijuana from a variety of sources including Marijuana smuggled into the United States from South and Central America. The Police department has conservatively estimated the “420 Primary Caregivers” business to be generating approximately \$50,000.00 a week in income.  
(Source Declaration of Sgt. Tim Miller Anaheim P.D. Street narcotic Unit)

### **ALAMEDA COUNTY**

January 12, 2005 a Medical Marijuana customer was robbed after leaving the “The Health Center” Medical Marijuana Dispensary (San Leandro). The victim was accosted by two subjects who possibly followed the victim away from the dispensary.

February 6, 2005 a Medical Marijuana Dispensary, the “Compassion Collective of Alameda County” was robbed by two subjects armed with handguns. The robbery took place at 4:50 pm in the afternoon and the suspects took an unspecified amount of cash and Marijuana.

April 27, 2005 a Medical Marijuana Dispensary, “The Health Center” (San Leandro) was burglarized at approximately 3:05 am. No specifics were provided as to the loss sustained as a result of the burglary. Many investigators believe that the victims do not truthfully report the loss of cash or marijuana.

May 24, 2005 a patron of a Medical Marijuana Dispensary, “A Natural Source” (San Leandro) was robbed by three subjects in the parking lot of the dispensary after making a purchase of Marijuana.

August 19, 2005: Five subjects armed with assault rifles conducted a take over robbery of a Medical Marijuana Dispensary “A Natural Source” (San Leandro). They engaged in a shoot out with two employees and one of the suspects was killed in the exchange of gun fire.

Sept. 12, 2005: Both money and marijuana were stolen from the Alameda County Resource Center (16250 East 14th St.) when burglars chopped through the wall of an adjacent fellowship hall during the night.  
(Source Declaration by Lt. Dale Amaral Alameda County Sheriff’s Department)

**Calls for Service Related to Medical Marijuana Dispensaries (Unincorporated San Leandro and Hayward)** Officer Initiated events may be vehicle stops or on-view arrests. 16043 East 14<sup>th</sup> Street: 2003: 2 Officer Initiated activity events, 2004: 1 Officer Initiated activity events. This business is now closed.

21227 Foothill Blvd "Garden of Eden" 2003: 1 Officer initiated activity events, 2004: No calls for service, 2005: 1 Theft call, 4 alarm calls, 1 Officer Initiated activity events.

913 E. Lewelling Blvd. "We are Hemp" 2003: 1 Officer initiated activity event, 2004: 1 Assault call, 2 Officer Initiated activity events, 2005: 1 Assault call, 1 Officer Initiated activity event.

16250 East 14<sup>th</sup> Street: 2003: 11 Officer initiated activity events, 2004: 3 loitering calls, 9 Officer initiated activity events, 2005: 5 Officer initiated activity events.

15998 East 14<sup>th</sup> Street: "The Health Center" 2003: 1 Officer initiated activity event, 2004: 1 Trespassing call, 1 Assault, 2 Disturbance calls, 2 Miscellaneous, 26 Officer initiated events, 2005: 1 Robbery, 1 Aggravated Assault, 1 Grand Theft, 3 Petty Thefts, 2 Vehicle Thefts, 4 Trespassing calls, 5 Loitering calls, 1 Weapons Possession, 2 Controlled Substance cases, 4 Alarm calls, 9 Disturbance calls, 3 Miscellaneous calls and 21 Officer Initiated events.

16360 Foothill Blvd: 2003: 1 Officer initiated activity event, 2004: 2 Officer initiated activity events, 2005: 1 Homicide, 2 Aggravated Assaults, 1 Grand Theft, 1 Controlled Substance case, 13 alarm calls, 2 Officer Initiated events.

21222 Mission Blvd: "Compassionate Collective of Alameda County" 2003: 2 Officer Initiated events, 2004: 5 Officer Initiated events, 2005: 1 Attempted Homicide, 2 Robberies, 2 Burglaries, 2 Controlled Substance cases, 10 Alarm calls, 2 Disturbance calls, 1 Miscellaneous calls and 2 Officer Initiated events.  
(Source Alameda County Sheriff's Department Report)

### **Car Jacking Latest Pot Club Crime**

Linda Sandsmark [San Leandro Times](#) (Excerpt from the article)

San Leandro, CA Sept 29, 2005 -- A woman was carjacked and robbed Monday afternoon after she left The Health Center (THC) marijuana club at 15998 East 14th Street. The unidentified woman, who is from Garberville in Humboldt County, walked back toward the clinic and her car was found on nearby Liberty Street. "She doesn't want to pursue a criminal complaint in spite of the fact she was carjacked," says Alameda County Sheriff's Department spokesman Lt. Dale Amaral. "When you have this kind of drug distribution center it's an absolute magnet for every thug in the nine Bay Area counties. We're running from call to call." Crimes including burglaries and robberies at many of the dispensaries have caused widespread community concern. ....It's a target-rich environment," says Amaral. "The sheriff's department is devoting a tremendous amount of resources to these clubs. Though the clubs may not be selling directly to students, the county's School Resource Officers report a 36-percent increase in arrests on nearby school campuses for minors possessing marijuana, possibly due to increased supply in the area.

(Source [http://www.hempevolution.org/thc/dispensary\\_robbed040514.htm](http://www.hempevolution.org/thc/dispensary_robbed040514.htm))

## **ARCATA**

- There are two dispensaries in town that share a building.
- The two dispensaries have an ongoing disagreement with each other that has resulted in numerous calls for police services to settle disputes.
- The facilities do not have the correct electrical support and continuously blow out the electricity in the area. They have not complied with upgrading their electrical systems or responded to fire department concerns regarding proper exits and signage.
- There have been numerous instances where people have purchased marijuana at the dispensary and then resold it at a nearby park.
- A doctor has come to the dispensaries and, for a fee, will provide a medicinal marijuana recommendation for just about any complaint the patient makes.

(Source Staff Report to Davis City Council: Medical Marijuana June 13, 2005)

## **BAKERSFIELD**

Sep 8th, 2005. DEA arrested three subjects in raid on the Free and Easy cannabis dispensary. Kern County sheriffs summoned the DEA after being called to investigate a robbery at the facility. Police found plants growing at one subject's home plus 20 lbs of marijuana, and illegally possessed firearms. .

(Source) <http://www.canorml.org/news/fedMedicalMarijuanacases.html>

## **BERKELEY**

March 30, 2000: Two males armed with sawed off shotguns forced entry into a residence and forced the occupant at gun point to turn over a safe. A subsequent investigation revealed that a second resident who was not home at the time was a former director of a Medical Marijuana Dispensary and was the intended target of the robbery.

October 2001, December 2001 and June 2002: The Medical Marijuana Dispensary on University was robbed. Large sums of money and Marijuana taken.

March 2003: A home invasion robbery over marijuana cultivation escalated into a homicide.

December 2003: The Medical Marijuana Dispensary on Telegraph was robbed. (No further info provided)

April 2004: A home invasion robbery investigation resulted in the seizure of \$69,000.00, ten pounds of Marijuana and a "Tech 9" machine pistol.

"While recognizing the medical needs of the cannabis using patients, staff is concerned about the potential for crime and violence associated with the distribution and cultivation of Marijuana"

(Source) City Manager's report to the Berkeley City Council

*Pot club robbed for third time in a year (Excerpts from the Article)  
By David Scharfenberg, Daily Planet staff (06-07-02)*

**Club had promised to limit amount of cash, marijuana stashed there**

Four men stole \$1,500 and \$3,500 worth of marijuana from the Berkeley Medical Herbs pot club yesterday after two of them were allowed on site without proper identification. The afternoon heist renewed concerns about the integrity of the club's security and reignited some anger in the neighborhood. This incident marks the third time in a year robbers have stormed the medicinal marijuana club, located in a small brick building at 1627 University Avenue. The last robbery, in December, prompted a rash of concern from city officials about security at the club. "The guys who robbed it ran out with a big satchel," the neighbor said, adding that he disapproves of the marijuana club. "This is a very attractive place for other drug dealers to rob. It's not something we want in our neighborhood." Geshuri acknowledged that a few neighbors are opposed to the club, but said most of the residents support Medical Herbs in its mission. The club had pledged after the December robbery to keep no more than \$1,000 and one pound of marijuana on site. But Geshuri said the robbers on Wednesday made off with \$500 more than that and as much as a pound-and-a-half of marijuana. The witness opposed to the club said theft proves that management is not keeping its pledge to prevent robberies and ensure safety.

Berkeley

- Has had three to four facilities operating in the City. (Over the last 3-4 years).
- There have been several take over robberies of the dispensaries.
- There have been arrests where legitimate purchasers have resold marijuana on the street to well individuals.
- Obvious young people entering and purchasing marijuana from the dispensary.
- Recommended that if we did not currently have the dispensaries, we should not allow them.
- Police department has been given explicit instructions by their City Council not to take any kind of enforcement action against the dispensaries or people going in or out of the facility.
- Facilities will accept any Health Department cards, even those obviously forged or faked.

(Source Staff Report to Davis City Council: Medical Marijuana June 13, 2005)

**BUTTE COUNTY**

Butte County does not track statistics related to Medical Marijuana Dispensaries, however a Detective in the Investigations Unit knew of;

At least six robberies or attempts, one of which involved a shoot out between the suspect and victim occurred during the months of August to October 2005. Each of these robberies took place at the victim's residence and the target was the victim's marijuana cultivation. He stated that this is the busy time of year for these activities as it is harvest time for the Marijuana grows.

(Source Det. Jake Hancock Butte County Sheriff's Department)

## **CALAVARAS COUNTY**

Jan. 2005. Federal government files forfeiture suit after local sheriff finds 134 marijuana plants. Government seeks to forfeit a home and five acres of land. The defendant says he was growing for half a dozen friends and family members and had checked with local authorities to make sure he was within legal guidelines.

(Source <http://www.canorml.org/news/fedMedicalMarijuanacases.html>)

## **CHERRYLAND**

Cherryland, CA June 30, 2005 -- An employee of a marijuana dispensary narrowly escaped with his life after a gunman opened fire as he waited outside the establishment for co-workers to arrive. The employee, whom authorities declined to identify, was sitting inside his car in the rear parking lot of the Collective Cannabis Club at 21222 Mission Boulevard on Tuesday morning when a masked gunman appeared, said Lt. Dale Amaral, spokesman for the Alameda County Sheriff's Department.

(Source [http://www.hempevolution.org/media/santa\\_cruz\\_sentinel/scs041213.htm](http://www.hempevolution.org/media/santa_cruz_sentinel/scs041213.htm))

## **CLEAR LAKE**

There have been a few reported robberies of Medical Marijuana patients away from the dispensaries. One significant case involved home invasion robbery. Multiple suspects entered the home of a person who was known to be a Medical Marijuana user. During the robbery, one resident was beaten with a baseball bat while the suspects made inquiries regarding the location of the marijuana.

Two of the suspects were shot and killed by the homeowner.

(Source Clear Lake P.D. Inv. Clawson)

## **CLOVIS**

In December of 2005 the Clovis Police Department in conjunction with the Fresno County Sheriff's Department conducted an investigation which resulted in the arrest of a subject for possession of 120 pounds of marijuana. The subject of the investigation was found to have a Medical Marijuana card which helped facilitate his possession and sales of marijuana.

(source [www.ci.clovis.ca.us/PressReleaseDetail.asp?ID=838](http://www.ci.clovis.ca.us/PressReleaseDetail.asp?ID=838))

**DAVIS** (Excerpts from Staff Report to Davis City Council: Medical Marijuana June 13, 2005)

In summary, the experiences of other cities that already have dispensaries are bad. Dispensaries have experienced robberies themselves; legitimate patients have been robbed of their marijuana as they leave the facility; people purchasing marijuana at the dispensaries have been caught reselling the marijuana nearby; street level dealers have begun selling marijuana and other drugs nearby in an effort to undersell the dispensary; some dispensaries have doctors present in their facility who will recommend marijuana as a course of treatment for just about any patient complaint; and many dispensaries do not take serious steps to ensure they are selling only to legitimate patients or their caregivers. When asked, many of the police departments that already have facilities in their cities said that if Davis did not already have a dispensary, we should take steps to prohibit one from opening in the city.

## **DIXONVILLE**

August 25, 2006: Medical Marijuana cardholder caught with 200 pounds of pot. A Medical Marijuana cardholder was caught with 120 pounds of processed marijuana, 80 pounds of marijuana butter, 10 grams of hashish, 45 large cannabis plants and several psilocybin mushrooms. The Douglas Interagency Narcotics Team found some of the pot packaged for sale and \$7,000 worth of cash at the home of Dwight Ehrensing off Strader Road, north of Buckhorn Road in Dixonville. Ehrensing, 61, was arrested and booked at the Douglas County Jail on charges of delivery of marijuana and the manufacture and possession of marijuana. The narcotics team was given a search warrant after receiving a tip that Ehrensing was selling marijuana, which isn't allowed, even for Medical Marijuana cardholders. "We're finding it's becoming more common," said DINT Lt. Curt Strickland. "People are using the cards to circumvent the law." DINT was assisted at the scene by the Douglas County Sheriff's Office, Oregon State Police, parole and probation officers.

Source: <http://www.newsreview.info/article/20060825/NEWS/108250091>

## **EL DORADO COUNTY**

Medical Marijuana Dispensary operated Medical Marijuana clinic in Cool, California with 6000 patients; DEA raided Sep. 28, 2001; seized patient records. Indicted Jun 22, 2005 for marijuana found on premises.

(Source <http://www.canorml.org/news/fedMedicalMarijuanacases.html>)

## **FAIRFAX**

- Chief of Police Ken Hughes, advised the following:
- Fairfax has one marijuana dispensary
- Fairfax has had some problems with patients selling to non-patients
- They have had problems with purchasers from dispensary congregating at a baseball field to smoke their marijuana
- Fairfax police arrested one person who purchased marijuana at the dispensary and then took it to a nearby park where he tried to trade it to a minor for sex
- Very small town and low crime rate

(Source Rocklin P.D. report)

## **HAYWARD P.D.**

- Acting Chief Lloyd Lowe, advises the following:
- Hayward has three dispensaries total, two legal under local ordinance and one illegal.
- They have had robberies outside the dispensaries
- They have noticed more and more people hanging around the park next to one of the dispensaries and learned that they were users in between purchases
- They have problems with user recommendation cards – not uniform, anyone can get them
- One illegal dispensary sold coffee, marijuana and hashish – DA would prosecute the hashish sales and possession violations after arrests were made
- They have received complaints that other illegal drugs are being sold inside of dispensaries

- The dispensaries are purchasing marijuana from growers that they will not disclose
- Chief Lowe believes that the dispensaries do not report problems or illicit drug dealers around their establishments because they do not want the police around
- Hayward Police arrested a parolee attempting to sell three pounds of marijuana to one of the dispensaries
- Hayward has recently passed an ordinance that will make marijuana dispensaries illegal under zoning law in 2006

(Information provided by Rocklin P.D. report)

### **HUMBOLDT COUNTY**

One subject arrested in Humboldt County Aug 01, 2001 growing 204 plants for the Salmon Creek patients' collective; case turned over to the feds, pled guilty Dec 6; sentenced to 15 months for possession. Released from prison May 2003. This subject is now missing and presumed dead since Aug 2003; police suspect foul play. (Source <http://www.canorml.org/news/fedMedicalMarijuanacases.html>)

12/12/2003 Subject: Attempted Murder Suspects Arrested

Contact: Brenda Gainey, Case No#: 200308180, Location: Garberville

Humboldt County Sheriff's Deputies arrested two Garberville men last night wanted in connection with an attempted murder case from Mendocino County. Yesterday afternoon the Mendocino Sheriff's Office received a report of a shooting in Willits. Detectives from Mendocino learned that the victim, Jarron Jackson, 38 of Antioch, had been shot once in the arm during a robbery at a residence in Willits. Mendocino County Sheriff's Detectives learned the identities of the two suspects and issued a "Be On the Lookout" bulletin to Northern California police agencies. The bulletin also indicated that the two suspects were residents of Garberville. Late yesterday evening Humboldt County Sheriff's Deputies and officers from the California Highway Patrol went to the suspects' residence on the 1400 block of Redwood Dr. in Garberville.

Arrested at the house were Charles Magpie, 26, and Rudolph King, 28. Both men were taken into custody without incident. While waiting for Mendocino County Officials to arrive at the scene, Humboldt County Deputies received consent to search the house from one of the residents. Deputies found a sophisticated indoor commercial marijuana grow. Members of the Sheriff's Drug Enforcement Unit were called and found the following:

- Twenty-eight pounds of processed marijuana; estimated street value of \$100,000.
- One thousand growing marijuana plants ranging in size from six inches to two feet; estimated street value of \$875,000.
- Two shotguns
- Approximately \$16,000 in cash

Date Released: 6/2/2006 Subject: Marijuana Investigation Contact: Deputy Campbell  
Case No#: 200603240 Locations: Swayback Ridge

On 6/1/06, Sheriff's deputies were conducting follow up to a residential burglary that occurred in the Swayback Ridge area of Humboldt County. While attempting to contact persons who may have had knowledge about the burglary, a commercial indoor marijuana operation was discovered.

The Sheriff's Drug Enforcement Unit, assisted by the Drug Enforcement Administration and the Bureau of Narcotics Enforcement, served a search warrant on the property. Law Enforcement seized 570 marijuana plants, 1.5 pounds of processed marijuana, and three rifles. Suspect information was obtained, and warrants are being sought at this time. (Source <http://www.co.humboldt.ca.us/sheriff/pressreleases>)

#### **KERN COUNTY**

July 20, 2005. The director of American Kenpo Kungfu School of Public Health was arrested for cultivating over 2,000 plants at three different locations. He was charged with conspiracy to distribute and possess more than 1,000 plants (10 year mandatory minimum).

(Source <http://www.canorml.org/news/fedMedicalMarijuanacases.html>)

#### **LAKE COUNTY TASK FORCE: (Bureau of Narcotic Enforcement)**

One recent case currently in federal litigation involves the seizure of 32,000 plants from one grow. The cultivator claims that he is a "provider" for Medical Marijuana patients and therefore exempt from prosecution for cultivation. The subject was arrested and released on bail pending trial on marijuana charges with possible sentence of 12 years to life. On Feb 16, 2005 this subject was re-arrested along with another subject after allegedly selling one pound of marijuana to DEA agents, who claim they did not mention medical purposes.

(Source) Lake County Narcotic Enforcement Team

One pound of high grade Marijuana sells for approximately \$4,000.00 dollars in the Bay Area. In the Mendocino area that price drops to approximately \$2,700 per pound based on availability. It is estimated that one plant can yield one to three pounds of Marijuana. Based on this information 32,000 plants times 1- 3 pounds = 32,000 – 96,000 pounds at \$2,700 per pound = \$86,400,000 to \$259,200,000.

#### **LAKE COUNTY IMPACTS**

Sheriff Rod Mitchell, advised the following:

- Lake County has one marijuana dispensary in Upper Lake (Two as of this writing)
- The biggest problem is the doctor, close by the dispensary who is known across the state for being liberal in his recommendations to use marijuana for a fee of \$175
- Many "patients" come from hours away and even out of state, Oregon specifically, to get a marijuana recommendation from the doctor
- Upper Lake has been impacted by the type of people coming for the marijuana doctor and dispensary. Citizens report to the Sheriff that the people coming to Upper Lake for marijuana look like drug users ("dopers").
- One quilt shop owner has told the sheriff that she does not feel safe anymore because of the type of people drawn to the marijuana doctor and the dispensary, which are located close together in the very small town.

- They also have a notorious marijuana grower who beat prosecution for cultivation by making a medical claim. Law enforcement has taken a hands off approach even though he is blatantly violating the law.
- The Marijuana grower has recently claimed to be a church to avoid paying taxes.

(Source Rocklin P.D. report)

## **LAYTONVILLE**

Crane by QUINCY CROMER/The Daily Journal (Excerpts from the article)

The owner of Mendo Spiritual Remedies in Laytonville and Hemp Plus Ministry in Ukiah -- who says he provides Medical Marijuana to more than a thousand people in Mendocino County -- will be in court next week to face charges for cultivation of marijuana.

Les Crane, founder and self-proclaimed reverend of the two churches where Medical Marijuana is available locally, said some 5,000 cannabis plants and his life savings -- about \$6,000 converted into gold -- were seized by the Mendocino County Sheriff's Office on May 16. "They came here because a guy was coming to rob my house.

I called them to come and solve the problem and then they found out about the grow. We showed them all the documentation and they left and went and got a search warrant and came back and searched my church," Crane said.

(Source) <http://www.hightimes.com/ht/news/content.php?bid=1203&aid=10>

### **Laytonville marijuana guru shot to death (Excerpts from the article)**

2 others beaten in home; no suspects, but officials believe killing related to pot growing Saturday, November 19, 2005

By GLENDA ANDERSON

THE PRESS DEMOCRAT

A Laytonville pot guru who founded two Mendocino County medicinal cannabis dispensaries was shot to death during an apparent robbery in his home early Friday morning. Les Crane, who called his pot dispensaries churches and referred to himself as a reverend, said he was in the business to help ailing people, not to make money. He had said he had nearly 1,000 patients. He was killed at about 2:30 a.m. Friday in his home, which is about a mile from the center of Laytonville.... Two other people in Crane's home at the time of the shooting were beaten....Crane's death is believed to be related to his marijuana-growing and dispensing activities, Mendocino County authorities said. "I am totally surprised we haven't had more robberies and violent crimes associated with these things because of the amount of money involved and the value of the product," Sheriff Tony Craver said. His religious credentials were issued by the Universal Life Church, which supplies certificates through the mail and the Internet. Sheriff's Lt. D.J. Miller provided few details of the crime, pending further investigation, including how many times Crane was shot or if any money or items were taken. Mendocino County officials had doubts about Crane's purpose for growing pot, and in May he was arrested for marijuana cultivation and several thousand pot plants were confiscated from his home. The criminal case was pending when he was killed....

(Source)<http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303>

## **LOS ANGELES COUNTY**

January 2004, Approximately six to eight known Medical Marijuana Dispensaries operating in West Hollywood. Several of the Medical Marijuana Dispensaries have generated calls for service.

January 10, 2004, An Assault with a Deadly Weapon and a Vandalism are reported at one of the Medical Marijuana Dispensaries as well as calls generated reporting obstruction of the street or sidewalk.

February 19, 2005, A Medical Marijuana Dispensary "LA Patients and Caregivers" reported that two subjects armed with handguns robbed the dispensary.

May 6, 2005, A search warrant was served at one of the dispensaries by L.A.P.D. (no further information provided)

May 15, 2005, A Medical Marijuana Dispensary "Alternative Herbal Health Services" four to five subjects armed with handguns entered the business at 4:25 pm, one of the employees was "pistol whipped" as the suspects demanded access to the dispensary's safe.

(Source Declaration of Sgt. Robert McMahon Los Angeles County Sheriff's Department)

## **LOS ANGELES P.D.**

### **Medical Marijuana Overview**

The purpose of this fact sheet is to provide an overview of the issues concerning Medical Marijuana from its inception to the present and review the Los Angeles County Ordinance that permits Medical Marijuana providers (providers, collectives, cannabis clubs and clinics) in unincorporated areas of the county. Medical Marijuana providers have been popping up all over the City of Los Angeles at an alarming rate causing a myriad of enforcement dilemmas. Because the district attorney, city attorney and city council have no policy regarding Medical Marijuana, citizens and police are perplexed as what to do and who to turn to. Further exacerbating the problem, long lines of drug abusers, who are not sick, are purchasing marijuana at will. Based upon a number of findings, as described in this fact sheet, allowing Medical Marijuana providers in the City of Los Angeles is not in the best interests of the Department, the City, and especially, its citizens. Therefore, Medical Marijuana providers should be banned in the City.

The Compassionate Care Act of 1996, known as Proposition 215, made the possession and cultivation of marijuana legal for "qualified patients" and "primary caregivers." Qualified patients included those with serious illnesses that had a recommendation from a physician and primary caregivers were individuals designated by a patient who has consistently assumed responsibility for the housing, health and safety of the patient.

Senate Bill 420, enacted in 2004, implemented Proposition 215 and provided guidelines that included, a volunteer identification card system issued by county health departments for patients; immunity from arrest for possession, transportation, delivery or cultivation

with specified amounts of marijuana; and, expanded the definition of primary caregiver to employees of health care facilities. It also provided for limited compensation – no profiteering – for the primary caregiver, for “out of pocket” expenses and services, but not product. A “dispensary” is not a primary caregiver. Senate Bill 420 did not legalize providers. It stated primary caregivers cannot cultivate or distribute Medical Marijuana for profit. Sales and possession for sale are illegal. Commercial enterprises selling marijuana to any qualified public purchaser is not a primary caregiver and are subject to arrest and prosecution.

The Los Angeles County Ordinance does not specify who may dispense Medical Marijuana and what dosage is appropriate for a particular illness. One of the arguments for the legalization of Medical Marijuana is that marijuana relieves pain and suffering, aids digestion of food and nourishment and other benefits to persons suffering from cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine and other illnesses. A recent add in a magazine from Pacific Support Services, Inc., in advertising Medical Marijuana recommendations, usurped Proposition 215 by adding, “sports injuries, auto injuries, insomnia, chronic pain and nausea, and anxiety,” to the aforementioned serious illnesses. They also promised, “If you do not qualify for a recommendation your visit is free,” and provided a coupon for \$150 evaluation. When it comes to dosage, there is no specified dosage for a particular illness. The dosage is left to the decision of someone that has smoked or eaten marijuana products to speculate as to a person’s needs. These persons and providers do not have pharmaceutical experience.

In May 2005, officers from the LAPD served a search warrant upon a dispensary that was one of a chain of seven Medical Marijuana providers located throughout the state. The dispensary was targeted for blatant distribution and illegal sales of marijuana to adults and young people. Young people from all over southern California flocked to the business to buy marijuana and then returned to their respective communities to conduct street sales of the drug. No one on the premises had pharmaceutical training or licensing to distribute the drug. Furthermore, the business promoted the sale and cultivation of 60 strains of marijuana, of which, only six strains were for medical purposes. Evidence was also recovered at the scene that showed the dispensary was in business to make a profit and allegedly laundered their proceeds. **Fourteen persons were arrested and nearly 800 pounds of marijuana and over \$242,000 in cash was seized (the 14 arrested were never filed on by the district attorney). Evidence documented over \$1.7 million in cash was received from an average of 300 patients per day, during the month of March 2005. An email from the chain’s headquarters boasted \$2 million monthly and 800 patients daily.** The executive director chastised the dispensary for not bringing in more patients, which was a clear violation of Senate Bill 420 wherein providers are supposed to be non-profit. **It was estimated the corporation as a whole brought in over \$200 million annually that was allegedly laundered through the purchase of real estate, exotic automobiles, expanding business operations and foreign investment. Patients reportedly paid as much as \$6,400 for a pound of marijuana.**

During the aforementioned investigation, it was learned patients spent \$150-\$250 to be examined by a doctor to receive a recommendation, then another \$40-\$50 to obtain a patient identification card. According to Senate Bill 420, identification cards are only to be issued only by State or County health departments and not private entities. The cards were produced fraudulently. Next, patients had to spend from as little as \$30 to several thousand dollars for dried marijuana or marijuana products. Some questions arose, “How can someone on a fixed income or pension afford Medical Marijuana?” and “What dosage of marijuana is appropriate for an ailment.”

The Los Angeles County Ordinance provides for the sales and consumption of edible marijuana. Edibles are food products, i.e. soda pop, peanut butter, candy, bakery items, jam and other liquids that contain various levels of Tetrahydrocannabinol (THC), the psychoactive agent of marijuana. There were no regulations in the Ordinance for the quality control, potency, dosage and legality of the products sold. There is no Food and Drug Administration (FDA) approval of the products. Furthermore, on April 20, 2006 the FDA rejected the use of marijuana for treating serious illnesses, stating they did not support the use of smoked marijuana for medical purposes.

On March 23, 2006 in Oakland, “Beyond Bomb,” one of a handful of manufacturers and distributors of edible marijuana products, who distributed edibles to the Yellow House and Medical Marijuana providers in California and the U.S., was searched by the Drug Enforcement Administration. The owner was arrested for marijuana trafficking. The area of the company used for processing and packaging edibles was atrocious. No sanitary precautions were taken whatsoever and the area was absolutely filthy and vermin was present. In addition, the company sold edibles in packaging resembling copyrighted and trademarked food items. The company used the same logo, candy wrapper colors and derivatives of the names of legal products, i.e. “Buddafinga” had the similar color wrapper and logo as the NestleUSA candy bar “Butterfinger.” Over 20 different marijuana candy items were found that violated state and federal laws pertaining to the infringement of copyrights and trademarks. In addition, legitimate candy bars were opened and the contents was laced with THC and then repackaged in the new labeling. There was no explanation for “3X,” “6X,” or “10X” markings on the wrappers of edible products (according to operators of providers the markings indicate the potency of THC in the product). Lastly, there are no directions on the edible packages for the uses, dosage, warnings (allergy alerts, stomach bleeding and use with alcohol), drug facts, expiration date and other information, as required for over the counter drugs.

On August 15, 2006, a newly established Medical Marijuana dispensary in Hollywood, in an effort to recruit patients, **handed out free samples of bakery items laced with THC. Two persons, an UPS driver ate a cookie and a security guard ate a piece of chocolate cake, and then fell violently ill and was hospitalized.** The LAPD is currently investigating the poisoning of the two victims.

The Los Angeles County Ordinance also provided for the smoking of marijuana on site with a ventilation system but states nothing about the dangers associated with such use and secondhand smoke.

According to the scientific studies, there are more than 4,000 chemicals in cigarette smoke including 43 known cancer causing (carcinogenic) compounds and 400 other toxins. These effects damage the heart and lungs and make it harder for the body to fight infections. Breathing secondhand smoke has been found to be as dangerous as smoking. Marijuana smoke and cigarette smoke contain many of the same toxins, including one which has been identified as a key factor in the promotion of lung cancer. This toxin is found in the tar phase of both, and it should be noted that one joint has four times more tar than a cigarette, which means that the lungs are exposed four-fold to this toxin and others in the tar. Marijuana smoking for patients with already weakened immune systems means an increase in the possibility of dangerous pulmonary infections, including pneumonia, which often proves fatal in AIDS patients. None of these effects are stated in the ordinance. In addition, citizens and businesses adjacent to providers complain of marijuana smoke that permeates into their working spaces and public hallways causing them distress and caused their businesses to lose customers.

It was learned during the West Hollywood investigation; physicians were allegedly handing out Medical Marijuana recommendations for profit without actually examining prospective patients. Proposition 215 and Senate Bill 420 provided doctors could not be prosecuted for issuing Medical Marijuana recommendations. **Evidence was recovered wherein one doctor saw 49 persons in one day, netting \$150 per patient. The same doctor allegedly saw 293 patients in one week earning over \$43,000 without ever personally examining them.** Medical doctors typically see an average of no more than 10 patients per day. It was learned the doctor allegedly examined patients from a closed circuit television while a clerk received the payment and handed out pre-signed recommendations. Projecting his earnings, he could receive over \$2.1 million annually without practicing medicine or worrying about malpractice insurance. An investigation last month in San Diego County proved this to be true regarding a different well-known physician. An undercover officer and a television crew, in separate incidents, obtained recommendations from the same physician, claiming maladies without being examined and they paid for pre-signed recommendations. To further show there are no controls of who can receive Medical Marijuana, both persons then went to Medical Marijuana providers and obtained marijuana for their pets. They actually put their pet's names on the recommendations (one was a dog and the other was a bird). The providers commented that Medical Marijuana, in edible form, was good for them.

Another problem associated with Medical Marijuana recommendations is that there is no penalty for providers that do not check identification against the name listed on the recommendation. **Just last week, a high school coach in the San Fernando Valley allowed members of his team to use his recommendation so that they could purchase marijuana for recreational use. The dispensary made no effort to remove the recommendation from the 17-year-olds' possession and did not prevent them from obtaining marijuana.**

The Los Angeles County Ordinance called for a security system and guards for each dispensary. Medical Marijuana providers have had more extensive security systems than Sav-On, Ritz or Walgreen drug stores, and yet they still have been robbed and assaults have occurred because they keep exorbitant amounts of cash and marijuana on hand. In addition, the security systems and guards do nothing for the surrounding businesses or area. Many of the providers in LA County employ street gang members with extensive criminal histories as security guards. Despite the guards, the Department has seen a significant increase in Part I and Part II crime wherever providers have appeared. Surrounding merchants and residences have had to deal with intimidation, second-hand smoke, and vandalism to personal property and buildings, urinating and defecating in public, thefts from vehicles and businesses and the loss of business. On August 28, 2006 between midnight and 3 a.m., unknown suspects tunneled through an adjoining business (workout gym) into a Medical Marijuana dispensary and stole the marijuana inside. Lastly, several unincorporated areas within the County of Los Angeles border the City of Los Angeles and are causing problems for both cities. In San Francisco, a Medical Marijuana dispensary just lost its bid to open up a shop near Fisherman's Wharf. The City's Planning Commission meeting was packed by citizens who opposed the cannabis dispensary complaining that customers did not purchase pot for health problems, but to resell it on the street, and that the outlets are a magnet for general drug use and increases in overall crime, traffic and noise.

There were no provisions in the Los Angeles County Ordinance regarding advertising of Medical Marijuana providers. In August 2006, Medical Marijuana dispensary flyers were found on the Grant High School campus in Van Nuys, offering Medical Marijuana doctor evaluations and recommendations and free samples of marijuana. Medical Marijuana advertising has also been found on college campuses. On August 16, 2006 Time Warner Cable pulled the plug on three ads promoting Medical Marijuana that were scheduled to debut on four popular cable channels in the Coachella Valley.

There were no provisions in the Los Angeles County Ordinance for background verification of the owner's qualifications to run a Medical Marijuana dispensary. The owners of several Medical Marijuana providers have been found to be felons and in the case of one the largest Medical Marijuana corporations, the owner is a fugitive from another state for drug trafficking. **On August 17, 2006 the owner of a major Medical Marijuana dispensary in North Hollywood, with over 1,000 patients, was interviewed. He was anxious to speak with police because a Jamaican drug trafficking organization was trying to takeover his business and was threatening physical violence to him and his family.**

A new tact has been taken by a Medical Marijuana dispensary in Hollywood in representing themselves as a religious organization citing a recent decision by the U.S. Supreme Court, allowing certain hallucinogenic controlled substances to be used in religious ceremonies. Temple 420, in their interpretation of the court decision handed down in February 2006; purports marijuana is the sacrament of their religious experience. They offer prospective members unlimited supplies of marijuana to be picked up in person or sent through the mail after paying a \$100 membership fee.

They represent, "Membership cards will work like Medical Marijuana cards in California. If a member is ever pulled over with cannabis, anywhere in the nation, they can present their card and show the authorities that they are lawfully in possession of religious marijuana."

**Though issuing prescribed medications, providers do not have to meet the same standards as pharmacies. As news agencies have pointed out, State regulations are stricter for California's barbers than its Medical Marijuana providers.**

Lastly, Senate Bill 420 has a provision allowing cities and counties to decide whether or not to approve Medical Marijuana providers. On August 16, 2006 the city of Monterey Park joined several counties and cities around the state, including the cities of Roseville, Pasadena and Torrance, in banning Medical Marijuana providers. Just in the last few days, the city of Corona has begun examining whether or not to ban Medical Marijuana providers. These cities, along with 38 others throughout the state, have recognized the serious impact Medical Marijuana providers have had upon communities and do not want what is happening in the southern California to happen in their communities. According to representatives from these cities, the banning of Medical Marijuana providers has not adversely affected their constituents.

**Source Det. Dennis Packer Asset Forfeiture/Narcotics Vice Division L.A.P.D.)**

## **MENDOCINO COUNTY**

### **Marijuana: Marijuana Crop Worth \$1.5 Billion in One California County Alone, Paper Estimates 12/2/05 (Excerpts from the Article)**

Northern California's Mendocino County has been known for marijuana growing for at least 30 years. Part of the state's legendary Emerald Triangle of high-grade pot production along with neighboring Humboldt and Trinity counties, Mendocino has long profited from the underground economy. Last week, a local newspaper, the Willits News, tried to gauge just how large the profits may be, and the result is startling. According to the News, the local marijuana industry will add \$1.5 billion to the county's economy this year. With Mendocino's legal economy estimated at about \$2.3 billion, that means the pot economy is almost two-thirds as large as all other legal economic activities combined. When combining the aboveground and underground economies, the marijuana industry is responsible for roughly 40% of all Mendocino County economic activity, a figure approaching the proportions of the Afghan opium economy. The County of Mendocino Marijuana Eradication Team (COMMET) seized 144,000 plants this year, and District Attorney told the paper COMMET normally seized between five and eight percent of the crop, a little less than the 10% rule of thumb for estimating all drug seizures. The paper more than compensated for the lowball seizure rate by also factoring in a 20% crop loss to spoilage. Following the formula, the News estimated 1.8 million plants were sown in the county this year, with 1.32 million surviving droughts, floods, bugs, mold, and cops. And while both the DEA and Mendocino County law enforcement like to say that one plant produces one pound, the newspaper consulted local grower "Dionysius Greenbud," who said the average yield is closer to a half pound -- a very rough estimate, given a local crop that consists of both high-yielding outdoor plants and smaller, lower-yielding indoor plants. The paper's in-the-ballpark estimate for total pot production in the county is thus

some 662,000 pounds. The paper assumed a wholesale price of \$2200 a pound, based on reports from local growers, and a simple multiplication yields a total of \$1.5 billion. Is that figure out of line? It's hard to say. In last year's "Reefer Madness: Sex, Drugs, and Cheap Labor in the American Black Market," Eric Schlosser quoted former DEA officials as estimating the value of all marijuana grown nationwide at \$25 billion. While it is difficult to believe that one California County accounts for nearly 5% of all pot grown in the US, who is to say different? (Source <http://stopthedrugwar.org/chronicle/413/mendocino.shtml>)

March 16, 2006 Three suspects enter a Medical Marijuana Dispensary (Mendocino Remedies), pepper spray the employees and attempt to take property. A fight between the suspects and victims ensues and the suspects flee the scene. (Source <http://www.co.mendocino.ca.us/sheriff/pressreleases.htm>)

### **MODESTO**

July 18th, 2005. DEA arrests three subjects on charges stemming from a raid by Stanislaus Co sheriffs, who reported discovering 49 plants and 235 pounds of marijuana there. The main subject of the investigation and his wife had been providing Medical Marijuana for patients at a San Francisco dispensary. (Source <http://www.canorml.org/news/fedMedicalMarijuanacases.html>)

### **Soap store a front for pot outfit, cops say**

Patrick GIBLIN Modesto Bee (Excerpts from the article)

Modesto, CA June 17, 2006 -- Drug agents looked past the soaps and lotions at The Healthy Choice on McHenry Avenue in Modesto and sniffed out a marijuana store in the back, law enforcement officials said Friday. "The second store was just like a legitimate store, with shelves, prices listed and receipts given to the customers," said Rea, an agent with the Stanislaus Drug Enforcement Agency. "I've never seen anything like it." There were prescription bottles filled with pre-weighed amounts of marijuana. There also were 50 to 100 pre-wrapped, marijuana-laced brownies and an equal number of marijuana-laced cookies. The store had a menu of prices and types of marijuana, with the different varieties neatly packed in Tupperware containers, Rea said. "They offered full customer service," Rea said. Local, state and federal drug agents raided the store about 9 a.m. Friday and stayed until about 1 p.m., seizing property and cataloging the inventory, sheriff's spokeswoman Gina Legurias said. They also seized about \$20,000 in cash. Approximately 30 people came to the store looking to buy marijuana while officers were there, Rea said. About half of them had California Medical Marijuana cards, indicating they were suffering from cancer, glaucoma or other ailments. Marijuana is believed to help relieve the symptoms. However, the store isn't a licensed Medical Marijuana dispensary. The rest of the potential customers didn't have cards, Rea said. "They sold to anyone and everyone," he said. No customers were arrested. They were interviewed to give officers an idea of how much business the store did, Rea said

## OAKLAND

- Large criminal element drawn to the dispensary location
- Marijuana dealers who have a doctor recommendation are purchasing from the dispensary and then conducting illegal street sales to those who do not have a recommendation.
- Street criminals in search of the drugs are robbing medical use patients for their marijuana as they leave the dispensary.
- Thefts and robberies around the location are occurring to support the illegal and legal (by State law) drug commerce.
- Chief Word mentioned that a shoe repair business next door to a dispensary has been severely impacted because of the concentration of criminals associated with the dispensary. The shoe repair business owner is considering shutting down his business.
- They had more than 15 total in city, now limited to four by ordinance but control is not very strong. The fines are too small to control a lucrative business.
- Most of the crime goes unreported because the users do not want to bring negative publicity to the dispensary.
- The dispensaries have an underground culture associated with them.
- At least one of the dispensaries had a doctor on the premises giving recommendations on site for a fee.
- One location was a combination coffee shop and dispensary and marijuana was sold in baked goods and for smoking.
- Dispensary management has told the police that they cannot keep the criminal element out.

(Source) Rocklin P.D. report

June 30, 2004: Five subjects were arrested by DEA following a CHP raid on a warehouse where 4,000 plants were found. The subjects claim that the plants were for a licensed dispensary. Police gave conflicting accounts of the incident; **the CHP says it called on the DEA after Oakland police declined to help.** Two defendants have pled not guilty to manufacturing charges bearing a 10-year to life sentence.

March 16, 2006. DEA raids cannabis candy manufacturer, "Beyond Bomb," at three different East Bay sites, seizing over 5,000 plants, \$150K cash, and the company's stash of cannabis candies & soda pop. (Source) <http://www.canorml.org/news/fedMedicalMarijuanacases.html>

One Department representative was willing to speak with me, but did not wish to be quoted for this report. They advised me of a recent carjacking. This event involved an owner and three employees of a Medical Marijuana Dispensary. None of the four could agree on any fact relating to the case other than while property of the dispensary was stolen, no Marijuana or cash was taken. This leads us to believe that either a large quantity of Marijuana or cash was the target of the attack.

## PLACENTIA

### **Temporary ban on medical marijuana sale proposed The 45-day moratorium would allow city staff to study ways to regulate marijuana distributors**

By SUSHMA SUBRAMANIAN Excerpts from the article

The Orange County Register Friday, August 11, 2006

Placentia -- The City Council on Tuesday plans to establish a 45-day moratorium on launching medical marijuana dispensaries. The effort was prompted by two recent cases involving the sale of marijuana. In May, police confiscated 15 mature marijuana plants from a man who was distributing the drug from his residence without a permit. City staff also received an inquiry about setting up a dispensary in Placentia. **Several California cities that have medical marijuana dispensaries have experienced an increase in crime, including resale of marijuana to people who don't have prescriptions and burglaries at the businesses, a city staff report says. "You don't want become the hotbed for medical marijuana sales,"** Mayor Scott Brady said. "If you don't set up the proper rules and regulations, then you become the capital of fill in the blank - marijuana sales or massage parlors."

Eight massage parlors were operating in the city in March 2005, when the city set up stricter rules for massage therapists to show proof of certification. Many residents complained about illicit activity at the establishments. Since then, about half of the businesses have been shut down.

Source [http://www.ocregister.com/ocregister/homepage/abox/article\\_1241289.php](http://www.ocregister.com/ocregister/homepage/abox/article_1241289.php)

## PLEASANTON

The City of Pleasanton does not have any dispensaries operating in Pleasanton, whether legally or illegally. Pleasanton has a moratorium on dispensaries in place, has not prepared any reports on a ban, and staff will request that Council extend the moratorium for another 12 months. In support of the moratorium, the following health / safety / welfare information was cited;

Juveniles in Pleasanton found with marijuana which was re-sold to them after having been obtained from a dispensary.

A dispensary employee was the victim of a robbery at his home after he brought more than \$100,000.00 in cash from a Medical Marijuana Dispensary back to his home to Pleasanton.

(Source Larissa Seto Assistant City Attorney)

## ROSEVILLE:

- Street level dealers trying to sell to those going to the dispensary at a lower price
- People are smoking marijuana in public around the facility
- People coming to the community from out of town and out of state to obtain Marijuana (Nevada State, San Joaquin County, etc)
- Marijuana DUI by people who have obtained from dispensary
- At least one burglary attempt into building

(Source Rocklin P.D. report)

On January 13, 2006 the proprietor of the Roseville's Medical Marijuana Dispensary was indicated by a Federal Grand Jury on 19 counts of marijuana trafficking and money laundering. **The indictment alleges that in an eight month period the defendant made approximately \$2,750,849.00 from the sale of Medical Marijuana and of that figure \$356,130.00 was traced to money laundering activities.** The U.S. Attorney handling the case stated, "This case is a perfect example of a person using Medical Marijuana as a smokescreen to hide his true agenda, which is to line his pockets with illegal drug money."

(Source Press release California State Attorney Generals Office)

### **SACRAMENTO**

Sacramento has four dispensaries. Relatively few crimes other than at least two burglary attempts. Most of the complaints came to the council via citizens regarding quality of life issues i.e. loitering, traffic and use of marijuana in or near the dispensaries.

July 7, 2005. The director of Alternative Specialties dispensary, charged by feds following raid by Sacramento County Sheriff that uncovered two indoor gardens with an alleged 800 plants. Sheriffs say the subject had a criminal record for embezzlement and failed to file for a business license. He was charged with the manufacture of marijuana and illegal possession of weapons.

(Source <http://www.canorml.org/news/fedMedicalMarijuanacases.html>)

### **SAN DIEGO**

#### Armed Men Rob Pot From Medical Marijuana Store

Posted by Pierre Werner on August 1, 2005 10:41 am (110 reads)

SAN DIEGO -- Two men armed with a shotgun and rifle stole drugs from a Medical Marijuana store on Sunday, police said. The robbers went into Tender Holistic Care in the 2100 block of El Cajon Boulevard at about 8:30 p.m. Sunday. They took an unspecified amount of marijuana from the store and fled in a late model Isuzu Rodeo or Trooper with tinted windows, according to witnesses. The car was last seen heading east on El Cajon Boulevard, police said.

Source:

<http://medicalmarijuanareferrals.com/modules/news/index.php?storytopic=0&start=420&PHPSESSID=0c8a52777fa2204f4874a268edd4f580>

Dec 12, 2005 - Interagency task force raids 13 of 19 San Diego dispensaries. Task force led by DEA with state police. Raids conducted under state, not federal search warrant. No arrests, investigation ongoing.

(Source <http://www.canorml.org/news/fedMedicalMarijuanacases.html>)

July 7, 2006: Medical Marijuana dispensaries charged with drug trafficking

ALLISON HOFFMAN Associated Press (Excerpts from the Article)

Federal prosecutors accused six people Thursday of illegally trafficking pot under the cover of California's Medical Marijuana. "They made thousands of dollars every day," Lam said. "Their motive was not the betterment of society. Their motive was profit." Prosecutors alleged that these dispensaries sold marijuana or marijuana-based products with little concern for legitimate medical need. "The party is over," District Attorney Bonnie Dumanis said at a news conference with federal prosecutors. She added that Proposition 215, the ballot measure that legalized marijuana for medical purposes, has been "severely abused by neighborhood pot dealers opening up storefronts." Complaints from residents living near dispensaries precipitated an investigation beginning in September 2005 by the San Diego police, the county sheriff's department, the Drug Enforcement Administration, Dumanis said. The San Diego County District Attorney's office released a complaint sent last week to the state medical board against four physicians alleging that they wrote "recommendations" for Medical Marijuana use - doctor's notes required by state law - to apparently healthy individuals.

(Source:

[Http://www.mercurynews.com/mld/mercurynews/news/breaking\\_news/14982395.htm](http://www.mercurynews.com/mld/mercurynews/news/breaking_news/14982395.htm))

**City hopes to close legal pot dispensary** (Excerpts from the Article)

July 8, 2006 By Linda Lou UNION-TRIBUNE STAFF WRITER SAN MARCOS – An existing medical-marijuana dispensary here survived a City Council vote in February that banned any more dispensaries from opening. It was able to receive a business license because it called itself a nutritional supplement store, city officials said. But the dispensary's ability to remain open is now uncertain. Now the city is intent on shutting down the business, run by Legal Ease Inc. of San Diego, because it's been burglarized several times since the council's vote, said City Manager Rick Gittings.

The city contends it's a threat to the community's health, safety and welfare, violating the provisions the city imposed in February when it allowed the dispensary to stay open, Gittings said. The concept of providing Medical Marijuana to patients who really need it has good intentions, but as indicated by state and federal prosecutors this week, Medical Marijuana dispensaries are fronts for drug peddling, Gittings said. The letter said that another business near the dispensary's current location was burglarized because it was mistaken for the dispensary. The letter also said Legal Ease had failed at least once to submit security tapes of its premises and has failed to reveal what was stolen in the burglaries. Sgt. Gary Floyd, supervisor of San Marcos' street narcotics and gang unit, said he's not aware that Legal Ease had talked with the Sheriff's Department about relocating. He said that after some recent early-morning burglaries, the dispensary installed roll-up metal security covers over the door and window because thieves had smashed the glass to get inside. In Thursday's raid, dozens of candy bars and cartons of ice cream containing THC, a marijuana byproduct, were confiscated, Floyd said. Bags of packaged marijuana and larger bags of the drug used to refill the smaller ones were also taken, he said. No one was arrested. In December, a federal drug agent said he was able to purchase marijuana at the site with a forged doctor's recommendation.

(Source: <http://www.signonsandiego.com/news/northcounty/20060708-9999-1mi&smmari.html>)

## **SAN FRANCISCO**

May 14, 2005--In a daring home-invasion robbery at around 10PM, the house of the owner of Alternative Health and Healing Services at 442 Haight St was robbed of several pounds of cannabis and the dispensary keys. Details are sketchy, but it is believed that the robbers burst into the owner's home at gunpoint. More on this story as details are known. (Source) [http://www.hempevolution.org/thc/dispensary\\_robbed040514.htm](http://www.hempevolution.org/thc/dispensary_robbed040514.htm)

June 23, 2005 3 S.F. pot clubs raided in probe of organized crime (Excerpts from the Article)

Medical Marijuana dispensaries used as front for money laundering, authorities say. Federal authorities raided three San Francisco Medical Marijuana dispensaries Wednesday, and investigators arrested at least 13 people as part of an alleged organized crime operation using the clubs as a front to launder money. Authorities said.....that the operation controlled at least 10 warehouses where marijuana was grown in large quantities and that those involved were bringing in millions of dollars. One warehouse in Oakland that federal agents raided earlier this month was capable of growing \$3 million worth of marijuana annually, investigators said. The marijuana ostensibly was for cannabis clubs, but the amount being grown was far more than needed to supply the dispensaries, authorities said.

(Source) <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL>.

Dec. 20, 2005 - DEA raids HopeNet Cooperative after first raiding home of HopeNet directors Steve and Catherine Smith. No arrests. Agents seize cash, medicine, a few hundred small indoor plants, mostly cuttings and clones.

(Source) <http://www.canorml.org/news/fedMedicalMarijuanacases.html>

June 27, 2006: Medical Marijuana dispensary robbed during S.F. Gay Pride Parade  
Adam Martin [San Francisco Examiner](#)

Thieves apparently took advantage of Sunday's 36th Annual San Francisco Gay Pride Parade and Celebration to commit this year's second robbery of a Medical Marijuana dispensary. According to police and the club's proprietor, two men entered Emmalyn's California Cannabis Clinic at 1597 Howard St. about 1:30 p.m. Sunday. They held up the clerk and stole cash and inventory while most of the staff was handing out fliers at the Gay Pride Parade. Sunday's holdup marked The City's second pot club robbery of the year. The Purple Heart dispensary at 1326 Grove St. was robbed Feb. 3, San Francisco Police Lt. John Loftus said. There were four such robberies in 2005, Loftus said. Loftus said clubs are attractive to thieves because "it's a big cash business, and marijuana is expensive." The two men who robbed the dispensary had been in about an hour prior to the crime and bought some marijuana. When they returned, Baumgartner said, "they put a gun to my clerk's head, had him lie down on the floor, then they robbed him and the store. He said the crime was captured on security cameras, whose tapes will be reviewed in the investigation.

(Source) <http://www.hempevolution.org/media/examiner/e060627.htm>

## **SAN JOSE**

### **Murder in a Head Shop (Excerpts from the Article)**

Will David Cruz's killer ever be found? By William Dean Hinton

ON MAY 10, right around 8:30pm, Jonathan Cruz dropped in on his brother at the Rainbow Smoke Shop on West San Carlos Street. Shortly after Jonathan departed, someone walked into the shop and killed David Cruz with a single bullet wound to the back of his head, just above the left ear. No money was taken from the register, and the store wasn't ransacked. The killing was essentially the end of Andrew's shop. After 10 years as owner, she was afraid to be in her own store. She began carrying a .38 with hollow-point bullets and closed the Rainbow's doors two hours earlier than before David's death. David Cruz's killer, meanwhile, has never been identified. The Cruz case is approaching the nine month mark with no credible theory why David was shot. (Source <http://equalrights4all.us/content/view/192/50/>)

## **SAN LEANDRO**

San Leandro does not have any Medical Marijuana Dispensaries within their City Limits. They do however have employees of Medical Marijuana Dispensaries from other jurisdictions living in their city.

June 19, 2005: Suspects enter an unoccupied residence of a Medical Marijuana Dispensary employee taking jewelry and \$10,000.00 in cash.

June 28, 2005: Suspects return to the same residence and begin to force entry when they are confronted by the resident and flee before any loss is sustained.

September 20, 2005: A receptionist of a Medical Marijuana Dispensary was accosted by a lone suspect as she walked from her vehicle to her house. The receptionist was able to get into her home and call police before the robbery was completed.

October 26, 2005: A Detective on routine patrol observes a suspicious circumstance and stops two subjects. The stop results in the arrest of the subjects for robbery and possession of stolen property. The house the suspects were watching was the home of a Medical Marijuana Dispensary employee.

December 19, 2005: The same receptionist (9/20/05 event) is robbed as she walks from her vehicle to her home. The suspects took a bag containing receipts from the Medical Marijuana Dispensary (Paperwork only, no cash)  
(Source Mark Decoulode San Leandro PD)

## **SANTA BARBARA**

**MEDICAL MARIJUANA SHOP ROBBED:** By Indy Staff, August 10, 2006

The first reported armed robbery of a Medical Marijuana distribution center took place at Santa Barbara Hydroponics, 3128 State Street.

Owner Jack Poet said he has been robbed three times before but never reported the earlier robberies because “Medical Marijuana is such a controversial issue.” Poet said the robber in his thirties, 160 pounds, with red hair and a goatee walked away with \$30 cash and 15 small display baggies of marijuana.

By Indy Staff | August 10, 2006 | 0 Comments | 0 TrackBacks

(Source

[http://www.independent.com/news/2006/08/medical\\_marijuana\\_shop\\_robbed.html](http://www.independent.com/news/2006/08/medical_marijuana_shop_robbed.html)

## **SANTA CRUZ**

**Four men sought in home robberies**

Santa Cruz Sentinel

Santa Cruz, CA Dec 13, 2004 -- Santa Cruz Police are asking for the public’s help in finding four armed men who took marijuana grown for medicinal uses and electronics from two separate houses on Clay Street. Around 1 a.m. Sunday, a white, Asian and possibly two black males — all wearing masks and dark clothing — broke into two residences, rounded up their tenants, held them at gunpoint and ransacked their homes, all while demanding drugs and cash. Two of the victims were battered during the robbery. One of the suspects fired a single shot from a handgun when one of the victims tried to escape. No one was shot.

[http://www.hempevolution.org/media/daily\\_review/dr050824.htm](http://www.hempevolution.org/media/daily_review/dr050824.htm)

## **SANTA CRUZ COUNTY**

Capitola 2004: Three suspects entered the victim’s home armed with a handgun in search of the residents Medical Marijuana grow. The resident and two guests were ordered to the floor. During the robbery the resident was shot and stabbed but managed to fight off the suspects who fled prior to the arrival of the responding Deputies.

Live Oaks October 1, 2005: Four suspects attempted to conduct a home invasion robbery of a home cultivator of Medical Marijuana. The homeowner fired a shotgun at the suspects who fled and were later captured by police following a vehicle pursuit and crash.

Ben Lomond March 5, 2006: Two suspects who identified themselves as “Police” forced their way into the victim’s residence. The victim was assaulted, robbed and left tied up in his residence until the next day when he was discovered. Subsequent investigation revealed that the motive for the robbery was the victims Medical Marijuana supply.

## **SANTA ROSA**

May 29, 2002 Federal agents raided a Medical Marijuana buyers club here Wednesday and arrested two people. A U.S. Drug Enforcement Administration spokesman said two addresses were searched, including the club near downtown. Marijuana, cash, a car and a weapon were seized.

(Source) <http://cannabisnews.com/news/12/thread12999.shtml>

September 29, 2004 The father of the owner of a Medical Marijuana Dispensary was followed home from the dispensary and robbed at gunpoint in front of his residence. The owner of the club believed that his business was being “cased” and that “further robberies were eminent.”

January 25, 2005 Suspects force entry into a closed Medical Marijuana Dispensary and burglarize the business taking three pounds of Marijuana and cash.

March 3, 2005 Suspects forced entry into a Medical Marijuana Dispensary a stole a laptop computer, Marijuana and smoking paraphernalia.

April 15, 2005 Employees of a Medical Marijuana Dispensary were robbed by a suspect armed with a shotgun as they were closing the business. The suspect stole a “duffle bag” of Marijuana.

April 18, 2005 Suspects forced entry into a closed Medical Marijuana Dispensary and stole a digital scale.

April 19, 2005 Suspects forced entry into a Medical Marijuana Dispensary and stolen one half pound of marijuana.

Mar 17, 2006 Suspects forced entry into a closed Medical Marijuana Dispensary, loss unknown at this time.

(Source) Lt. Briggs Santa Rosa P.D.

The Vice unit has been involved in the investigation of the following Medical Marijuana Dispensary related crimes;

- A homicide, during a residential robbery where the suspects sought Marijuana cultivated for a dispensary.
- Four residential robberies, where the suspects sought Marijuana cultivated for a dispensary.
- Twelve cases where individuals were cultivating Marijuana for dispensaries, but were found to be operating outside Medical Marijuana guidelines and in a “for profit” status. Each of these cases resulted in the arrest of the cultivators and disposition is pending.

- Instances where undercover officers have found subjects buying Marijuana from Medical Marijuana Dispensaries under the guise of Medical Marijuana and then reselling the Marijuana to non Medical Marijuana users.

(Source) Sgt. Steve Fraga Santa Rosa P.D.

## **SONOMA COUNTY**

A subject was arrested May 9, 2001 while growing for himself and other patients; convicted by a jury of cultivating more than 100 plants on Feb 11, 2002; sentenced to 5 yrs probation; He was re-arrested July 31, 2002 for cultivating while on probation. Convicted and sentenced to 44 months for growing 920 plants Dec 19, 2002. Released on bail April 2004; awaiting sentencing post-Raich 2005.

The proprietor of Genesis 1:29 club in Petaluma was arrested Sept 13, 2002. Agents uprooted 3,454 plants at the club's garden in Sebastopol. The suspect pled guilty July 2003; sentenced to 41 months, July 2005. Information provided by:  
(Source) <http://www.canorml.org/news/fedMedicalMarijuanacases.html>

Friday, February 17, 2006 at 12:13, PM Commercial marijuana operation shut down. On 2/16/05, the Sonoma County Narcotic Task Force, SCNTF, and the County of Mendocino Marijuana Eradication Team, COMMET completed an investigation involving a large-scale commercial marijuana growing operation. At the first residence on Little Creek Rd., agents located a marijuana growing operation where "starter" plants were being cultivated. These plants would eventually be moved to the larger grow rooms as they matured. As agents collected evidence, Kenneth D. Brenner, 57 yrs, of Annapolis arrived at the residence. When agents contacted Brenner, they located grow equipment in the bed of his truck. He was detained and returned to his residence. At Brenner's residence, agents seized numerous firearms. Agents also seized an AK47, a Colt AR15, and a .308 sniper rifle. Additional documents linking Brenner to the growing operation were seized. The indoor grow operation included 4 buildings which were located approximately a quarter of a mile off Annapolis Rd. in the thick brush. The grow buildings ranged from 100'X 30' to 30'x 20'. The buildings were constructed of plywood, with the exteriors painted black, and concealed under the thick canopy of trees. The plants were growing in a hydroponics type system, under approximately 120 high intensity lights. The lighting equipment alone is valued at \$48,000.00. Agents located a camouflaged, insulated concrete bunker which housed a 125KW diesel generator. This generator was seized and valued at approximately \$75,000.00. The total number of plants was approximately 1700.

Agents determined the plants when harvested would yield approximately 50 pounds of marijuana. The marijuana would have a street value of \$150,000.00. As agents continued their searching, they seized over 3,000 live rounds of ammunition in one of the grow buildings. The ammunition matched the same type of assault rifles seized at Brenner's residence. Agents then discovered numerous metal military type ammunition cans hidden in the area. When the cans were opened, the agents discovered 22 solid bars of silver, and antique silver coins. The bars each weighed 9ozs., with an estimated value of \$30,000.00. The Drug Enforcement Administration was contacted to consider the adoption of this case on a federal level.

Mr. Brenner was released at his residence. The case will be under further review by the United States Attorney's Office. For further information contact Detective Sergeant Chris Bertoli at (707) 565-5441.

Prepared by Detective Sergeant Chris Bertoli.

Thursday, January 5, 2006 at 12:18, PM \$600,000 in marijuana seized.

On 1/4/06, the Sonoma County Narcotics Task Force completed a three month investigation involving the sales of methamphetamine in the City of Cloverdale. Through the use of undercover purchases, Task Force Agents identified a residence on South Cloverdale Boulevard as the source of methamphetamine. When agents served a search warrant at the residence, they located 212 pounds of manicured marijuana. The marijuana had been concealed in various locations on the property. Along with the marijuana, agents seized a half ounce of "crystal" methamphetamine, a scale, packaging material, and pay/owe records. As agents continued their search, they located an AK-47 assault rifle with 3 fully loaded 30 round magazines next to the rifle. A stolen sawed-off 12 gauge shotgun, 2 additional rifles, and one loaded semi-automatic handgun were also located in the same location. While searching the residence, agents encountered three children living at the residence with their parents. The ages of the children were 6,7, and 8 years. As agents searched, they discovered approximately 3 pounds of marijuana within the same room as the children were discovered sleeping. The estimated street value of the marijuana is \$636,000.00 dollars. The methamphetamine is valued at \$450.00.

For further information contact Detective Sergeant Chris Bertoli at (707) 565-5441.

Prepared by Detective Sergeant Chris Bertoli.

(Source [www.sonomasheriff.org](http://www.sonomasheriff.org))

## STANISLAUS COUNTY

Lack of cash, risk to kids and more crime discussed (Excerpts from the Article)

By ROGER W. HOSKINS BEE STAFF WRITER

Last Updated: August 23, 2006, 03:14:33 AM PDT

Law enforcement officials compared the battle against methamphetamine to the war on terrorism and warned that American children were far more at risk to drugs. Wasden said any task force needed to set its sights on the real window that widens the drug trade generation after generation. "Nobody starts with methamphetamines," said Wasden. "Our youth are being confused by the mixed messages we are sending and we need to send youth a core message that marijuana is a drug." **From marijuana to meth: Officer after officer offered their witness and belief that the people buying medicinal marijuana in Stanislaus County were neither sick nor afflicted.**

**In their collective view, medicinal marijuana was a Smokescreen for recreational use. Sheriff's Sgt. Bob Hunt, a member of the Stanislaus Drug enforcement Agency, offered a frightening picture of the marijuana-meth link. "We have people buying \$300,000 and \$400,000 homes and they aren't moving in furniture but grow lights," said Hunt. "They are careful not to have more than 12 plants or sell more than \$10,000 at a time. "They are using the marijuana profits to fund their meth operations.**

We arrested one young dealer and he owned nine properties in Patterson." Cardoza called on the officers present to wage and win the public relations war on marijuana. "I voted against the federal bill to legalize pot," said Cardoza. "I'm bucking the public sentiment. I get 200 letters a year from people who want the United States to back off. I don't get any from people who want us to enforce the federal marijuana ban." So, he added, "It's up to you (officers) to educate the public."  
(Source) <http://www.modbee.com/local/story/12623637p-13328561c.html>

#### **TEHEMA COUNTY**

Two subjects were indicted by federal grand jury on Jan 8, 2004 after trying to assert Medical Marijuana defense in state court. Arrested with 100s of small seedlings, 33 mature plants, and a few pounds of processed marijuana in Red Bluff and Oakland. Defendants say they were for personal use. The Tehama DA turned the case over to the feds while pretending to negotiate a deal with their attorneys. Denied a *Raich* defense by Judge England.  
(Source) <http://www.canorml.org/news/fedMedicalMarijuanacases.html>

#### **TRINITY COUNTY**

A subject and his wife were arrested in 2003 for a sizable outdoors grow; they were re-arrested the next year after deliberately replanting another garden in public view. While awaiting trial, they were arrested once again, this time for a personal use garden of approximately ten plants.  
(Source) <http://www.canorml.org/news/fedMedicalMarijuanacases.html>

#### **TUSTIN**

After a Medical Marijuana Dispensary opened, undercover officers conducted an investigation in the business. During the service of a search warrant, 25 pounds of marijuana was seized and the dispensary was shut down. The District Attorney still has not made a decision as to whether to file charges or not.  
(Source) Scott Jordan Tustin PD

#### **UKIAH**

Over the last four years, the City of Ukiah has experienced an increase in crimes related to the Medical Marijuana Dispensaries. They are four Dispensaries in town as well as several citizens growing Marijuana for the purpose of providing Marijuana to dispensaries. There have been approximately ten robberies of either dispensaries or private grows. Some of these robberies have resulted in shootings. There has also been an arson of a dispensary which the police department believes was the result of a dispute with a customer.  
(Source) Det. Guzman Ukiah P.D.

#### Ukiah Daily News (Excerpts from the Article)

An arson fire burned the Ukiah Cannabis Club Saturday morning, causing extensive damage and blackening neighboring structures as well. A man who told The Daily Journal he was upset with the Ukiah Cannabis Club, claiming club members owed him money for the crop of marijuana he grew for them, was arrested at the scene.....

The man in the back of the store, later identified as William Howard Ryan, 51, of Willits, telephoned UPD dispatch, saying he was armed and that he would shoot anyone coming to get him. Officers and firefighters heard muffled shots from the interior of the store..... Ryan was arrested on charges of arson, burglary and possession of hashish. He was interviewed by The Daily Journal just days ago when he claimed he was going to sue the Ukiah Cannabis Club for the money he says he is owed. Some witnesses said they saw Ryan enter the building with what looked like grenades strapped to his body. There were also reports the suspect carried a weapon, though that was not corroborated by police. A spokesperson for the Forest Club said the bar would be closed for a short time only. (Source [http://www.hempevolution.org/media/ukiah\\_daily\\_news/udn020527.htm](http://www.hempevolution.org/media/ukiah_daily_news/udn020527.htm))

### **VENTURA**

Two subjects were arrested Sept 28, 2001 for cultivating for the LACRC. Forfeiture filed against their property, including home they built for themselves, in July 02. Raided again and arrested for personal use garden of 35 plants in Aug 02; charged with cultivation. Pled guilty Sep 03. Ninth Circuit denied appeal March 2006. (Source) <http://www.canorml.org/news/fedMedicalMarijuanacases.html>

### **CALIFORNIA NARCOTIC OFFICERS ASSOCIATION**

Agents have conducted sting operations on web sites such as “Craigslist” and recently conducted an investigation which resulted in the arrest of a subject for the sale of three pounds of marijuana as well as possession of an additional four pounds. This subject was an employee of a local Medical Marijuana Dispensary.

In all of these communities, law enforcement leaders were concerned with the impacts to the public health, safety and welfare by the commercial marijuana dispensing enterprise. All wished that they did not exist in their community. The trouble seems to occur when a large number of marijuana users, legal (under State law) and illegal gather at one location making them easy targets for illegal drug dealers; those freelance illegal drug dealers who are trying to recruit individuals with a doctors recommendation to legitimize (under State law) their sales and possession; and those who wish to prey upon the ill to steal their marijuana.

This is compounded by the vast amounts of cash and little or no oversight of the processes of prescription, procurement and sales of Medical Marijuana. All of these impacts are avoidable if the commercial marijuana dispensing business were not allowed to locate in our community.

### **Medical Marijuana Doctor's**

Another area of contention is the apparent lack of oversight regarding who receives a physician's recommendation for Medical Marijuana and the process in doing so. One doctor who is touted as a “Medical Marijuana Doctor” is a practitioner in the City of El Cerrito. It is reported that our local doctor has issued over ten thousand recommendations for Medical Marijuana in the ten years since Prop. 215 was enacted in 1996. Research on the internet has revealed that the cost to patients to receive their initial recommendation ranges from \$125.00 to \$250.00.

If these figures are accurate, this one doctor has made \$1,250,000 to 2,500,000 over the past ten years just in issuing Medical Marijuana recommendations. These recommendations have to be renewed every one to two years at the cost of \$50.00 to \$100.00. This same doctor has repeatedly been the target of investigations regarding his practices related to Medical Marijuana and is currently on probation with the Medical Board of California as a result of investigations into 47 complaints, all of which were referred by law enforcement or district attorneys. This Doctor's Website offers the following explanation;

Medical Board of California v Tod H. Mikuriya, M.D.

Since 1993, the Medical Board of California have had various ongoing investigations into Dr. Mikuriya's use of cannabinoids in his medical practice. Beginning in 1993 with rural county probation officers turning him in to the medical board for prescribing Marinol to probationers. The initial investigation resulted in a letter in Dr. Mikuriya's file. With the passage of the Compassionate Use Act of 1996, outlying Sheriff Deputies and District Attorneys began flooding the Medical Board with bogus complaints. Nearly 50 complaints were filed, none came from patients, health care professionals or patient families--none alleged any harm to patients. The medical board initiated multiple investigations. In 2003 Dr. Mikuriya had a hearing in front of an Administrative Law Judge which resulted in the worst of the allegations being dismissed. (Dismissed charges included unprofessional conduct and incompetence.) However, Dr. Mikuriya was convicted for negligence and failing to keep adequate records. In April of 2004 he was placed on probation which includes a practice monitor, cost recovery (\$70,000), and various other indecencies. Appeals of all charges are pending and continue. This page and the associated links contain all of the legal documents in this matter, as well as interpretations of why it occurred and the politics that surround it by Dr. Mikuriya. All of these materials are being made available to the public and any interested party as a means for Dr. Tod to show that this entire production was--and remains--a political action and has nothing to do with patient care and/or harm.

(Source: <http://www.mikuriya.com/>)

**Another interesting concept is that even the doctors involved in this industry appear to do a "cash only" business.**

This is from Dr's Ellis' site; <http://www.potdoc.com/ProfilePage.html>

Occasionally the office will be closed due to Dr. Ellis' outside schedule. You must call to schedule an appointment to see Dr. R. Stephen Ellis, MD (CA License # G-40749). We are not a referral service for Medical Marijuana doctors in your area. We are a medical clinic with one medical doctor located in San Francisco, California.

We can see patients living anywhere in the State of California in our medical clinic located in San Francisco. A Prop. 215 recommendation written from our office is good anywhere in the State of California. We will ultimately require confirmation of your diagnosis from your MD (or DC, DPM, or DDS as appropriate). We work with our patients to develop appropriate case documentation as per the routine standards of medicine – the only acceptable standard of valid legal protection a 'Prop 215' recommendation can provide.

Please bring an official picture ID for proof of ID and age. ALL patients (and any caregivers) MUST be at least 18 years of age and no longer attending high school. Exceptions in extreme cases can be made, so please feel free to call and discuss your situation.

**The Initial New Patient Physical Exam and Evaluation with Dr. Ellis is \$250.00 total if you qualify and a recommendation is issued.**

There is an initial interview with Dr. Ellis to see if you qualify and the cost is included in the \$250.00 new patient total fee. All patients that we will be able to assist then continue to undergo a physician performed medical history and physical exam as part of the initial visit. Those patients that we will not be able to help are immediately refunded all but \$25 (for pre-screening assessment) of the total \$250 new patient fee. The \$250 new patient fee includes all follow-up visits needed as well as associated administrative services for the entire initial 6 month period. New Patients are covered for up to six months with their initial letter of recommendation. Once you are an established patient (six months after your initial visit), expired letters can be re-issued if the condition is still valid. You must see Dr. Ellis at a scheduled appointment in person in order to have an expired letter re-issued. Unfortunately, recommendations / physician statements can not be issued by telephone or mail at this practice. Any available updates to your medical records from your doctors confirming that your diagnosis is still valid are expected (and MAY be necessary) to complete the renewal process. The office visit and exam fee for established patients is currently \$125.00 and any includes and all follow-up visits needed as well as associated administrative services for entire 1 year period. Established patients recommendations can be issued for up to one year duration as indicated.

Due to potential patient privacy issues, **all fees are due and payable in full in CASH ONLY at the time of your visit.** Patients are to bring the entire \$250 payment at their initial visit. Multiple banks and ATMs are in the immediate vicinity. The San Francisco Clinic is very conveniently located in downtown San Francisco in the 450 Sutter St. Medical Building (Suite # 1415), between Stockton and Powell Streets, just one block North of Union Square. We are a short walk from Powell Street Station for convenient BART / MUNI (and hence SFO, OAK, & Cal Train) access from all of California. Multiple non-validated parking options on-site and very nearby. Call for simplified directions. Practice Profile page updated on February 27, 2006

This is what one reporter has to say about Dr. Ellis;

**Doctor's orders: Get high** (Excerpts from the Article)

A trip into the Medical Marijuana demimonde smokes out America's confusion about drugs, pleasure and morality. **By Chris Colin**

Jan. 31, 2001 | SAN FRANCISCO -- To get pot, you can stand on 16th and Mission and wait for someone to approach you, and wonder if he's a cop, and wonder if he's going to rob you, and wonder if his pot is laced with strychnine. Or you can have a dull pain in your right ear.

In a green box on the back page of the San Francisco Bay Guardian, Dr. R. Stephen Ellis advertises Medical Marijuana physician evaluations for just about anyone. The ad contains no explicit offers or promises, just a list of symptoms that presumably qualify one for legal pot: "Anorexia ... chronic pain ... arthritis ... migraine, or ANY other condition for which marijuana provides relief." This is from California Health & Safety Code 11362.5, implemented after California passed Proposition 215, also known as the Medical Marijuana/Compassionate Use Act, in 1996. At the bottom, boldfaced, underlined, in caps, we're reassured: "It's THE LAW!" **My ear hurts, I tell the assistant over the phone. He tells me to bring \$200 cash. No check or credit card? I ask. Cash, he says.** To my left are the ill; three men between 35 and 50 sink into their chairs and stare at things in the floor that I can't see. Their eyes are glassy, and two of their heads are chemo-bald. To my right are three young men, none over 22 surely. They slump too, but with attitude, not sickness. They have baggy jeans and each has acne. The young camp looks at its shoes. The man directly to my left says he has glaucoma. He's grumpy about waiting. The man to his left says he's new to medicinal marijuana and is shaking and giddy. The man to his left sells sports tickets for a living, and is doing so on a cell phone, apparently unfazed by his circumstances. To my right are frauds. "I hurt my back playing football," the big one next to me says. He grins conspiratorially, as if he's never touched a football in his stoner life. Across from us a raver taps his toes. He grins, too, when I make eye contact. The surfer next to him grins too. "I better get this before my man Nate's party Friday," he says to no one in particular. "How long does it take to get the prescription filled?" I ask. "My other friend got some from a San Francisco dispensary two days after his evaluation," he says. I wonder how many scammers it would take to undermine the Medical Marijuana cause. Not that fakers are taking pot from the legitimately ill -- there's plenty to go around. Ellis joins me in the bare room, slight, friendly and rushed. He seems breakable. He also has the air of celebrity, probably because he's the only man many people know who can legalize pot, albeit one smoker at a time. He talks fast, like someone who either has been in an E.R. for years or has a line of patients out the door, each with a wad of cash. He takes my money and puts it in his pants pocket. "My ear hurts," I say, and I explain the pain. My honed explication of the problem doesn't seem to interest him. He interrupts after a minute, telling me to take my shirt off so he can use his stethoscope. The checkup is rudimentary, There's a brief, touching moment where he pats my arm, not weirdly, and then he's signing his recommendation. For the next 12 months, I'll be a legal Medical Marijuana smoker. The police, depending on the county, generally don't arrest smokers who have a prescription, except when they do. Courts often drop cases, depending on the judge, or how a jury might respond. Getting a physician's recommendation from Ellis may have been easy, but getting him on the phone for an interview is another story. It isn't until a month after my visit that he agrees to talk. "What were you doing before this?" I ask. "I was at emergency rooms," he says. "Which ones?" "Various emergency rooms in the Bay Area," he says. He won't say how many patients he's seen since opening the office in July -- "let's say several hundred," he finally tells me. Nor will he say how many are ultimately granted recommendations. I get the impression most walk away satisfied. "What about fakers?" I want to know. Ellis assures me that fakers don't make it to the examination room. "They realize it's a legitimate medical setting and go home," he says. "They can't get in without supporting documentation."

I tell Ellis that I was not asked for supporting documentation. He says he has since changed that policy, though I sense that he did so reluctantly. "We don't [require supporting documentation] in the E.R.," he says. "People come in complaining of a headache, we go over to an open cabinet and they leave with a shot of Demerol in their butt." "And that's unfair?" I ask. "Marijuana is much more benign than conventional narcotics," he says. We talk about his history. Ellis graduated from the University of Illinois medical school at Chicago in 1978, he says. His work as an emergency physician exposed him to "a real need" for better pain management strategies. A few seminars on Medical Marijuana persuaded him to look into alternative treatments. If Ellis was uneasy at the beginning of our conversation, he's in a gallop by the end. I ask why so few California doctors are recommending marijuana for pain four years after the passage of 215. "They're afraid," he says. "They're afraid of the [California] Medical Board, and of their peers, and possibly of potential legal ramifications ... even though they're clearly protected by the law." It's the California Medical Board that gets Ellis fired up. "They've been officially silent [on Medical Marijuana], but behind closed doors they've been harassing physicians," he says. "That's the bottleneck on 215. Patients can't get their docs to prescribe medicinal marijuana, even though the law allows for this. In California, you might find 1 in 1,000 doctors" who would. Ron Joseph, the board's executive director, calls Ellis' charges ridiculous. "It's a nice fallback," Joseph says, "but I defy him to cite one case where the board has harassed a single doctor." As Joseph tells it, it's not the board's policy to have an official position on Medical Marijuana -- it would just as soon have a position on X-rays. "We don't say whether it's good or bad, appropriate or inappropriate," he says. "We simply ask, 'Has the physician applied good judgment?'" Because the board's procedure is simply to investigate a "physician's actions as they're brought to our attention [by a patient]," he says, it has no incentive to bother doctors who are prescribing marijuana. So why aren't more doctors prescribing marijuana? Joseph blames the government. "The chilling effect has come from federal [agencies]," he says. "Doctors might be afraid of losing their DEA permit" (which allows them to prescribe controlled substances). As for Ellis' objection to the liberal distribution of Demerol in the E.R., compared with the paucity of marijuana prescriptions in the doctor's office, Joseph says an E.R. deserves its own standards. "It's a much different situation," he says. "There's little time to make the diagnosis [in the E.R.]. This is not the case in an office visit where the patient has the opportunity to explain his medical history." If a patient *is* able to obtain a physician's recommendation, he or she must next join a buyer's club. The Oakland Cannabis Buyer's Club is a mile from my house, so I swing by on a Saturday. Like Ellis' office, the OCBC is also low-rent, but it makes up for it in atmosphere. If Ellis' operation was film noir, the "Co-op" is Cheech & Chong plus "Beaches." The store mixes earnest compassion for the ill with a healthy appreciation for fat, leafy weed. Inside, past the pipes and bongs and vaguely pornographic poster of a luscious green bud, a woman at a counter sorts membership files. (The club has roughly 4,000 members, executive director Jeffrey Jones tells me later, but it's hard to count. Why? I ask. "We don't know how many are dead," he replies.) The woman at the counter gives me paperwork and takes my physician recommendation, a copy of which I'd already faxed in for approval. I do the paperwork and pose for my photo and pay the fee. My \$21.95 entitles me to a list of active dispensaries, support in the event of police trouble, free massages and regular cultivation seminars. Cultivation? I ask.

I can grow up to 48 plants, they say -- beyond that it's risky. My new member I.D. is my "shield." If a cop stops me for possession, I need only flash the card. If that doesn't work, the officer is to call the 24-hour phone number on the back, and the club will vouch for me. "But this is legal, right?" I ask. "Well," they reply, "yes. But call if there's a problem." I'm out in 10 minutes, but still without pot. This is because an injunction keeps the club from selling it. The unmarked dispensary two blocks away is to pharmacy as Bates Motel is to Ritz-Carlton. Metal gratings cover the windows of the old building, which begs for a paint job or some dynamite work. The next room is un-American. It's how Amsterdam is described among teenagers, a perversely legal assortment of illegal things: pot plants, pot brownies, pot cookies, pot seeds and, of course, pot. Half a mile from the Oakland Police Department, two glass counters full of dope and a promising back room await anyone with an OCBC card and some cash. There is no catch. I experience the brief heartbreak of poorly timed access -- this kind of opportunity would've been great back when I liked pot -- but mainly I'm glad people who need it can get it. I buy an eighth of an ounce of the good stuff, not the great stuff. It's \$45. The guy behind the counter is nice like a nurse. The place isn't a neighborhood drugstore -- no matter how medicinal your marijuana, it's still pot, and pot culture is irrepressible -- but there's no Pink Floyd or opium-den decadence. Ellis, like many Medical Marijuana advocates, is breathless on the subject. Finally, what will happen to a doctor in a tiny office who flouts federal law on the back page of the San Francisco Bay Guardian? Is he in danger? "I don't know," Jones from the OCBC had said. "Is a bug that flies into the light in danger?" Because he's working with other information, or because he's blinded by the light, Ellis himself isn't scared. "They'd be crazy if they bothered me," he'd told me, before getting off the phone to see another patient.  
(Source <http://drugandhealthinfo.org/page02.php?ID=6>)

### **Another Doctor found through Internet research;**

*Hanya Barth, M.D.*

Wellness Counseling & Alternative Medicine  
California License #A031974

### **your Appointment**

***There are four things you should bring with you:***

- 1) Any paperwork regarding your condition, including doctor reports, treatment notes, and paperwork with your diagnosis. The doctor is here to give you a second opinion. Any health history paperwork helps the doctor understand what your primary diagnosis is. Our doctors are here to provide you with a second opinion, therefore you must have seen a physician recently for the condition you use marijuana to treat in order to be evaluated. We are happy to refer you to a low cost medical clinic so that you may receive a check up. Please call and ask our office staff for the number to one of these locations.
- 2) Any medications or prescriptions (you may bring the bottles with their prescription labels), any supplements or over-the-counter herbs, vitamins, etc. We are interested in knowing what you regularly use to alleviate your condition.

3) California Driver's License or California I.D. Card. You must be able to prove California residency. This is a California law. We must see a photo I.D. proving residency here in the state of California.

**4) Please bring the appropriate fees to pay for your visit. At this time, our office is not accepting checks or credit cards. If payment is an issue, please speak with our office staff.**

<http://www.howardstreethealthoptions.com>

### **This is Dr. Milan Hopkins in Upper Lake;**

Are you concerned about your health and looking for an old-fashioned doctor who will take the time to listen? One who is up-to-the-minute on new medical developments and understands your needs? You'll find a caring non-judgmental doctor accepting Medi-Cal, Medi-Care, Tribal Healthcare & other types of insurance. Also included on site is Leah, a certified massage and bodywork therapist. Please call to get affordable fees (Fees based on a sliding scale).

#### **Cannabis Fees and Requirements**

Due to the legalities surrounding a medical recommendation for cannabis, patients are required to provide Dr. Hopkins with the following documentation:

**Primary Physician Information:** If you have a primary care physician, we request that you discuss with him/her your desire for a cannabis recommendation. We require the name, telephone number, and mailing address of your physician. If possible please bring any medical records you may have that would support your medical conditions.

The California State Medical Board has decreed that the physician issuing a recommendation for medical cannabis must either assume responsibility for all aspects of the patient's care, or must consult with the patient's primary physician prior to issuing the recommendation.

**Identification:** Please bring with you some form of pictured identification.

**Fee:** **The initial consultation and recommendation fee for medical cannabis is \$175.00 to be paid at the time of service. (We do not except checks or bank card payments)**

**Six Month Check-Up:** **The doctor requests that his patients return ever 6 months, the fee for this visit is \$60.00 to be paid at time of service. It is require by the California State Medical Board that cannabis patients be under the continual care of the prescribing doctor.**

**Annual Renewal:** **Your recommendation will need to be renewed every year for \$125.00 with a 6 month check-up. If you missed your 6 month check-up it will be \$175.00.**

<http://www.dochop.com/>

## 10News Exposes 'Marijuana Doctors' (Excerpts from the Article)

POSTED: 4:39 pm PDT July 6, 2006, UPDATED: 12:41 pm PDT July 7, 2006

SAN DIEGO --

Doctors Offer Legal Pot

Proposition 215 -- the Medical Marijuana initiative approved by voters ten years ago, has been subverted, abused and misused say law enforcement agencies our I-Team has spoken with. Prop. 215 is supposed to provide seriously ill people access to marijuana to help relieve their pain but a 10News investigation discovered just about anyone can get pot legally if they want. 10 News became interested in Medical Marijuana after seeing a large number of advertisements for doctors prescribing pot. These pot docs' ads appear every week in the San Diego Reader. Discussions with 10News sources both in and out of law enforcement seemed to confirm a disturbing pattern of increasing sales by the pot docs as well as an increase in the number of distributors for the Medical Marijuana. We used staff members to go into doctor's office and see how difficult it was to get a referral for pot. It was very easy. Too easy in fact, say law enforcement sources. It turned out both federal and local agencies are also looking into the process. The 10News I-Team was able to acquire some government surveillance tapes used to document how different doctors would discuss with patients the benefits of marijuana. One shows an undercover officer and a Dr. Robert Steiner, discussing pot. "I assure you Tylenol is more of a risk to you and a hazard than is cannabis," said Dr. Robert Steiner. Steiner was doing one of his "legitimate and affordable" Medical Marijuana evaluations as advertised in the Reader. "It's open drug dealing with legitimacy," said Deputy District Attorney Dana Greisen. Greisen said doctors are recommending marijuana to just about anyone who can afford a doctor's visit. "It's being recommended for insomnia, depression (and) anxiety," said Greisen. "The law is being abused in a massive scale," said Greisen. The people using the marijuana aren't suffering from cancer, AIDS or other serious illnesses, which Proposition 215 is supposed to address. Dr. Steiner claimed no downsides to using marijuana on the law enforcement video. "We have two convincing studies that cannabis does not cause lung cancer. Cannabis regenerates brain cells," said Steiner. **The undercover agent then asked if he could also get pot for his dog. "He's got arthritis. He whines at night because of the pain," said the undercover agent. "Again, it is perfectly acceptable for pups," said Steiner.** Dr. Alfonso Jimenez has a Web site -- Medical Marijuana of San Diego -- where patients can register for his services online. What happened when we sent our testers in? "He was just laid-back and friendly. (He) didn't really seem to worry about if he was giving me this for the right reasons or not," said tester number one. He went to Jimenez for back pain he doesn't have. He got his referral and could have purchased pot legally. "There's a line behind me coming out of the door," said tester number one. DDA Greisen said it's all about the money. **"We had a doctor recently (who) testified he gave out about 2,000 recommendations in last year -- that's what he testified to in court -- at \$230 approximately. You do the math -- that's \$500,000 in cash,"** said Greisen. Greisen said most office calls are paid for in cash. That's what another 10News employee had to do. He paid \$125 to have Steiner recommend marijuana for his "sleeping problems." "They just let me in the office. (They) kind of started giving me all these facts about Medical Marijuana before they even knew what was wrong with me," said tester number two.

Tester two would get his marijuana if he went to another doctor first to document his condition. "He (Dr. Sterner) referred me to a doctor who would have me in and out real quickly. I could come right back, (and) he would be able to sign off on the recommendation. Once people get their recommendations, 10News discovered there's no limit or control as to how much marijuana they can buy from storefronts called dispensaries, and unlike a regular prescriptions, a patient can use the recommendations more than once. Dr. Jimenez has several offices and we talked to him by phone at his Hawaii location, he told 10News that he only provides a referral for patients with medical illnesses. Jimenez's operates a Web site MedicalMarijuanaOfSanDiego.com. When 10News visited Dr. Sterner, he explained he had to see patients and closed his office door. But there is another loophole in the system, called the primary care giver form. "Over the last year, we saw a proliferation of these recommendations," said Greisen. He says just about anyone can get marijuana. And to make matters worse, he says, doctors hand out blank primary caregiver forms. These forms allow patients to list anyone they want to be a caregiver. It allows this person to purchase or grow marijuana for them. 10News Investigations sent in two staffers to check Greisen's claims. And it was as the assistant district attorney had claimed. Our staffers were given blank caregiver forms. 10News learned that one person named his dog as a caregiver. As part of the investigation, 10News nominated a bird named Riggo as a caregiver. "The doctors -- because they're giving it to so many people -- are basically legalizing marijuana one doctor and patient at a time," said Greisen.

(Source: <http://www.10news.com/news/9480300/detail.html>)

## Medical Marijuana abuses reported among teens

By **Stephanie Bertholdo** [bertholdo@theacorn.com](mailto:bertholdo@theacorn.com) (Excerpts from the Article)

Part I of two parts on local teen drug abuse

A decade has passed since Californians voted to legalize marijuana for medicinal purposes. At the time, one of the arguments against legalizing the drug was that the law might open the door to abuse, especially among teens. Indeed, many teenagers in the area have found that the marijuana grown and dispensed by medical groups can be easily obtained, and is perhaps of even higher quality than what can be purchased on the street. 'Know the right doctor' To safeguard against abuse, people who suffer from cancer, AIDS, chronic pain and other conditions must obtain a prescription from a licensed physician, the first step to possessing a Medical Marijuana identification card. Once a Medical Marijuana identification card is in hand, a citizen can drop in to any local Medical Marijuana dispensary throughout California and legally purchase up to eight ounces of marijuana or other cannabis products. **One Oak Park teen who wished to remain anonymous for this article said that at least 10 of his friends have fraudulently obtained Medical Marijuana identification cards. "It's really easy to get," said the 19-year-old. "You just have to know the right doctor."** According to several experts interviewed by The Acorn, if a person cannot convince their own physician that the drug is necessary for a particular medical condition, the dispensaries will often recommend a doctor who is more likely to write a prescription. The process to obtain a Medical Marijuana identification card is fairly straightforward.

Once a doctor's prescription is obtained, a form is filled out and after the prescription becomes verified a patient is legally eligible to purchase marijuana in limited quantities. "It's better pot, I guess, than a lot of the street stuff," said the Oak Park teen. Each dispensary devises guidelines on how much marijuana a patient can purchase. A spokesperson for Herbal Independent Pharmacy in Woodland Hills said that the store allows individuals to purchase only two ounces within a two-week period. "Someone could reasonably smoke an ounce in a week," the HIP employee said. For those who want to bypass such limitations, a regular supply of marijuana can be obtained by visiting different dispensaries in the Conejo and San Fernando valleys. Cannabis "clubs" do not check with other dispensaries, another HIP spokesperson said. The onus is on the patient, who by law may possess only eight ounces of marijuana at a time. But "they could hit 50 dispensaries in one day if they wanted to," the employee said. Some marijuana issued with 'little or no justification' Dep. Matt Dunn, a member of the Lost Hills Juvenile Intervention Team in Agoura Hills, said law enforcement officers often deal with teens in possession of Medical Marijuana. Randi Klein, the alternative education counselor with the Las Virgenes Unified School District, has seen a rise in Medical Marijuana usage over the past 18 months and believes that Medical Marijuana cards are being obtained by students who should not qualify. Klein said many of the clinics have doctors on staff who will write the prescriptions for such ailments as insomnia or anxiety. Klein considers doctors who prescribe marijuana for minor ailments, especially for teens who fabricate complaints of back pain, insomnia or anxiety, to be negligent. "I do think that kids are starting (to use drugs) younger and younger," Klein said. She said parents must take a more proactive role in supervising their children, from monitoring computer usage to making sure their teens are where they say they are. There are thousands of web pages outlining the drunken escapades of students, and thousands of pictures of students who appear drugged or drunk, Klein said. "It looks cool to so many kids," Klein said. She recommends that parents ask to see their children's profiles on the site. "It's important to know what your kids are doing," Klein said.

(Source: [http://www.theacorn.com/news/2006/0727/Front\\_Page/004.html](http://www.theacorn.com/news/2006/0727/Front_Page/004.html))

Who is Ken Estes you ask? Ken Estes is a long time proponent of Medical Marijuana who has or has had interests in at least four Medical Marijuana Dispensaries, all of which have come under law enforcement and media scrutiny. His dispensaries have been robbed, the focus of law enforcement scrutiny and when ordered by two cities (Oakland June/04 and Richmond currently) to close his dispensaries has refused to do so.

**When Pot Clubs Go Bad: Ken Estes just wants to share the miracle of Medical Marijuana. Everyone else just wants him to go away.** (Excerpts from the Article)

By Chris Thompson

Article Published Jul 24, 2002

Neighborhood lore has it that before Ken Estes set up his medical-marijuana club, the property used to be a whorehouse. The neighbors wish it still was. Back then, the customers walked in, took care of business, and got out. Bad shit never went down at

central Berkeley's local brothel -- certainly nothing like what happened on the afternoon of June 5. At 2:37 p.m., roughly ninety minutes before closing According to the police report, they forced the guard through the door, rushed into the club, and screamed at everyone to lie face down on the floor. Everyone did except for one man, a wheelchair-bound patient who had come to get his legally prescribed dose of reefer and now had a gun in his face. The two men trashed the place and finally found the stash after prying open a locked file cabinet. It was the third armed robbery at 1672 University Avenue in ten months. You get into a lot of creepy stuff when you hang out with Ken Estes. You get burglaries, armed robberies, police raids, and felony charges. You also get allegations of cocaine dealing, tax fraud, and spousal abuse. Shortly after a motorcycle accident left Estes paralyzed below his chest, he became a devoted advocate of Medical Marijuana. He carefully organized his club to offer every possible comfort to the sick or dying. And unlike other East Bay pot clubs, most of which stress a clinical pharmacy's atmosphere, patients can sit down and light up right there, beneath rustic paintings of Jimi, Janis, and Jerry. If it weren't for the crime that has plagued his club's operation, Estes might be the patron saint of Berkeley stoners. "We have the best prices and the best medicine." he boasts. "If you know buds, we have the bomb." But ever since Estes first got involved in the medical-marijuana movement, men with drugs, guns, and evil intent have followed him everywhere he goes. They have robbed him, exploited his generosity, and endangered the lives of everyone around him -- even his three children. He always picks the wrong friends. At least that's Ken's side of the story. His estranged lover, Stacey Trainor, told a darker version to the Contra Costa district attorney's office. She alleged that Estes is a former coke dealer who lied to secure his club's lease, that he has a Berkeley doctor in his pocket who will sell pot prescriptions for \$215 a pop, and that up to thirty percent of his customers buy his product without any medical notes at all. Police and University Avenue merchants, meanwhile, claim that high-school kids used to line up for a taste outside Estes' club, and that his security guards scared away neighborhood shoppers and even got involved in fights on the street. His fellow cannabis-club operators even tried to drive Estes out of town. **In the six years since its passage, mayors, district attorneys, and state officials have been so focused on protecting patients from federal prosecution that they've neglected to implement any sort of regulations about how pot should be distributed. No state or local agency or mainstream medical group has offered any comprehensive guidelines on who should hand out pot in what manner. As a result, medical pot is not just legal, but superlegal, perhaps California's least-regulated ingestible substance. In the absence of official regulation, it has fallen to pot-club operators themselves to craft some sort of system** All they have is a gentlemen's agreement. Ken Estes broke that agreement, whether by design or neglect. And no one may have the legal power to make him stop. In 1992, he signed over his share of the salons to his business partner and started distributing pot, going to demonstrations, and working to decriminalize medical cannabis. Yet as Estes became a fixture in the medical cannabis scene, his life became increasingly chaotic and dangerous. At the very time that Proposition 215 liberated thousands of medical-marijuana smokers from prosecution, Estes began a long, almost farcical slide into crime. Even scoring on street corners didn't compare to what was to come. "No guns in the face at that point," he says of his early years. "That came later, with the medical-marijuana movement."

Estes began his cannabis activism by volunteering at the Oakland Cannabis Buyers cooperative. Jeff Jones, the co-op's executive director, doesn't even smoke pot. If Estes is a creative but befuddled libertine, Jones is rigid and dogmatic. From the start, the two rubbed one another the wrong way. After passage of Proposition 215, the co-op emerged from the shadows and began distributing pot out in the open. But no one had any idea how to go about it. **There were simply no rules; one day medical pot was illegal, the next day it wasn't. Proposition 215 is one in a long series of brief, poorly conceived initiatives whose implementation has proven to be a giant headache. The "Compassionate Use Act of 1996" offers no guidance on how pot should be distributed;** indeed, the initiative is a single page in length and merely encourages the federal and state governments to "implement a plan to provide for the safe and affordable distribution of marijuana to all patients." Six years later, no one in Sacramento has figured out what this means. No state agency has ever issued binding directives on how to distribute pot, or to whom. With the state paralyzed, it has fallen to local governments to regulate Medical Marijuana. The portion of the Berkeley municipal code governing medical pot, for example, is so ridiculously lax that it plays right into the city's worst stereotypes, and yet it's as strict as virtually any other Bay Area city. Although the code limits the amount of pot a club can have on hand, there are no provisions limiting how close a pot club can be to a school, or requiring doctors to conduct an actual evaluation of patients, or requiring background checks for pot distributors -- which is standard practice for anyone who wants to run a liquor store. Yet the code does encourage pot clubs to "use their best efforts to determine whether or not cannabis is organically grown." The end result is that medical pot is actually less regulated than candy bars, which must at least have their ingredients printed on the wrapper. Club operators disagree on whether this is good or bad. Jeff Jones wants the government to step in and bring some common sense to pot's distribution. "We thought the government would get involved in distributing Medical Marijuana as per the state law," he says. "I never thought that five or ten years later, we'd still be operating in a vacuum." Others worry that if the state takes a firmer hand, a conservative governor or attorney general might interpret the law so narrowly as to effectively recriminalize medical cannabis. But everyone agrees that since the government hasn't set up rules, club operators must police themselves. Even the police, hamstrung by a city council cognizant of the overwhelming public support for medical pot, can do virtually nothing to crack down on rogue clubs. If someone wanted to hand out pot like candy, no one could stop him. His neighbors along University Avenue soon figured this out. Accounts differ as to what Estes did when he first showed up at the Oakland co-op's door in 1995. Some say he taught the co-op's pot cultivation classes; others claim he weighed out the baggies and sampled the wares to categorize their potency. Estes says he did both. Whether the Oakland co-op itself was entirely above-board is a matter of some dispute. According to Trainor's statement to the Contra Costa DA, the co-op paid Estes in pot and unreported cash. "Part of the marijuana he received as payment from the club he would sell to other people, including persons who had no medical prescription for marijuana," her statement reads. In October 1998, the feds managed to get an injunction prohibiting the Oakland co-op from dispensing marijuana and Estes jumped in to fill the void. But he needed customers, so Trainor says Estes called a friend who worked there.

This employee gave Estes the names, addresses, and phone numbers of five hundred patients, and Estes soon started drumming up customers. Estes concedes he made no effort to call their doctors and confirm their medical condition he just started making deliveries to anyone with a card from the Oakland club. By the time that Estes went into business for himself, he, Trainor, and their three children had moved to a house in Concord, where he began growing pot to supply his growing army of patients. On September 20, Concord police officer David Savage took a call: Estes' neighbor claimed that she could see a bumper crop of pot plants growing in his backyard. Savage stopped by and peeked over the fence. Later that afternoon, he returned with a search warrant. Savage's police report indicates that he found pot everywhere. He found roughly fifty plants in a makeshift greenhouse in the backyard. He found an elaborate hydroponics system in the garage; behind sheets of dark plastic, dozens of plants were growing on plastic trays and in children's swimming pools; grow lights wheeled back and forth on a track hanging from the ceiling. He found baggies of weed stuffed in desk drawers and scattered along the floor, and plants hanging in the closets. In the master bedroom, underneath a crib where one of the children slept, Savage found two garbage bags with dried marijuana in them. "None of the growing and dried marijuana was in a secure place," Savage wrote in his report. "Most of the marijuana was accessible to the children in the residence. But Savage didn't know what to do with Estes. Estes had an Oakland cop card certifying him as a patient, as well as patient records indicating he was a legally valid caregiver. How much dope did Proposition 215 allow him to have? By then, Estes had bought some property near Clear Lake, and Trainor had moved up north with the kids, growing more dope in a shed behind the house. Meanwhile, Estes' cousin Tim Crew had moved into the house to help him grow a crop that dwarfed his prior stash. **This period marks the beginning of one of Estes' most foolish habits: keeping massive amounts of drugs and money lying around.** "People told me, 'Don't put more than a certain amount in the bank, or you could get in trouble,'" he says. "We had a lot of money, and I kept it with me. I'd hide it in my closet, hide it in my suitcase. I just didn't want to put it in a bank." As more and more people got hip to Estes' stash, his cavalier attitude would provoke a spate of armed robberies that left his University Avenue neighbors terrified. The first robbery happened in Concord on January 1, 2000. Neighbors called the cops and reported that several men had burst out of Estes' house and raced down the street, leaving the door ajar. When Concord officers arrived at the scene, they found that the front door had been forced open. They also found no fewer than 1,780 marijuana plants in various stages of cultivation, even after the break-in. This time, the cops wouldn't be satisfied with confiscating his stash. The DA charged Estes with four felony counts of possession and cultivation of marijuana for sale, and will probably argue that the volume of pot on hand proved that he was an outright dealer, not a medicinal caregiver. With the heat coming down in Concord, Estes eyed Berkeley. Taking out a business license and a zoning permit to sell "herbs and other homeopathic remedies," Estes set up shop at 1672 University Avenue. From the very beginning, Berkeley Medical Herbs was characterized by his permissive business style. Michael "Rocky" Grunner showed up at Estes' door just months into his new operation and handed him a bag of quality product. But over time, a tense, nervous atmosphere infected the club. Finally, Estes claims, a friend came to him and broke the bad news: Grunner was dealing crank out of the back room.

Estes says he promptly threw Grunner out of the club. But the club's neighbors were beginning to worry about the sketchy new element. Machinist Richard Graham is a longtime area resident and has been known to take a hit upon occasion. But he even he draws the line at Estes' way of doing business. A few months after Estes opened the club, Graham dropped off a package mistakenly delivered to the wrong address. When Graham asked the man behind the counter how business was holding up, he offered to set him up with a physician for \$200. "I asked them how their operation works, and they told me you just need a note from the doctor, and we have a doctor, and you can get a note for just about anything," Graham says. "Then he told me the prices, the registration fee to get the note, \$200 per year. I just got the impression that these are people in it to sell marijuana as a business. I didn't feel that these were people motivated to help sick people, which I think other people are. It was a decidedly unclinical atmosphere, let's put it that way." In fact, Estes' operation was so unclinical that it even advertised in the Berkeley Daily Planet. Superimposed over the image of a big fat bud, the club announced that it had plenty of pot for sale, listing killer strains such as "Jack Frost, Mad Max, Romulin, G-Spot, and more." Other club operators groaned in dismay when they read the notice: "One-source shopping for all your medicinal needs! First visit, first gram free with mention of this ad!" Soon, kids were lining up outside, neighbors and police report, and the club's busiest hour was between three and four in the afternoon, when Berkeley High students got out of class. "The biggest complaint was the kids going in and out of there," says Lieutenant Al Yuen, head of the Berkeley Police Department's Special Enforcement Unit, which handles narcotics investigations. "We looked into that and watched kids going in and out. We never caught him selling to kids without a card. He claims that the kids had medicinal cards, but he doesn't keep records on who he sells to." In fact, Trainor told the DA's office that Estes sold his product to anyone with the cash. She estimated that seventy percent of the club's buyers were patients from the Oakland co-op, and that the other thirty percent were recreational users. And Trainor alleged that even many of the so-called patients may have had fraudulent doctor's notes. She claimed that Estes referred everyone without a card to Dr. Frank Lucido, a Berkeley family practitioner who allegedly charged a fee for every note. "Estes would tell his buyers to go to Lucido, give him \$215, and he would give the person a prescription. For a while, Estes says, he even accepted photocopies of Lucido's notes, and neighbors used to find them littering the sidewalk in front of his club. Lucido says he used to write such notes and rely on patients to provide verification later. But he says he discontinued that practice two years ago, and now requires independent verification of his patients' ailments from another physician. Lucido says Estes has been a headache for his medical practice. Two years ago, the doctor says, Estes printed business cards that claimed he was working in conjunction with Lucido. The physician says that as soon as he found out, he had a lawyer call Estes and tell him to stop making that claim immediately. Why is Trainor telling so many tales out of school? It all began two years ago, when she began an affair with Rocky Grunner. The feud culminated on August 31, 2000, when Trainor swore out a temporary restraining order against Estes, claiming that Estes threatened to kill her. When the Lafayette cops arrived at his house to serve it, they found more plants growing in the basement. Back went Estes into the pokey, and the cops even raided the club and seized product and financial records. Two months later, Lafayette narcotics agents raided Grunner's own house and seized seventeen pounds of marijuana.

Trainor eventually broke off her affair. Grunner could not be reached for comment. Six months ago, as Estes became the subject of a Contra Costa district attorney investigation, Trainor met with assistant district attorney Phyllis Franks and county investigator Tony Arcado. Over the course of several hours, she told the story of their life together. According to her statement, Estes didn't start his new career dealing medical pot -- but cocaine. "After selling the tanning salon, Estes earned income by selling cocaine," Arcado wrote in his summary of Trainor's interview. "Trainer [sic] said the income from the cocaine business ran out in 1993, and Estes switched to selling marijuana." On the evening of Friday, October 12, 2001, the club was winding down after a long day when someone knocked on the door. An employee pulled the door open and stared straight down the barrel of a silver handgun. "We opened up the door, same as for everybody: 'Hey, what's up?'" Estes says. "The guys came in. They put everybody on the ground and took everything." Time was running out for Estes. The kids and the police raids were bad enough, but now men were waving guns around and racing off with drugs. At the time, Estes had no security guards, no iron gate on the door, just a lot of cash and pot. Neighbors and police representatives claim that this just made things worse. The men were not professional guards, and scared people away from the neighborhood by loitering on the sidewalk during business hours. Estes says the neighbors are giving way to their own racist fears. "If you talk to them, they're big, soft, easygoing guys," he says. "But unfortunately they're black. And in this society, you think of black as criminal. So the moment you see black people standing around, looking at your ID, I guess it looks like a crack house. I have black friends, and that seems to be held against me. None of the other clubs seems to be scrutinized as much as me." Not only did the guards not sit well with the neighbors, they also didn't stop the crime. On the evening of December 13, 2001, one last patient, a young woman, knocked on the door. As an employee opened the door for her, he glanced down to his left and saw three men crouched low. The woman turned and walked back to the sidewalk and the men rushed through the door. One pulled out an Uzi submachine gun, and the second robbery in two months was under way. The thieves probably wouldn't have kept coming back if there hadn't been so much to steal. Estes refuses to say how much pot was lost during the first robbery, but he says he kept an average of three pounds of dried marijuana in his store at all times. "Plus we had hash, we had kief, we had oils and other extracts from marijuana. We had baked goods, brownies, carrot cakes, Reese's peanut butter cups that were done like that. We had everything." At \$65 an eighth, that meant thugs could make off with about \$25,000 with one quick hit, to say nothing of the cash he kept on hand. With this, the city had finally had enough. City Councilmember Linda Maio convened a neighborhood meeting about the club -- which Estes didn't bother to attend -- and told the rest of Berkeley's cannabis dispensaries to bring their colleague to heel. On January 2, Geshuri agreed to the following terms: the club would only operate five hours a day; less than a pound of dope would be on the premises; newspaper advertising would stop immediately; a professional security company would be retained; and security cameras would be installed. The final robbery on June 5 spelled the end for Ken Estes. Despite his promise not to keep more than a pound of pot at the store, neighbors report that during the getaway, the robbers' duffel bag was so heavy that they had to drag it down to the car. As for the security cameras, club officials claimed that they had mysteriously broken down that day, and there was no film of the incident.

Estes had used up his last store of good faith, and even the other clubs agreed he had to go. He, his brother Randy Moses, and Geshuri have signed a lease at a new club in Oakland, near the corner of 18th Street and Broadway, where he promises to tighten up security. If this the best local government can do, Estes is in the clear. Of course, good old-fashioned drug laws may solve the Ken Estes problem for us. Assistant district attorney Phyllis Franks of Contra Costa County is preparing to try Estes on four felonies stemming from the Concord raids, and if convicted, he'll be out of business. This brings up the final legal question unresolved by Proposition 215: how do prosecutors determine whether someone is a legally sanctioned caregiver, or a drug dealer? The answer is there is no answer. When Estes turned himself in, forty demonstrators accompanied him to the station, and his image -- the martyr of Medical Marijuana, persecuted by vindictive prosecutors -- was flashed across the nightly news throughout the Bay Area. Estes admits he's made some mistakes, and vows to improve his operation. I believe I know who's behind this, the robberies. All this stuff that's gone on has happened since Stacey went to the police, and the police believed her. They told me that many times women turn on their drug-dealing boyfriends, and this seems like a case of that. I wish I could have hired better people, but I can't say that I would have done anything different. I really didn't foresee the criminal element making its presence like it did. But I can only do so much." And should Estes revert to his old, seat-of-his-pants ways, we may have no choice but to put up with him.

(Source) [www.compassionatecoalition.org/comment/reply/3789](http://www.compassionatecoalition.org/comment/reply/3789)

**Medical Marijuana merchant defies Oakland order to close. Others might go underground, as city's new rule gets mixed reaction from consumers, business owners** (Excerpts from the Article)

Oakland Tribune (CA) Wednesday, June 02, 2004 By Laura Counts, STAFF WRITER  
OAKLAND -- Medical Marijuana patients who packed into the Dragonfly Holistic Solutions dispensary on Telegraph Avenue on Tuesday seemed unaware the business had been told by the city to shut down. They said they were seeking the most potent medicine in town -- a strain of marijuana called "Barney Purple" -- and didn't like hearing that new city rules will limit them to four city-sanctioned establishments. Those that received licenses will have to pay a \$20,000 annual fee. Those that did not were supposed to close Tuesday. **Dragonfly did not make it, but owner Ken Estes said he will continue to operate in defiance of city rules until he is arrested.** He planned a protest outside the dispensary Tuesday morning, but the only signs of one emerged when the doors to the club opened 15 minutes late. "There is some kind of discrimination going on behind the scenes," Estes said. Still, no one except Estes continued business as usual. There are too many people who appreciate getting marijuana in a civilized way," said Lee, one of the backers of an initiative now collecting signatures for the November ballot that would all but decriminalize adult use of marijuana in Oakland. Sparky Rose, operator of Compassionate Access on Telegraph -- which also was approved -- said he serves 7,000 patients and is expecting more. He plans to soon move to a larger location nearby. The city will review the new rules in six months. Jeff Jones, director of the Oakland Cannabis Buyers' Cooperative -- which issues identification cards but does not dispense -- said he has been advising clubs to follow the rules.

"The city is our friend, and we are in this together. They are doing what they feel they need to do," Jones said. "I think the best practice is to close down quietly, and we'll spend the next six months lobbying to increase the limit."

<http://www.marijuana.org/OaklandTrib6-02-04.htm>

**Marijuana Clubs Question Ethics Of City's Order To Close** Friday, May 19, 2006 by Tom Lochner Contra Costa Times (Excerpts from the Article)

Richmond, CA -- With the crafting of a Medical Marijuana regulating ordinance stalled, the Richmond City Attorney's office has ordered the immediate closure of two cannabis clubs, the only ones known to operate in the city. One, Natural Remedies Health Collective on Macdonald Avenue, promptly closed. The other, Holistic Solutions on Hilltop Mall Road, remained open Thursday. Owner Ken Estes said he hopes to persuade Richmond officials and council members that his business benefits both patients and the city at large. In a cease-and-desist order dated May 16, Assistant City Attorney Trisha Aljoe told Natural Remedies owner Linda Jackson that failure to comply will result in the filing of criminal charges. Estes said he received a similar letter. Jackson closed her shop Wednesday, but on Thursday, she questioned the legality and ethics of the city's order. **"This is taking away my livelihood and putting my patients in harm's way,"** said Jackson. On Thursday, the committee declined to adopt a recommendation by the city staff to declare cannabis clubs a "non-permitted use" and referred the matter to the city council to consider as part of a general plan overhaul. Police Chief Chris Magnus said Thursday that cannabis clubs are a drain on police resources. Magnus said there was a burglary at Natural Remedies in May 2005. But Jackson said that occurred under a previous owner. And at Holistic solutions, Magnus said, Richmond officers observed a steady stream of young people coming and going, causing him to doubt they were there for medical reasons. But Estes said many younger people use Medical Marijuana for pain resulting from injuries and that police should come inside to observe how he checks out his patients.

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[www.hemp.net/news/index.php?article=1149877045](http://www.hemp.net/news/index.php?article=1149877045)

**Clearlake, CA: Moratorium on marijuana dispensaries (June 6, 2006)**

Submitted by Nathan on Mon, 06/12/2006 - 9:24am. [Lake County, California](#)

Moratorium on marijuana dispensaries (Excerpts from the Article)

06/06/2006 Denise Rockenstein, Lake County Record-Bee

Source: [http://www.record-bee.com/oanews/ci\\_3906208](http://www.record-bee.com/oanews/ci_3906208)

Yet, 10 years after the passage of the Compassion Use Act, barriers are still blocking patients' access to medicinal marijuana. It is the city's hope that the issue will be resolved in Federal Court before the moratorium, which has been extended to 10 months, 15 days, is complete. According the staff report submitted to the council on May 25, "Clearlake currently has no permitted Dispensaries, but the Police Department believes there may be businesses distributing Medical Marijuana in the City, and that it is likely that persons will seek land use entitlements and permits from the City to distribute Medical Marijuana." Holistic Solutions, a natural healing center that provides medicinal marijuana, has been operating on Lakeshore Drive in Clearlake for more than a year under City of Clearlake Business License No. 4535.

Another distributor, **Barrett Consulting**, which operates Alternative Patient Services out of the Java Express Mall, has been a permitted business in the City of Clearlake for more than four years. Both Holistic Solutions and Barrett Consulting have been successful in obtaining a business license as well as renewals of those licenses. "If something doesn't change before (Sept. 30) I will be out of business," said James Barrett, Barrett Consulting proprietor who began his business after recognizing a need for local access. He further identified the elderly as being most affected by access barriers, stating that the teenage population basically has unlimited street access to marijuana. "The thing with the moratorium is that there is going to be a lot of (elderly) patients that can't get their medicine." Barrett agrees that zoning regulations on Medical Marijuana dispensaries are needed as does Holistic Solutions co-owner Dave Moses. "Zoning regulations are badly needed," Barrett said, "but, in my opinion, that should have been taken care of in 1997." Moses has extended his assistance to the city staff in establishing regulations on businesses providing medicinal marijuana to patients. **Moses, along with his brother Ken Estes, have been involved in the marijuana movement for more than 13 years.** Estes, president of Holistic Solutions, began using Medical Marijuana following a paralyzing motorcycle accident in 1993. "When I was going through my rehab I tried marijuana for the first time and it really worked. It did something that the pills weren't doing. It gave me my appetite back and I could sleep," Estes explained from his wheelchair. "The pills were breaking me down and the marijuana was kind of filling me up. Making me eat; giving me a good positive attitude. There are some good characteristics to marijuana that pharmaceuticals long to have." **Estes and Moses were instrumental in the establishment of regulations in the San Francisco area where they operate two more dispensaries.** An outline of those regulations has been submitted to city staff. As of Tuesday, June 6, the city has made no attempt to contact either Estes or Moses although they are eager to help put zoning regulations in place. "We want regulation and control because we believe in that," Moses said. "We don't think that we should be within 100 feet of a school, or operate all hours of the night, for example, and we would be like to be contributing our fair share to the city's coffers." Although Moses had requested that the council include in its moratorium authorization for renewal of existing business licenses, his request was denied. However, Mayor Joyce Overton recommended that the item be brought back before the council for a progress update in August. Contact Denise Rockenstein at [drockenstein@clearlakeobserver.com](mailto:drockenstein@clearlakeobserver.com).

#### **Pot club owner unable to retrieve seized items 09/02/2006**

By Tom Lochner

CONTRA COSTA TIMES

The owner of a cannabis club and his deliveryman have struck out at Richmond police headquarters trying to retrieve confiscated property: the club owner's 27 pounds of marijuana and the driver's personal effects, which include more than \$23,000 in cash he called his life's savings. "They're denying patients their medicine," said Ken Estes, who owns Holistic Solutions on Hilltop Mall Road and the marijuana that was in the truck. On Thursday, a WestNET officer handed the deliveryman, Richard Barrett, a notice of intended forfeiture of the cash. **Barrett said he has carried his savings with him since the Sept. 11, 2001, terrorist attacks.**

**Estes described as "pure harassment" a police action that began Tuesday with a traffic stop and culminated in Barrett's arrest on suspicion of illegally transporting narcotics and confiscation of the truck's cargo. Barrett was released later Tuesday after the cannabis club's legal team posted \$15,000 bail. Barrett has an Oct. 2 date to appear in court but has not been charged with any crime. By then, Estes said, the marijuana, which he described as top-grade with the name "Ken's granddaddy," likely will be useless. "The product can go bad," Estes said. "It's like any kind of perishable."** Richmond has no cannabis club-regulating ordinance. Administrative officials have said the clubs are therefore illegal, but they have not enforced a cease-and-desist order against Holistic Solutions issued May 16. Other cities have held that without an ordinance, there is no legal basis to control or ban the clubs. Estes said he considers Richmond's cease-and-desist order illegal.

Source: <http://www.contracostatimes.com/mld/cctimes/news/15425405.htm>

In closing, what we have learned over the ten years since the adoption of Proposition 215? We have learned that what was intended as "Compassionate use" has turned into an unregulated multi-million dollar cash and carry industry. There are appears to be little or no controls in place to govern the issuance of "medical recommendations" from doctors, the cultivation and transportation of marijuana to the dispensaries, as well as the operation of the dispensaries themselves. In those rare instances when the blurry line has been egregiously crossed, there is seldom a successful prosecution as a result.

We as the Law Enforcement component of our society must find a means of controlling this situation within our communities. The first step in the process must be the accurate recording of data relating to Medical Marijuana. Each of us at some point will be expected to inform our local governments as to the actual extent of the problem and our suggested course of action. Only by being well informed, with quantifiable and defensible statistics, will be able to broach this sensitive issue and make our recommendations to either ban these activities or at the very least put in place reasonable restrictions to reduce their impact.



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# Board of Supervisors Memorandum

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September 7, 2010

**Initiation of Zoning Code Text Amendment Concerning  
Medical Marijuana Dispensaries and Cultivation Locations**

Report

Proposition 203 is a ballot initiative to be voted upon during the general election on November 2, 2010. If approved by the voters, the initiative will enact a group of statutes titled the "Arizona Medical Marijuana Act," to include a new Chapter 28.1 in Title 36 and amendment of Arizona Revised Statute (ARS) §43-1201. If adopted, the new law would decriminalize possession, sale and cultivation of marijuana for certain purposes under state law and would provide for the establishment of medical marijuana dispensaries and offsite cultivation locations.

The proposed law specifically permits cities, towns and counties to enact zoning regulations for such medical marijuana dispensaries, and the Board of Supervisors has the authority to enact such zoning regulations pursuant to ARS Title 11, Chapter 6.

It is recommended that the Pima County Board of Supervisors initiate a Zoning Code Text Amendment that:

- Limits the location of medical marijuana dispensaries and offsite cultivation locations to nonresidential, commercial business zones.
- Prohibits medical marijuana dispensaries and offsite cultivation locations in the Gateway Overlay Zone, the Buffer Overlay Zone and historic zones.
- Requires a Type III conditional use permit approved by the Board of Supervisors for a medical marijuana dispensary or medical marijuana offsite cultivation location.
- Requires a supplemental conditional use permit application to include the following supplemental information:
  - Certification that the property owner is aware the property will be used for marijuana dispensing or cultivating.
  - Requires a list of the operating organization's officers and board of directors and a certification that the operator complies with requirements in the proposed law prohibiting criminal history.
- Requires spacing setbacks:
  - At least 2,000 feet from other dispensaries and offsite cultivation locations;
  - At least 1,000 feet from schools;

Board of Supervisors Memorandum

**Re: Initiation of Zoning Code Text Amendment Concerning Medical Marijuana Dispensaries and Cultivation Locations**

September 7, 2010

Page 2

- At least 1,000 feet from drug and alcohol rehabilitation facilities;
- Appropriate setbacks from other sensitive uses.
- Allows the Board to add permit conditions necessary to conserve and promote the public health, safety, convenience and general welfare.
- Limits floor area and hours of operation.
- Prohibits drive-through pickup windows and delivery service.
- Prohibits outdoor seating areas.

Recommendation

I recommend the Pima County Board of Supervisors direct the Planning & Zoning Commission to consider the Zoning Code Text Amendment at its September 29, 2010 meeting and to provide its recommendations regarding such Zoning Code Text Amendment to the Board of Supervisors immediately thereafter for consideration at the Board of Supervisors October 5, 2010 meeting, such that the Zoning Code Text Amendment, if adopted, would take effect in November 2010.

Respectfully submitted,



C.H. Huckelberry  
County Administrator

CHH/mjk – September 1, 2010



## Medical Marijuana Matrix Prop. 203

County Code	County Name	Population	Approx. # of Dispensaries
AP	Apache County	69,980	2
CO	Cochise County	127,866	3
CN	Coconino County	127,450	3
GI	Gila County	51,994	2
GM	Graham County	34,769	2
GR	Greenlee County	7,754	1
PZ	La Paz County	20,172	2
MA	Maricopa County	3,990,181	70
MO	Mohave County	194,944	4
NA	Navajo County	111,273	2
PM	Pima County	1,003,000	15
PN	Pinal County	324,962	4
SC	Santa Cruz County	42,845	2
YV	Yavapai County	212,635	4
YU	Yuma County	190,557	4
		Total	120

Population Figures: Wikipedia  
 Figures compiled by: Michelle B. Graye  
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# GREEN LEAF RELIEF

NON PROFIT

BOX 61

TUCSON, ARIZONA 85702

On the web at [WWW.GREENLEAFRELIEF.ORG](http://WWW.GREENLEAFRELIEF.ORG)

9/4/2010

SEP 16 2010

Dear Randall Holdridge  
County Zoning and Planning Commission  
RE: Prop 203 Medical Marijuana Zoning Proposals

I represent the non profit organization GREEN LEAF RELIEF. We will be applying for a medical marijuana dispensary permit in Tucson if prop 203 passes. We are concerned not only for our patient's wellbeing but also for the safety of the community. Here are a few recommendations for your consideration when making new zoning regulations.

1. Prop 203 already has a 500 foot buffer between dispensaries and schools. If you decide on making set backs for churches, drug rehabilitation centers etc. We would suggest they also be 500 feet. Making them further (1,000 ft. or more) would not make much of a difference except to make our choice of dispensary locations in the city that much harder. I'm sure you'll agree it will be important to have dispensaries in Tucson as the 25 mile radius "halo" around the dispensary prohibits potentially dangerous grow rooms in the city. Medical patients growing indoors with powerful electric grow lights can increase the chance of fires as well as the number of home invasions.
2. Please be careful if considering limiting the size of a dispensary. If we are limited to a specific square footage there are several things to consider. The Medical Marijuana industry will start small but as time goes on more patients will enter the program. It has been estimated there will be over 66,000 medical user cards in Arizona within a few years. We plan to start with small harvests and increase their size to meet patients needs. In New Mexico their dispensaries are reporting that because of their crop limitations, harvests are sold out the day they are available. For the next several months they're telling patients they are sold out and next harvest it already pre-sold. This forces more and more patients to grow at home increasing the chance of residential fires and home invasions. In Oakland, California there is an estimated 400-500 residential grow rooms. Their local government has decided to ban home grows next year and issue permits to 4 large growing facilities each being limited to 100,000 sq. ft. each. Even we can not see the demand in Arizona growing that big, but keep in mind if we are in one building we need room not just for cultivation rooms but for offices, patient lobby, work areas, employee break room, kitchen, and bath rooms. We are currently looking at properties around 5,000 sq. ft. and thinking in 2-3 years needing to expand to possibly 10,000 or 15,000 sq. ft.

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As Prop 203 already limits the amount of medical marijuana dispensaries to 1 dispensary to every 10 pharmacies. It would make sense to allow a few well-sized dispensaries that can keep up with increased demand. If we are allowed to increase the size of future harvests to keep up with increased demand we will be keeping down the number of potentially dangerous residential grow rooms.

3. For safety and security reasons, we suggest that dispensaries only be allowed to stay open for sales during daylight hours and not be allowed to make sales at night.

Please do not compare us to “pot shops” in California and Colorado, those states do not have dispensaries. They operate as collectives with patients growing in their homes and selling through a collective “pot shop.” These pot shops are often mistakenly called dispensaries by the press. In Arizona we will not have “pot shop collectives” we will have actual dispensaries that can not buy from patients therefor making it easier to monitor us from seed to sale as everything happens in one building. The reason we do not hear much about medical marijuana conflicts in the news from states such as New Mexico is because they have dispensaries and not collectives.

We have plans for a very secure and safe environment for our patients. The dispensary and cultivation rooms will all be in one building. We would prefer one building instead of two. This way there would be no need to transport marijuana between cultivation and sales sites. Our plans include security guards, a patient lobby with bullet proof transaction window, steel doors with biometric locks and security cameras watching all employees and patients. No one will be allowed into the secure lobby except those with state issued medical marijuana ID cards. Over the past 2 years we have researched and studied dispensaries in the 14 states that already have medical marijuana laws. We plan to be an asset to the community and a model to other Arizona dispensaries. We feel that prop 203 has regulations built into it that will help Arizona avoid much of the uproar that we see in California and Colorado. We hope to work with the City Council and the Pima Health Dept. in any way we can to make a Pima County medical marijuana program safe and secure for our patients and our community.

Thank you,

Steven Gonzales

Chairman of the Board

GREEN LEAF RELIEF