

A Primer to the Meaning of Proposition 215 and SB420
(And a little about Marinol, Sativex and the California Marijuana Research Center)

"Possession and cultivation of marijuana is no more criminal – so long as its conditions are satisfied – than the possession and acquisition of any prescription drug with a doctor's prescription."

Honorable Ronald George, Chief Justice of the California Supreme Court in Mower Decision 2002

- **Medicinal Cannabis Made Legal in California by Prop 215**

The people of California approved the Proposition 215 initiative in November 1996 with 56% of the popular vote statewide. When the voters passed this initiative, Prop 215 created a new section of the state Health and Safety Code - section 11362.5 - establishing "the right to obtain and use marijuana for medical purposes" and exempting users who have a doctor's approval from the penalties for marijuana possession and cultivation.

According to the California Supreme Court (in the 2002 Mower decision), under the law patients and/or their primary caregivers who possess or cultivate marijuana for medical treatment recommended or approved by a physician are exempted from criminal prosecution, just as they are for prescription medication when they have a prescription. The treatment may be for "cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief."

The California Appellate Court decision in the Sparks case makes it clear that a patient does not need to defend or justify the doctor's approval/recommendation. The court ruled that any patient who has a valid approval/recommendation from a licensed California physician, is protected from prosecution. The court ruled that a jury could not overrule the doctor's judgment and nullify a valid M.D. recommendation.

- **Physician Harassment**

Proposition 215 states "physicians may not be penalized" in any way for making the medical cannabis approval/recommendation, which may be either written or oral. What this means seems clear, but to the Medical Board of California (MBC) it is open to debate. In an apparent contradiction to this provision of 215, the MBC has "investigated" 7 of the 10 physicians on the NORML website. Fortunately, "*Bearman v. Joseph*" has provided some clarity. In that case the California Second District Appellate Court told the Medical Board that (1) they needed a real reason to investigate a doctor, (2) they could not subpoena records and violate doctor/patient privilege for no reason, (3) they did not understand Proposition 215, and (4) showing a doctor's written recommendation to a law enforcement official does not waive your right to privacy of your medical records.

- **SB 420**

SB 420 is enabling or implementing legislation which provides administrative uniformity for Prop 215. SB 420 added article 2.5 to section 11362.5. This law went into effect January 1, 2004, and provides a floor for the amounts of cannabis a patient may possess

for personal medicinal use. It also authorized initiation of an official voluntary state medicinal cannabis ID card. This voluntary medical cannabis patient ID card should, in most cases, preclude arrest by local county and state authorities.

In the fall of 2003, as part of SB 420, the California State legislature directed the State Health Department to initiate a voluntary state medicinal cannabis patient ID card. When that deadline came and went Santa Barbara County instituted its own Medical Patient ID cannabis card program. This program has worked well. However, the State Health Department has finally instituted their card. Within the last few months, the state has implemented a program that all counties are required to join.

Starting in February 2006, when Santa Barbara County identification cards expire people will be required to apply for the new State program. Each person's information will be entered into a database that officials can access statewide. This is an advantage to police who previously had trouble verifying the validity of cards that were not issued in the county, since each jurisdiction had a separate system.

As of March 1, 2006 Ventura, S.L.O. or L.A. Counties have not yet joined the state's program. Riverside and San Bernardino have. San Diego County originally try to sue the state in federal court so they would not have to initiate the card program. This was never taken seriously. They are not suing in State court. Should this ever go to federal court in order for the San Diego to prevail, the U.S. Supreme Court would need to overturn a precedent which goes back to the Fugitive Slave Act of 1857. San Bernardino has joined their suit.

- **Criteria to receive a bonafide doctor's recommendation as per Prop. 215:**

- The patient is presently under a doctor's care
- In the doctor's medical opinion from purely a medical perspective:
 - (1) the use of marijuana is appropriate for the patient's condition; and (2) such use is recommended for the treatment of the patient's condition;
- the physician does not intend to encourage the patient to engage in illegal activity, and is only providing her/his opinion, based upon their understanding of currently available medical and scientific evidence, of the potential efficacy of marijuana use for the patient's condition.
- The patient has a current, well-documented, serious medical condition for which more conventional treatment has been tried.
- The doctor and patient have a bonafide doctor/patient relationship.
- The physician does a good faith history and physical, and reviews appropriate records.

- **Statewide Patient Guidelines**

Statewide guidelines for implementing Prop 215 became effective January 1, 2004. SB 420 provides some direction and needed uniformity for the implementation of Prop 215. Until now, Prop 215 has been implemented in an inconsistent manner, with different guidelines, depending upon the local political situation.

SB 420 allows for a floor of how much cannabis a person may possess for personal medical use: "A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. in addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient." The amount can be more if cities and counties set their own higher guidelines for medical marijuana use or if a doctor recommends more.

- **How Much Cannabis Can You Have?**

The 420 guidelines only set a floor, the ceiling can be whatever the physician says is necessary or the county sets as a guideline. Clearly a person who has less than the state floor should be immune from prosecution for simple possession or cultivation. Several cities and counties such as Arcata, Santa Cruz, San Francisco, San Diego, Oakland, Alameda, Mendocino, and Humboldt have set higher limits. A person may have to explain in court why they possess more than the state floor if they do not reside in a jurisdiction with the higher guideline. Of note, the federal government provides seven (7) to nine (9) pounds per year to seven (7). Independent New Drug (IND) patients. IND nears independent new drug program. It started with Robert _____ in 1978 and grew to 25 with about 20 more on the waiting list. The program was killed in 1991 but those receiving government cannabis at the time were grandfathered in. There are seven members of the original 15 federal medical marijuana patients remaining aalive and on the program.

- **Take Care. Be Prudent. Behavior to Avoid.**

More important than the amount guidelines are any surrounding circumstances which law enforcement might consider suspicious. Behavior to avoid includes:

(1) possessing scales or baggies; (2) an unusual amount of cash; (3) illegal firearms; (4) prior conviction for drug sale; and (5) having the drug divided into more than three packages or containers. Other areas of potential suspicion of criminality include: (6) contributing to the delinquency of a minor, (7) driving under the influence, and (8) cultivating or possession with intent to sell.

- **Where can medicinal cannabis be obtained?**

Since Prop 215 does not include the word distribution, distribution is not covered by the law. The question where patients can get the drug if they are unable to grow it themselves is one that the state has not addressed and is in a legal gray area. Several localities, particularly in the Bay area, have allowed medical cannabis dispensaries to operate. The federal government maintains these dispensaries are not legal under federal law. This interpretation is currently being challenged in the courts.

Because of the uncertainty of the application of federal law, a doctor cannot suggest to you where you might obtain cannabis, nor by their recommendation do they intend to encourage you to engage in any legal activity. *It does not appear that making you aware of the 18 FDA approved whole smoked cannabis research projects being administered by*

UCSD is a violation of federal law. Four UC medical school studies provide federally grown cannabis to participating subjects.

- **Is a recommendation a prescription?**

What is confusing here is the term prescription. It is true that a recommendation should in no way to be interpreted as a prescription as defined under Federal Law (Controlled Substances Act of 1970). An approval/recommendation is not a formal prescription, but is merely a statement of your doctor's professional opinion that use of cannabis could be medically beneficial in your case. The California Supreme Court in the 2002 Mower decision found that a recommendation/approval that adopts the legal provisions of California Health and Safety Code section 11362.5 and is used and applied under California law is considered the same as a prescription and provides the same legal protections.

Cannabis (marijuana) is considered a Schedule I drug by the federal government. Under federal law prescription, possession, use, cultivation and sale of cannabis is illegal and federal law precludes prescribing cannabis. The use of medical necessity as a defense for violation of federal criminal laws pertaining to marijuana is not clear.

- **CB1 and CB2 Receptors**

Cannabis has been used as medicine for thousands of years but it was actually about 40 years ago that scientists discovered the active ingredient, THC. Once the active ingredient was located scientists were then able to see what portions of the brain this chemical effected. In 1988 the CB1 receptor, which is found mainly in the brain, was discovered but then in 1992 a discovery by a team led by Raphael Mechoulam of Hebrew University in Jerusalem found the first Cannabinoid neurotransmitter that is “endogenous” or normally present in the brain. It’s an arachidonic acid derivative, called anandamide named after the Sanskrit term for bliss.

In 1993 the CB2 receptor, which is found mainly outside the brain, was discovered. This set the stage for the discovery of an entire basic system in the human body, the endogenous cannabinoid or endocannabinoid system.

- **UCSD Researchers Studying Marijuana, Pain Relief**

Researchers at UCSD’s “The California Center for Marijuana Research” are looking at several research questions. One question they are researching is cannabis’ ability to ease pain. “There is a large amount of research ongoing right now at UCSD to answer these questions,” said Dr. Mark Wallace. This is just one of 18 FDA approved being administered by the California Center for Marijuana Research at UCSD which are being done at 4 medical schools in California.

Dr. Wallace, an Anesthesiology professor at UCSD says, “The results suggest that there is a therapeutic window of the cannabis. If you don’t get enough of it, you don’t get pain relief. I think we need to keep working to demonstrate the medicinal use of cannabis by good, quality research and then get it in the hands of a pharmacist.”

- **Marinol**

Marinol is synthetic delta 9 THC. Delta 9 THC is one of 483 chemicals in cannabis. It is considered the most pharmacologically active. It has been helpful in treating nausea, decreased appetite, pain and ADD. But Marinol is not always successful.

Marinol fails precisely because it isn't cannabis but just one of the 483 chemicals that make up the plants profile. In recent years cannabidiol (CBD), the other major cannabinoid in cannabis is important in combination with THC in producing a more balanced medicinal effect. CBD is especially active in anti-inflammatory effects, which seem to effect just about every other condition by extension. The effect of taking Marinol (which lacks CBD) is sometimes to get too high, dysphoric. Patients often compare the effect with eating too many hashish brownies.

- **Sativex (Tincture of Cannabis)**

Sativex is a whole plant medicinal cannabis extract indicated for relief of symptoms of multiple sclerosis (MS) and for the treatment of severe neuropathic pain. Developed by GW Pharmaceuticals, Bayer has exclusive rights to market Sativex in the UK and Canada. In April 2005, Health Canada approved the sale of Sativex in Canada and in June 2005, Bayer began marketing Sativex there. In December the British Home Office approved British physicians to write prescriptions for patients returning from Canada who use the medicine. Finally, in December 2005, the FDA approved Phase III clinical trials for Sativex here in the US of A.

Sativex offers an improvement on Marinol in that it is a whole plant extract liquid mouth spray that is made form the 50/50 combination of two different Mendellian plants, a plant that expresses itself mostly in THC and another that expresses itself mostly in CBD.

- **Statement of Former Attorney General Dan Lundgren:**

What should be one of the most authoritative statements on the state legal implications of Proposition 215 is laid out in the Ballot Argument against Prop 215, found in the official 1996 California Voter's Pamphlet signed by the president of the California District Attorney's Association and endorsed by then California Attorney General, Dan Lundgren.

Among other assertions, they state in their ballot argument that:

"Proposition 215 does not restrict the use of marijuana to AIDS, cancer, glaucoma and other serious illnesses.

...Proposition 215 legalizes marijuana for "any other illness for which marijuana provides relief." This could include stress, headaches, upset stomach, insomnia, a stiff neck ... or just about anything."

They go on to say that:

"Proposition 215 does not require a written prescription. Anyone with the "oral recommendation or approval by a physician" can grow, possess, or smoke marijuana."

The above statements were endorsed by several organizations and individuals, including the California State Sheriff's Association, the California District Attorney Association, the California Police Chiefs Association, the California Narcotics Officers Association, the California Peace Officers Association, and the then California Attorney General Dan Lundgren.

There is still some ambiguity. *This is because the federal government prevailed in overturning the Raich v. Ashcroft decision which had support states rights on a controversial 6-3 vote. The Supreme Court stood in the way of states regulating medicine as per the 10th Amendment to the Constitution which preserves all rights and powers specifically granted to the federal government revert to the states.*

Nevertheless, the federal government is under increasing pressure. Laws similar to Prop 215 have been more widely adopted. Medical cannabis has been approved by the voters of Arizona, Washington, Oregon, Alaska, Maine, Rhode Island, Vermont, Colorado, Nevada, Washington D.C., Montana, and the state legislatures of Hawaii and Maryland. A total of 36 states officially recognize the medicinal value of cannabis. Poll after poll shows growing public impatience with the present legal obstacles to medical cannabis. According to a 1995 poll conducted by the American Civil Liberties Union, 85% of Americans believe that marijuana should be available as a medicine. A 1997 ABC poll found 69% of Americans support medical marijuana. Subsequent polls have shown even more support for the medical use of cannabis with a doctor's recommendation.

References:

Note: Above incorporates material from several web sites:

- 1) Rx Marijuana The Impact of Proposition 215 on California Physicians, by Lester Greenspoon, M.D. and James Bakalar.
- 2) WAMM - Doctrine of Necessity.
- 3) California NORML - Medical Marijuana task force in Calaveras sets guidelines.
- 4) 1996 California State Ballot.
- 5) SB 420