

**CALIFORNIA AND
MEDICAL
MARIJUANA**

OVERVIEW

- The history of California's medical marijuana laws
- Dispensaries: the law, the facts, the fiction
- Legalization and Decriminalization

LEGAL BACKGROUND

- The Federal Controlled Substances Act
- Proposition 215
- The Medical Marijuana Program Act
- The California Attorney General's Guidelines
- Local ordinances
- Other Federal and State laws

THE CONTROLLED SUBSTANCES ACT

- Marijuana is a Schedule I Drug
- Cultivation, possession, and sales are criminal acts
- Does the CSA preempt California's medical marijuana laws?

All court decisions to date have said: No.

1996: PROPOSITION 215

- Provides that under California law seriously ill people have the right to use marijuana for medical purposes
- Requires a physician's "recommendation" - oral or written
- De-criminalizes two activities: possession and cultivation under California Law

2004: THE MEDICAL MARIJUANA PROGRAM ACT

- Identification cards
- Possession amount guidelines
- Created the right to act collectively and cooperatively
- Decriminalized cultivation, possession, sales, and other activities for a narrow group of persons for narrow purposes

2008: THE CALIFORNIA ATTORNEY GENERAL'S GUIDELINES

- Mandated by the Medical Marijuana Program Act
- Two practical goals:
 - Provide a comprehensive summary of the law
 - Fill in some of the many gaps in the law

DEVELOPMENT OF THE GUIDELINES

- Law Enforcement representatives
- Patient-advocate groups
- Many meetings and drafts

THE STAKEHOLDERS' DILEMMAS

- Law Enforcement
- Patient Advocate Groups

LAW ENFORCEMENT'S DILEMMA

- Do you work with the law and help refine it, such as through legislation, and thereby legitimize something that most law enforcement professionals think is a bad law?
- Do you ignore it and continue to press criminal enforcement but risk allowing the law and the policy in this area to evolve without you?

PATIENT ADVOCATES

- There is widespread abuse and criminals involved
- These facts discredit the medical marijuana movement

**DISPENSARIES:
THE LAW, THE FACTS, THE FICTION**

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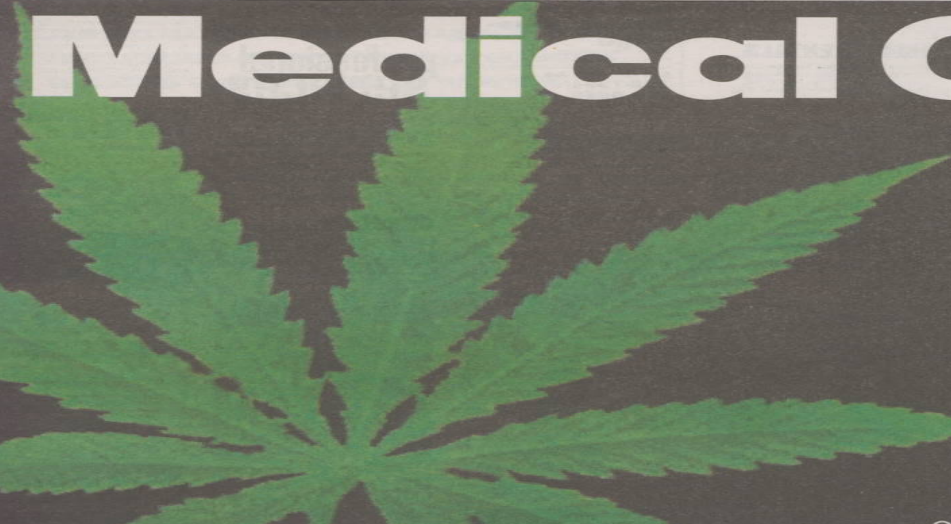
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WHAT IS A DISPENSARY?

- The term “dispensary” does not appear in Proposition 215 or the Medical Marijuana Program Act
- The terms “collective” and “cooperative” do not appear in 215 or the Medical Marijuana Program Act
- The right to act “collectively” and “cooperatively” appear in the Medical Marijuana Program Act but are not defined

TYPES OF DISPENSARIES

- Storefronts
- Offices
- Residential and other non-commercial brick and mortar dispensaries
- Home delivery
- What Proposition 215 voters likely envisioned: on-site garden; no cash exchanged; maybe a primary caregiver; limited to a few seriously ill patients



POTENTIALLY LAWFUL MODELS

- A primary caregiver dispensing to one or more patients
- A collective or cooperative operated by and for qualified patients and primary caregivers

THE CALIFORNIA ATTORNEY GENERAL'S STRUCTURAL CONTROLS

- The basic premise:

Any dispensing operation must be a closed-circuit of marijuana cultivation and consumption with no distribution to non-members.

THE PRINCIPAL CONTROLS

- The dispensary may dispense only to members
- Verification procedures to ensure members are qualified patients
- Maintenance of membership lists
- Presumptive limitations on possession amounts
- Cultivation must be performed by members and primary caregivers
- Acquiring from anyone other than a member, or a primary caregiver, is prohibited
- The organization must be not-for-profit

TOP 6 NEEDED LEGAL FIXES

- Sales, profits, and cash transactions
- Who has a serious medical condition
- Definitions and limitations on “collectives” and “cooperatives”
- Possession amounts
- Specificity of doctors’ recommendations
- Licensing: dispensers, collectives, and care givers

**LEGALIZATION
AND
DECRIMINALIZATION**

AB 390 (AMIANO)

- Decriminalizes cultivation, possession, transportation, sale, and use
- The ABC will establish a licensing scheme, when allowed by Federal law, for: cultivators, wholesalers, retailers
- The State will collect fees (\$50 an ounce), use for treatment and prevention
- California law enforcement will be precluded from engaging in enforcement actions, including those under federal law

THE BARNEY FRANK BILL

- Suspends CSA and FDA for conduct permitted by States' medical marijuana laws

TWO BALLOT INITIATIVES FOR 2010

- "The Regulate, Control and Tax Cannabis Act of 2010"
- "The Tax, Regulate, and Control Cannabis Act of 2010"

THE REGULATE, CONTROL AND TAX CANNABIS ACT OF 2010

- Oaksterdam University
- Permits possession, and sales, for personal use to one ounce
- Permits cultivation for personal use of up to 25 square feet
- Controls related to persons under age 21
- Allows for local taxation and regulation

OF NOTE

- Federal law will not preempt the decriminalization provisions
- This means state and local criminal enforcement will be suspended to the extent these laws provide
- Like 215, the Legislature will have little or no power to amend
- Overall impact: wildly uncertain



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THANK YOU

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