

HEALTH AND SAFETY CODE

→§ 11362.5. Medical use

(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) 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.

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Article 2.5

MEDICAL MARIJUANA PROGRAM

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➔§ 11362.7. Definitions

For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the

primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

§ 11362.71. Establishment and maintenance of voluntary program for issuance of identification cards to qualified patients; access to necessary information; duties of county health departments; arrests for possession, transportation, delivery or cultivation

(a)(1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program.

(2) Receive and process completed applications in accordance with Section 11362.72.

(3) Maintain records of identification card programs.

(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

§ 11362.715. Fees for identification cards; application for identification cards; legal representatives

(a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

§ 11362.72. Duties of county health department or county's designee after receipt of application for identification card; approval of application; issuance of card

(a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

§ 11362.735. Serially numbered identification cards; contents; copy given to primary caregiver

(a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

§ 11362.74. Denial of applications; reasons; reapplication after denial; appeals

(a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

§ 11362.745. Annual renewal of identification cards

(a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

§ 11362.755. Application and renewal fees; reduced fees for Medi-Cal beneficiaries

(a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department,

including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

§ 11362.76. Duties and responsibilities of persons to possess identification cards; expiration of card for failure to comply

(a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

§ 11362.765. Criminal liability; application of section; assistance and compensation

(a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article,

nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides 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.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

§ 11362.77. Amount qualified patients or caregivers may possess; guidelines; modifications to possession and cultivation limits by Attorney General

(a) 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.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals,

researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

§ 11362.775. Criminal sanctions against qualified patients, primary caregivers, and persons with valid identification cards

Qualified 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, 11358, 11359, 11360, 11366, 11366.5, or 11570.

§ 11362.78. Refusal to accept identification card issued by department; fraud

A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

§ 11362.785. Necessity to accommodate medical use of marijuana at places of employment or penal institutions; permission for prisoners or persons under arrest to apply for identification card; reimbursement for medical use of marijuana

(a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical

use of marijuana.

§ 11362.79. Places where medical use of marijuana is prohibited

Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

- (a) In any place where smoking is prohibited by law.
- (b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.
- (c) On a schoolbus.
- (d) While in a motor vehicle that is being operated.
- (e) While operating a boat.

§ 11362.795. Confirmation by court that criminal defendant is allowed to use marijuana for medical purposes while on probation, released on bail, or on parole; statement of court's decision and reasons; administrative appeal of decision

(a)(1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b)(1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

§ 11362.8. Civil penalty or other disciplinary action against licensee based on role as designated primary caregiver; application of section

No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

§ 11362.81. Penalties; application of section; development and adoption of guidelines to ensure security and nondiversion of marijuana grown for medical use

(a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars (\$1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars (\$1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

§ 11362.82. Separate and distinct provisions

If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

§ 11362.83. Adoption and enforcement of laws consistent with article

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

§ 11362.9. California Marijuana Research Program; legislative intent; creation; research proposals; establishment; powers and duties; Scientific Advisory Council

(a)(1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a program, to be known as the California Marijuana Research Program.

(2) The program shall develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, shall develop medical guidelines for the appropriate administration and use of marijuana.

(b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the following:

(1) Proposals shall demonstrate the use of key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research regarding marijuana's general medical efficacy and safety.

(2) Proposals shall contain procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

(3) Proposals shall contain provisions for a patient registry.

(4) Proposals shall contain provisions for an information system that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

(5) Proposals shall contain protocols suitable for research on marijuana, addressing patients diagnosed with the acquired immunodeficiency syndrome (AIDS) or the human immunodeficiency virus (HIV), cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The proposal may also include research on other serious illnesses, provided that resources are available and medical information justifies the research.

(6) Proposals shall demonstrate the use of a specimen laboratory capable of housing plasma, urine, and other specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for studies of toxic effects of marijuana.

(7) Proposals shall demonstrate the use of a laboratory capable of analyzing marijuana, provided to the program under this section, for purity and cannabinoid content and the capacity to detect contaminants.

(c) In order to ensure objectivity in evaluating proposals, the program shall use a peer review process that is modeled on the process used by the National Institutes of Health, and that guards against funding research that is biased in favor of or against particular outcomes. Peer reviewers shall be selected for their expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the applicants or the topic of an approach taken in the proposed research. Peer reviewers shall judge research proposals on several criteria, foremost among which shall be both of the following:

(1) The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.

(2) Researchers' expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.

(d) If the program is administered by the Regents of the University of California, any grant research proposals approved by the program shall also require review and approval by the research advisory panel.

(e) It is the intent of the Legislature that the program be established as follows:

(1) The program shall be located at one or more University of California campuses that have a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campuses at which research under the auspices of the program is to take place shall accommodate the administrative offices, including the director of the program, as well as a data management unit, and facilities for storage of specimens.

(2) When awarding grants under this section, the program shall utilize principles and parameters of the other well-tested statewide research programs administered by the University of California, modeled after programs administered by the National Institutes of Health, including peer review evaluation of the scientific merit of applications.

(3) The scientific and clinical operations of the program shall occur, partly at University of California campuses, and partly at other postsecondary institutions, that have clinicians or scientists with expertise to conduct the required studies. Criteria for selection of research locations shall include the elements listed in subdivision (b) and, additionally, shall give particular weight to the organizational plan, leadership qualities of the program director, and plans to involve investigators and patient populations from multiple sites.

(4) The funds received by the program shall be allocated to various research studies in accordance with a scientific plan developed by the Scientific Advisory Council. As the first wave of studies is completed, it is anticipated that the program will receive requests for funding of additional studies. These requests shall be reviewed by the Scientific Advisory Council.

(5) The size, scope, and number of studies funded shall be commensurate with the amount of appropriated and available program funding.

(f) All personnel involved in implementing approved proposals shall be authorized as required by Section 11604.

(g) Studies conducted pursuant to this section shall include the greatest amount of new scientific research possible on the medical uses of, and medical hazards associated with, marijuana. The program shall consult with the Research Advisory Panel analogous agencies in other states, and appropriate federal agencies in an attempt to avoid duplicative research and the wasting of research dollars.

(h) The program shall make every effort to recruit qualified patients and qualified physicians from throughout the state.

(i) The marijuana studies shall employ state-of-the-art research methodologies.

(j) The program shall ensure that all marijuana used in the studies is of the appropriate medical quality and shall be obtained from the National Institute on Drug Abuse or any other federal agency designated to supply marijuana for authorized research. If these federal agencies fail to provide a supply of adequate quality and quantity within six months of the effective date of this section, the Attorney General shall provide an adequate supply pursuant to Section 11478.

(k) The program may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research, regardless of whether the areas of study are being researched by the committee.

(l)(1) To enhance understanding of the efficacy and adverse effects of marijuana as a pharmacological agent, the program shall conduct focused controlled clinical trials on the usefulness of marijuana in patients diagnosed with AIDS or HIV, cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The program may add research on other serious illnesses, provided that resources are available and medical information justifies the research. The studies shall focus on comparisons of both the efficacy and safety of methods of administering the drug to patients, including inhalational, tinctural, and oral, evaluate possible uses of marijuana as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in the effects of different cannabinoids and varieties of marijuana.

(2) The program shall examine the safety of marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.

(3) The program shall be limited to providing for objective scientific research to ascertain the efficacy and safety of marijuana as part of medical treatment, and should not be construed as encouraging or sanctioning the social or recreational use of marijuana.

(m)(1) Subject to paragraph (2), the program shall, prior to any approving proposals, seek to obtain research protocol guidelines from the National Institutes of Health and shall, if the National Institutes of Health issues research protocol guidelines, comply with those guidelines.

(2) If, after a reasonable period of time of not less than six months and not more than a year has elapsed from the date the program seeks to obtain guidelines pursuant to paragraph (1), no guidelines have been approved, the program may proceed using the research protocol guidelines it develops.

(n) In order to maximize the scope and size of the marijuana studies, the program may do any of the following:

(1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or timeframe of the marijuana studies that are authorized under this section. The program shall not expend more than 5 percent of its General Fund allocation in efforts to obtain money from outside sources.

(2) Include within the scope of the marijuana studies other marijuana research projects that are independently funded and that meet the requirements set forth in subdivisions (a) to (c), inclusive. In no case shall the program accept any funds that are offered with any conditions other than that the funds be used to study the efficacy and safety of marijuana as part of medical treatment. Any donor shall be advised that funds given for purposes of this section will be used to study both the possible benefits and detriments of marijuana and that he or she will

have no control over the use of these funds.

(o)(1) Within six months of the effective date of this section, the program shall report to the Legislature, the Governor, and the Attorney General on the progress of the marijuana studies.

(2) Thereafter, the program shall issue a report to the Legislature every six months detailing the progress of the studies. The interim reports required under this paragraph shall include, but not be limited to, data on all of the following:

(A) The names and number of diseases or conditions under study.

(B) The number of patients enrolled in each study by disease.

(C) Any scientifically valid preliminary findings.

(p) If the Regents of the University of California implement this section, the President of the University of California shall appoint a multidisciplinary Scientific Advisory Council, not to exceed 15 members, to provide policy guidance in the creation and implementation of the program. Members shall be chosen on the basis of scientific expertise. Members of the council shall serve on a voluntary basis, with reimbursement for expenses incurred in the course of their participation. The members shall be reimbursed for travel and other necessary expenses incurred in their performance of the duties of the council.

(q) No more than 10 percent of the total funds appropriated may be used for all aspects of the administration of this section.

(r) This section shall be implemented only to the extent that funding for its purposes is appropriated by the Legislature in the annual Budget Act.

Justices Rule U.S. Can Ban Medical Pot

In a 6-3 decision, the high court says federal anti-marijuana statutes override laws in 10 states that allow the plant's use to ease pain or nausea.

By DAVID G. SAVAGE
Times Staff Writer

WASHINGTON — The Supreme Court on Monday upheld the federal government's power to seize and destroy marijuana that is used as medicine by seriously ill patients, ruling that strict federal drug laws trump California's liberalized policy on pot.

The Constitution makes the laws of the United States the "supreme law of the land," and "if there is any conflict between federal and state law, federal law shall prevail," Justice John Paul Stevens said for the court. It is up to Congress, he said, to change the law.

The 6-3 decision did not seek to resolve the dispute over whether marijuana may be good medicine. Instead, the justices focused on whether the federal government could enforce its zero-tolerance policy on marijuana in the 10 states — most of them in the West — where voters or lawmakers had opted to legalize marijuana used for medical purposes.

The court's leading liberals sided with the Bush administration and its federal drug enforcers, while three of its more conservative members, including Chief Justice William H. Rehnquist, joined the side of the

California marijuana users to limit federal authority.

The decision weakens, but does not overturn, state laws that permit seriously ill people to use marijuana to relieve pain or nausea.

Federal drug agents, prosecutors and judges may arrest, try and punish those who grow or use marijuana, the court said, even in states where it is legal.

However, state and local police need not assist in those efforts. And since most law enforcement is carried out by state and local officials, the liberalized medical marijuana laws should continue to have practical significance.

But California Atty. Gen. Bill Lockyer said the ruling showed "the vast philosophical difference between the federal government and Californians on the rights of patients. ... Taking medicine on the recommendation of a doctor for a legitimate illness should not be a crime."

[Marijuana, from Page A1]

Federal law enforcement officials sought to dispel the idea that drug agents would be unleashed on marijuana-using patients in California and other states.

"The vast majority of our cases are against those involved in trafficking, and major cultivation and distribution," said Karen P. Tandy, head of the Drug Enforcement Administration. "I don't see any significant changes

in DEA enforcement strategies after today's decision. We don't target sick and dying people."

However, the case before the court was brought by two ill California women, one of whom had her personal marijuana confiscated by federal agents.

Angel Raich, a brain tumor patient from Oakland, urged Congress on Monday to rethink its policy on marijuana.

"I'm in this battle, literally, for my life," she said after the ruling. She called on Congress to "stop federal raids on sick and dying patients. ... I hope for myself, for my children and for other patients out there that our congressional leaders put compas-

sion first. Our lives are literally in their hands."

A House bill is pending, sponsored by Rep. Barney Frank (D-Mass.), that would permit physicians to prescribe marijuana as medicine. But it has been rejected several times in the past, and its chances of becoming law are seen as slim.

In the Controlled Substances Act of 1970, Congress classified marijuana as a dangerous and illegal drug that had no benefits. Though many experts dispute that conclusion, Congress has made no move to amend the law. The statute makes it illegal to import, manufacture, distribute, possess or use marijuana.

for example, he spoke for a 5-4 majority that struck down the federal Gun-Free School Zones Act on the theory that gun possession was not commerce and therefore was beyond Congress' authority to regulate.

The same is true of marijuana possession. Raich's lawyers argued. They won in the U.S. 9th Circuit Court of Appeals in San Francisco two years ago. The "noncommercial cultivation and possession of cannabis for personal medical purposes" is beyond Congress' power, the appeals courts said. It is "different in kind from drug trafficking."

Then-U.S. Atty. Gen. John Ashcroft appealed to the Supreme Court. He argued that federal authorities could not eliminate the illegal national market in marijuana if it was legal to grow and possess the substance in 10 states.

The case posed an interesting twist for the justices. In the past, the liberals have favored broad federal power because it was crucial in areas such as the minimum wage law, civil rights enforcement, and environmental protection. The conservatives have favored protection of states' rights and limits on federal power.

In the case decided Monday, both sides were true to form but with two exceptions.

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But in 1996, California voters approved a measure that said "seriously ill Californians have the right to obtain and use marijuana for medical purposes" if they have a recommendation from a physician. Since then, Alaska, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont and Washington have passed similar laws.

After the approval of those measures, cooperatives were set up to act as dispensaries for patients seeking marijuana. In 2001, however, the high court ruled that federal prosecutors could get court orders to shut down the operations.

The case decided Monday fo-

cused on patients who grew marijuana at home for their own use. It tested whether Congress' power to regulate "commerce among the states" extended to individuals who were not buying or selling marijuana.

Raich sued to defend her use of marijuana as medicine. She suffers from serious medical conditions, including an inoperable brain tumor, chronic back pain and muscle spasms. She and her doctor said that cannabis was uniquely effective in relieving her pain. She sued along with Diane Monson after drug enforcement agents raided Monson's Butte County home in 2002 and destroyed her marijuana plants.

Their lawyers argued that homegrown marijuana did not involve interstate commerce and therefore was beyond the authority of the federal government. They cited recent high court rulings that limited Congress' power on other matters.

In the past, Rehnquist has said there was a crucial difference between national and local matters, and that the court should limit federal officials from meddling in local affairs. In 1995,

Justices Antonin Scalia and Anthony M. Kennedy, who in the past have taken the side of states' rights, joined the court's liberal bloc — Justices Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer — in agreeing with the Bush administration's stand against the marijuana users.

The six-member majority said Congress had the authority to police the nation's illegal marijuana market.

"One need not have a degree in economics to understand why a nationwide exemption for the vast quantity of marijuana [or other drugs] locally cultivated for personal use ... may have a substantial impact on the interstate market for this extraordinarily popular substance," Stevens wrote.

The court's majority made clear it was not endorsing the federal policy on marijuana. "The voices of voters allied with [these two women] may one day be heard in the halls of Congress," Stevens said.

Rehnquist and Justices Sandra Day O'Connor and Clarence Thomas dissented in *Gonzales vs. Raich*. They said the Constitution should be read to "protect historical spheres of state sovereignty from excessive federal encroachment."

"This case exemplifies the role of states as laboratories," O'Connor said. States' voters and lawmakers, she said, should be given the freedom to set laws regarding "the health, safety and welfare of their citizens."

Thomas questioned how a few patients could upset the national market for marijuana.

"Congress' goal of thwarting the interstate drug trade would not plainly be thwarted if it could not apply the [federal law] to patients like Monson and Raich," he said. "If Congress can regulate this ... then it can regulate virtually anything."

Times staff writer Richard E. Schmitt contributed to this report.

High court ruling doesn't invalidate California statute

By DAVID WHITNEY
and CLAIRE COOPER
McCLATCHY NEWS SERVICE

WASHINGTON — A medical prescription is not a ticket to legal marijuana, the U.S. Supreme Court said Monday in a 6-3 ruling in which the justices sided with federal authority over states' rights but nonetheless expressed sympathy for those whose illnesses have been uniquely alleviated by the popular street drug.

In an opinion written by Justice John Paul Stevens, the court held that laws in California and nine other states permitting marijuana cultivation, possession and use by persons with a doctor's prescription do not trump the federal government's authority under the Constitution to prosecute sick users on federal drug charges. The ruling — which crossed the court's usual ideological lines — doesn't invalidate laws in those states, but it does deflate their power to protect users and doctors who prescribe the drug.

The justices said their decision was "made difficult" by the claims of the two California women who brought the appeal — Angel McClary Raich of Oakland and Diane Monson of Oroville. The women said they would suffer irreparable harm if their supply to legal marijuana dried up because of the ruling.

But the justices said the state exemption for medical marijuana was certain to add to the burgeoning street supply of weed.

"In contrast to most prescriptions for legal drugs, which limit dosage and duration of the usage, under California's law the doctor's permission to recommend marijuana is open-ended," the majority said.

The court's three dissenters complained that the ruling marked an unconstitutional infringement on states' rights and warned that it handed Congress broad powers to

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meddle in state issues.

Proponents of medical marijuana said they doubted the ruling would have much effect on marijuana prosecutions. The Justice Department, meanwhile, said it was pleased that the Supreme Court had reaffirmed the scope of the nation's drug laws, but did not elaborate.

John Waiters, President Bush's director of national drug control policy, was more expansive, asserting that it would put an end to medical marijuana as a political issue.

"Smoking illegal drugs may make some people feel better," he said. "However, civilized societies and modern day medical practices differentiate between inebriation and the safe, supervised delivery of proven medicine by legitimate doctors."

Even in the majority opinion, however, the high court suggested that the question of medically permissible marijuana belonged in the political arena. Medical pot proponents can turn to administrative avenues to have it reclassified from a banned Schedule I drug to a Schedule II drug restricted to medical use, the justices said.

"But perhaps even more important than these legal avenues is the democratic process in which the voices of voters allied with these (women) may one day be heard in the halls of Congress," it said.

Though a clear blow to medical pot proponents, the ruling appeared unlikely to have major practical consequence, at least not immediately. Most marijuana cases are brought by the states, and there's nothing in the ruling compelling them to act any differently now. And instead of overturning California's 1996 Compassionate Use Act, it merely rejects one of the arguments that medical marijuana users are immunized from prosecution under the federal Controlled Substance Act.

"Legitimate medical marijuana patients in California must know that state and federal laws are no different today than they were yesterday," said

California Attorney General Bill Lockyer. Mr. Lockyer said, however, some local law enforcement agencies could be more aggressive in bringing marijuana cases now.

Nine other states — Alaska, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont and Washington state — have similar laws. Arizona permits marijuana prescriptions but has never instituted a program to support them. In Maryland, people accused of violating state possession laws can present evidence to a judge of a medicinal use of the drug; the judge could then lower the punishment to a \$100 fine.

The Drug Enforcement Administration said it saw no change in its enforcement priorities.

"Our mission remains the same — to disrupt and dismantle major traffickers," said DEA spokesman Bill Grant. "We've never targeted the sick and dying." But Mr. Grant said the agency was pleased the Supreme Court recognized the fact that marijuana is a dangerous drug.

Ms. Raich, who has a brain tumor and has credited marijuana with relieving her misery to the point that she no longer requires use of a wheelchair, said at a press conference Monday that she will be beating a path to Congress.

"We're not going away," said Ms. Raich, who admitted she was smoking even as she talked with reporters by phone about the ruling. "Just because we did not win this battle does not mean that we will not win this war."

Ms. Monson, who has chronic back spasms, said she was "very disappointed" with the ruling. "I think it's just a blow to compassion everywhere," she said. "But I'm going to continue to do what I think is right."

Ms. Raich and other medical marijuana supporters said they will be asking Congress to bar the Department of Justice from spending any money in 2006 to "interfere" with state marijuana laws.

Randy Barnett, who argued the case for the women before the high court, also said they will be returning to the 9th Circuit Court of Appeals, whose decision on their behalf was reversed

interstate market for marijuana," he said. "It is difficult to see how this vast market could be affected by diverted medical cannabis."

In her dissent — joined by Justice Rehnquist, who missed the oral arguments because of his own medical condition — Justice O'Connor emphasized that the victor in the majority ruling was Congress, now with broadened powers to meddle in state affairs without restraint.

"Today's decision allows Congress to regulate interstate activity without check," she said.

The case was ripe with social and political overtones from the beginning. The 9th Circuit Court of Appeals in San Francisco — generally considered one of the court's most liberal benches — struck an unexpectedly conservative blow by declaring federal authority subordinate to states' rights in the case.

The Rehnquist-led high court, which has made a hallmark of paring back federal authority, balked when two of the states' rights justices, Antonin Scalia and Anthony Kennedy, embraced federal authority. Justice Scalia's position, in particular, baffled some court observers.

David Bernstein, a George Mason University law professor, said it's always disappointing when the court's more liberal members disregard explicit constitutional limits on federal authority, but it's even more so when court conservatives such as Justice Scalia do it.

"It suggests he focuses on the text of the Constitution when it helps him get to the result he's trying to reach," Mr. Bernstein said. "It opens him up to criticism that he uses it only for political purposes."

For patients such as Ms. Raich, it's not simply a political or judicial issue. Though she risks federal prosecution if she doesn't stop using marijuana, Ms. Raich said Monday her decision to keep taking the drug was a no-brainer.

"If I stop using it, I would die," she said. "I do not have a choice but to continue using cannabis."

by the Supreme Court on Monday, on other remaining constitutional issues in the case.

Many had regarded the challenge before the justices as the strongest argument on behalf of medical marijuana. Ms. Raich obtains marijuana from caregivers who raise it for her. But Ms. Monson grows her own, and after Drug Enforcement Administration agents raided her home on Aug. 15, 2002, they destroyed her six plants even though county sheriff's deputies argued her use of the drug was legal under state law.

The women filed a lawsuit for an injunction barring federal drug agents from enforcing the federal drug laws against those who grow, possess or use medical marijuana.

Their claim wasn't that the Controlled Substances Act was legally flawed, but that the commerce clause of the Constitution prohibited it from

being enforced against activities in which no money changed hands and that occurred entirely within the borders of a single state.

The high court said such a conclusion would undermine the ability of the federal government to apply uniform standards between states and for it to prevail in situations where there were conflicts with state laws.

Additionally, the majority said, growing a large quantity of marijuana for medical users was certain to have consequences on the illicit pot market, thus drawing the matter squarely within the framework of the Commerce Clause. "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market," the high court said.

Chief Justice William Rehnquist and Justices Sandra Day O'Connor and Clarence Thomas disagreed.

"Diane Monson and Angel Raich use marijuana that has never been bought or sold, that has never crossed state lines, and that has had no demonstrable effect on the national market for marijuana," wrote Justice Thomas in a separate dissent.

"If Congress can regulate this under the Commerce Clause, then it can regulate virtually anything and the federal government is no longer one of limited and enumerated powers," he said.

Justice Thomas said there is no reason to believe that California is somehow out of control in its enforcement of marijuana laws because of what's grown for a relatively small and distinct group of registered medical marijuana users.

"But even assuming that states' controls allow some seepage of medical marijuana into the illicit drug market, there is a multibillion-dollar

(1987) (requiring a "nexus" between the burden imposed by development and the condition), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (requiring "rough proportionality" between an exaction and the impact of the proposed development). Both the *Nollan* and *Dolan* opinions cited to *Agins*, but the Court explained that the issue in those cases was "whether the exactions substantially advanced the *same* interests that land-use authorities asserted would allow them to deny the permit altogether," and not "whether the exaction would substantially advance *some* legitimate state interest." 125 S. Ct. at 2086-87. Similarly, in the context of a due process challenge to a government regulation, the question of whether the regulation advances a legitimate purpose is still relevant.

CONCLUSION

Lingle is a significant victory for local governments, and it reflects the Court's willingness to defer to the legislative branch in determining what regulations serve a legitimate public purpose.

FOR ADVICE FROM RW&G CONCERNING REGULATORY TAKINGS, PLEASE CONTACT ANY OF THE LAWYERS IN THE FIRM'S PUBLIC LAW DEPARTMENT.

United States Supreme Court Upholds Federal Authority to Restrict Intrastate Cultivation of Medical Marijuana

BY ALEXANDER ABBE

On June 6, 2005, the United States Supreme Court decided *Gonzales v. Raich*, a case concerning the cultivation of marijuana by two California women, under the authority of California law, to treat their debilitating illnesses. 125 S. Ct. 2195 (2005). The Court upheld the authority of the federal government to regulate that usage, but the opinion leaves many questions unanswered about state and local authority to regulate medical marijuana.

BACKGROUND: THE COMPASSIONATE USE ACT

In 1996, California voters approved Proposition 215, the "Compassionate Use Act" (the "CUA"). The measure acknowledged that marijuana is potentially beneficial in the treatment of numerous illnesses, including cancer, AIDS, and chronic pain. The Act provided that neither patients nor their primary caregivers would be subject to prosecution under state law for growing, possessing, or processing marijuana for use by those patients. Health & Safety Code ("HSC") section 11362.5(d). Moreover, no physician would be subject to prosecution under state law or denied any right or privilege for having prescribed marijuana to a patient. HSC section 11362.5(c).

In 2003, the Legislature enacted SB 420, which contained implementing language for the CUA. Among other provisions, the bill required the State Department of Health Services to establish a voluntary program for the issuance of identification cards for qualified patients. HSC section 11362.71, set caps on the amount of marijuana any person could possess, HSC section 11362.77, and provided an exemption

from state criminal liability for persons “who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” HSC section 11362.775.

Prior to *Raich*, the Supreme Court examined the CUA and established that at least large scale manufacturing and distribution of marijuana remains illegal under federal law. *United States v. Oakland Cannabis Buyer’s Cooperative*, 532 U.S. 483 (2001). In that case, the Court held that there was no “medical necessity” exception to the Federal Controlled Substances Act (“CSA”), and as a result a medical marijuana dispensary could be enjoined from distribution and manufacturing under the CSA. *Id.* at 494-95.

The text of the CUA does not expressly address the impact of any federal laws, including the CSA; even if it had, the state is without authority to override a federal law under the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2; *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604 (1991) (citing *Gibbons v. Ogden*, 22 U.S. 1 (1824)). Instead, it provides an exemption only to prosecution under California law; enforcement of Federal law prohibitions on marijuana manufacture and possession are still possible, as the *Raich* petitioners discovered.

GONZALES V. RAICH

In *Raich*, two California residents suffering from serious illnesses, Angel Raich and Diane Monson, used marijuana for a number of years. Monson cultivated her own marijuana, while Raich relied upon two caregivers to provide her with locally grown marijuana at no charge. Both women were using marijuana as a medication pursuant to their doctors’ recommendations; Raich’s condition was so severe that her physician stated that stopping cannabis treatments “would certainly cause Raich

excruciating pain and could very well prove fatal.” 125 S. Ct. at 2200.

The controversy arose when agents of the Federal Drug Enforcement Administration (“DEA”) seized and destroyed Monson’s six cannabis plants under the authority of the Federal CSA. In response, Monson and Raich sought injunctive and declaratory relief prohibiting the enforcement of the CSA to the extent that it prevented them from possessing, obtaining, or manufacturing cannabis for their personal medical use. *Id.*

Though sympathetic to the petitioners’ conditions, the Supreme Court concluded that Congress’s commerce powers extended to the regulation of intrastate growth and use of marijuana pursuant to *Wickard v. Filburn*, 317 U.S. 111 (1942). That opinion involved a challenge to federal restrictions on the volume of wheat individual farmers could grow, which were enacted to avoid surpluses and consequent abnormally low prices. Filburn sowed more than the permitted allotment, intending to consume the excess on his own farm, and he argued that the Interstate Commerce Power should not extend to production that would never enter the stream of commerce. The *Wickard* Court rejected this argument, reasoning that homegrown wheat competes with wheat in commerce, and that the miniscule degree of the impact of an individual farmer’s crop was irrelevant. *Id.* at 127-28 (“That appellee’s own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial.”).

As in *Wickard*, the *Raich* Court reasoned that home cultivation would have an effect on the interstate market. “While the diversion of homegrown wheat tended to frustrate the federal

interest in stabilizing prices by regulating the volume of commercial transactions in the interstate market, the diversion of homegrown marijuana tends to frustrate the federal interest in eliminating commercial transactions in the interstate market in their entirety.” 125 S. Ct. at 2207. As a result, the regulation was within the scope of Congress’s commerce power, and the Court upheld enforcement of the CSA.

CITY AUTHORITY TO PROHIBIT MEDICAL MARIJUANA, POST-RAICH

At first blush, the *Raich* opinion appears to be a victory for those seeking to limit the use of medical marijuana. However, the Court’s holding is relatively narrow: it concluded that Congress was not precluded from regulating intrastate manufacture and possession of marijuana under the Interstate Commerce clause, but it did not expressly strike down the CUA. The Court did not address preemption concerns under the Supremacy Clause. “[R]espondents’ challenge is actually quite limited...” *Id.* at 2204. As such, it fails to provide definitive authority either for restricting or facilitating the use of medical marijuana.

As a result, local governments are left with the question of how to implement, or prohibit, the provisions of the CUA. The CUA expressly contemplates some form of local regulation. HSC section 11362.83 provides that “[n]othing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.” There is little guidance, however, on what sort of local ordinances would be “consistent” with the CUA. An ordinance that limits patients’ authority to use and cultivate medical marijuana would arguably be inconsistent. Accordingly, the text of the bill itself may bar local governments from restricting or prohibiting medical marijuana.

The City of Fresno is currently facing such a

challenge. A group called “Americans for Safe Access” recently filed a complaint alleging that the city’s ordinance was inconsistent with the CUA. *Americans for Safe Access v. City of Fresno*, No. 05CECG01245 (filed April 25, 2005). The Fresno Municipal Code prohibited marijuana dispensaries with three or more patients or caregivers, Fresno Municipal Code section 8-221(d), and the plaintiffs alleged that this was impermissibly inconsistent with the CUA’s exemption from state criminal prosecution for persons who “associate collectively or cooperatively to cultivate marijuana for medical purposes,” HSC section 11362.775. The suit is in its preliminary stages (and, notably, was filed prior to the *Raich* opinion), but it is indicative of the sorts of risks a city faces in restricting medical marijuana usage.

The California Constitution also potentially prohibits municipalities from refusing to enforce a statute on the basis that federal law prohibits its enforcement. “An administrative agency... has no power...(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law...” Cal. Const. art. III section 3.5. The Constitution does not define “administrative agency,” but last year the California Supreme Court cited this section in holding that a mayor could not declare a statute unconstitutional. See *Lockyer v. City & County of San Francisco*, 33 Cal. 4th 1055, 1094 (2004) (“[A]t the time article III, section 3.5 was adopted, it was clear under California law that a local executive official did not have the authority to determine that a statute is unconstitutional or to refuse to enforce a statute in the absence of a judicial determination that the statute is unconstitutional.”). A number of lower courts have come to similar conclusions, albeit in unpublished opinions. This

suggests that a city would not have the authority to prohibit medical marijuana uses on federal preemption grounds.

If a city does not wish to allow medical marijuana dispensaries, the safest option in the short term would be to adopt an interim zoning ordinance pursuant to California Government Code section 65858 creating a moratorium on medical marijuana dispensaries for up to two years. This interim ordinance will allow the city to further consider its options in light of pending cases and legislation while preventing the establishment of a marijuana dispensary within the city.

CITY AUTHORITY TO PERMIT OR REGULATE MEDICAL MARIJUANA, POST-RAICH

As the above discussion demonstrates, there are numerous questions about a city's authority to prohibit medical marijuana uses. Unfortunately, there are also questions about a city's authority to permit such uses. Given that federal law prohibits the cultivation and distribution of medical marijuana, it is unlikely that a city has the authority to enact an ordinance allowing such uses. *See* Government Code section 37100 ("The legislative body may pass ordinances not in conflict with the Constitution and laws of the State or the United States."). For example, it is improbable that a city could enact regulations requiring health screenings for prostitutes, or obligating kidnappers to provide food and beverages to their captives.

A city wishing to nevertheless permit medical marijuana uses might simply allow such uses "to the extent that they are not prohibited by federal law," or perhaps "to the extent the federal government does not enforce the federal prohibition." This avoids the need for the city to make a determination of what is preempted and does not overtly conflict with the federal statutes.

CONCLUSION

The *Raich* case is one more ingredient in an already overstocked soup of regulation. It perhaps indicates an inclination of the Supreme Court to limit local control in this area, but the case did not definitively overrule California law. Notably, in response to the *Raich* opinion, the California Attorney General issued a statement the next day that although the case upheld federal authority, "legitimate medical marijuana patients in California must know that state and federal laws are no different today than they were yesterday." In addition, on May 4, 2005, Representative Barney Frank (D-Mass.) introduced federal legislation to expressly permit states to legalize medical marijuana. Similar bills introduced in prior congressional sessions died, however. Until such legislation passes, or the courts issue an actual Supremacy Clause ruling, the law remains in a state of limbo.

In the meantime, a city wishing to remain out of the fray has a moratorium option. Outside of a moratorium, a city is potentially prohibited from enacting regulations that would be more restrictive than the CUA allows, and a city may lack the authority to declare a statute preempted by federal law. Cities wishing to allow medical marijuana uses may be barred from enacting a law that directly conflicts with federal law, but they could potentially enact a more "generic" ordinance allowing uses to the extent they do not conflict or are not enforced.

FOR ADVICE FROM RW&G CONCERNING THE REGULATION OF MEDICAL MARIJUANA, PLEASE CONTACT ALEXANDER ABBE OR ANY OF THE LAWYERS IN THE FIRM'S PUBLIC LAW DEPARTMENT.

Technicality Aside, Medical Pot is Now Illegal in California

By Roderick E. Walston

Given the Supreme Court's recent decision in *Gonzales v. Raich*, 125 S.Ct. 2195 (2005), which held that Congress may constitutionally prohibit the medical use of marijuana, are the laws of states such as California allowing such use valid?

Intuitively, the answer would seem no: Since the Supreme Court upheld Congress' power to prohibit medical marijuana use, the states would seem powerless to allow its use.

But to many, the answer is not so clear cut. The California attorney general's office announced shortly after the Supreme Court decision came down that the ruling does not invalidate the California law, Proposition 215, that allows the state's residents to use medical marijuana.

The attorney general also recently opined that the state medical marijuana program displaces city and county programs, but without suggesting that all such programs are invalid under the Supreme Court decision. A recent gathering of Bay Area city attorneys was advised that the cities had the option of continuing to regulate medical marijuana use (although some city attorneys are advising their city clients that their regulatory programs are now illegal). And San Francisco authorities are continuing to regulate the city's medical marijuana dispensaries, debating only whether the number of dispensaries should be reduced.

Perhaps the most forthright declaration is an opinion by Oregon Attorney General Hardy Myers issued shortly after the Supreme Court decision was announced. Oregon is one of several states that allow limited medical use of marijuana. Myers, who is a fine attorney general, advised the Oregon agency charged with administering the program that the Supreme Court decision "does not invalidate" the state program nor does it require Oregon officials to enforce federal prohibitions. Therefore, Myers concluded, Oregon officials have "no legal mandate to change" the state program, they "may resume issuing registry identification cards," and they have "no legal duty to communicate to registrants or applicants that state law does not protect patients from potential federal prosecution."

www.doj.state.or.us/releases/re1061705.htm

Myers' advice that Oregon officials may continue operating their program is presumably the advice he would have given if the Supreme Court decision had gone the other way — that is, if the court had ruled that Congress does *not* have constitutional power to regulate medical marijuana use. But the court ruled that Congress *does* have constitutional power to prohibit medical marijuana use and *has* in fact prohibited it. It is difficult to see how Oregon officials — or for that matter California officials — can be properly advised that the Supreme Court decision does not, at least for all practical purposes, invalidate state programs legalizing medical marijuana.

A little background might be in order. In 1996, California voters passed Proposition 215, now codified as the Compassionate Use Act, which allows "seriously ill" people in California to use marijuana for medical purposes. The act precludes state criminal prosecution of any California resident who, with a doctor's approval, possesses or cultivates marijuana for medical purposes. Angel Raich and Diane Monson, both California residents, are allowed to possess and use med-

ical marijuana under the law. They brought an action against U.S. Attorney General John Ashcroft (who was succeeded by Alberto Gonzales), to enjoin him from enforcing a federal law prohibiting them from medical use of marijuana.

The federal law that prohibits marijuana use is the Controlled Substances Act, 21 U.S.C. Section 801 *et seq.* The Controlled Substances Act is part of a broader statute, the Comprehensive Drug Abuse Prevention and Control Act, that Congress enacted in 1970 in order to regulate drugs and prevent their abuse. The Controlled Substances Act makes it unlawful to manufacture, distribute, dispense or possess any drug except as authorized by the act. The Controlled Substances Act places all drugs into five categories, the last four of which allow limited use of drugs for which there is a "useful and legitimate medical purpose." The first category absolutely prohibits the possession or use of drugs for which there is no currently accepted medical use. Marijuana is listed in the first category. This means that Congress concluded that marijuana has no valid medical purpose and is illegal under all circumstances.

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Raich (along with Monson) argued that Congress does not have the constitutional power under the Commerce Clause to prevent her from possessing and using marijuana for medical purposes. Under the Commerce Clause, Congress has the power to regulate interstate commerce. Raich asserted that her use of medical marijuana is purely local and does not affect interstate commerce.

The Supreme Court, in a 6-3 decision, disagreed. Although the court in some recent decisions has construed Congress' commerce powers narrowly, the *Raich* court construed its powers more broadly. (Justices Anthony Kennedy and Antonin Scalia, who had voted for the more narrow interpretation of congressional power in the recent decisions, voted for a more expansive interpretation in *Raich*.) According to *Raich*, Congress may constitutionally regulate drug use because the drug has commercial effects that extend beyond the boundaries of a single state; because regulation of medical marijuana use is a necessary part of Congress' "larger regulatory scheme" of national regulations; Congress may regulate medical marijuana use even though it may otherwise be purely local and not affect interstate commerce. The court noted that Raich's circumstances are very compelling but held that this is a matter for Congress, not the courts, to consider.

To be sure, the Supreme Court did not specifically invalidate the California law allowing medical marijua-

na use — which is presumably why Myers said Oregon authorities could continue operating their program. Technically, the court decided only that Congress could constitutionally regulate marijuana use and did not hold that the California law was pre-empted by the federal law and therefore invalid. But the court, in holding that Congress could properly regulate medical marijuana use, left no room for an argument that the California law is still valid — the congressional statute upheld by the court prohibits marijuana use in all cases, and thus overrides the California statute authorizing marijuana use under limited circumstances. Under the Supremacy Clause of the Constitution, a state law that conflicts with a federal law is invalid — unless the federal law exceeds Congress' authority, which the *Raich* court held is not the case here.

Still, Raich has another arrow in her quiver: She also argued in the case below that the Controlled Substances Act violated her constitutional rights under the Due Process Clause and that marijuana use was medically necessary to her. The 9th U.S. Circuit Court of Appeals did not reach these arguments because it instead upheld Raich's Commerce Clause argument, which was rejected by the Supreme Court. Presumably the 9th Circuit will now consider Raich's additional arguments. Neither the 9th Circuit nor the district court in the proceedings below, however, has upheld Raich's due process and medical necessity arguments, nor intimated they have merit. Therefore, there is no basis now for suggesting that the marijuana programs of California, Oregon and other states are valid after the Supreme Court decision. To say that Oregon can continue administering its program as before, as Myers has opined, seems to ignore the full ramifications of the Supreme Court decision and to suggest that Oregon can do what it plainly cannot.

Indeed, the reasoning of *Raich* strongly undermines any suggestion that federal regulation of marijuana use violates Raich's due process rights. The *Raich* court substantially deferred to Congress' judgment that regulation of medical marijuana is a necessary part of federal drug law enforcement, and it said that Congress had acted "rationally" in making this judgment. If Congress has acted rationally in regulating medical marijuana under its commerce powers, Congress cannot have acted irrationally or violated due process in applying its laws to Raich.

Thus, while the *Raich* decision technically does not "invalidate" state programs allowing medical marijuana use, the decision removes the legal foundation on which those programs are based. After *Raich*, the states do not have the option of regulating medical marijuana use, assuming they had it before. As the Supreme Court pointed out in its decision, Raich still has some legal avenues open to her — she can try to get marijuana reclassified under the federal statute, or get the statute itself changed. Until that happens, the Supreme Court decision is the law of the land and applies to all.

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Forum

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State's Medical Marijuana Experiment May Not Be Over

By Charles S. Doskow

Angel Raich and Diane Monson are residents of Northern California, suffering from severe medical conditions that have been relieved by the use of medical marijuana. The drug has been prescribed by their physicians, as authorized by the California Compassionate Use Act. They profess to be heavily dependent on marijuana for their physician-prescribed treatment. Raich's physician has opined that without it she would suffer serious pain, and the result could be fatal.

In 2002, federal agents seized and destroyed marijuana plants being used for their treatment. The federal Controlled Substances Act classifies marijuana as a prohibited Category I drug, making its manufacture, distribution or possession a federal crime.

Plaintiffs brought action in federal court to enjoin the enforcement of the law against them, and they were successful in persuading the 9th U.S. Circuit Court of Appeals to authorize an injunction.

That decision was reversed 6-3 Monday by the U.S. Supreme Court in *Gonzales v Raich*, 2005 DJDAR 6530, a holding that may or may not have brought to a screeching halt California's noble experiment with making marijuana a legitimate medical treatment. The Supreme Court's holding establishes the constitutionality of the enforcement of the Controlled Substances Act against the California marijuana users.

California approved the use of medical marijuana by vote of the people. In 1996, the electorate adopted Proposition 215, now the Compassionate Use Act, authorizing physicians to prescribe the drug for those who could benefit from its use. While medical opinions vary, respectable opinion supports its use. California is one of 10 states that have approved medical use.

But the federal drug laws brook no exceptions, and the present executive administration is unwilling to modify the law. Marijuana is classified as a Schedule I drug under the Controlled Substances Act, based on a Congressional finding that it has no "accepted medical use," and its manufacture, distribution or possession are therefore criminal.

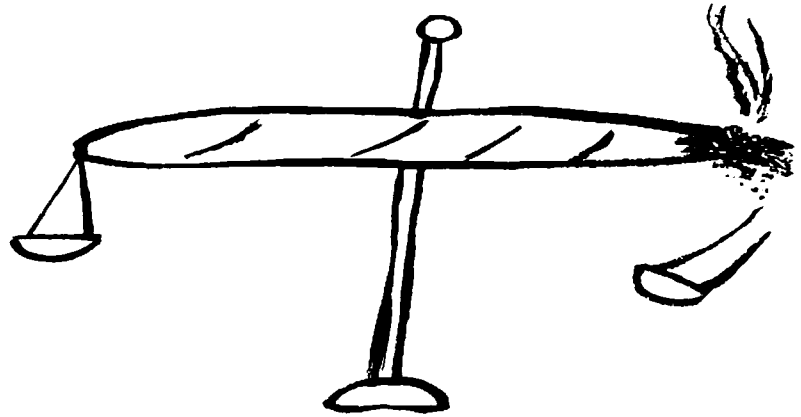
In 2002, the Supreme Court rejected the argument that there was a "medical necessity" exception to enforcement of the marijuana laws: *United States v Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483. The court found the law to be unambiguous, containing no such exception.

But *Raich* is not about the right to medical treatment, or the medical efficacy of marijuana. The opinion of the court, and of the dissenters, addresses the question of the powers of Congress under the Interstate Commerce Clause. No other constitutional considerations are addressed.

We need to go back to basics: Our constitution created the federal government as one of limited, enumerated powers. Article I, Section 8 of the Constitution lists 17 paragraphs of powers, and the "necessary and proper" clause. The Commerce Clause grants Congress power over commerce among the several states.

From the mid-1930s through 1995, the Commerce Clause was given extremely wide scope by the court, which interpreted "commerce" increasingly broadly and overruled objections based on state power and sovereignty. In 1995, in *United States v Lopez* (514 U.S. 549) and in 2001, in *United States v Morrison*, (529 U.S. 598), the Supreme Court, for the first time in many years, held two acts of Congress to be in excess of the commerce power and therefore unconstitutional.

Neither case involved commerce in the business sense. *Lopez* held invalid a federal law criminalizing the possession of guns on school grounds, and *Morrison* voided a provision of the federal Violence Against Women Act, which created a private cause of action for sexual assault. A divided court, in both cases, refused to



recognize what it called "tenuous" connections to legitimate bases of federal power.

The court in both cases found the subjects to be noneconomic regulations in areas of traditional state governance, and it refused to accept validating arguments of federal connections — arguments that, in many previous cases, had been sufficient to sustain federal power.

The argument against enforcement in *Raich* rested in large part on those two cases, which invoke the concept that the state is entitled to regulate areas of state concern involving the health and welfare of the state population.

The court, in an opinion by Justice John Paul Stevens, was not buying. It found that the Controlled Substances Act constituted a comprehensive federal regulatory scheme, and that the states could not create exceptions to that scheme. The activities being regulated — cultivation, sale and use of marijuana — are, it held, "quintessentially economic," unlike those in *Lopez* and *Morrison*.

And for precedent, Stevens dragged out the case considered to have sustained the longest reach of the Commerce Clause, *Wickard v Filburn*, 317 U.S. 111 (1942). *Wickard* held that wheat grown by a farmer on his own farm for consumption solely by his family could be regulated under the Commerce Clause because, when aggregated with similar production, it could affect interstate commerce. The court found *Wickard*, despite its whiskers, to be a strong precedent for upholding the regulation in *Raich* of wholly intrastate circumstances.

The other governing constitutional doctrine is federal supremacy. If the federal regulation is valid, it trumps any state law in the area. Once the constitutionality of the federal act is sustained, state law must yield.

Justice Antonin Scalia concurred in *Raich*, emphasizing the "necessary and proper" clause, which applies to the enumerated powers of Article I, Section 8. The regulation of the entirely intrastate activity affected here is necessary, in his view, to carry out Congress' regulatory scheme in the Controlled Substances Act.

The dissenters were unwilling to extend the commerce power. Three justices, Sandra Day O'Connor, Clarence Thomas and Chief Justice William Rehnquist, argued that the basic constitutional scheme of distribution of sovereignty left these issues to the states. They would have maintained that distribution by denying this exercise of federal power. O'Connor emphasized the role of the states as laboratories, free to make their own rules for the "health, safety and welfare" of their residents.

The lineup of the justices is consistent with that in *Lopez* and *Morrison*, both of which were decided by 5-4 votes. Four justices of the *Raich* majority (Stevens, Ginsburg, Breyer and Souter) were in dissent in those cases.

Only Justices Scalia and Kennedy changed their position. (The court personnel, be it remembered, has not changed since 1994). And it could be considered surprising to find the more liberal side of the court enforcing the drug laws, while the more conservative side would have allowed the use of marijuana.

Which raises the enticing question of whether some of the justices (Stevens, Ginsburg and O'Connor come to mind) may have voted on the basis of constitutional principles and against their personal predilections.

The decision does not require California to enforce the federal laws, and it is clear that only federal authorities will do so. The first statement by the Drug Enforcement Administration after the decision was announced suggests that enforcement activity against users, as distinguished from growers and distributors, will not be a priority.

It should be noted that the decision in no way purports to decide whether marijuana is in fact an effective medication. The court said only that Congress could rationally have decided that, as the standards of Category I recite, there is no "accepted medical use" for the drug. Congress is entitled great deference in making such factual determinations where no fundamental personal rights protected by the Constitution are involved. Neither *Oakland Cannabis* nor *Raich* considers whether the right to "life" under the 14th Amendment, or similar provisions, could be invoked in the underlying dispute over a patient's right to medical marijuana.

What could change the present legal position? Several avenues are open. Least likely would be amendment of the Constitution. But Congress could act to remove marijuana from Category I, which would mean that it would be subject to regulation under the Controlled Substances Act, but with approved uses. Such legislation has been introduced in the past but has not been enacted.

Or the administration could, as a matter of policy, decline to enforce the law against users. Whether a change in court personnel would have any effect is questionable: The two seats considered most likely to open (Rehnquist and O'Connor) were in dissent in *Raich*.

Public opinion has approved the enactment of laws in 10 states legalizing medical use. The views of the public, once acknowledged by Congress, could change the present posture of the medical use of marijuana.

Charles S. Doskow is professor of law at the University of La Verne College of Law in Ontario and president of the Inland Empire Chapter of the Federal Bar Association.

House Rejects Bid to Undercut Medipot Ruling

By Andrew Taylor
Associated Press

WASHINGTON — Yes, the government can make a federal case out of medical marijuana use, the House said Wednesday.

Less than a week ago, the Supreme Court ruled that the government can prosecute medical marijuana users, even when state laws permit doctor-prescribed use of the drug. In response, the House rejected a bid by advocates to undercut the decision.

By a 264-161 vote, the House turned down an amendment that would have blocked the Justice Department from prosecuting people in the 10 states where the practice is legal.

Advocates say it is the only way that many chronically ill people, such as AIDS and cancer patients, can relieve their symptoms.

"It is unconscionable that we in Congress could possibly presume to tell a patient that he or she cannot use the only medication that has proven to combat the pain and symptoms associated with a devastating illness," said Rep. Maurice Hinchey, D-N.Y., who sponsored the amendment.

Opponents said the amendment would undercut efforts to combat marijuana abuse. They said Marinol, a government-approved prescription drug that contains

the active ingredient in marijuana, offers comparable relief.

"Marijuana has never been proven as safe and effective for any disease," said Rep. Mark Souder, R-Ind. "Marijuana can increase the risk of serious mental health

problems, and in teens, marijuana use can lead to depression, thoughts of suicide, and schizophrenia."

from carrying out their mission. 'This is about states' rights, plain and simple,' DeFazio said.

Far from condoning drug abuse, the amendment was "about helping people who are suffering from debilitating pain,"

'It is unconscionable that we in Congress could possibly presume to tell a patient that he or she cannot use the only medication that has proven to combat the pain and symptoms associated with a devastating illness.'

Rep. Maurice Hinchey,
Sponsor of defeated amendment

added Blumenauer. "Imposing harsh sentences for those who are legitimately trying to control their own pain makes no sense at all."

The vote came as the House debated a \$57.5 billion bill covering the departments of Commerce, Justice and State.

Proponents of medical marijuana had hoped to gain momentum following the high court's ruling. A poll commissioned

by the Marijuana Policy Project found that respondents, by a 68-18 percent margin, believe that medical marijuana users should not face federal prosecution.

The poll, conducted June 8-11 by Mason-Dixon Polling & Research, also found that 65 percent of those surveyed favored doctor-prescribed medical marijuana, with 20 percent opposed.

A similar amendment last year was defeated by a comparable margin.

"A lot of these guys voting against it are just afraid because it's a 'drug issue,'" said Rep. Sam Farr, D-Calif.

Separately, the House narrowly rejected an amendment to block restrictions on gift parcels shipped to Cuba.

The 216-210 vote reversed a trend in recent years of rising sentiment in Congress in favor of relaxing penalties against Cuba. The House passed a similar amendment last year by a 221-194 vote.

At issue are tighter restrictions imposed a year ago on package shipments, including those sent to Cubans by people in the U.S.

"We are not going to prop up the regime in Cuba by sending toothpaste and toilet paper," said Rep. Jeff Flake, R-Ariz.

According to a White House policy statement, "It is essential to maintain sanctions and travel restrictions to deny economic resources to the brutal" rule of President Fidel Castro.

Pot ID Card Program Shelved

Verification system for medicinal users is put on hold after U.S. Supreme Court ruling creates concerns about possible prosecutions.

By RONG-GONG LIN II
Times Staff Writer

California health officials Friday suspended a pilot program that issues photo identification to medical marijuana users out of concern that a recent U.S. Supreme Court ruling could make the state and ID holders targets for federal prosecution.

The action comes a month after the nation's high court ruled that the federal government could seize and destroy marijuana being used as medicine, regardless of state laws such as California's Proposition 215 that allow the drug's use by patients who have received a doctor's permission.

The state's Department of Health Services on Friday also asked Atty. Gen. Bill Lockyer's office to determine whether the identification card program could potentially make patients and state staffers liable for prosecution because it identifies them as receiving marijuana or helping to facilitate marijuana use.

Teresa Schilling, a spokeswoman for Lockyer, said the attorney general's office plans to review the issue and present an opinion as soon as it can.

Once the health department receives the legal review, it will make its own decision on the future of the program. "We also wanted to ask [Lockyer] whether information gathered from card holders could potentially be used by federal law enforcement officers to identify medical marijuana users for prosecution," health services spokesman Ken August said.

The agency also had concerns that a state-issued medical marijuana identification card could give patients a false sense of security and might lead them to believe they are protected from federal prosecutors, August said.

[See Card, Page B10]

Marijuana ID Card Program Pulled

[Card, from Page B1]

The identification card program was approved by the state Legislature in 2003 and was intended to be used as a tool for state law enforcement officers to easily determine whether an individual is using marijuana for medicinal purposes under California's Proposition 215, August said.

Before Friday, the state had issued 123 cards in three counties — Amador, Del Norte and Mendocino. The plastic cards bear California's state seal, an identification number, a website to verify the card's authenticity and an expiration date. Health officials had planned to offer the cards statewide next month, but that is now in question.

The decision to suspend the program still allows patients who have received the cards to use them, and law enforcement officers will continue to be able to verify a card's authenticity online.

The suspension does not affect identification card programs counties and cities have created on their own, August said. Patients can also still offer a doctor's prescription as proof to law enforcement that their possession and use of marijuana is legal, he said.

Medical marijuana advocacy groups immediately criticized the suspension and said the cards are completely legal because state law allows for the medical use of marijuana.

"The decision would seem to be a tragedy, and I hope they'll reverse it as soon as possible," said Ethan Nadelmann, executive director of the Drug Policy

Alliance.

The program's suspension only makes it more difficult for law enforcement officers to differentiate between patients who are using marijuana for medicinal reasons and those who are not, Nadelmann said.

"It was always understood that the medical marijuana ID system would not provide a protection against federal arrests. The whole point of the program was to provide protection against arrests by state law enforcement and to make it easier for law enforcement authorities to enforce the law," he said.

Federal officials have so far expressed little interest in arresting sick and dying people. Karen P. Tandy, head of the federal Drug Enforcement Administration, has said her agency is after those involved in trafficking and major cultivation.

Last month, Oregon's attorney general ordered health officials to resume that state's medical marijuana identification program after reiterating that it was legal, said Steph Sherer, executive director of Americans for Safe Access.

"There is nothing illegal about the program, and it's unclear why anyone has a question about the legality," said Daniel Abrahamson, a legal affairs director at the Drug Policy Alliance.

"Even the attorney general of California, on the day of the [Supreme Court] decision, declared California's law to be legal, and so why the Department of Health Services is retreating from enforcing the law is unclear," he said.

Los Angeles Times
7-9-05

S.M.
Tuesday, July 19, 2005, TIMES • A5

Medical marijuana program resumes

ASSOCIATED PRESS

SACRAMENTO -- State officials revived California's medical marijuana identification card program Monday, saying state employees weren't violating federal law by issuing pot ID cards.

"The state attorney general has reviewed this concern and said that California can issue ID

cards to medical marijuana users without state employees facing prosecution for assisting in the commission of a federal crime," state Health Director Sandra Shewry said in a statement.

Shewry's office shuttered the pilot program 10 days ago, citing concerns over a recent U.S. Supreme Court ruling.

Last month, the court ruled

that people who smoke marijuana because their doctors recommend it to ease pain or other conditions can be prosecuted for violating federal drug laws.

The ruling did not strike down laws in California and nine other states that permit medical cannabis use, but said federal drug laws take precedence.

Pot theft cited in boy's killing

A Bellflower man who allegedly shot a 15-year-old said the youth and his brother were trying to steal medicinal marijuana on the man's property.

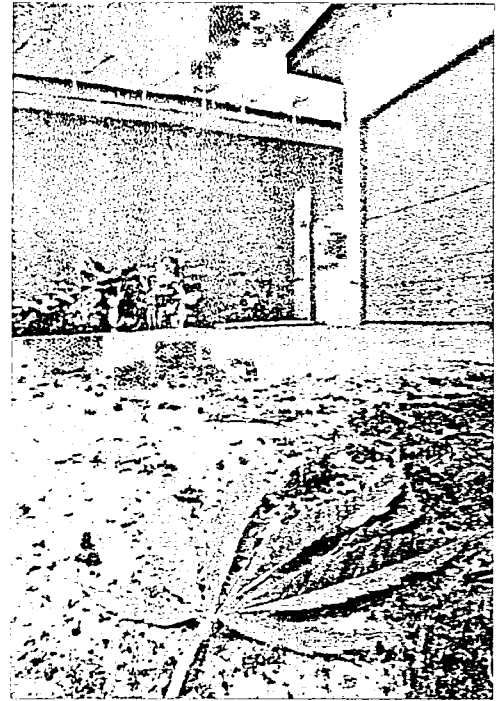
By TAMI ABDOLLAH
AND RICHARD WINTON
Times Staff Writers

A Bellflower man who said he was growing marijuana to ease pain from liver cancer is in custody on suspicion of fatally shooting a 15-year-old boy who allegedly was trying to steal some of the plants with his older brother.

Prosecutors will have to decide whether Jerry Cress acted in self-defense and was in reasonable fear for his life when he shot Jacob Walker with a small-caliber handgun shortly before daybreak Sunday, said Los Angeles County Sheriff's Homicide Capt. Ray Peavy. That decision could come as early as today.

Jacob's friends and relatives said he was off Cress' property and fleeing down the street when the 57-year-old allegedly fired the fatal rounds and that the shooting wasn't a case of self-defense but vigilantism.

He was running away and the guy shot him in the back. He was already off the property," said Teresta Walker, 18, his sister. "I believe it was in the middle of the street. He was already off the prop-
[See Pot, Page B8]



EVIDENCE? A marijuana leaf and potting soil litters the driveway next to the shooter's house.

Los Angeles Times
1-23-07

[Pot, from Page B1]

erty, leaving it, so the guy had no reason to shoot him at all."

Peavy lent some support to that account, saying, "They were attempting to run away when they were being fired at."

A neighbor found what appeared to be marijuana leaves on her driveway Monday morning and said police told her not to touch anything.

Outside Cress' home, classmates of Jacob decorated a memorial with messages, a dozen candles and white and red rose bouquets. More than 75 people gathered there Monday night to remember Jacob's life.

In an unusual twist, the dead boy's brother, Duane Berry, 24, could be charged with murder because the shooting occurred during the alleged commission of a felony.

Detectives said Jacob and his brother were attempting a burglary. Berry had recently been released from jail on a narcotics sales charge that is to go to trial next month.

"The kids in neighborhood had learned the guy had pot plants on his property, and some had broken in before," Peavy said. "These two knew there was a pretty large quantity."

Peavy said that around 6:30 a.m. Sunday, the brothers tried to break into a shed on Cress' property where the marijuana was being grown under ultraviolet lamps. "The homeowner heard his dog start barking and came out and confronted these



DON BARTLETT/LOS ANGELES TIMES

PAIN: Yolanda Rice says she last saw her son alive just a few hours before the Sunday morning shooting, asleep in his bed. "Things are different from when I grew up," she says. "Whatever happened to 'Get off my yard or I'll call the police?'"

two guys. He fired two or three rounds," Peavy said.

Detectives said Cress called the police to report the attempted burglary and acknowledged firing a few rounds on his property on Park Street, just north of the 91 Freeway. He said one of the males was armed with a hammer.

Accompanied by Berry, Jacob turned up a short time later at Lakewood Regional Medical Center, where he died of his wounds.

"At first we thought this was a pellet-gun shooting, but it

turned out to be a small-caliber handgun," Peavy said. "As is sometimes the case, the small round bounced around inside him, hitting his vital organs."

Peavy said Cress told detectives he had liver cancer and "it appears he has been self-medicating for a period of time."

In this diverse working-class neighborhood in Bellflower, near the border with Paramount, news of the shooting came as a shock. But the existence of the marijuana crop was well-known to many teenagers. Some who spoke to The Times said many

people had attempted to raid the crop before.

By about 3 p.m. Monday, nearly a dozen youths on foot or bicycles had arrived from nearby schools to look at the memorial in front of Cress' house.

"It's OK, Clifford, I cried too," said Ivan Perez, 13, an eighth-grader at Paramount's Mokler School, as Clifford Miller, 16, who said he was Jacob's best friend, choked up.

Clifford, 16, a Paramount High School student who lives in a nearby trailer park, said he last saw Jacob on Saturday night when he biked over to talk for a while.

"I have third period with him," Clifford said, before tearing up and falling silent.

Teresta Walker said Jacob was not violent. "He liked animals, loved watching the Discovery Channel," she said. "My brother would not come in with a hammer."

The brothers' mother, Yolanda Rice, 42, said she last saw Jacob alive just a few hours before the shooting as he slept in his bed. Rice, a trainee vocational nurse, said her son was shot in the back and arm.

"Things are different from when I grew up," she said. "I don't know what the shooter was thinking."

"Whatever happened to 'Get off my yard or I'll call the police'? What happened to that?"

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Moratorium sought on new pot clinics

Bratton cites opening of 94 medical marijuana dispensaries in L.A. in a year and calls for rules to regulate the facilities.

By PATRICK MCGREEVY
Times Staff Writer

Concerned by a 2,350% increase in the number of medical marijuana dispensaries in Los Angeles in a one-year period, Police Chief William J. Bratton is calling for a moratorium on new

facilities until strict rules can be adopted governing them.

In a report to the Police Commission, Bratton said he wants to ban existing dispensaries within 1,000 feet of schools, churches, parks and places designated exclusively for the care of children. He also advocates limiting their hours to 10 a.m. to 6 p.m.

The establishments are allowed under a 1996 state ballot measure and a more recent state law making marijuana available to patients by prescription to relieve pain or nausea.

Bratton said the number of dispensaries increased from four in November 2005 to 98 a year later.

"This has fostered an increase in... crime problems and caused quality-of-life issues for families and communities, as evidenced by the 110 complaints received from neighbors, business owners and concerned citizens concerning these dispensaries," Bratton's report states.

The Police Commission will consider his recommendations today.

Los Angeles Police Department officers have been called to clinics because of problems including robberies, burglaries and drug use in front of the clinics, Lt. Paul Vernon said. Without regulations, he said, officers are hamstrung.

In the absence of specific zoning rules, 12 of the medical marijuana dispensaries in Los Angeles have opened within 1,000 feet of schools, Bratton said.

"One clinic blatantly resorted

New rules on pot clinics proposed

[*Marijuana, from Page B1*] to placing fliers on the windshields of vehicles parked in and around Grant High School in an obvious effort to entice children," Bratton said.

The chief did not identify the clinic, but said its flier stated that it is legal to own, grow and smoke medical marijuana and that "qualification is simple and our experienced physicians are more than happy to help you," adding that the visit is free if the applicant does not qualify.

"This was not the intent of the voters when they passed Proposition 215," the chief said.

The clinics have proliferated elsewhere as well, although Los Angeles, as the state's largest city, has the most, said Joseph Elford of Americans for Safe Access, a group in support of the clinics. But San Francisco, with about 30 clinics, has more per capita, or about one per 25,400 residents, while Los Angeles has one dispensary for every 39,200 people.

On Monday, advocates for medical marijuana disputed that the dispensaries are magnets for crime, and expressed concerns that Los Angeles officials may reduce patients' access to the drug.

"A blanket ruling saying you can't be within a number of feet within a school or park is entirely unnecessary and overbroad," said Bruce Mirken, a spokesman for the Marijuana Policy Project, another advocacy group.

He said a lengthy moratorium on new dispensaries would have an adverse effect on medical patients who rely on marijuana in their battles with disease.

The proliferation of dispensaries followed passage of Proposition 215, called the Compassionate Use Act, and Senate Bill 420, which took effect in 2004; together, they legalized possession and cultivation of marijuana for qualified medical patients.

Marijuana is used for medical purposes by thousands of people suffering from painful and

tire-killing diseases, including cancer, AIDS, anorexia and arthritis.

"However, the spirit and intent of this act has been exploited and abused for both profit and recreational drug use by many of the medical marijuana dispensaries in the city of Los Angeles," Bratton said. "Absent stringent regulations and enforcement actions, these dispensaries have flourished throughout the city."

The chief's recommendations were welcomed Monday by Councilman Dennis Zine, who already has asked the Planning Department to draft a moratorium ordinance, banning any new outlets for six months, with an option to extend it for another

six months while new rules are being formulated. "There is no regulation as far as zoning and hours of operation," Zine said. "What I want to do is bring a semblance of order and not go against the public's will in favor of these clinics."

Steve Leon, owner of the medical marijuana outlet Highland Park Patient Collective, disagreed with the allegation that the clinics spur criminal activity.

"I think it's quite the opposite," he said. "I'm in an area that is gang-infested, but there is no graffiti on my building. It is very clean. And other businesses have moved in. We have created quite a nice little artistic community."

Leon said his building is more than 1,000 feet from schools and parks, and that the LAPD has been "very gracious."

The proposed moratorium found favor with at least some owners of current dispensaries.

"The moratorium is kind of a good idea. It's getting out of control, with a new one opening every week," said Billy Astorga, manager of the Eagle Rock Herbal Collective, adding that his business already has strict operating rules.

State laws have been exploited and abused for both profit and recreational drug use.'

L.A. Police Chief
William J. Bratton

Los Angeles Times

1-16-07

Carpinteria moves to ban marijuana dispensaries

By ANNA DAVISON
NEWS-PRESS STAFF WRITER

Medical marijuana dispensaries won't be allowed in Carpinteria, the City Council decided Monday.

Citing concerns about the potential for criminal activity and conflicts between federal and state law, council members voted unanimously to extend the current moratorium on dispensaries to give staff enough time to develop an ordinance banning them altogether.

"There are businesses that are legitimate and legal that we choose not to have in Carpinteria for good reason," Councilman Joe Armendariz said at the meeting.

"I don't see anywhere in town that a dispensary could locate," said Councilman Brad Stein.

City officials raised concerns that if dispensaries were to open in Carpinteria, pot might be sold illegally and there could be increases in criminal and nuisance activity. They cited robberies and attempted burglaries at dispensaries in Santa Barbara as examples of the potential problems. Officials also said they're worried about the conflict between federal law, which classifies marijuana as dangerous, with no medicinal value, and the more permissive state law, which allows people suffering from chronic disease and nausea to use marijuana with authorization from a doctor.

There aren't any dispensaries in Carpinteria, city officials said, but council members noted that there are at least four operating in Santa Barbara.

"It's not too much for them (patients) to drive 10, 15 miles up the freeway," Mr. Armendariz said.

Californians voted in 1996 to allow the use of marijuana for medical purposes.

The city and county of Santa Barbara allow pot dispensaries, but moratoriums have been enacted in

"There are businesses that are legitimate and legal that we choose not to have in Carpinteria for good reason."

Joe Armendariz,
Carpinteria councilman

Buellton, Lompoc, Santa Maria and Solvang. Goleta has no regulations dealing with dispensaries.

Carpinteria's moratorium was enacted in February, initially to give city officials time to research the issue. The ban was later extended and was to expire next month. City staff will now draft an ordinance banning dispensaries, which will be approved by the council at a later date.

Steve Levine, a Carpinterian and president of the Hemp Industries Association, said the council's vote for a ban was "very disappointing," although he spoke at the meeting in favor of extending the moratorium.

"I get the sense that most of the people here are not quite ready (for a dispensary)," he explained. "I think it's important for everybody to understand the issue.

"It's a shame," Mr. Levine said of the ban. "Carpinteria could be the model for how this should be done. That's what I was hoping."

According to figures compiled by Carpinteria city staff, most California cities have either banned or placed moratoriums on marijuana dispensaries.

Lt. Eric Koopmans of the Santa Barbara County Sheriff's narcotics unit told council members Monday

that "there's a lot of crime associated with these storefronts."

Surveillance of some dispensaries has revealed, he said, that most customers "are college age and they don't really appear physically to have any illnesses." An undercover agent sent into one of the dispensaries in the county was able to buy marijuana without authorization, Lt. Koopmans told the City Council.

He also said dispensary operators in other areas have been busted for having large stashes of cash and weapons, and some have been found to be stealing electricity.

"There's illegal activity going on in a lot of these storefronts," Lt. Koopmans said.

However Mr. Levine challenged those categorizations and asked, "I wonder what the crime rates are at liquor stores?"

Santa Barbara police Lt. Paul McCaffrey said there have been "robberies and burglaries and attempted burglaries at the marijuana dispensaries" in Santa Barbara — including some that have gone unreported. He said he thinks "there are legitimate reasons to be concerned" about crime associated with dispensaries, but said Santa Barbara hasn't seen problems with loitering, littering, heavy traffic or other nuisances.

While Mr. Levine said he understands the Carpinteria City Council's position on the matter, he said it may be difficult for some Carpinterians to travel to Santa Barbara for medical marijuana.

"It's assuming someone is in a position to take time off during the day, that they have money for gas."

"I would like to see a collective in Carpinteria for the safe and legal use and obtaining of marijuana," he added. "It's up to us to do it properly. I think it's doable for Carpinteria to be a model."

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DEA targets larger marijuana providers

The federal agency sees big profits for medical dispensaries as a sign of illegal high-stakes drug dealing. Advocates say the raids are unfair.

By RONE TEMPEST
Times Staff Writer

HAYWARD, Calif. — Until federal drug agents arrested him last month, Shon Squier was one of Hayward's most successful and generous young businessmen.

Customers lined up outside his downtown storefront, particularly on Mondays, when he offered free samples to the first 50 visitors. Business was so good

that Squier, a former construction worker, was able to donate more than \$100,000 to local charities.

But Squier's success as a dynamic medical marijuana entrepreneur was also his downfall. Federal drug agents raided his home and business, arresting Squier and his store manager, freezing bank accounts containing \$1.5 million and confiscating several expensive cars, motorcycles and \$200,000 in cash.

Medical marijuana advocates claim the raid constitutes unfair, selective enforcement by the Drug Enforcement Administration of the estimated 170 medical marijuana dispensaries in the state, including 85 in the San Francisco Bay Area.

Just down the street, another medical marijuana dispensary,

not as big or as flashy as Squier's, was left untouched by the DEA agents in the Dec. 11 raid.

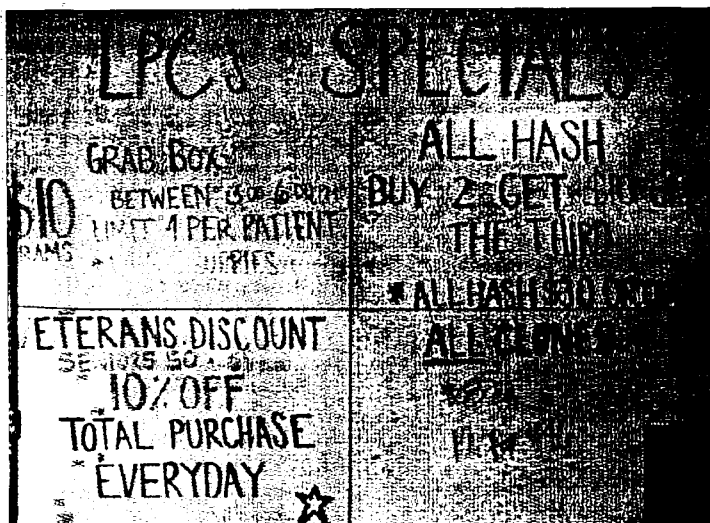
The federal drug agency, which does not recognize California laws legalizing the sale of marijuana to patients with doctor's prescriptions, contends the amount of money involved proves that the medical marijuana trade is nothing more than high-stakes drug dealing, complete with the same high-rolling lifestyles.

"These people will tell you they are just interested in the terminally ill," said Gordon Taylor, DEA special agent in charge of the California eastern federal district, "but what they are really interested in is lining their pockets with illegal drug money. When you pull the mask off, you

see that they are nothing more than common dope dealers."

California's two medical marijuana laws, Proposition 215, approved by voters in 1996, and Senate Bill 420, passed in 2003, are not clear about how much money proprietors can take out of their businesses. One section of SB 420 states that medical marijuana caregivers should be allowed "reasonable compensation" for their services. Another section states that distribution should be done on a nonprofit basis.

"The legislation is about as clear as mud the way that they wrote it," said Joe Elford, lawyer for Americans for Safe Access, a pro-medical marijuana group. "The dispensaries are legal under state law because they are [See Marijuana, Page B7]



ROBERT DURELL Los Angeles Times

HIGH TIMES ARE OVER: A sign at Shon Squier's Local Patients Cooperative, shut by the DEA, lists discounts and specials.

Los Angeles Times

1-1-07

... continued on next page ...

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preceding page ...

DEA targets state's larger dispensaries of marijuana

[*Marijuana, from Page B1*]

cooperatives and collectives. It is my best guess in terms of what the Legislature intended is that they shouldn't be operating to make a profit."

With the proliferation of medical marijuana dispensaries of all sizes across the state, the DEA and Internal Revenue Service have recently concentrated their investigations on young, high-profile operators like Squier, 34, and Luke Scarmazzo, 26, co-owner of a Modesto dispensary.

Scarmazzo got the attention of the DEA earlier in the year, when he produced a rap video that showed him counting stacks of hundred dollar bills, blowing billows of smoke at the camera and flipping off federal agents.

The Scarmazzo video, featuring the background sound of a pump shotgun racking a round, includes actors posing as members of the Modesto City Council. Online at www.krazmusic.com, it includes the refrain:

*I'm in business, man.
I mean business, man.
Let me handle my business,
damn.*

Federal prosecutors showed it at Scarmazzo's bond hearing to demonstrate his criminal intent in order to deny him bail.

But Fresno lawyer Anthony P. Capozzi, who represents Scarmazzo, said the effort backfired.

"Let me tell you, the whole courtroom was swaying to the music," Capozzi said. Scarmazzo was released on a \$400,000 bond and his 2007 Mercedes-Benz, confiscated by federal agents, was returned to him.

Taylor, the DEA agent, said that between January and June of this year, Scarmazzo, who has a previous felony conviction, and his associates recorded \$3.4 million in sales of marijuana products with brand names that included "911," "AK47" and "Train Wreck." Scarmazzo and his California Healthcare Collective co-owner, Ricardo Ruiz Montes, also, 26, are charged in federal court with money laundering and "operating a continuing criminal enterprise." The last charge, one of the most severe under federal drug laws, carries a sentence of 20 years to life in prison.

Here in Hayward, Squier and his business manager, Valerie Lynn Herschel, 23, are charged with the illegal manufacture and

*'When you pull the
mask off, you see that
they are nothing more
than common dope
dealers.'*

Gordon Taylor, Drug Enforcement
Administration special agent

distribution of marijuana, a federal "controlled substance." Federal agents confiscated hundreds of plants, brownies, cookies and other products containing marijuana from Squier's business, Local Patients Cooperative.

"I only gave the people what they wanted — easy, safe access to medical marijuana," said the slightly built Squier, cuddling his pet Chihuahua in his former office, which was stripped bare by federal agents.

He described his business as a responsible enterprise that paid federal and state payroll taxes for 60 employees, contributed to the Hayward High School football team and gave discounts to Hayward residents, veterans and customers in wheelchairs.

Squier said that he served about 75 customers a day and had 70,000 individual patients in his books. The success of his business allowed him to buy a \$1.5-million home in the Hayward Hills overlooking San Francisco Bay, a Hummer and a late-model Mercedes.

Half a block down Foothill Boulevard, Tom Lemos, 45, continues to operate his much lower-volume Hayward Patients Resource Center.

Whereas Squier and Scarmazzo flaunted their wealth, Lemos, who claims to have 3,000 to 4,000 regular customers, emphasizes his modest lifestyle.

"I live in a rental apartment and I drive an '86 Isuzu with 245,000 miles on it," Lemos said.

Appearing before the Hayward City Council on Dec. 19 to ask for a renewal of his agreement to operate in the city, Lemos opened his remarks by stating: "I don't live in a large house."

Compared to his "small, homey" medical cannabis operation, Lemos said, Squier's high-volume Local Patients Cooperative down the street was a "Wal-Pot."

After hearing Lemos' presen-

tation and testimony from several of his patients, the City Council agreed to extend his agreement for 90 days, suggesting that he would be granted a longer-term permit if he moved from the downtown area to a more remote location, away from schools and the general public.

Even before the federal bust, the city had informed Squier that its agreement with him would be terminated.

Similarly, after Scarmazzo began operating in Modesto, the City Council passed an ordinance banning additional cannabis cooperatives, and the city had on several occasions attempted to halt Scarmazzo's operation.

The raids on both the Hayward and Modesto operations support what medical marijuana advocates contend is an unwritten practice by the DEA of being more likely to crack down on an operation that has lost local government support.

After the U.S. Supreme Court ruled last year that federal laws banning marijuana sales take precedence over those in California and other states permitting the sales, the DEA was empowered to arrest patients and operators at any one of the dispensaries that started up after passage of Proposition 215.

Instead of going after everyone, however, the federal agency appears to concentrate on the larger and higher-profile operations.

Medical marijuana advocates contend it is unfair of the DEA to cite examples like Squier and Scarmazzo to represent the typical dispensary operators.

"Most operators are not wealthy individuals," said Elford, the Americans for Safe Access lawyer. "As far as we can tell, the majority of dispensary operators are simply people who are interested in providing safe, affordable and reliable medicine to the people who need it and are not in it for the profit."

The "big fish" strategy enrages Oakland lawyer James Anthony, who represents Scarmazzo in civil matters.

"Why does the DEA suddenly concern themselves with how successful a medical cannabis collective is?" he asked. "Are they saying that if these guys had led monkish lives, then they would have left them alone? Are they judging Donald Trump on his lifestyle?"

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Cities Look to Block Pot Clubs

Officials across the state say they fear a lack of regulations could make new medical marijuana sites magnets for drug dealing and crime.

By HECTOR BECERRA
Times Staff Writer

Cities across California are acting to prevent new medical marijuana clubs from opening, with officials saying they fear that a lack of regulations in state law could make the clubs magnets for illegal drug dealing and crime.

In the last two months, San Francisco, Modesto, Ontario, Huntington Beach and West Hollywood have imposed moratoriums until officials can devise rules to govern marijuana clubs. The moratoriums do not affect existing clubs; San Francisco already has 37.

"There's been some extremely negative experiences in other cities," said Pasadena Mayor Bill Bogard, whose city will consider an interim ban later this month, though it has no marijuana clubs now.

Los Angeles Times
4-4-05

"My biggest concern would be because zoning rules have not been developed, we might find ourselves permitting a dispensary without rules that would assure us it won't become a neighborhood problem," he said.

In 1996, California voters passed Proposition 215, which legalized the use of marijuana for medical treatment. Since then, cannabis clubs have opened in many parts of the state to distribute the drug. But the federal government, which has not shifted its own policy against marijuana use, has raided pot clubs throughout the state.

As cities now consider restricting new clubs, many municipal officials are looking to the Northern California town of Rocklin, which banned the clubs outright late last year. Rocklin officials have produced a report widely distributed around the state citing examples of petty crime, pot DUIs and illegal drug dealing around existing clubs in Hayward, Oakland and Roseville.

Though some cities say they are just interested in temporary freezes on the clubs that would allow them to fix problems or create regulations, other cities are pondering permanent bans.

The prospect of a permanent ban worries advocates of medical marijuana, some of whom say they are not opposed to temporary moratoriums.

(See Clubs, Page B1)

Cities Look to Restrict Medical Marijuana Clubs

(Clubs, from Page B1)

"There's a sense that there needs to be regulations and controls to ensure the dispensaries provide quality services and are being good neighbors," said Daniel Abrahamson, director of legal affairs for the Drug Policy Alliance in Oakland.

"But simply prohibiting them leads to bad results for everyone," he added. "If you permanently ban dispensaries, you're essentially driving them underground, and you lose all ability at regulating them."

San Francisco Supervisor Ross Mirkarimi said the city remains committed to medical and therapeutic uses of marijuana. He said he opposes any permanent bans on such establishments. "A compassionate city would open up to these clubs," Mirkarimi said.

But San Francisco experienced growing pains from its largely unregulated clubs. That has led the city to keep new clubs from moving in until regulations are in place. The city decided cannabis clubs should be regulated like other businesses.

"Why should they operate in the shadows when we can legitimize them by developing regulations that make them part of our

mainstream culture?" Mirkarimi said.

Rocklin Police Chief Mark Siemens cited federal law in pushing for the ban in his town. The bedroom community of about 43,000 recently had been approached by people who wanted to open a club, he said.

The City Council voted to add medical pot clubs to a short list of businesses prohibited in the city, including kennels, trash disposal sites and wrecking yards.

Since then, city officials have sent copies of their ordinance to more than 50 interested cities, Siemens said.

"We thought the simplest process was to ban this type of business because it is federally illegal to distribute marijuana under whatever guise," Siemens said. "We didn't want to be in a position of using local policing and zoning authorities to license or screen an illegal business venture."

That position was criticized by advocates for medical pot use.

"I find it interesting that Rocklin is a city in California, but it wants to adhere to federal law instead of state law," said Mike Corral, agricultural director for Women's Alliance for Medical Marijuana in Santa Cruz. "They

should be adhering to California law."

In November, the U.S. Supreme Court heard arguments in a case on whether the federal government's zero-tolerance policy trumps the medical marijuana laws in California and 10 other states. A decision is expected later this spring, and leaders of some cities say they want to wait until then before deciding whether to ban clubs.

"I prefer not to have them in the community at all," said Ontario Mayor Pro Tem Alan Wupner, whose city adopted a moratorium. "If the federal court comes out against them, I'd like to pass a motion to ban them completely."

San Francisco's Mirkarimi said he feels otherwise.

"I think the ruling will be adverse, but I don't think it will affect our existing clubs," Mirkarimi said. "But that's why I'm fretting, as well as others in the City Hall family, that we want to take care of our house and protect what we have now, just in case there is state or federal intervention."

In Huntington Beach, which has no medical pot businesses, zoning restrictions approved in February would require 500 feet

of separation between the clubs and parks, schools or places of worship. The dispensaries also would have to be more than 750 feet from each other, said Police Chief Ken Small.

"We wanted to be more proactive, as opposed to reactive like other cities," said Small, adding that the temporary ban has been lifted.

Richard Bruckner, the planning director for Pasadena, said he favors tight controls.

"I would hope they would be regulated to the extent that a pharmacy is regulated, and that there were prescriptions and other safeguards," Bruckner said. "But without that, people are nervous."

Corral of the medical marijuana alliance said he thinks the issue of crime related to the clubs is overstated. However, he said, regulation may help the clubs.

"I think it will make them more legitimate in the eyes of the general population, some of who equate a cannabis club with drug dealing," Corral said. "As with anything, there's positives and negatives, but in the long run, I think it's more positive."

Times staff writer Rachana Rothi contributed to this report.

Medical marijuana dispensaries raided

BY DON THOMPSON
ASSOCIATED PRESS

SACRAMENTO — Federal drug agents launched a wide-ranging crackdown on medical marijuana providers Wednesday, charging a husband and wife in Sacramento and raiding more than 20 San Francisco dispensaries.

In San Francisco, drug agents conducted searches of three pot clubs and more than 20 homes and businesses, capping a more than two-year investigation into an alleged marijuana trafficking ring.

Officials with the Drug Enforcement Administration and U.S. attorney's office would not say how many people were arrested or give other details, pending a news conference today.

In Sacramento, Dr. Marion Fry, 48, and her husband, attorney Dale C. Schafer, 50, were arrested on a sealed indictment handed down a week ago. It charged them with conspiracy to grow and distribute marijuana between August 1999 and September 2001 from their storefront California Medical Research Center in Cool, a Sierra foothill community northeast of Sacramento.

"Marijuana was legal in this part of the United States until this month, so any attempt to hold them as serious criminals would have been, I think, inappropriate," said their attorney, Laurence Lichter. "They are charged with violating the old marijuana laws, which are now back in effect, and I'm hoping that the jury will see ... that Dr. Fry was acting as a physician."

Law enforcement officials in Sacramento and San Francisco said the actions were unrelated and were part of independent, long-running investigations.

Lichter, however, said he believed Wednesday's arrests and sweep may have been prompted by the U.S. Supreme Court's medical marijuana ruling two weeks ago. The high court said federal law prohibiting the sale and distribution of narcotics supersedes state medical marijuana laws.

First Assistant U.S. Attorney Lawrence Brown in Sacramento said the Supreme Court ruling "lays to rest any question whether federal authorities have jurisdiction."

California is one of 10 states that allow the use of marijuana for medicinal purposes.

State Attorney General Bill Lockyer supports the state's medical marijuana law, but his Bureau of Narcotics Enforcement was involved in the San Francisco investigation, spokeswoman Teresa Schilling said.

"It's more than medical marijuana. This was an illegal marijuana operation," she said.

Gordon Taylor, the assistant special agent in charge of the Sacramento DEA office, alleged that Fry and Schafer also crossed that line. The indictment states the couple was growing more than 100 plants during the period in question.

Both were freed without posting bond after an initial court hearing Wednesday.

That investigation has been pending since December 2000, when drug agents said they seized



Associated Press

Drug enforcement agents remove marijuana plants from a dispensary Wednesday in San Francisco. A moratorium enacted in March prohibits new clubs from opening until the city devises a regulation plan. Officials say the raided clubs opened after the moratorium was passed.

several United Parcel Service packages containing marijuana.

The DEA ended Fry's registration to dispense controlled sub-

stances in December 2002 based on the investigation, but no charges were filed until the indictments last week.

Authorities defend crackdown on pot clubs

Raids on dispensaries in Bay Area allegedly uncovered global drug ring

By GARANCE BURKE
ASSOCIATED PRESS

SAN FRANCISCO — Authorities described this week's raids on San Francisco pot clubs as one of the largest drug crackdowns in the area in recent memory, and said the arrests were the first step in uncovering a major international drug operation.

U.S. Attorney Kevin Ryan said agents raided three pot clubs that operated as fronts for marijuana and Ecstasy trafficking, and warned that federal drug laws would be strictly enforced even in cities tolerant of medical marijuana.

"We're empathetic to the ill and to the sick. However, we cannot disregard federal law," said Drug Enforcement Administration Agent Javier Pena. "We have the power to enforce federal drug laws even in areas where it might not be popular."

Twenty people were indicted on federal drug charges in court

documents unsealed Thursday, and an arrest warrant has been issued for another. Two others face state drug charges, and more arrests are pending, Mr. Ryan said.

Following a two-year investigation dubbed Operation Urban Harvest, officials searched a total of 25 homes and businesses throughout the Bay Area on Wednesday. They seized some 9,300 pot plants with a street value of more than \$5 million, said Mr. Ryan.

He said the pot clubs were a base of operation for a larger drug trafficking organization importing and selling large quantities of marijuana and Ecstasy, and engaging in money laundering and cash smuggling.

Despite the city's recognition of medical pot clubs as legal, San Francisco police officers participated in the investigation but did not make arrests or enter the marijuana clubs.

While federal officials said at a news conference that the raids would not

usher in a broader crackdown on marijuana dispensaries in the city, protesters outside said they sent a frightening message to patients.

"I'm scared," said Kathleen Prevost, who said she uses marijuana to control her post-traumatic stress disorder. "All I want to do is have access to my medicine."

Authorities said the Supreme Court decision two weeks ago — upholding federal law that medical marijuana is illegal — was not the impetus behind Wednesday's busts. But they warned that federal laws will be strictly applied.

"There are some members of the public who think they can disregard the courts and Congress," Agent Pena said. "The DEA will not be among them."

Authorities are now reaching out to international law enforcement organizations, Mr. Ryan said.

The alleged traffickers laundered millions of dollars using 12 financial institutions and 40 bank accounts, said Kenneth Hines, an agent in charge of the IRS criminal investigation.



ASSOCIATED PRESS

At a San Francisco news conference, U.S. Attorney Kevin Ryan announces that Operation Urban Harvest resulted in 15 arrests for marijuana and drug trafficking. Behind him is a map showing most of the locations that were raided.

Santa Barbara News-Press
6-26-05

Pot raids stir fear among medical users

Goleta physician: DEA wants to intimidate cannabis growers

By MELISSA EVANS
NEWS-PRESS STAFF WRITER

A federal crackdown on pot clubs in Northern California may spur fear among cannabis users throughout the state, medical marijuana advocates said Thursday.

"It will be a cautionary note, and I think that's the intent (of federal officials)," said Dr. David Bearman, a well-known Goleta physician who prescribes cannabis. "I think it's

unfortunate."

The Drug Enforcement Agency, in cooperation with state officials, raided cannabis clubs and 20 homes and businesses in San Francisco on Wednesday and arrested a husband and wife in Sacramento. A spokesman with the federal agency in Los Angeles said the arrests came after a two-year investigation into an alleged crime operation. Police say owners used the clubs as a front to launder money and distribute marijuana and the drug

Ecstasy illegally.

Asked about the raids, DEA spokesman Jose Martinez noted that the U.S. Supreme Court ruled two weeks ago that federal drug laws outlawing marijuana use trump state laws that allow it for medicinal purposes.

"We empathize with the sick and terminally ill, but we will not turn a blind eye to people who break federal

Please see MARIJUANA on A12



ASSOCIATED PRESS

Protesters in San Francisco decry the cannabis club raids.

MARIJUANA

Continued from Page A1

law," Mr. Martinez said.

In Sacramento, Dr. Marion Fry, 48, and her husband, attorney Dale Schafer, 50, were arrested on a sealed indictment handed down a week ago. It charged them with conspiracy to grow and distribute marijuana between August 1999 and September 2001 from their storefront California Medical Research Center in Cool, a Sierra foothill community northeast of Sacramento.

"Marijuana was legal in this part of the United States until this month, so any attempt to hold them as serious criminals would have been, I think, inappropriate," their attorney, Laurence Lichter, told The Associated Press.

"They are charged with violating the old marijuana laws, which are now back in effect," he said, "and I'm hoping that the jury will see... that Dr. Fry was acting as a physician."

Mr. Lichter said he believed Wednesday's arrests and sweep may have been prompted by the Supreme Court ruling. Dr. Bearman said it appears the government is trying to intimidate cannabis growers by making a public example out of one case.

"This has everything to do with politics," he said, "and nothing to do with medicine."

City and county authorities know of the clubs and cooperatives that operate here, and generally ignore them unless there is a problem. Sgt. Erik Raney of the Santa Barbara County Sheriff's Department and Lt. Paul McCaffrey of the Santa Barbara Police Department hadn't heard of the raids on Thursday but said their policies won't change.

There are at least three cannabis dispensaries in the city, including the Compassion Center of Santa Barbara County, the Santa Barbara

Patients Group and HortiPharm, which Joshua Braun and two others opened about a month ago.

Mr. Braun said he was scared at first to hear about the raids, but after doing some research he was relieved because, he said, he believed the clubs were operating illegally.

"Those kind of places give us a bad name," he said. "This is exactly the kind of thing we like to see. Go after them."

California is one of 10 states that allow the use of marijuana for medicinal purposes. State Attorney General Bill Lockyer supports the state's medical marijuana law, but his Bureau of Narcotics Enforcement was involved in the San Francisco investigation, spokeswoman Teresa Schilling said.

"It's more than medical marijuana. This was an illegal marijuana operation," she said.

Gordon Taylor, the assistant special agent in charge of the Sacramento DEA office, alleged that Dr. Fry and Mr. Schafer crossed that line. The indictment states the couple was growing more than 100 plants during the period in question.

"They were taking their (medical) clients and turning them into their customer base" for illegal marijuana sales, Mr. Taylor said.

Both were freed without posting bail after an initial court hearing Wednesday.

In September 2001, the DEA seized 28 filing cabinets full of patient records from the Medical Research Center, which doubled as Dr. Fry's office. That raid triggered a legal battle over patient privacy.

The DEA ended Dr. Fry's registration to dispense controlled substances in December 2002 based on the investigation, but no charges were filed until the indictments last week.

This story includes reports from The Associated Press. E-mail Melissa Evans at mevans@newspress.com.

Coming to the Wharf, a Medi-Pot Club

By Jesse McKinley
New York Times News Service

SAN FRANCISCO — The newest attraction planned for Fisherman's Wharf, San Francisco's most popular tourist destination, has no sign, no advertisements and not even a scrap of sourdough. Yet everyone seems to think that the new business, the Green Cross, will be a hit, drawing customers from all over the region to sample its pungent wares.

For some, that is exactly the problem.

The Green Cross is a cannabis club, one of scores that sell marijuana to patients with a doctor's note. They have sprouted around California in the decade since the passage of Proposition 215, which legalized the use and sale of marijuana to those suffering from chronic pain, illness or infirmity. San Francisco, a hot spot in the AIDS epidemic, voted overwhelmingly in favor of the proposition in 1996 and has about 30 clubs, serving some 25,000 patients and caregivers.

But none of San Francisco's medical marijuana dispensaries, as they are formally known, have been in places anywhere as popular as Fisherman's Wharf, where most people come to enjoy chowder, Ghirardelli chocolate or cable cars. Now, with the opening of the new club just weeks away, some residents and merchants are fighting to keep it out.

"The city is saturated with pot clubs," said T. Wade Randlett, the president of SF SOS, a quality-of-life group that opposes the planned club. "Fisherman's Wharf is a tourism attraction, and this is not the kind of tourism we're trying to attract."

Emboldened by a series of regulations passed last fall by the city's Board of Supervisors, some neighborhoods are resisting new marijuana dispensaries, which they say attract crime and dealers bent on reselling the drugs. In the debate over the new rules last year, several neighborhoods successfully lobbied to be exempted from having clubs.

Other neighborhoods managed to get clubs shuttered, including a previous version of the Green Cross, which was forced out of a storefront in the city's Mission District after neighbors said they had seen a rise in drug dealing, traffic problems and petty crime.

The proposed dispensary also comes at a time when medical marijuana's legal standing is murky. Last summer, the U.S. Supreme Court upheld federal authority to prosecute the possession and use of marijuana for medical purposes, despite voter-approved laws allowing medical marijuana in California and nearly a dozen other states.

That decision prompted California to stop issuing identification cards to patients, for fear of opening state workers up to federal charges of abetting a crime. (Patients, who need a doctor's recommendation to get marijuana, can still be issued cards by San Francisco and other

California cities.)

Clubs in San Francisco now must go through a permit process, which includes public hearings, and the proposed dispensary at Fisherman's Wharf is the first to have done so. A hundred people packed a neighborhood meeting on June 13, peppering the club's owner, Kevin Reed, with questions. Outside, fliers were handed out imploring residents to "Stop Marijuana Store!" and listing the planned club's proximity to schools and hotels.

Elizabeth Naughton Moore, 33, a lawyer and real estate developer who lives about a block from the planned location, said she dreaded the thought of walking her 18-

The city is saturated with pot clubs. Fisherman's Wharf is a tourism attraction, and this is not the kind of tourism we're trying to attract.'

T. Wade Randlett,
President of SF SOS

month-old son anywhere near it.

"Anyone with a modicum of common sense can see this is not an appropriate location," Moore said. "I understand patients need to have access to it, but I think with 30 locations, they have options."

All of this upsets Reed, a soft-spoken, sharply dressed 32-year-old who founded the first Green Cross in 2004. He said he had spent tens of thousands of dollars on security and other expenses to make the new club a model for marijuana dispensaries.

"I've changed so much and brought so much professionalism to the movement, but the public can't see that," Reed said. "I took it from the 1960s" into the 21st century.

The unopened dispensary at Fisherman's Wharf — in a nondescript storefront tucked under a weary-looking bed-and-breakfast — has all the trappings of modern retail: high-speed Internet access, high-tech security cameras and high-end merchandise. An ounce of marijuana will sell for \$300, and Reed's outlet will have a whopping 55 varieties. Framed photographs of San Francisco scenes adorn the club's black walls, and the glass-topped counters gleam under track lighting.

"I would love to offer it out of a hospital, I would love to offer it out of Walgreen's, but the truth is, they're not allowing that," said Reed, who uses marijuana to treat a back injury. "So somebody has to open a place like this and show that it can be done right."

What that includes, Reed said, is abiding by a batch of new rules. Chief among those is a stipulation

that forbids clubs from opening within 1,000 feet of a school or a community center.

"This wasn't our original location, nor was it our ideal location," Reed said, adding that tourism at Fisherman's Wharf had nothing to do with his decision. "But it was really hard finding legal areas."

He said Green Cross would not sell marijuana to tourists, only to those with doctors' notes.

One of those legal areas happened to be at the wharf, which is zoned primarily for commercial use. But Christopher Martin, whose family owns the Cannery, a three-story retail and restaurant complex a block from the proposed club, said that the neighborhood had been trying to become more upscale and residential, and that a pot club should not figure into the plans.

"We are trying to build a more stable, more interesting community here," Martin said.

What local merchants say they fear most is the clientele smoking in the neighborhood, congregating on sidewalks or clogging streets with double-parked cars. Reed said that his security personnel would prevent loitering and that 16 security cameras would constantly monitor the club and the area.

"Criminals that deal drugs don't want to come into a store where they are being recorded," Reed said.

The pot clubs themselves, which are usually cash businesses with ample amounts of product, are sometimes targets of crime. Four in San Francisco were robbed in 2005, and last weekend, a club downtown was robbed during the Gay Pride Parade. And while the law was passed with seriously ill patients in mind, like those with AIDS and cancer, some critics say that now even people with commonplace aches and pains can get a doctor's recommendation.

But what both sides can agree on — in classic San Francisco fashion — is that the problem is really Oakland's fault. In 2004, Oakland, the smaller, less glamorous city across the bay, banned many of its cannabis clubs, driving some to reopen in San Francisco. Other cities in the state have also instituted bans or new restrictions.

The rising neighborhood opposition to the clubs also stands in striking juxtaposition to the personal political beliefs of many in San Francisco, a city that prides itself on a progressive attitude.

"Every single person I've ever spoke to and every meeting I've ever went to, if there was any opposition at all, the first words out of their mouth is, 'I voted for this,'" Reed said.

Martin concurred. "Both the merchants and the residents — though philosophically we don't have a problem with medicinal marijuana being available, we all voted for it — we think customers are going to be better served in another location," he said. "We just think it's the wrong time, wrong place."

Pot club at Fisherman's Wharf tests new city law

By JORDAN ROBERTSON
ASSOCIATED PRESS

SAN FRANCISCO — Fisherman's Wharf is home to cable cars, postcard views of Alcatraz and the scent of sourdough. And now the fragrance of fresh marijuana?

City planners are considering whether to issue a permit for a medical marijuana dispensary in the heart of the city's tourist hub, despite outrage from neighbors and businesses. The Planning Commission is scheduled to vote today, and some have vowed to appeal any permit the city grants.

"The wharf is San Francisco's Disneyland," said Rodney Fong, president of the Fisherman's Wharf Merchants Association. "About half the people who come are with kids, and the things they are looking for are family attractions — sea lions, dining. So a marijuana dispensary doesn't really match the market we have."

The Green Cross is the first cannabis club to seek a permit under strict guidelines the city adopted in November to curb street crime around its roughly 30 dispensaries and prevent sales to non-patients.

This left-leaning city quickly became a hub for pot clubs after voters in 1996 made California the first state to legalize medicinal marijuana. But the Fisherman's Wharf fight highlights difficulties in the 11 states that allow medical marijuana, as they seek to regulate the drug without banishing patients to dark alleys and rough neighborhoods.

The city made the Green Cross close its previous location in the Mission District in March after neighbors made complaints about rising traffic and crime, which owner Kevin Reed said were unfounded. He said he was forced into the wharf after being rejected by dozens of other landlords.

"Nobody wants this in their backyard," Mr. Reed said. "They're fighting for their beliefs and their family values. But if they continue fighting on the path they're fighting now, they'll put us all out of business."

Mayor Gavin Newsom said Mr. Reed has been responsible and should not be punished for flaws in the new rules, calling it an "unintended consequence" that the club wound up at the wharf.

"The intent of the legislation was to generate less controversy, not more," Mr. Newsom said. "We may not like what he is doing, but he is playing by the rules we set up."

S.F. Planners Deny Permit for Fisherman's Wharf Pot Club

From The Associated Press

SAN FRANCISCO — The San Francisco Planning Commission has decided a medical marijuana dispensary doesn't belong near the shops, cable cars and postcard views of Alcatraz Island that make up Fisherman's Wharf.

The commission voted 4-2 late Thursday to reject the application filed by the Green Cross, a pot club that wanted to open the dispensary.

Commissioner Michael J. Antonini said he voted against the permit because of concerns by local merchants, who feared the pot club would scare off tourists, as well as concerns by residents, who argued its presence would impair the quality of life in the neighborhood.

"The people who were against granting the permit were from the neighborhood where it would have been located, and those in favor of it were mainly coming from the out-

side and asking that it be imposed on that area," Antonini said.

The Green Cross was the first cannabis club to seek a permit under strict guidelines the city adopted in November to curb street crime around its roughly 30 dispensaries and prevent sales to non-patients.

This left-leaning city quickly became a hub for cannabis clubs after voters in 1996 made California the first state to legalize medicinal marijuana. Voters in 10 other states have since enacted laws that allow dispensing pot to treat specific medical problems, although the federal government continues to outlaw marijuana.

San Francisco's clubs were largely unregulated before the new rules. Now the owners of dispensaries must submit to criminal and employment background checks, pay for a permit and business license, and are prohibited from operating near schools

POT CLUBS

S.F. to regulate resident smokers

BY LISA LEFF
ASSOCIATED PRESS

SAN FRANCISCO — San Francisco supervisors voted unanimously Tuesday to adopt regulations governing medical marijuana clubs after allegations of abuse at several of the city's 35 facilities.

The proposed rules, crafted with input from Mayor Gavin Newsom, require pot dispensary operators to apply for permits that include criminal and employment background checks. Club owners would have to pay \$6,610 for a permit along with \$3,100 for a business license.

The regulations also would govern where and how the clubs could do business, prohibiting them from opening in industrial or residential areas. The zoning guidelines would prevent dispensaries from operating within 500 feet of schools or within 1,000 feet if pot-smoking is allowed on the premises.

The crackdown came as elected officials in this liberal city grappled with how to balance their compassion for patients who smoke pot to ease pain with the logistical realities of an unregulated industry that deals in a federally illegal product. Until now, the dispensaries have operated without government oversight.

Noise, traffic and odor complaints from neighborhood groups, along with the realization last spring that a pot dispensary was getting to open in a city-operated residential hotel for substance abusers, led the mayor and Supervisor Ross Mirkarimi to step in.

"There is always a fine line — do you restrict or just allow — and we erred on the side of allowing," Newsom said. "We said to the clubs, 'Do what you do and do it appropriate-



Associated Press

Tom Tricarico, right, smokes cannabis for medicinal purposes Tuesday at the San Francisco Patients Co-op in San Francisco. Supervisors voted unanimously Tuesday to adopt regulations governing medical marijuana clubs after allegations of abuse at several of the city's 35 facilities.

ly,' but they got a little out of control."

California is one of 10 states where medical marijuana is legal. Under the Compassionate Use Act approved by voters in 1996, people with a doctor's recommendation are supposed to be able to smoke pot without fear of state or local prosecution.

In June, however, the U.S. Supreme Court ruled that medical marijuana patients could be prosecuted for illegal pot possession under federal law, regardless of state ordinances.

The San Francisco permits will include a bold-faced disclaimer: "Issuance of this permit by the City and County of San Francisco is not intended to and does not authorize the violation of state or federal laws."

When the city started crafting the regulations last spring, San Francisco was home to an estimated 40 dispensaries, far more than any other California city. Since

the state's voters adopted the act in 1996, the San Francisco Department of Public Health has issued identification cards to nearly 8,000 people who claimed they needed the drug to ease symptoms for afflictions ranging from AIDS to arthritis.

Mirkarimi, a member of the Green Party, said his goal in crafting the new rules was to make sure that irresponsible clubs did not jeopardize the rights of patients or invite federal drug agents to shut down dispensaries that operated legitimately. Officials estimated that the zoning rules and fees would probably force a handful of clubs out of business.

"There have been days when I would have been OK not being the front man trying to push this, but what caused me not to abort the process was I couldn't allow neglect or indifference threaten the very gains the medical marijuana movement has made," he said.

Under the new rules, clubs

that were operating as of April 1, when the city imposed a moratorium on new clubs, would have 18 months to obtain a permit. Their applications then would have to be approved by the city's planning director with input from the police on the adequacy of proposed security measures and the backgrounds of the people running the clubs.

Kris Hermes, legal director for the medical marijuana advocacy group Americans for Safe Access, said after the vote that most patients and dispensary owners were generally pleased with San Francisco's regulations and regard them as a stamp of approval from the city.



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document on file in this office.

Naig Ros
SEAL
City Clerk
City of Concord, California

Concord Police Department

Date: August 29, 2005

To: Mayor and Council Members

From: David Livingston, Chief of Police

Subject: *Medical Marijuana Dispensaries – Potential Secondary Impacts*

The purpose of this memorandum is to provide a summary of additional background information regarding the proposed ordinance which would prohibit the establishment of medical marijuana dispensaries within the City of Concord. Police Department staff believes it is important to identify some of the potential secondary effects on public safety by the operation of marijuana dispensaries.

In researching this issue, Captain Crain reviewed a memorandum from Rocklin Police Chief Mark Siemens dated July 13, 2004, which addressed the secondary effects as observed by Rocklin police staff. The memorandum was in reference to pending consideration by the Rocklin City Council of a proposed ordinance to regulate the establishment of medical marijuana dispensaries in the City of Rocklin. In his memorandum, Chief Siemens addressed a variety of community safety concerns that had been expressed by a number of agencies throughout Northern California. While the City of Rocklin had no experience with dispensaries, other nearby communities did. The agencies he polled were Roseville, Oakland, Hayward and Fairfax police departments as well as the Lake County Sheriff's Office. All five agencies expressed similar concerns or experiences. Those concerns included, but were not limited to:

- Street level dealers attempting to sell to people entering the business
- Smoking of marijuana in public areas
- Increased "driving while under the influence of marijuana" violations
- Attempted burglaries of marijuana establishments
- Robberies of clients as they left businesses with their purchase
- Adverse impact on neighboring businesses
- Presence of a physician on the premises issuing prescriptions for use, which drew numerous people from out of the area
- Lack of effort on the part of dispensary owners/employees to control unlawful or nuisance behavior in and around the business
- Increased loitering and associated nuisances
- Complaints that other illegal drugs were sold from the dispensaries

- Trading of marijuana purchased at a dispensary to a minor for sex
- Purchasers congregating and smoking marijuana in areas frequented by children
- Sales of marijuana to persons not holding the appropriate certificate

The representatives of each of the agencies polled by Chief Siemens expressed regret that the dispensaries existed in their respective communities. Each was struggling with the immediate impacts and developing a method by which to regulate such businesses.

DISCUSSION

There are two medical marijuana dispensaries currently operating in the City of Concord. One is located at 2155 Colfax Street, and the other is located at 1120 Contra Costa Blvd. While the Police Department has no record of any complaints related to the business on Colfax Street, the department has responded to a citizen's complaint regarding activity associated with the business on Contra Costa Blvd.

That complaint was referred to the Police Department by the City Attorney's Office, on July 26, 2005. A representative of a neighboring business called to report that a "bad element" was loitering near the dispensary and "harassing" female customers of the complaining business. Officer Ken Carlson investigated the complaint and found no such activity at the time of his contact; however, Officer Carlson has continued to monitor the activity near the dispensary and is prepared to take the appropriate action against any criminal violations or nuisance issues.

While the City of Concord has responded to only the one complaint to date, it is likely that the city would experience an increase in complaints similar to those reported by the agencies referenced in this memorandum if additional dispensaries were authorized. The chance of such activity will also likely increase as word spreads about the existence of the two dispensaries currently operating in the City of Concord.

In addition to facts provided in Chief Siemens' memorandum, there have been two recent events of particular note in our region. The first incident was a recent robbery of a dispensary and homicide in unincorporated San Leandro and the second was a revocation of operating authorization for a dispensary by the City of Modesto.

San Leandro – Unincorporated Area

On August 19, 2005, a number of subjects concealed themselves near the entrance to the facility prior to the opening of the business. The subjects then confronted arriving employees at gunpoint and forced them into the building where they committed a "take over" robbery of marijuana and cash. An employee retrieved a firearm that was kept at the business for protection and exchanged gunfire with the robbers. One of the suspected robbers later died from wounds received in the shootout.

A representative of the Alameda County Sheriff's Office advised Concord staff that not unlike Concord's experience, the Sheriff's Office had also received very few complaints relative to the operation of the medical marijuana dispensaries in the unincorporated area. In fact, most criminal investigations did not involve the actual operation of the dispensary but instead the robberies of individuals after they left the facility. The victims were targeted for the marijuana they had just purchased.

In July of 2005, the Alameda County Board of Supervisors passed an ordinance regulating the existence of medical marijuana dispensaries. The ordinance calls for a three-part, comprehensive inspection. First, the Sheriff's Office is also now authorized to conduct thorough background investigations on all dispensary operators. The other two components are a facility inspection by the County Health Department and a code inspection by the County Building Department. Alameda County limits the number of dispensaries to a total of three in the unincorporated area, based on total population of those areas.

City of Modesto

The City of Modesto had adopted an ordinance that allowed marijuana dispensaries but required regulation of those dispensaries. Their ordinance also included provisions for the revocation of a previously issued permit, however, there was very little enforcement. The ordinance was vaguely written allowing a dispensary to open as long as the owner/operator complied with some very general provisions. In fact, two dispensaries set up operation without knowledge of the Police Department and with no real description of the true purpose of the businesses. One of the two eventually ceased doing business in the city.

The city began to reexamine its ordinance and the City Council ultimately enacted an emergency ordinance placing a moratorium on all such operations. The city then used the time period of the moratorium to proceed with a full prohibition on such businesses. The one remaining marijuana dispensary was granted a grace period in which to prepare for permanent closure. A Modesto Police Department representative reported that other than the potential for secondary public safety impacts, there were no issues of concern relative to either of the dispensaries. The actions by the City Council to enact a prohibition against such establishments were prompted by the June 6, 2005, U.S. Supreme Court decision in *Gonzales v. Raich*.

The Concord Police Department joins in the recommendation that the City Council enact an ordinance prohibiting medical marijuana dispensaries within the City of Concord.

cc. Lydia Du Borg, City Manager
Craig Labadie, City Attorney



send to a friend

From The Administrator
Marijuana: The Myths Are Killing Us

By Karen P. Tandy, Administrator, U.S. Drug Enforcement Administration,
Washington, D.C., and Chair, IACPNarcotics and Dangerous Drugs Committee

I certify that this is a true copy of
a document on file in this office.
SEAL
Mayka
City Clerk
City of Concord, California



Karen P. Tandy, Administrator, U.S. Drug Enforcement Administration

When 14-year-old Irma Perez of Belmont, California, took a single ecstasy pill one evening last April, she had no idea she would become one of the 26,000 people who die every year from drugs.¹ Irma took ecstasy with two of her 14-year-old friends in her home. Soon after taking the tiny blue pill, Irma complained of feeling awful and said she felt like she was "going to die." Instead of seeking medical care, her friends called the 17-year-old dealer who supplied the pills and asked for advice. The friends tried to get Irma to smoke marijuana, but when she couldn't because she was vomiting and lapsing into a coma, they stuffed marijuana leaves into her mouth because, according to news sources, "they knew that drug is sometimes used to treat cancer patients."²

Irma Perez died from taking ecstasy, but compounding that tragedy was the deadly decision to use marijuana to "treat" her instead of making what could have been a lifesaving call to 911. Irma was a victim of our society's stunning misinformation about marijuana—a society that has come to believe that marijuana use is not only an individual's free choice but also is good medicine, a cure-all for a variety of ills. A recent poll showed that nearly three-fourths of Americans over the age of 45 support legalizing marijuana for medical use.³

It's a belief that has filtered down to many of our teens, if what I'm hearing during my visits with middle school and high school students across the country is true. I'm amazed at how well versed in drug legalization these teens are. It is as if legalization advocates stood outside their schools handing out their leaflets of lies. Here is what students have told me about marijuana: "It's natural because it grows in the ground, so it must be good for you." "It must be medicine, because it makes me feel better." "Since everybody says it's medicine, it is."

Legalization advocates themselves have alluded to the fact that so-called medical marijuana is a way of achieving wholesale drug legalization. A few years ago, the New York Times interviewed Ethan Nadelmann, director of the Lindesmith Center, a drug policy research center. Responding to criticism that the so-called medical marijuana issue is a stalking horse for drug legalization, Mr. Nadelmann did not disagree. "Will it help lead toward marijuana legalization?" he asked. "I hope so."⁴

The issue of marijuana as medicine has captured the nation's attention and has now made its way to the U. S. Supreme Court, with Ashcroft v. Raich still pending.⁵ The natural extension of this myth is that, if marijuana is medicine, it must also be safe

for recreational use. This pervasive mindset has even reached our courts. In January 2005, for example, Governor Frank Murkowski of Alaska had to ask the legislature "to overrule a court ruling that adult Alaskans have the right to possess marijuana for personal use in their homes."⁶ There was no pretense of medical use in this ruling; it gave Alaskans the legal right to smoke marijuana for any reason, lending credence to the belief that marijuana is not only safe to treat serious illness but somehow safe for general use and for all society.

What is the antidote? Spreading the truth. As a prominent spokesperson in your community, you have the opportunity and, I would argue, the responsibility to inform your neighbors. America is not suffering from anything that the truth can't cure. To help you set the record straight, this article seeks to rebut the rhetoric and recap the reality.

Myth: Marijuana is medicine.

Reality: Smoked marijuana is not medicine.

The scientific and medical communities have determined that smoked marijuana is a health danger, not a cure. There is no medical evidence that smoking marijuana helps patients. In fact, the Food and Drug Administration (FDA) has approved no medications that are smoked, primarily because smoking is a poor way to deliver medicine. Morphine, for example has proven to be a medically valuable drug, but the FDA does not endorse smoking opium or heroin.

Congress enacted laws against marijuana in 1970 based in part on its conclusion that marijuana has no scientifically proven medical value, which the U.S. Supreme Court affirmed more than 30 years later in *United States v. Oakland Cannabis Buyers' Cooperative, et al.*, 532 U.S. 483 (2001). Marijuana remains in schedule 1 of the Controlled Substances Act because it has a high potential for abuse, a lack of accepted safety for use under medical supervision, and no currently accepted medical value.⁷

The American Medical Association has rejected pleas to endorse marijuana as medicine, and instead urged that marijuana remain a prohibited schedule 1 drug at least until the results of controlled studies are in.⁸ The National Multiple Sclerosis Society stated that studies done to date "have not provided convincing evidence that marijuana benefits people with MS" and does not recommend it as a treatment.⁹ Further, the MS Society states that for people with MS "long-term use of marijuana may be associated with significant serious side effects."¹⁰

The British Medical Association has taken a similar position, voicing "extreme concern" that downgrading the criminal status of marijuana would "mislead" the public into thinking that the drug is safe to use when, "in fact, it has been linked to greater risk of heart disease, lung cancer, bronchitis, and emphysema."¹¹

In 1999 the Institute of Medicine (IOM) undertook a landmark study reviewing the alleged medical properties of marijuana. Advocates of so-called medical marijuana frequently tout this study, but the study's findings decisively undercut their arguments. In truth, the IOM explicitly found that marijuana is not medicine and expressed concern about patients' smoking it because smoking is a harmful drug-delivery system. The IOM further found that there was no scientific evidence that smoked marijuana had medical value, even for the chronically ill, and concluded that "there is little future in smoked marijuana as a medically approved medication."¹² In fact, the researchers who conducted the study could find no medical value to marijuana for virtually any ailment they examined, including the treatment of wasting syndrome in AIDS patients, movement disorders such as Parkinson's disease and epilepsy, or glaucoma.

The IOM found that THC¹³ (the primary psychoactive ingredient in marijuana) in smoked marijuana provides only temporary relief from intraocular pressure (IOP) associated with glaucoma and would have to be smoked eight to 10 times a day to achieve consistent results. And there exists another treatment for IOP, as the

availability of medically approved once- or twice-a-day eye drops makes IOP control a reality for many patients and provides round-the-clock IOP reduction.¹⁴ For two other conditions, nausea and pain, the report recommended against marijuana use, while suggesting further research in limited circumstances for THC but not smoked marijuana.¹⁵

Before any drug can be marketed in the United States, it must undergo rigorous scientific scrutiny and clinical evaluation overseen by the FDA. For example, the FDA has approved Marinol (dronabinol)-a safe capsule form of synthetic THC that meets the standard of accepted medicine and has the same properties as cultivated marijuana without the high- for the treatment of nausea and vomiting associated with cancer chemotherapy and for the treatment of wasting syndrome in AIDS patients.

The federal government has approved and continues to approve research into the possible use of marijuana as medicine and any new delivery systems of marijuana's active ingredients. To quote U.S. Supreme Court Justice Stephen Breyer's remarks during the November 2004 Raich oral argument, "Medicine by regulation is better than medicine by referendum."¹⁶ Proving that the regulatory process does work, DEA has registered every researcher who meets FDA standards to use marijuana in scientific studies. Since 2000, for example, the California-based Center for Medicinal Cannabis Research (CMCR) has gained approval for 14 trials using smoked marijuana in human beings and three trials in laboratory and animal models.¹⁷ This CMCR research is the first effort to study the medical efficacy of marijuana. But researchers have not endorsed smoking marijuana and instead are attempting to isolate marijuana's active ingredients to develop alternative delivery systems to smoking.¹⁸ Not one of these researchers has found scientific proof that smoked marijuana is medicine.¹⁹

Myth: Legalization of marijuana in other countries has been a success.

Reality: Liberalization of drug laws in other countries has often resulted in higher use of dangerous drugs.

Over the past decade, drug policy in some foreign countries, particularly those in Europe, has gone through some dramatic changes toward greater liberalization with failed results. Consider the experience of the Netherlands, where the government reconsidered its legalization measures in light of that country's experience. After marijuana use became legal, consumption nearly tripled among 18- to 20-year-olds. As awareness of the harm of marijuana grew, the number of cannabis coffeehouses in the Netherlands decreased 36 percent in six years. Almost all Dutch towns have a cannabis policy, and 73 percent of them have a no-tolerance policy toward the coffeehouses.²⁰

In 1987 Swiss officials permitted drug use and sales in a Zurich park, which was soon dubbed Needle Park, and Switzerland became a magnet for drug users the world over. Within five years, the number of regular drug users at the park had reportedly swelled from a few hundred to 20,000. The area around the park became crime-ridden to the point that the park had to be shut down and the experiment terminated.²¹

Marijuana use by Canadian teenagers is at a 25-year peak in the wake of an aggressive decriminalization movement. At the very time a decriminalization bill was before the House of Commons, the Canadian government released a report showing that marijuana smoking among teens is "at levels that we haven't seen since the late '70s when rates reached their peak."²² After a large decline in the 1980s, marijuana use among teens increased during the 1990s, as young people apparently became "confused about the state of federal pot laws."²³

Myth: Marijuana is harmless.

Reality: Marijuana is dangerous to the user.

Use of marijuana has adverse health, safety, social, academic, economic, and behavioral consequences; and children are the most vulnerable to its damaging effects. Marijuana is the most widely used illicit drug in America²⁴ and is readily available to kids.²⁵ Compounding the problem is that the marijuana of today is not the marijuana of the baby boomers 30 years ago. Average THC levels rose from less than 1 percent in the mid-1970s to more than 8 percent in 2004.²⁶ And the potency of B.C. Bud, a popular type of marijuana cultivated in British Columbia, Canada, is roughly twice the national average—ranging from 15 percent THC content to 20 percent or even higher.²⁷

Marijuana use can lead to dependence and abuse. Marijuana was the second most common illicit drug responsible for drug treatment admissions in 2002—outdistancing crack cocaine, the next most prevalent cause.²⁸ Shocking to many is that more teens are in treatment each year for marijuana dependence than for alcohol and all other illegal drugs combined.²⁹ This is a trend that has been increasing for more than a decade: in 2002, 64 percent of adolescent treatment admissions reported marijuana as their primary substance of abuse, compared to 23 percent in 1992.³⁰

Marijuana is a gateway drug. In drug law enforcement, rarely do we meet heroin or cocaine addicts who did not start their drug use with marijuana. Scientific studies bear out our anecdotal findings. For example, the Journal of the American Medical Association reported, based on a study of 300 sets of twins, that marijuana-using twins were four times more likely than their siblings to use cocaine and crack cocaine, and five times more likely to use hallucinogens such as LSD.³¹ Furthermore, the younger a person is when he or she first uses marijuana, the more likely that person is to use cocaine and heroin and become drug-dependent as an adult. One study found that 62 percent of the adults who first tried marijuana before they were 15 were likely to go on to use cocaine. In contrast, only 1 percent or less of adults who never tried marijuana used heroin or cocaine.³²

Smoking marijuana can cause significant health problems. Marijuana contains more than 400 chemicals, of which 60 are cannabinoids.³³ Smoking a marijuana cigarette deposits about three to five times more tar into the lungs than one filtered tobacco cigarette.³⁴ Consequently, regular marijuana smokers suffer from many of the same health problems as tobacco smokers, such as chronic coughing and wheezing, chest colds, and chronic bronchitis.³⁵ In fact, studies show that smoking three to four joints per day causes at least as much harm to the respiratory system as smoking a full pack of cigarettes every day.³⁶ Marijuana smoke also contains 50 to 70 percent more carcinogenic hydrocarbons than tobacco smoke and produces high levels of an enzyme that converts certain hydrocarbons into malignant cells.³⁷

In addition, smoking marijuana can lead to increased anxiety, panic attacks, depression, social withdrawal, and other mental health problems, particularly for teens.³⁸ Research shows that kids aged 12 to 17 who smoke marijuana weekly are three times more likely than nonusers to have suicidal thoughts.³⁹ Marijuana use also can cause cognitive impairment, to include such short-term effects as distorted perception, memory loss, and trouble with thinking and problem solving. Students with an average grade of D or below were found to be more than four times as likely to have used marijuana in the past year as youths who reported an average grade of A.⁴⁰ For young people, whose brains are still developing, these effects are particularly problematic and jeopardize their ability to achieve their full potential.⁴¹

Myth: Smoking marijuana harms the smokers.

Reality: Marijuana use harms nonusers.

We need to put to rest the thought that there is such a thing as a lone drug user, a person whose habits affect only himself or herself. Drug use, including marijuana use, is not a victimless crime. Some in your communities may resist involvement because they think someone else's drug use is not hurting them. But this kind of not-

my-problem thinking is tragically misguided. Ask those same people about secondhand smoke from cigarettes, and they'll quickly acknowledge the harm that befalls nonsmokers. Secondhand smoke is a well-known problem, one that Americans are becoming more unwilling to bear. We need to apply the same common-sense thinking to the even more pernicious secondhand effects of drug use.

Take for instance the disastrous effects of marijuana smoking on driving. As the National Highway Traffic Safety Administration (NHTSA) noted, "Epidemiology data from . . . traffic arrests and fatalities indicate that after alcohol, marijuana is the most frequently detected psychoactive substance among driving populations."⁴² Marijuana causes drivers to experience decreased car handling performance, increased reaction times, distorted time and distance estimation, sleepiness, impaired motor skills, and lack of concentration.⁴³

The extent of the problem of marijuana-impaired driving is startling. One in six (or 600,000) high school students drive under the influence of marijuana, almost as many as drive under the influence of alcohol, according to estimates released in September 2003 by the Office of National Drug Control Policy (ONDCP).⁴⁴ A study of motorists pulled over for reckless driving showed that, among those who were not impaired by alcohol, 45 percent tested positive for marijuana.⁴⁵

For those of you who patrol streets and highways, you know that the consequences of marijuana-impaired driving can be tragic. For example, four children and their van driver-nicknamed Smokey by the children for his regular marijuana smoking-died in April 2002 when a Tippy Toes Learning Academy van veered off a freeway and hit a concrete bridge abutment. He was found at the crash scene with marijuana in his pocket.⁴⁶

Some such drug-impaired drivers will be detected through the Drug Recognition Expert program, which operates under the direction of the IACP and is supported by NHTSA.⁴⁷ However, if we are to bolster cases against drugged drivers, greater protection for innocents on the road requires the development of affordable roadside drug detection tests, and some are in the testing phase now.

Secondhand smoke from marijuana kills other innocents as well. Last year, two Philadelphia firefighters were killed when they responded to a residential fire stemming from an indoor marijuana grow.⁴⁸ In New York City, an eight-year-old boy, Deasean Hill, was killed by a stray bullet just steps from his Brooklyn home after a drug dealer sold a dime bag of marijuana on another dealer's turf.⁴⁹

Chief: Help Spread the Truth about Marijuana

Debunking these myths and arming our young people and their parents with the facts do work. We have proof. It came in the form of good news from the Monitoring the Future survey that reveals that marijuana use has dropped 36 percent among eighth graders since 1996, and modestly declined among 10th and 12th graders.⁵⁰ It is no coincidence that while marijuana use declined, the proportion of students perceiving marijuana use as dangerous increased.⁵¹ "Quite possibly, the media campaign aimed at marijuana use that has been undertaken by ONDCP, in collaboration with the Partnership for a Drug Free America, has been having its intended effect," University of Michigan researcher Lloyd Johnston, the study's principal investigator, said.⁵² Research also shows that parental disapproval can prevent teen drug use. Most young people (89 percent) reported that their parents strongly disapprove of their trying marijuana. Among these youths, only 5 percent had used marijuana in the past month.⁵³

Spread the truth. Join with your community leaders. Clear the smokescreen by educating the children, parents, teachers, physicians, and legislators in your community before the myths kill any more Irma Perezes or Deasean Hills. ■

¹ Centers for Disease Control and Prevention, "Deaths: Final Data for 2002," National Vital Statistics Reports, vol. 53, no. 5: 11.

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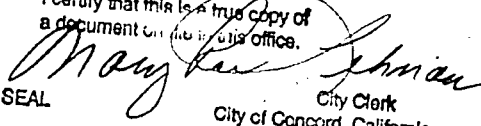
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Pot Club Closes Following Robbery

Posted by CN Staff on June 14, 2002 at 16:06:30 PT
By David Scharfenberg, Daily Planet Staff
Source: Berkeley Daily Planet

I certify that this is a true copy of
a document on file in this office.

SEAL City Clerk
City of Concord, California

The University Avenue medicinal marijuana club that was robbed last week for the third time in a year closed its doors permanently Tuesday. "We wanted to make sure that we weren't putting patients at risk, and we wanted to keep neighbors safe," said Berkeley Medical Herbs office manager Dorrit Geshuri.



The club, which has attracted a spate of negative publicity with the robberies, was closed also because the club wanted to protect the medicinal marijuana movement and the other four pot clubs in town, Geshuri said.

The financial losses incurred in the robberies did not play a role in the closure, she said.

"I think it's a responsible decision," said City Councilmember Linda Maio, who had vowed to shut down Medical Herbs after last week's robbery.

The heist took place Wednesday afternoon when two Latino men said they knew owner Ken Estes then forced their way into the club, brandishing a gun and a knife.

The robbers told everyone to lie on the ground and made off with about \$1,500 in cash and over a pound of marijuana, valued at \$3,500.

After a December robbery, neighbors and city officials raised concerns about security on site and the safety of residents. The club responded by shortening its hours of operation, hiring a licensed security guard and installing cameras, among other measures.

The club was considering additional measures, Geshuri said, when the June 5 robbery occurred.

The Medical Herbs ownership announced the closure in a weekly meeting of the Alliance of Berkeley Patients, an umbrella group for the dispensaries in town.

Don Duncan, who operates Berkeley Patients Group, another marijuana club, welcomed the decision.

"I think in this instance, it's for the best," he said, noting that he would normally be upset with the move because there is "safety in numbers" for a movement under constant political pressure.

Duncan said he is pleased that the Medical Herbs management is committed to putting patients in touch with other clubs.

"The patients will be taken care of," he said. "That's great."

"I am so grateful that the management of that group has decided to shut its doors," said City Councilmember Dona Spring. "Public safety comes first."

Spring argued that the decision will serve the medicinal marijuana movement in Berkeley. By pre-empting new robberies, she said, the closure will help prevent neighbors of other clubs from becoming overly concerned.

"My reaction is one of relief," added Mayor Shirley Dean. "I think it was a good decision on their part, a responsible decision."

Several neighbors made efforts to close down the club in the wake of the robberies. But Geshuri said most have been supportive.

Stan Eby, who manages a number of apartments on University Avenue, said a drug store and meat market that used to be in the neighborhood were robbed far more often than the pot club. He said he was sad to see Medical Herbs go.

"It's a shame that it's closing up," he said. "We need clubs like that."

Geshuri said the management of Medical Herbs may re-open as a "juice bar and herbal medicine establishment." The new store would not sell marijuana, she said.

Note: Club aims to protect public, patients and marijuana as medicine.

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Reefer gladness

Like a cloud of second hand smoke, California's medical marijuana legislation has been looming over the Central Coast since 1996. The storm finally broke over Morro Bay.

BY ALICE MOSS

No one laughed when Central Coast Compassionate Caregivers opened on April Fool's Day. But of course, it wasn't a joke. People are serious about their right to use medical marijuana, and with the opening of SLO County's first and only city-sanctioned cannabis dispensary, Morro Bay City Officials have unequivocally stated that they're not playing around. Yes, this is the same dispensary that was run out of Atascadero in February, shortly after owner Charles C. Lynch opened up shop there. This time, though, CCCC is being welcomed with (mostly) open arms. Is this a medical triumph or a terrible mistake? Some people may already have their minds made up about this, but it looks like the rest of us will just have to wait and see.

Lynch, for one, seems elated if a little exhausted. But then, it's been only six days since CCCC reopened and he might still be getting used to the idea of actually being in business again. He wasn't open a month the first time before a judge ordered him to shut down until further notice. Even though Atascadero's moratorium banning dispensaries had already expired, it came to city officials' attention that the business license they issued Lynch was for a "health service provider"

which didn't exactly apply to medical marijuana. They needed time to figure out what, exactly, they were supposed to do with him. But closing down meant Lynch had to cut his patients off — more than 300 in just the first three weeks of business — from the county's only public supply of medical cannabis. So rather than wait for Atascadero to make up its mind, he packed up his goods and moved west to Morro Bay, where there was another expired moratorium and a willingness by government officials to give pot a chance. Lynch, a polite, soft-spoken man with thinning red hair and a lilt to his voice that hints at his southwestern roots, doesn't care to discuss what happened in Atascadero, saying simply that he's trying to put the past behind him. Then he proudly shows off his new business license, hanging high in the small foyer of his Monterey Street store. "This is the first one in the county that says medical marijuana dispensary," he says, smiling in disbelief.

Some Morro Bay residents were shocked to first find about CCCC's move in the local news, saying the city never warned them about an impending dispensary. In response to these complaints, Mayor Janice Peters suggests people should start paying more attention to what goes on at City Council meetings. She says that before Lynch ever arrived, she and the other city planners had started laying down the groundwork for allowing medical marijuana within city limits

"About four or five months ago, our moratorium expired and by then we had pretty much decided that legitimate use in the city was reasonable," she explains. Then CCCC was shut down in Atascadero. "We knew we'd be the next target." Sure enough, Lynch came to the city with a request to open up in Morro Bay. Peters admits that she'd hoped to have more time to establish clearer parameters, primarily to control the future growth of dispensaries. But she also believes that she and her council members, many whom she has known people who benefited from medical cannabis, made the right decision. "We wanted to give it a chance," she says. "I only hope our community gives it that same chance."

The community, to be sure, is torn over the issue. While the general consensus seems to be that medical marijuana should be made available to the people who need it, there is some concern that a storefront dispensary might be going a bit too far. Worries range from an increase in traffic to the area, to heightened criminal activity and, because Morro Bay has yet to establish any limits on dispensaries, the possibility that pot clubs will soon be popping up all over town. Though an uncontrollable explosion of dispensaries is highly unlikely, City Attorney Rob Schnitz says the zoning restrictions alone make it extremely difficult to open such a business; problems related to dispen-

saries in parts of the Bay Area and San Diego suggest that these fears aren't completely unfounded.

Lynch appears to be making every effort to ensure that his dispensary doesn't cause any problems, and neighbors so far seem to have only praise for his outgoing thoughtfulness and courtesy. He even installed special fans and an air purification system when the folks downstairs at Fidelity National Trust complained of the constant smell of marijuana wafting into their office. Even so, Fidelity's Assistant Vice President Liz Childres is having a hard time accepting that there's a pot dispensary right next door. Though she considers herself an advocate for medical marijuana — "I voted for Prop. 215," she says — she's concerned about the negative impact a publicly recognized dispensary might have on the city's image. She would hate to see that affect tourism, an industry she relies on in her line of work. There's also issue of illegal activities taking place in the area, which is why she has arranged to have a security system installed in her office — even though Lynch has, one of his own, complete with surveillance cameras and motion-sensitive alarms.

Childres also worries about drug abuse. She estimates that about half of the "patients" she's seen walk into CCCC seem to be in fine health and don't appear to be in any real need of marijuana. "The older people look sick," she insists; they use games and walkers. The young people end up

"We wanted to give it a chance. I only hope our community gives it that same chance."

— MB Mayor Janice Peters

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on their skateboards. They look perfectly healthy." But the truth is, doctors recommend marijuana to treat a variety of ailments, not all of them obvious to the casual observer. These include, but aren't limited to, glaucoma, asthma, epilepsy, depression, nausea, chronic pain, and even drug addiction. And in accordance with the law, Lynch requires all of his patients to present a doctor's recommendation before they can enter the dispensary (because marijuana is a federally banned substance, it can't technically be prescribed), which is then verified by a receptionist before they can ever get close to the marijuana. Still, Childers thinks there's got to be a more reasonable way to deal with this. "I don't know why they can't all just take Marinol," she says, referring to the FDA-approved marijuana alternative. "The pharmacies should be handling this anyway."

But marijuana dispensaries have also proved to be responsible, if unorthodox, businesses in other communities. At the Compassionate Center of Santa Barbara, a dispensary that opened in 1999, owner Patrick Fourmy says that he has never had any problems with the authorities. Furthermore, he thinks it's ridiculous to worry that a cannabis dispensary will cause mayhem. On the contrary, he claims, properly run dispensaries can actually reduce criminal activity by providing patients with a respectable and legal place to get their doctor-approved medicine. The key, however, is for dispensary owners, their patients, local physicians, and especially the authorities to work together willingly and, sometimes, creatively. Local law enforcement seems to be prepared to give it a try, even though their duties place them directly at odds with the dispensary's practices. Morro Bay Police Chief John De Rohan is taking his lead from other cities' agencies that are currently dealing with the medical marijuana issue. The stance seems to be, if there aren't any problems, then there's no reason to get involved. Still, he says, what he'd really like is for something concrete to help him figure out this la-la-lawlessness.

On the wall next to his business license, Lynch, as required, has posted the list of conditions he agreed to when the city granted him the license. No one employed by the dispensary may be a convicted felon. No one under 18 is allowed without

The battle of the bud

BY PATRICK M. KLEMM

It was like trying to open a marijuana dispensary in Mariposa County, Lou Koory, Charles C. Lynch's San Luis Obispo-based attorney, quipped of CCCC's former home in conservative Atascadero. "This is just a much better location in every sense. It just feels right here."

In simple geographic terms, the move to Morro Bay appears a brief haul—little more than 17 miles of pleasant, winding mountain road separate the two Central Coast towns. Yet, in an ideological sense, the dispensary cut a swath across San Luis Obispo County, illuminating a stark contrast in the moral and rhetorical climates surrounding the rediscovered reality of medicinal legalization. But more than that, what Lynch and his coalition of medical marijuana users discovered in this transition was a logistical paradox of legislation on CCCC's crossing and frequently contradicting state and federal laws making the true legality of Nurse Mary Jane more a matter of opinion than the letter of the law.

Of course, Washington's position on how to approach a medical marijuana dispensary from an enforcement angle is clear — "bring 'em down." However, in Sacramento, a statement released last year by California Attorney General Bill Lockyer coaxed in a not-so-direct directive: police to enforce the state law. Striking a balance in areas where medical marijuana storefronts prove more common, like in neighboring Santa Barbara

County, law enforcement tends to take its cues almost primarily from the local government. But this practice offers little clarity as the political microclimates surrounding the issue continue to spur drastically different legal standards, even within individual counties. The result is a general sense of confusion, particularly among departments freshly exposed to this new breed of establishment, with the metaphorical buck stopping somewhere between local DEA office and Never-Never Land.

"There's no clear direction for law enforcement to handle this," Morro Bay Chief of Police John de Rohan said. "Hopefully somebody will make a decision. Until then, it's a big, conflicting mess."

More than one legal expert approached by the *New Times* stated the flexibility of State Senate Bill 420 — an update to Prop 215 designed specifically to protect dispensaries — tends to promote a trend of creative management. With their options wide open, some cities adopt and perpetually renew temporary moratoriums (San Luis Obispo, Grover Beach), others dig up justification for outright bans (Pismo Beach), and still others draft what dispensary owners call de facto bans — ordinances reportedly so restrictive they make it impossible for co-ops to operate. Koory and Lynch believe this to be the case in Atascadero, where the city council approved a measure last Tuesday putting strict limitations on any primary caregiver looking to take center stage as the town's

one and only marijuana dispensary. According to the ordinance, an applicant must establish the storefront at least 1,000 feet away from any school, church or park — a restriction more austere than any Central Coast city places on convicted sex offenders, save Paso Robles. But before reaching that stage, the prospective caregiver must first file with Atascadero Police Chief John Couch, who sets the terms for background investigation and can strike down the application at his discretion. Surprisingly, no applicants have yet come forward.

All of this begs the question: Where lies the source of all this legislative cross-fire? It appears a return to Battleground 10th Amendment, yet again.

All though semi-officially, not-legal-but-kind-of-legal in this state and ten others, to the federal government, marijuana still falls into the bin of Schedule I narcotics — those believed to elicit a high potential for abuse and possessing no medically-founded pharmaceutical value. In a landmark Supreme Court decision last June, justices sided with federal law enforcement agencies, upholding the constitutionality of raids and investigations conducted in the name of the 1970 Controlled Substances Act. The primary petitioner was Angel Raich, a 38-year-old medical marijuana patient in Oakland with a laundry list of health conditions. The court decided that, even though medical marijuana did not constitute an interstate trade, it still affected interstate commerce and deserved adequate federal attention. Needless to say, the indirect nature of the ruling churned up quite a bit of controversy.

"Americans like to put things in terms of war. They call it a war on drugs, but really it's a war on patients, a war on pro-

BUD BATTLE continued next page

a guardian. No consumption of cannabis on the premises. There are more conditions, and Lynch has even added a few of his own. Patients may not enter wearing hats or sunglasses, they may not consume cannabis within 100 feet of the dispensary, and they may not loiter outside the building. Signs everywhere remind patients to be considerate of the neighbors by stepping lightly and turning off their cell phones. A security guard greets visitors at the door and they must present their

doctor's recommendation and a California State ID in order to be lead upstairs by yet another security guard, who takes them to the reception area. It's there, in the sunlit room with large window that provides a peak at Morro Rock and the Bay, that patients undergo clearance and receive their CCCC photo ID card, the front of which bears the Seal of California adorned with cannabis leaves.

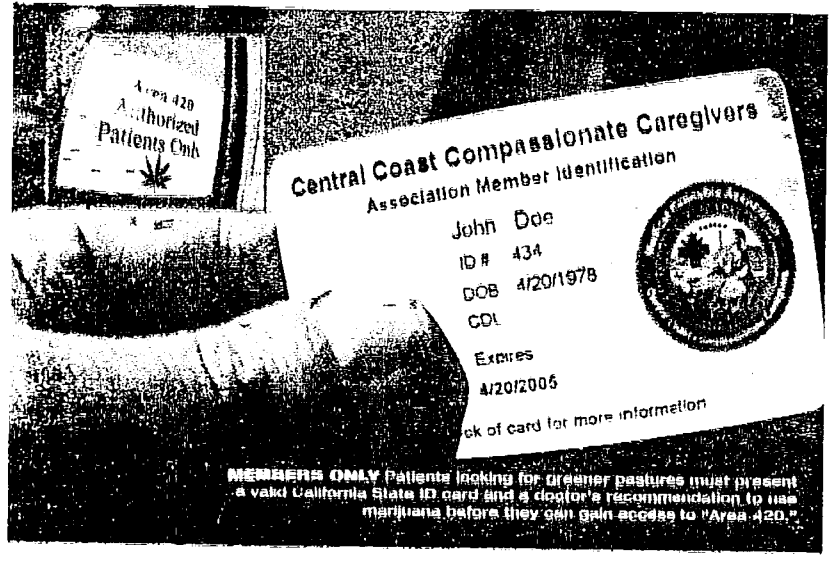
Of course, there are those people who think "medical marijuana" is just a euphemism for legalized pot, but patients who benefit from cannabis say they're not interested in legalizing the drug for recreational use. In fact, because pot is so potent, Lynch says he's more comfortable keeping marijuana under the "medical umbrella." He just wants to provide his patients safe and easy access to a something that gives them relief from their pain and discomfort, the same respect they would get if they were using conventional pharmaceuticals to treat their ailments.

Pat, who asked that only his first name be used for this story, lives in Paso Robles. He started using cannabis about five years ago to treat his

chronic back pain, seizures and anxiety. Prior to that, he says, he'd spent years trying "a truckload of pain pills. I took Vicodin, Norco, Somas, just about every pill there was. But after a while, they'd stop working and so I had to take more and more. Suddenly I was still in pain, and I was also addicted to pain killers." When a doctor suggested he try cannabis, Pat says he was desperate, and to his relief it worked. Hardly a miracle drug, he says marijuana doesn't take away all of his pain and he knows nothing can. But it makes his discomfort manageable, which is more than any of those pills did for him. Until CCCC opened, Pat, who isn't able to drive, had to get family members and friends to drive him as far as Oakland and Bakersfield to get his pot at medical dispensaries. The costly drive was so painful for him sometimes that on more than one occasion he had to hit the streets to score his medication. He had no way of knowing the quality of his purchase and worse yet, a lack of local, legal access to pot had forced him to break the law. "I want to stay above board with this," he says. "Having a dispensary in the area allows me to do that."

For those who might require a little more proof of healing powers of pot, consider this: The American Medical Association officially recognized the Fourth National Clinical Conference on Medical Marijuana, hosted by Santa Barbara City College earlier this month. At this fully accredited event, doctors, nurses, researchers, clinicians, patients, and advocates from all over the world gathered to discuss the established, debunked, and possible benefits of using marijuana as a medicine. Healthcare professionals even received official

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ple and a war on California." Koory said of the decision. "The federal government doesn't like its authority questioned."

In the wake of Raich vs. Ashcroft, opponents of medicinal legalization declared the end of the pharmaceutical pot debate — obviously, a false prognostication — and also dubbed the decision the ultimate justification for federal law enforcement to ignore state law. By and large, raids conducted by the DEA or local police in California tend to take place in urban areas and involve reports of widespread abuse. Officials with the California Narcotics Officers' Association (CNOA) said, in many areas of the state, local task forces are so consumed up in battling non-medical marijuana growing facilities that the ones allowed under 215 are largely ignored. Still, the thought of federal officers crashing through glass ceilings on zip cords remains plastered to the consciousness of dispensary owners.

"It's a definite concern," said Jim McGowen, operator of Bakersfield's American

Caregivers Association. "We make it a point to operate under certain guidelines but there's always the threat of federal harassment on the basis of federal laws."

The largest raid to occur in California took place Dec. 12, 2005 when DEA officers fanned across San Diego in a move against 13 area dispensaries. Because the investigation is still ongoing, DEA San Diego spokesman Dan Simmons would not comment on pending charges but called the action a "collection of evidence" and cited the Controlled Substances Act as justification. Though supplies of medical marijuana were taken as evidence, the only arrests made in the raid stemmed from active warrants and other offenses. According to Simmons, one man was taken in after arriving at the dispensary with a satchel of marijuana and a handgun — one of the two items violated local laws.

Unlike Morro Bay, San Diego city and county governments deferred regulation of marijuana dispensaries in protest of the SB-420 — a point made clear in a suit brought recently by the county

executives against the state. Thriving in this Petri dish of deregulation, dealerships continually opened up under the guise of medical dispensaries and sometimes, asserts CNOA Executive Director Bob Hussey, "changed the whole demographic of the area." In addition to angering many neighborhoods where the unbridled pot shops operate, these installations drew the ire of southern Californian dispensaries striving to operate on the straight and narrow.

"They're doing a great disservice to what we're trying to accomplish," vented Virgil Grant, owner of Holistic Caregivers of Compton. "You have these idiots who jump in for the wrong reason and it hurts the people who need this treatment as an alternative to synthetic drugs."

Yet, many local narcotics officers retain certain concerns even if dispensaries follow preset guidelines. Lt. Paul McCaffrey of the Santa Barbara Police Department — who described himself as neutral in the medical marijuana debate — lamented on the scarcity of record keeping at many dispensaries. "If someone broke into a pharmacy and stole Oxycontin, the pharmacist would have an obligation to the community to report it—he's in a position of moral trust," McCaffrey theorized. "Would you expect a marijuana dispensary to do the same?"

"Why would they?" Morro Bay City Attorney Rob Schultz rhetorically responded. Koory answered the claim by pointing out that SB-420 sets no requirements for record keeping and believes extensive paperwork could open the door to federal harassment of patients.

Whatever the case, Morro Bay city officials plan to take the matter in stride until results from San Luis Obispo County's first medical marijuana field test begin to trickle in. Meanwhile, the possibility of federal intervention quietly looms like storm clouds over the Pacific, a point of increasing worry to Lynch as his efforts garner greater regional attention. For now, the mild-mannered dispensary owner and his outspoken attorney continue to communicate with the local government, happy enough this batch of legal potpourri smells sweeter than the last.

Regardless, in the event fears of federal investigation actually turn to reality in Morro Bay, Schultz outlined the town's possible recourse in one word: "Nothing." Δ

Patrick M. Klemz can be reached at pklemz@newtimeslo.com

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credits for attending the conference, just as they would have if they'd attended a conference on heart disease.

"Area 420" lies just beyond a tropical beaded curtain, and it's in there that one faces the reality of medical cannabis as a serious player in SLO County. Green, sticky buds fill a huge glass display case, shelves filled with more than a dozen varieties, all with playful names like "Purple Power," "Lemon Drop," and "First Lady." It's easy to understand what the neighbors were talking about; the thick, musty smell of marijuana fills the air in the windowless room, giving the placebo effect of a contact high. A dry erase board notes the day's specials. All funniness aside, this is not a joke, and Brandon, a patient who also works at the dispensary, explains that each variety, grown from cloned plants, provides a distinctively different medicinal effect. Patients are encouraged to sniff small sample jars to get an idea of what they're choosing, and several reference books are available to answer any questions. Of course, he says, he's happy to offer advice, but there is usually a period of trial and error before patients find exactly what they're looking for. Their selection made, patients walk out of the dispensary with their purchase in hand along with a list of health and safety guidelines for marijuana usage. It certainly gives new meaning to the word drugstore.

Things are running smoothly right now for CCCC, but Lynch still has to prepare for a possible struggle with the feds, should they come knocking on his dispensary's door. With all social taboos he's had to break, and the many legal entanglements he continues to face, one has to ask the question: "Why?" After 15 years as a law-abiding member of the community and with a perfectly respectable job as a software designer — why would he want to stir up the community by opening a marijuana dispensary? Lynch, who uses marijuana to treat his migraine headaches, says he finally got tired of driving to other counties to get his medication. His voice cracks a little as he describes the first time he purchased cannabis in a recognized dispensary. "It was a relief, and as a patient who genuinely benefits from this drug, it was validating. He's doing this to give the people of SLO the same legitimate claim to their rights. I'm not a criminal," he says in a final effort to explain his position. "The law says this is allowed." Δ

Alice Moss is full of compassion. Pass your comments to the left at amoss@newtimeslo.com

Mari-what?

In addition to Congress, another government body possesses the authority to reschedule marijuana as a narcotic. If the Food and Drug Administration determined cannabis to offer any medicinal value, by definition, pot could no longer constitute a Schedule I substance. For 15 years after the Controlled Substances Act passed into law, scientists launched a barrage of studies tending to establish the efficacy of pot.

In 1985, the FDA approved a THC synthetic, under the trade name Marinol, designed primarily to relieve nausea symptoms resulting from chemotherapy and trigger appetite in AIDS patients. Although similar in their applications, dried marijuana contains a total of 80 cannabinoids, while Marinol just isolates the effect of one — THC. Proponents of medical marijuana call the pharmaceutical offering a meager substitute, claiming nausea patients simply regurgitate the pill in the 30-60 minutes it takes to dissolve.

Other objections surrounding Marinol include its hefty price, alleged ineffectiveness in some treatments where studies show marijuana proved effective and, of course, reported side effects. According to Dr. David Bearman, a Santa Barbara practitioner who both prescribes Marinol and issues recommendations for marijuana on a regular basis, patients taking the synthetic pill often complain of severe dysphoria (or, mental discomfort). It's an unfortunate effect of what recreational users might call "too much of a good thing" — the narcotic element of marijuana running amok when removed from its natural setting. Recent studies indicate a naturally occurring neuro-psychoactive chemical in marijuana called cannabidiol (CBD) helps take this edge off.

"Marijuana contains 483 chemicals and THC is the most pharmacologically active," Bearman said. "The CBD actually helps mitigate the excessive euphoria caused by THC."

Arguments in support of Marinol hail it as a safer alternative to gambling on the unknown dangers of long-term marijuana use. The FDA maintains that no whole plant could ever be considered a pharmaceutical product since it's far too difficult to isolate and catalogue the effects of every single chemical ingredient. And, even though a recent study by UCLA's Dr. Donald Tashkin helped dispel the myth that smoked marijuana has a carcinogenic effect, the threat of respiratory infection remains. In response to criticisms of Marinol's sluggish response time, development of an aerosol delivery system is in the works. Δ

PHOTO BY CHRISTOPHER GARDNER



LEGALIZED IT? In 1988 the FDA approved a synthesized version of THC, the most psychoactive chemical in marijuana. Marinol continues to receive mixed reviews from patients and their doctors.

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THE OUSTER OF A POPULAR MEDICAL MARIJUANA DISPENSARY BY ITS SAN FRANCISCO NEIGHBORS SIGNALS GROWING DISILLUSIONMENT WITH THE MEDICAL MARIJUANA INITIATIVE.

BY LAURA McCLURE

The unmistakable scent of burning marijuana lingered on the front steps of San Francisco's City Hall one cool night last September. Inside, more than 75 citizens murmured and jostled their way into the Board of Appeals chambers, there to decide the fate of the most popular medical marijuana dispensary in the city. At issue was the Green Cross—by all accounts a model pot club—which had operated for a little more than a year at the outer edge of the liberal, dog-and-stroller neighborhood of Noe Valley. Now, it appeared that the dispensary on 22nd Street had worn out its welcome. Although in 1996 the neighbors voted overwhelmingly in favor of Proposition 215, the statewide initiative that legalized medical marijuana, the Green Cross—like the city's other 30-plus pot clubs—wasn't exactly the result they had envisioned. (Known as the Compassionate Use Act, Prop. 215 allows patients and their caregivers to

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Inside the Green Cross: Patrons had five minutes to make their purchases from "budtenders."

possess and cultivate marijuana for personal medical treatment upon a physician's recommendation. It also protects such doctors from professional and legal sanctions.)

As the meeting got under way, the owner of the club, a nattily dressed young man named Kevin Reed, sat quietly in the back of the room—far from the woman wearing a plastic por-leaf tiara in the second row and the man in sunglasses with a guide dog that growled once, softly, when a stranger leaned over to pet it. Scattered throughout the crowd were a nun, several gray-haired teachers, and a bevy of young parents—most members of Noe Valley's Fair Oaks neighborhood association. One by one, the neighbors stood up at the microphone, said that they voted for Prop. 215 in 1996—and then complained of increased traffic, noise, and crime. "Have you ever sat outside and watched a beehive on a nice summer day?" asked one neighbor, a retired nurse. "And watched the bees go in and out, in and out, all day? Well, that's what happens down there." A mother of three concurred. "It is an unfortunate fact that a percentage of Green Cross patrons are criminals whose only intention is to resell marijuana. It is also an unfortunate fact that criminals carry weapons," she said. A third resident urged, "Although I voted for Prop. 215 like all my friends and neighbors, I request that you either revoke the Green Cross permit or move it out of the neighborhood." They were followed by patients speaking on behalf of the Green Cross, some of whom were also neighbors. "The Green Cross gives me the safest place to go," said a former police officer and mother of two. Added a middle-aged Montessori teacher: "It's not like we can go to Walgreens and say, 'Hey, we want generic.'"

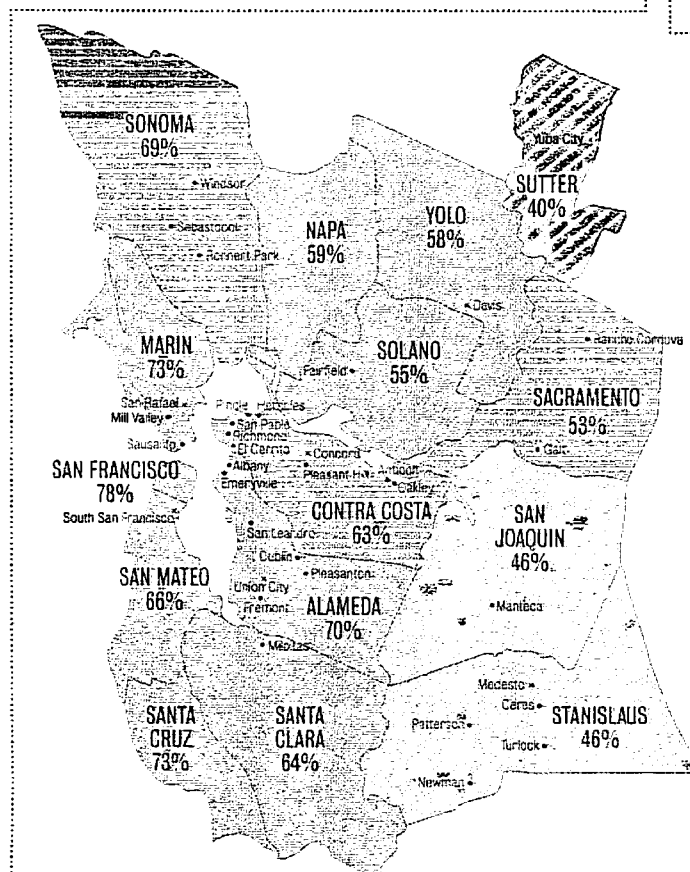
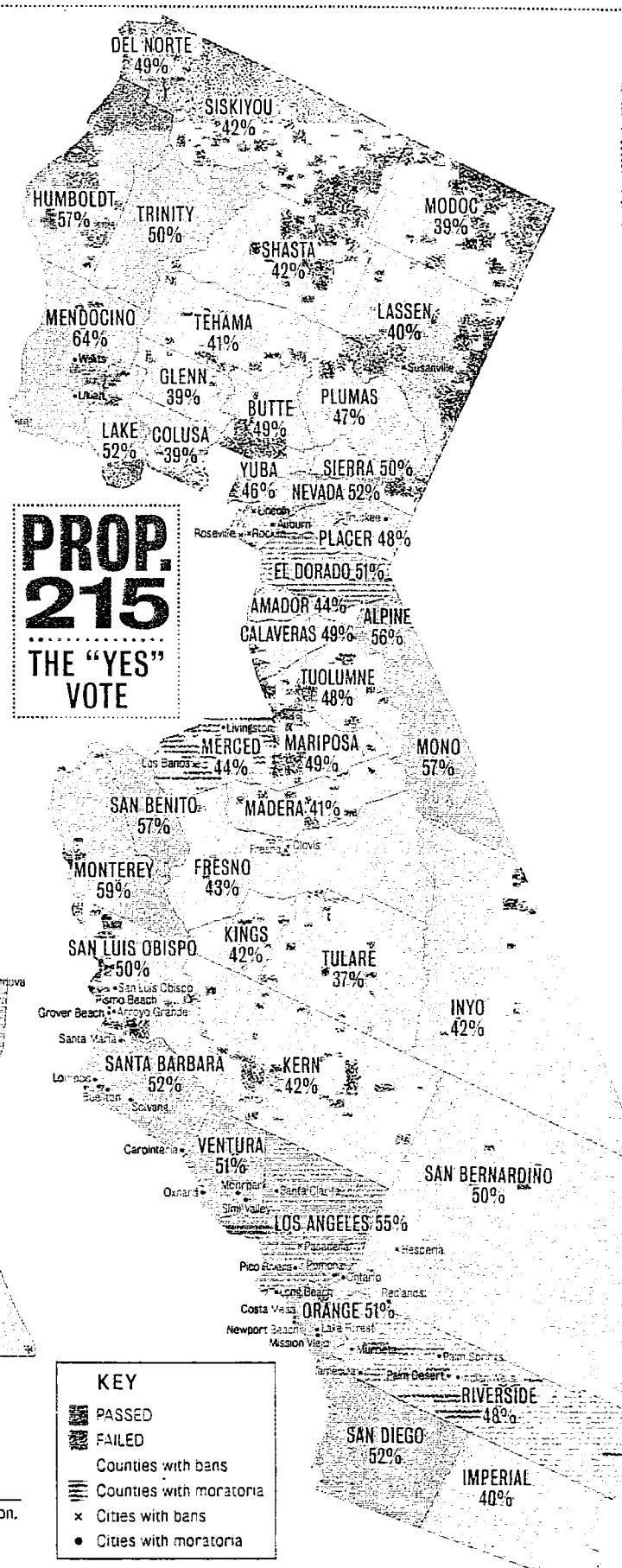
For four hours it went back and forth. Should San Francisco's Board of Appeals, which handles permit disputes, force a legally permitted, state-taxpaying, nonprofit dispensary to move? "You have a tough job in front of you,"

Lawrence Badiner, zoning administrator for the San Francisco Planning Department, told the board. "Kevin Reed is either the devil incarnate or an angel sent from above." The board's vice president, Randall Knox, also weighed in. "Prop. 215 was supposed to be the entree to how we allow this herb to be used as a medicine," he said. "But I think it would be disingenuous if I were to say that most of the marijuana used in this city and in this nation is used for medicinal purposes." Through it all Reed said little, except to add wearily, "I think most of the neighbors know I really have given a good faith effort." In the end, the board members voted to impose 33 new conditions to the permit and gave the Green Cross six months to find another home.

It wasn't supposed to turn out this way, with neighborhood warfare over medical pot. When Prop. 215 came before the voters ten years ago, its stated purpose was to allow seriously ill Californians with cancer, AIDS, glaucoma, chronic pain, migraines, or "any other illness for which marijuana provides relief" to legally grow or possess marijuana if a doctor recommended it, primarily for the treatment of nausea or pain. (How a patient might come to possess marijuana was left largely unspecified, though the Act did encourage federal and state governments to provide "safe and affordable distribution.") In a city whose large gay population had been decimated by AIDS, it wasn't surprising that 73 percent of the voters (compared with 56 percent statewide) focused more on how they hoped the measure would help the terminally ill than on its fuzzy legal parameters. "I think we can be a model for the whole state," San Francisco District Attorney Terence Hallinan told the *Los Angeles Times* a month after Prop. 215 passed. A decade later, San Francisco contains more pot clubs within its 46.7 square miles than any other city in

California. Figures vary widely (no state agency tracks the numbers), but there may be as many as 200 in the state. "Now either San Francisco has a lot of sick people," says Martin Halloran, a sergeant with the narcotics division of the San Francisco Police Department, "or this has gotten out of hand." More than 8,000 people have medical marijuana cards in San Francisco alone; doctors who specialize in medical marijuana recommendations take out ads in the back of alternative weeklies (one with the memorable phone number 1-888-POTDOCS). Meanwhile, 20 cities have banned dispensaries altogether. Cities that haven't addressed regulation issues are seeing an influx of clubs, and many of the same people who voted for the ballot initiative are growing disillusioned with its consequences.

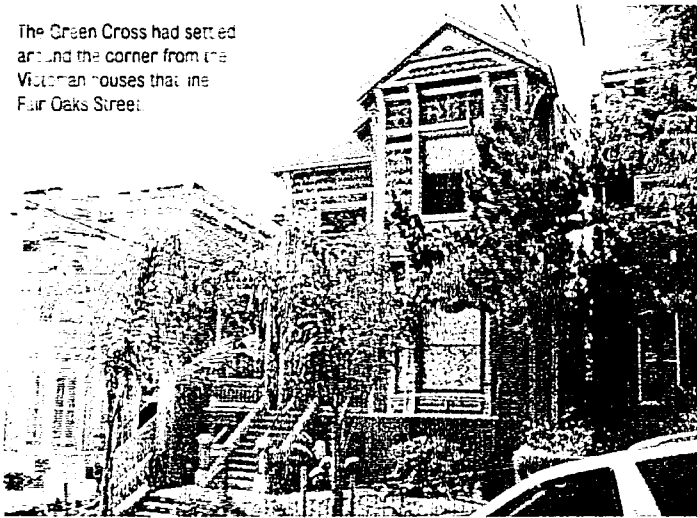
Part of the problem is nomenclature: *Pot club* just isn't a term that evokes white coats and pharmacies. And even though state law requires California dispensaries to operate as nonprofits, their proprietors often refer to them as "companies" and use phrases such as "moving product" that can make even their supporters uneasy. But many of the objections stem from the mistaken expectation that medical marijuana would be dispensed, like Vicodin, by licensed pharmacists in retail stores. "I thought it would be in Walgreens," is a common statement among the disillusioned, although drug



For a partial list of dispensary locations statewide, go to <http://canorml.org/prop/cbclist.html>

Source for voting results: California secretary of state website, 1996 general election. Source for bans and moratoria on medical marijuana dispensaries (as of April 14, 2006): Americans for Safe Access.

The Green Cross had settled around the corner from the Victorian houses that line Fair Oaks Street.



policy experts say this view is hopelessly naive. After all, under the federal Controlled Substances Act of 1970 (21 U.S.C. §§801–971), marijuana, like heroin, is a Schedule I drug with no accepted medical use—illegal in every state. Until that changes, no national pharmacy is likely to get into the marijuana business; California's patchwork quilt of local regulations is a response to that basic fact. "Would I vote for it again, [knowing what I know now]?" ponders Green Cross neighbor Marvin Edwards. "If it turns out like I'm seeing it, I don't think so."

When the Green Cross first opened its doors almost two years ago, just two blocks from my house, it generated little controversy. But like local views about medical marijuana itself, a lot has changed at the dispensary since then. I've followed the fortunes of the Green Cross since its beginning, and though I live nearby, I never joined the neighborhood association in calling for its ouster. In fact, I actually enjoyed pointing the club out to people as evidence that my tree-lined, Victorian-studded patch of San Francisco was less staid than it seemed.

When the store appeared in July 2004, at a corner known for its biannually reincarnated restaurants and short-lived clothing boutiques, no one really noticed. With no sign and little else to indicate what it was, the Green Cross quietly operated under the radar for about six months. In January 2005 I described it in *San Francisco* magazine as the first upscale medical marijuana dispensary in the city. Kevin Reed, the owner, had as his lofty goal changing the image of medical marijuana outlets from one of seedy clubs to safe, inviting boutiques anyone would be comfortable having around. Considering that my neighborhood is even more overwhelmingly pro-medical marijuana than the rest of San Francisco (in 1996, Prop. 215 received a "yes" vote from 88 percent of Noe Valley voters), it should have been a comfortable fit. Then came the sign above the door—a neon green cross—and the pot plant growing in the window. Customers began showing up in droves, not all of whom

looked like the young professionals going into the restaurants nearby. That's when the complaints of noise, smells, and "unsavory" characters began.

Of course, if you are a patient, none of that matters; what was inside the store was worth it all.

I made an early March visit. Once past the security guard checking medical cannabis cards at the door, the Green Cross seemed like a hip place to be ill. Upbeat electronica bounced off lipstick-red walls, a plasma-screen TV showed music videos, and a clock above the display counter read "424ever"—a reference to 420, old-school pot lingo for "time to smoke" and a generic code word for pot. A whiteboard on the wall listed the prices for cannabis by weight: 1.75 g = 1/16 = \$20, 3.5 g = 1/8 = \$40, 28.5 g = 1 oz = \$300. (One ounce was the limit a patient could purchase per visit; customers could pay

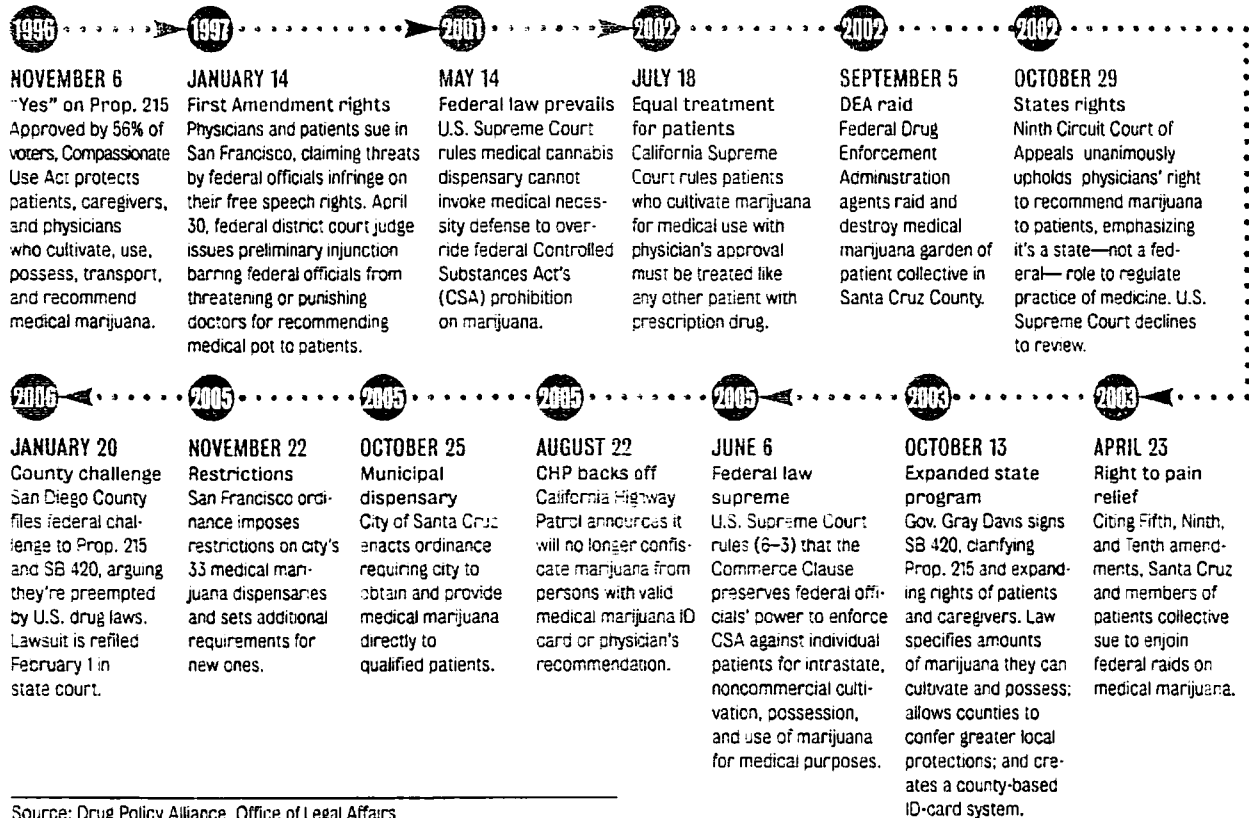
by Visa or MasterCard if they liked.) Four stylish "budtenders," three of them women, offered advice from behind a long glass counter to patients choosing among loose-leaf jars of pot with names like "Papa Smurf" and "Silver Haze," or Ghurardelli pot brownies and gluten-free cookies bearing the cheerful label "Incredible Edibles." Tiny lamps with violet shades hung in the gloom over the display case; on the back wall, the dispensary's cross logo was outlined in green lights. But for all the dim lighting and hipster bar music, both patients and staff were brisk and professional in their exchanges.

Jason, a 22-year-old with cancer and guarded brown eyes, said he came in once every two weeks to buy a type of cannabis called sativa, a strain said to relieve depression. Leticia, a 27-year-old neighbor and dental-office employee with severe insomnia, came in twice a week for an eighth ounce of the same. A third patient, a 60-year-old neighbor who declined to give his name, came once a month for an ounce of a different strain, indica, to treat a seizure disorder. Patrons had a five-minute limit in the store; there was no smoking, and not a lot of socializing. They were in and out with their purchases, and with up to 300 people a day visiting the club, the entryway resembled a revolving door.

With a membership of 4,200 people (on their best day, the budtenders sold \$45,000 worth of pot products), the Green Cross was exactly what many patients wanted—a clean, safe place to buy marijuana that wasn't hidden away in a bad neighborhood. Were all the patients really ill? The range of illnesses for which doctors can legally recommend pot is expansive, including not just diseases but any persistent medical symptom that a physician believes is disabling to a patient. If a number of the city's card-carrying medical-marijuana patients happened to be young men who, as Central District police station Captain James Dudley put it, "look like they could beat me in just about any sport," it's not the fault of the pot clubs. There's nothing about oversight of physicians in Prop. 215 or the subsequent Senate Bill 420 (Health and Safety Code § 11362.7–8), which in 2003 authorized collective and cooperative cultivation projects but never mentioned dispensaries.

I was curious whether the Green Cross patients really fit Dudley's stereotype, and whether their skin tones lent

REEFER MADNESS: 10 YEARS WITH A MEDICAL MARIJUANA LAW



Source: Drug Policy Alliance, Office of Legal Affairs

credence to charges that racism might underlie some of the neighbors' complaints. So one Saturday afternoon in March I sat in the coffeehouse diagonally across the street from the Green Cross and watched. (Because of restrictions imposed by the Board of Appeals on the club—short hours on Saturday (noon to 5 p.m.) and none on Sunday—Saturdays are particularly busy.) By my count, 43 people entered in one hour. They were, in fact, mostly young men in hooded sweatshirts or ball caps who looked to be under age 35. About 40 percent also appeared to be nonwhite—definitely a higher percentage than among the clientele entering, say, the Irish pub next door. Wherever they were parking, it wasn't in front of the dispensary—everyone I saw approached on foot. Although the corner is zoned a neighborhood commercial cluster (NC-1) district, meaning that establishments there exist primarily for the use of the neighborhood, sheer numbers seemed to suggest the club's customers were coming from far and wide, as critics maintained. Still, I had to wonder whether the extra foot traffic would have drawn complaints if instead of pot buyers the pedestrians were gourmands converging on a rare chocolatier.

By early March, none of the ostensible concerns the Fair Oaks neighbors had complained of—increased crime, double-parked cars, and smokers' fumes—seemed relevant anymore. After the Board of Appeals hearing last fall, the Green Cross limited its hours, ramped up security (deploying 17 cameras and at least two security guards during business hours), and offered incentives to patients who came by public transit

and didn't linger. A lieutenant in the Mission District police station said she hadn't heard any complaints from neighbors about nuisance crimes in many months, and a look at the crime data for the preceding three months showed that the closer you were to the Green Cross and its expensive security cameras, the less likely you were to be a victim of any serious crime—drug related or not. That left no problems but the clientele and the nature of the place itself. Owner Reed had fought to run a model dispensary, but in the end the Green Cross found itself ensnared by tensions intrinsic to the business.

Unlike many of the medical marijuana advocates at public rallies, Reed looks less like a pothead than like the young office manager for an architecture firm that he once was. Years before that he owned the Pit Stop Cafe in Eight Mile, Alabama, a diner specializing in Southern comfort food and successful enough that in 1997 the *Mobile Register's* food columnist wrote: "The plucky 23-year-old has an entrepreneurial spirit as fresh as his biscuits." Today Reed still carries a faint Alabama drawl, and on most days he wears a crisp dress shirt of muted tones. On some days he also wears stylish prescription glasses with brushed aluminum frames. As an advocate with a stake in the outcome of medical-pot policy, he keeps an eye on appearances, and says he doesn't believe smoking weed on the front steps of City Hall is "anything but counterproductive."

With his thin build, habitual smile, and slight limp (from a car accident that left him in pain and a medical marijuana user when he was 18), Reed exudes a gentleness at odds with the controversies that often surround him. "I thought I was doing it right," he says with a sad smile. "I thought I would be the last one standing." At the Green Cross he offered health insurance to his employees, kept current on permit applications and sales-tax payments to the state, and followed the rules for nonprofits—in short, he ran his dispensary as legitimately as possible and exactly the way the city asked him to. "I spent way too much of my time and energy just to open the door and sell weed," he says. "That sounds so illegal, doesn't it? Who the hell wants to tell somebody, when they ask you what you do, 'I sell weed?'" Instead, Reed had plans: He would start a Walgreens-style chain of dispensaries, making medical marijuana respectable by bringing it to safe neighborhoods around the city and state. No banks were willing to provide loans for pot clubs, so in July of 2004 he used a friend's capital to buy two candy jars' worth of pot from another dispensary and started selling small quantities of the stuff more cheaply in the Noe Valley locale. "It was the only way I knew to start a business from the ground up when you're in competition with 40 other stores," he says. After a few months, growers began bringing in backpacks full of weed (one medium-size backpack can hold about four pounds, or \$16,000 worth of pot) from their own gardens. Over time the number of jars in the shop grew to 50. Reed started keeping an Excel spreadsheet listing growers (by first names only) to whom he owed money—amounts that could range from \$12,000 to \$49,000 per batch, which he preferred to pay by check rather than cash. Nothing got stale; his experience in the food industry came in handy for moving the product along before it grew mold. "Just like a grocery store, it has to have expiration dates," he says.

In fact, aside from the two black storage lockers full of pungent weed and an excellent security team, the nuts and bolts of running the Green Cross weren't that different from running any other small business. Reed used QuickBooks accounting software, held power meetings in the mornings next to an employee schedule color-coded by name, and kept an inspirational calendar on the office wall with such phrases as "Have great dreams and dare to live them" written in cursive above a rocky coastline. He maintained liability insurance and paid himself modestly (\$35,000 in 2005); he even kept the sidewalk swept on his corner. At the height of the Green Cross's success he employed 20 people, including five security personnel. Last year, he paid almost \$200,000 in sales and payroll taxes to the state. Although he continually feared a raid and arrest by federal authorities (neither happened), as far as local matters were concerned he believed he was operating by the book. "I mean, almost a fifth of a million dollars went back into the system out of my store," he says. Still, he understood his risks: "I don't by any means fool myself into believing that local support could help me on a federal case."



eed just hadn't counted on grief from the neighbors: "Of course they all voted for Prop. 215, and they all believe [medical marijuana] should be legal—but only for them!" he says, his drawl growing stronger. "They see a young guy who don't look sick, but there's nothing I did to give that boy a card. There's nothing I can do to take that boy's card away from him.

And that's none of their business anyway. Who knows whether that boy is a caregiver, or a pothead, or a recreational user—who knows what that boy is. He could have AIDS and look like the healthiest boy walking around in the world. I don't get to see his doctor's note!"

As the Green Cross's six-month move-out deadline approached this spring, it was clear it would take more than Reed's vaunted pluck (and the real estate agent personally referred by San Francisco Supervisor Bevan Dufty) to get the business installed in a new home. At the end of 2005, San Francisco enacted zoning regulations for dispensaries so strict that pro-medical marijuana activists such as Rebecca Saltzman of Americans for Safe Access consider them a de facto cap on new pot clubs. She expects a number of existing clubs to close within a year if they can't meet the stringent new planning and public health standards, such as wheelchair accessibility. Though Saltzman says that the number of dispensaries across the state is at an all-time high—estimates range from 127 to more than 200—so is the number of moratoria and outright bans on such outlets by cities including Fresno and San Rafael. (In January, the San Diego County Board of Supervisors even went so far as to sue the state, arguing that Prop. 215 is preempted by the federal Supremacy Clause, though that theory has gained little traction.) Perhaps most telling about San Francisco's new regulations are the areas they place off-limits to new dispensaries—neighborhoods similar to mine. "Ultimately," says Reed, "when you close down the Green Cross, you're sending several thousand people back onto the streets to get medical marijuana—and the only way I believe marijuana is a gateway drug to other drugs is if you send them to Crackville, USA, to buy it—or you're sending them back to [clubs] where it feels more like a criminal element."

Still, Reed admits that dispensaries aren't the ideal solution. For one thing, they keep getting raided by the federal Drug Enforcement Administration—19 in California in the latter half of 2005 alone. In its *Tips for Would-be Cannabis Providers*, the pro-legalization group California NORML notes that neither Prop. 215 nor SB 420 "provides a green light for sales of cannabis. Those dispensaries that are selling marijuana over the counter accordingly do so at the tolerance of local authorities."

At a time when the tolerance of local authorities even in pro-pot San Francisco seems to be wearing thin, many patients would appreciate new delivery options. "Maybe in ten years we won't even need to smoke, we'll be able to get everything we need out of our little [marijuana] tincture sprays," says Reed. Indeed, the FDA has approved

Continued on page 51

Pot Clubs, continued from page 30

one synthetic THC medication, Marinol. But not everyone believes Marinol works, and for those who don't, dispensaries are one of the only quasi-legal ways to obtain the dried herb. A decade ago California became the first state to legalize the possession of medical marijuana (ten other states have followed), and since then an estimated 200,000 Californians have become medical marijuana users. But last summer the U.S. Supreme Court decided *Gonzales v. Raich* (125 U.S. 2195 (2005)), holding that the federal government can regulate—and prohibit—the private growth of marijuana for personal use even if it's authorized by state law. (On March 27, Randy Barnett, attorney for Angel Raich, one of the original respondents in the case, appeared before a three-judge panel of the Ninth Circuit, raising constitutional challenges to the federal government's complete prohibition of her medical cannabis use.) "The remaining controversy, if there's really any controversy," says University of

Southern California criminal law professor Charles H. Whitebread, "is about whether any federal agents will in fact take out after sick people." And if pot-smoking patients aren't protected, dispensaries are positively an invitation for federal raids.

"Pot clubs are illegal from beginning to end," says Marsha N. Cohen, a professor at the University of California Hastings College of the Law. "They're in total violation of federal law. You cannot possess, buy, or sell marijuana, period. The last time I looked, we were still in the United States." Mark A. R. Kleiman, a professor of public policy and director of the Drug Policy Analysis Program at UCLA, agrees. "Prop. 215 didn't provide for dispensaries. It didn't provide for Walgreens either. If you read the law, what it says is that if you're a patient who is helped by marijuana and your doctor has recommended it, you can grow it and possess it, or your primary caregiver can do it on your behalf. And the notion that these dispensaries are somehow the

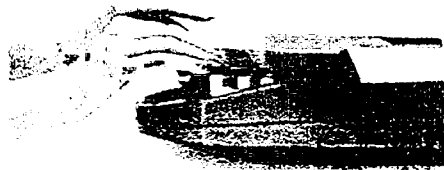
primary caregiver for hundreds of people at a time is like a bad joke."

Still, that doesn't mean Prop. 215 failed. "Prop. 215 worked just the way Prop. 13 worked—it got passed, which is what it was designed to do," says Kleiman. "Has it given us a sensible system? No. Could we have a sensible system, given that the drug is illegal nationally? Probably not." As for the next ten years, any break in the state-federal impasse will have to come at the federal level. "The right thing to happen," says Kleiman, "would be to get the clinical research done and get cannabis rescheduled, which it probably would be if the research were done."

In fact, a 1999 report by the Institute of Medicine, part of the National Academy of Sciences, has already indicated some legitimate medical uses for marijuana—which suggests that the "lack of research" argument is a red herring. What's really holding up the rescheduling process is politics. "The feds have their heads in the sand," says Cohen. "They seem to think that if they

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just don't look, this will go away. Instead, what they have is an endless battle with the states that have some kind of medical marijuana law."

But until the political battles at all levels play out, patients like those who went to the Green Cross are on their own. "It was just politics that closed me down," says Reed, after losing his campaign to keep the store open on 22nd Street. "And politics will be the only thing that stops me from opening the next one. Because, by the book, everybody says that I'm the best."



ays after the Green Cross closed, Reed, on edge, picks through the empty dispensary. He's ready to leave. Echoes ricochet off the bare walls, and with no drapes over the windows the sunlight filters in, exposing the peeling paint, the dust on the hanging lamps, and just how small the space really is—350 square feet. The sidewalk outside the

dispensary is as bare as its interior; one woman slowly pushes a stroller past the "FOR LEASE" sign taped inside the window. The adjacent dispensary office has already been rented out to a clothing boutique. But there may be life for the Green Cross after all, in another location, in a few months. Reed recently found a landlord in the former beatnik sanctuary of North Beach willing to rent to him, and angel investors ready to loan him money to renovate the new place, which he describes alternately as a "shell" and a "disaster." The landlord, like the investors, has medical marijuana patients in his family. But although Reed hurriedly signed a lease, nothing is set in stone—now he has to navigate an entirely different set of neighbors, and there's no guarantee he'll be issued a permit.

Today, locking up, he's optimistic but nervous. "Who's to say there's not a federal judge who lives behind the place?" he wonders aloud. "Who's to say there's not a DA living there who

won't like it?" His worst fear is that pro-medical marijuana neighbors from the Fair Oaks association will follow him across town to complain at the public hearing on permits for the new locale. "But that would just be evil," he concedes. If all goes well, he hopes to move into the North Beach site over the summer—making the Green Cross the first dispensary to open in a new location under San Francisco's new, stringent regulations. But after almost two years of strife in Noe Valley, Reed shrugs, laughs nervously, and steps out into the windy San Francisco day, locking the door to the former Green Cross behind him. "This has all been a huge gamble for me ever since I started, just to try to help people. And here we go again," he says. He sighs. "Look, here it is ten years later [after Prop. 215 passed], and there was actually somebody doing it right and by the book. If I can't open my doors again, then I have to think America's not quite ready for medical marijuana." ■

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FROM THE EDITOR

BY PETER ALLEN

What a strange trip this medical marijuana thing has been. Medical marijuana exists in a legal limbo—permitted as a sort of gray market in eleven states (California was the first) and outlawed in all 50 by the federal government. If this isn't reefer madness, what is? Associate Editor Laura McClure writes about this situation with considerable finesse in this month's cover feature ("Fuming Over Pot Clubs," page 24) McClure believes that the tension between growing local disenchantment with medical marijuana dispensaries and federal obstinacy over the reclassification of marijuana is coming to a head. The marijuana boutique she writes about, the Green Cross, was chased out of her San Francisco neighborhood, but it is poised to reopen soon in the city's North Beach area. Considering the art of acceptance and rejection in McClure's neighborhood, I believe it won't be long before irate North Beach neighbors, armed with pitchforks and torches, will chase the Green Cross into yet another neighborhood or perhaps out of the city altogether.

In the meantime, the federal government continues to act like a disapproving parent. As McClure was readying her article for publication, the Food and Drug Administration announced there were "no sound scientific studies" supporting the medical use of marijuana. This, despite a 1999 review (cited by McClure) by the Institute of Medicine—which is a part of the National Academy of Sciences—that found marijuana "moderately well suited for particular conditions, such as chemotherapy-induced nausea and vomiting and AIDS wasting." Meanwhile, efforts to pursue further research have been thwarted by the federal government. The DEA has so far denied a University of Massachusetts professor permission to grow a small patch of high-quality marijuana for research purposes. Critics of medical marijuana, however, say the medical issue is merely a smoke screen for those who simply want to legalize marijuana. After reading McClure's article about the regulatory dance between distributors and local law enforcement officials, it's clear that those who want to legalize marijuana have played the medical-use angle quite well.

Though fierce, the fights over medical marijuana are nothing like the quasi-theological debates dealing with potential conflicts created by lateral moves, which is covered in Senior Editor Tom Brom's Full Disclosure column (page 17). "The trouble now," says Brom, "is that the current ethics rules no longer fit practice at the megafirms, or their client bases. The ABA is more open to letting the rules fit the changes; the Rules Revision Commission of the State Bar is less amenable to change." Not mentioned in his column (for space reasons) is something he told me in the course of his reporting: Until 18 years ago "ethical walls" were commonly called "Chinese Walls." In a 1988 concurring opinion, court of appeals Justice Harry Low (now with JAMS) called the phrase "singularly inappropriate" and a "piece of legal flotsam which should be emphatically abandoned." Thanks to Low's opinion, it has been.

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Medical pot center loses money, drugs in robbery

By DAWN HOBBS
NEWS-PRESS STAFF WRITER

An armed bandit got away with a small amount of cash and about 2 ounces of pot Friday morning from Santa Barbara Hydroponics on State Street, which also is home to a medical marijuana distribution center called the Santa Barbara Patient's Group.

The robber was waiting outside the dispensary at 3128 State St. before the 9 a.m. opening time, police said.

When the owner arrived and opened a security door, it did not properly latch.

"The suspect was able to enter through the unsecured door and confronted the owner in a backroom," said Lt. Paul McCaffrey. "The suspect made verbal threats and displayed a handgun in his waistband."

He grabbed \$30 from the register and between 12 and 15 baggies of marijuana, each containing about 1/8 ounce valued at about \$50.

This is the first armed robbery of a dispensary in town that has been reported to police. There are about six in the county.

"However, the owner stated he has been robbed three to four times before," Lt. McCaffrey said. "He just never reported it to police."

Jack Poet has owned the medical marijuana distribution center for 10 years and Santa Barbara Hydroponics for five. The robbery, he said, angered him more than it frightened him.

"He knew my name and said he wanted all my money and started using profanities," Mr. Poet said. "I told him to get out of my store, and one thing led to another, and he came around the counter. He did not draw the gun, but he had it on his waistband."

"He said, 'I'm taking your money and your marijuana. As it worked out, he got the least amount of cash and the poorest-quality marijuana in the store. He was a punk.'"

Mr. Poet said a store surveillance camera captured images of the bandit on video, which he turned over to police.

Mr. Poet said he has not reported other robberies "because of the nature of my business," but noted that on Friday, police were "helpful and very nice."

The suspect is described as a white male in his 30s, about 5 feet 10, 160 pounds, with red hair and a goatee. He wore a gray, long-sleeved T-shirt and a gray baseball cap with an Oakland Raiders logo.

Anyone with information about the crime may call the Santa Barbara Police Department watch commander at 897-2355.

Santa Barbara News-Press

8-5-06

County to sue state over medical pot law

SAN BERNARDINO County supervisors voted unanimously Tuesday to sue the state for legalizing the use of medicinal marijuana. The Board of Supervisors contend the state's Compassionate Use Act, passed by voters in 1996, is in conflict with federal law. San Diego County filed a similar suit Jan. 20 and the suits will likely be merged into one. San Bernardino County Supervisor Dennis Hansberger said the seemingly conflicting federal and state laws leave local agencies in limbo in deciding which laws to enforce. Federal law outlaws marijuana use for any purpose while the state's decade-old Compassionate Use Act allows sick people to smoke pot with a physician's supervision.

— From news service reports

Santa Barbara News-Press

1-26-06

13 Marijuana dispensaries raided

ASSOCIATED PRESS

SAN DIEGO — Federal drug agents raided 13 San Diego-area marijuana dispensaries on Monday, seizing large quantities of the drug, computers and records in one of the largest crackdowns of its kind in California.

Authorities executed warrants at 11 dispensaries in San Diego and two in the northern suburb of San Marcos as well as the home of one of the shops' owners, said John Fernandes, special agent in charge of the Drug Enforcement Administration.

"These were nothing more than a front for distributing marijuana," Mr. Fernandes said.

One man, armed with a firearm, was arrested as he drove up to a dispensary with two pounds of marijuana he was trying to sell — apparently unaware of the raid taking

place. Agents seized a large, unspecified amount of marijuana and small amounts of psychedelic mushrooms, hashish and hashish oil.

Steph Sherer of the medical marijuana advocacy group Americans for Safe Access called the raids outrageous and a cowardly act of an administration that was out of touch with voters. Medical marijuana advocates planned to protest the raids Tuesday outside San Diego's federal courthouse.

In 1996, California voters passed Proposition 215, which decriminalized the use of medical marijuana under state law. However, under federal law, it is illegal to use marijuana even for medical purposes.

Authorities began investigating San Diego's dispensaries six months ago, prompted, in part, by complaints from neighbors. Instead of providing marijuana to seriously ill patients as voters had intended, dispensaries

that were raided Monday sold marijuana to young adults, Mr. Fernandes said. The combination of drugs and cash also has attracted armed robbers, he said.

"The message here is to essentially notify the community through our actions that these dispensaries posed a severe public hazard," Mr. Fernandes said.

DEA agents treated the dispensaries as they would any other criminal narcotics operation, seizing computers and other records to get an inside picture of how the dispensaries operated, where they obtained their marijuana and how profits were distributed, he said.

Last month, San Diego County became the first county in California to defy a state-ordered medical marijuana identification card and registry program. County supervisors ignored a warning from their own attorneys that the action would lead to costly litigation.

Santa Barbara News-Press

WASHINGTON

Medical marijuana still prosecutable

The House on Wednesday voted to continue to allow federal prosecution of those who smoke marijuana for medical purposes in states with laws that permit it.

By a 259-163 vote, the House again turned down an amendment that would have blocked the Jus-

tice Department from prosecuting people in the 11 states with such medical marijuana laws.

Advocates say medical marijuana use is the only way that many chronically ill people, such as AIDS and cancer patients, can relieve their symptoms.

HONOLULU

Feds want state to tighten pot law

Federal officials want the state to conduct background checks on those certified to supply medical marijuana to patients, saying the state must close loopholes being exploited by drug dealers.

Ed Kubo, chief federal prosecutor for Hawaii, said the December indictment of Richard Velasco, a 49-year-old accused drug dealer from the Big Island, is an example of why the state needs to strengthen oversight of its medical marijuana program.

Velasco was awarded a medical marijuana caregiver certificate in December 2004, just months after Hawaii County police officers discovered 246 marijuana plants growing on his property. He was arrested for drug trafficking.

San Diego Charges Six in Medical Pot Raids

By Allison Hoffman
Associated Press

SAN DIEGO — Federal prosecutors accused six people of illegally trafficking pot under the cover of California's medical marijuana laws — in some cases processed into baked goods, "Reefer's" peanut butter cups and "Splif" peanut butter.

Federal and state search warrants were executed at more than 11 locations throughout San Diego in a Thursday morning raid, and at least five people were arrested, authorities said. Federal charges were filed Friday.

"They made thousands of dollars every day," U.S. Attorney Carol Lam said. "Their motive was not the betterment of society. Their motive was profit."

One federal indictment accuses John Sullivan, 38, of growing more than 100 marijuana plants for distribution and distributing marijuana or processed marijuana-based goods from his two dispensaries, the Purple Bud Room in Pacific Beach and THC in San Diego.

Five managers of the Co-op San Diego were indicted separately on similar allegations. Wayne Hudson,

42; Christopher Larkin, 34; and Ross McManus, 39, are alleged to have distributed marijuana products through the co-op. Scott Wright, 40, and Michael Ragin, 34, are accused of growing hundreds of plants for the co-op at their homes.

Messages left at the dispensaries were not immediately returned.

Also, the San Diego County District Attorney has filed state charges against one of the men named in the federal indictment and nine others for selling marijuana and possessing marijuana for sale.

State charges were filed against Sullivan's THC dispensary and four other independent operations in San Diego. 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.

Dumanis said that her office has "no intention" of preventing people who suffer chronic illnesses like AIDS, glaucoma or cancer from using medically prescribed marijuana to ease their pain.

But San Diego County has fought an ongoing battle to limit the impact of the medical marijuana law, which was approved in 1996 by 55 percent of voters.

San Diego has ignored a state requirement that counties issue identification cards to registered medical marijuana users and maintain a registry of people who apply for the cards.

In December, county supervisors sued the state of California and its director of health services in federal court, saying federal law that prohibits marijuana use trumps the state law. The county moved that lawsuit to state court in February to avoid bringing the case to the 9th U.S. Circuit Court of Appeals, which has sided in recent rulings with medical marijuana supporters. That suit is still pending.

Pot user could get 20 years in prison

FRESNO A medical marijuana user could face more than two decades in prison after a jury convicted him of violating federal drug laws and other charges.

Dustin Costa, 60, a former Marine turned medical marijuana activist, was found guilty Wednesday in Fresno federal court of growing marijuana, possession of marijuana for distribution, and possession of a firearm. His sentencing date has not been scheduled. Costa said he plans to appeal the decision.

Santa Barbara News-Press

11-25-06

MODESTO

Medicinal pot shop raid nets guns, cash

A raid on a medical marijuana shop and the homes of its directors netted three guns, \$16,000 in cash and 34 pounds of pot-laced baked goods after

agents used fake identifications and bogus prescriptions to purchase drugs.

The California Healthcare Collective earned \$4.5 million since it opened in late 2004, said Drug Enforcement Agent Gordon Taylor. State law allows only nonprofit cooperatives to distribute the drug.

Santa Barbara News-Press

9-29-06

COUNTY LINES

SANTA BARBARA

Three arrested for attempted pot theft

Three Santa Maria men were arrested early Tuesday morning after what police claim were failed attempts to steal marijuana from two medical marijuana dispensaries.

Tyler Brown, 21, was booked for attempted burglary, prowling and violation of probation. Derrick Treur, 19, was booked for attempted burglary and prowling. Jacob Ray, 19, was booked for attempted burglary, prowling and possession of burglary tools, according to Lt. Don McCaffrey of the Santa Barbara Police Department.

A neighbor reported three men, wearing dark clothing, prowling at the rear of the Acme marijuana dispensary at 1227 De La Vina St. in Santa Barbara at 2:30 a.m., police said.

Officers stopped the men, who were in a black Saturn sedan, before they drove away. The men told the police that they were tired and looking for a place to rest before driving home to Santa Maria, police said.

However, officers became more suspicious when latex gloves fell out of the suspects' pockets as they were looking for identification. Inside the vehicle, police found a heavy-duty set of bolt cutters, McCaffrey added.

Police had also responded to an alarm about 15 minutes earlier at Pacific Greens, another marijuana dispensary, at 816 N. Milpas St. Someone had used bolt cutters to cut the padlock off a storage shed at the rear of the business but apparently fled when the doors were opened and an alarm sounded, McCaffrey added.

The suspects were then arrested for the attempted break-in at Pacific Greens and prowling on the property that borders the Acme marijuana dispensary.

Trio accused of trying to steal medical marijuana

By ANNA DAVISON
NEWS-PRESS STAFF WRITER

Three Santa Maria men were arrested Tuesday after they allegedly tried to steal marijuana from two marijuana dispensaries in Santa Barbara.

Derrick Treur and Jacob Ray, both 19, and 21-year-old Tyler Brown were caught by police outside the Acme Dispensary in the 200 block of West Victoria Street at about 2:30 a.m. Tuesday, authorities said.

"I guess they thought they could get some marijuana in the middle of the

night in Santa Barbara," said Santa Barbara Police Lt. Paul McCaffrey.

A neighbor had reported three men prowling in the area and when police arrived, the trio tried to drive away.

When they were stopped by officers, the men claimed they'd gotten tired on their drive home to Santa Maria and were looking for somewhere to rest, but officers said they noticed latex gloves spilling out of the men's pockets and found bolt cutters in their car. The owner of the dispensary reported that nothing had been taken from the business.

Shortly before that, at about 2:15

a.m. Tuesday morning, police responded to an alarm at Pacific Greens, a marijuana dispensary in the 800 block of North Milpas Street. The suspects used bolt cutters to remove a padlock on a storage shed and opened the doors, but apparently fled when the alarm sounded, police said.

Mr. Brown, Mr. Ray and Mr. Treur were arrested on suspicion of attempted burglary and prowling. Mr. Ray was also booked on charges of possessing burglary tools, and Mr. Brown for allegedly violating probation.

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Santa Barbara News-Press

1-4-07

19 Charged in Alleged Drug Ring

Indictments say three San Francisco medical marijuana dispensaries were used as a front for a \$5-million illegal global enterprise.

By ERIC BAILEY
AND JOHN M. GLIONNA
Times Staff Writers

SAN FRANCISCO — Federal authorities released indictments Thursday charging 19 people with running a \$5-million international drug ring that used three medical marijuana dispensaries here as a front.

In San Francisco, where dozens of cannabis clubs have thrived since California legalized the drug as medicine, officials declared that the busts would not undermine the city's role as a haven for medical marijuana users.

The indictments came as the result of a two-year investigation by U.S. drug agents into a network that allegedly cultivated at least 17,000 marijuana plants, trafficked in Ecstasy and engaged in money laundering and international bulk cash smuggling.

"We're not talking about ill people using marijuana," said Kevin Ryan, the U.S. attorney in San Francisco. "We're talking about a widespread criminal enterprise."

But medical marijuana advocates said it remained unclear whether the bust was the start of a renewed campaign by U.S. drug agents against pot dispensaries.



JOHN HARRIS Associated Press

REACTION: Edmond Larry protests Wednesday's club raids. There are about 35 medicinal pot dispensaries in San Francisco.

"I hope it's an anomaly," said Allen St. Pierre, executive director of the National Organization for the Reform of Marijuana Laws.

At the very least, "this is certainly a sign that the DEA is watching people who use medical marijuana," said Bruce Mirken, a Marijuana Policy Project spokesman.

Javier Pena, the U.S. Drug Enforcement Administration's special agent in charge of the San Francisco office, declined to link the bust to a renewed campaign against dispensaries.

He said, however, that a message had been sent to purveyors of medicinal pot.

"Some of us in the public think they can disregard the courts and Congress on this matter," Pena said. "The DEA will not be among them."

San Francisco has struggled

in recent months to rein in a proliferating collection of storefront medicinal pot dispensaries, which number about 35. Some local leaders, though supportive of cannabis patients, have called for a reduction to as few as eight clubs.

But Thursday, city leaders talked of San Francisco remaining a bulwark of support for California's medical marijuana law, which directly conflicts with U.S. statutes prohibiting cannabis use for any purpose.

Matt Dorsey, a spokesman for the city attorney, told a crowd of 75 patients and pot activists on the steps of City Hall that medical marijuana remained legal in the state. San Francisco officials, he said, "absolutely respect" the rights of the ill to engage in "the compassionate use of cannabis."

In the indictments released Thursday, three people were

charged with possession with intent to distribute Ecstasy, and two others were charged with intent to commit money laundering. An arrest warrant was issued for another man in connection with the case.

Each count of conspiracy to cultivate marijuana carries a mandatory minimum sentence of 10 years in prison, while conspiring to distribute Ecstasy can bring up to 20 years.

A money-laundering conviction can result in 20 years along with a \$500,000 fine, authorities said.

The three cannabis clubs involved in the raid, authorities said, were a key part of the ring.

A criminal complaint filed in the case contains alleged statements made to an undercover drug officer by Enrique Chan, owner of one dispensary targeted in the bust.

Chan estimated to agent Pena that only about half the patients had legitimate medical need.

To wrest free of legal squabbles, according to the affidavit, Chan said he hired several criminal defense attorneys, including famed drug lawyer Tony Serra and former San Francisco Dist. Atty. Terrence Hallinan.

"If I get busted for weed here, I'll take these patients to court," he allegedly said. "If it comes down to a battle in court, what are you gonna do? You're going to bring patients in court, like really sick patients with cancer, have them sit on the stand for you. And no jury is gonna... convict you."

Glionna reported from San Francisco and Bailey from Sacramento.

Los Angeles Times

6-24-05

West Hollywood Fights Medi-Pot Club's Seizure

By Leslie Simmons
Daily Journal Staff Writer

PASADENA — The city of West Hollywood is an "innocent owner" whose property was illegally seized by the federal government in a raid of a medical marijuana clinic four years ago, an attorney argued Monday before the 9th U.S. Circuit Court of Appeals.

The Los Angeles Cannabis Resource Center was "starting to make arrangements to sell the building," West Hollywood's lawyer Eric Honig told the three-judge panel. "They stopped growing [marijuana]. They made preparations."

During oral arguments Monday, members of the panel scoffed at the assertion, questioning whether a city that financially and morally supported the cultivation of an illegal drug could claim ignorance as a defense.

The innocent owner defense allows owners to keep property seized by the government if they can show good cause they were unaware of illegal activity taking place.

In this case, a four-month window had passed from the time the U.S. Supreme Court upheld a federal raid on a similar center in Oakland and the seizure of the Cannabis Resource Center.

Judge Alex Kozinski said that West Hollywood, which had controlling interest in the property, had plenty of time to take control of the center in those four months. Yet, the center was allowed to continue to operate, he said.

The city had the authority to take over the center in the event that it violated any local, state or federal laws.

"The city learned it was illegal on that date," Kozinski said, referring to the Supreme Court ruling in *U.S. v Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483

(2001). "There were people in the building doing all the things they do to cultivate cannabis."

Federal agents raided the West Hollywood center's headquarters on Oct. 25, 2001, seizing its computers, medical files, bank accounts and inventory — 400 plants and 10 pounds of harvested marijuana. The property was sold in January 2003.

Three of its executives later pleaded guilty to maintaining a drug establishment and were each placed on one year of probation and community service.

The raid came four months after the U.S. Supreme Court found no medical-necessity exception under the federal Controlled Substances Act allowing for the distribution of medical marijuana to qualified patients.

The center opened in 1996, the same year California voters passed Proposition 215, the Compassionate Use Act, which protected medical patients from prosecution if a licensed physician prescribed pot.

The West Hollywood raid is symbolic of broader tension between the federal government's all-out ban on marijuana use and the medical exceptions allowed by state and local governments in California and elsewhere.

Marijuana remains classified by Congress as a Schedule 1 narcotic, along with drugs such as heroin and LSD that are seen as having a high potential for abuse.

Marijuana advocates say the drug has medicinal purposes that help terminally and chronically ill patients deal with side effects from diseases, including AIDS, cancer and glaucoma.

Honig told the judges on Monday's panel, including Stephen S. Trott and Carlos Bea, that West Hollywood had good reason not to immediately shut down its cannabis club after the high court's ruling

on the Oakland club. He said West Hollywood was waiting to see whether the Oakland case would "leave open appeal for the seriously ill patient."

But Bea said that's no excuse for later claiming the innocent owner defense.

"You knew no matter what that the federal government was going to come down on you," he said.

Honig said the city had no reason to take over the center "if they were selling the building."

He also said West Hollywood got no warning from the federal government that the Drug Enforcement Administration was planning to raid the facility.

Assistant U.S. Attorney John E. Lee acknowledged in court Monday there is "some obligation by the U.S. government to treat a city with some kind of respect." But he said this situation was "unique," and it required the DEA to plan its raid discreetly, because the city and sheriff's department were "aligned" with the center.

"There's nothing that says you can't call a city and say 'clean it up,'" Kozinski responded. "You weren't out to bust anybody, you were out to shut down an operation."

Kozinski also questioned whether the city would have run afoul of state law if it had taken action against the center.

The city was not required to close the cannabis club, Lee said. What it failed to do was take control of the property, he added.

"I believe the city was acting within Proposition 215," Lee said. "The city was not acting within federal law and that's why we're here."

"Under federal law, they failed to do anything," he added.

Monday's panel did not indicate when it will rule on *U.S. v West Hollywood Community*, 04-56043.

Los Angeles Daily Journal
2-7-06

West Hollywood's Pot Club Woes A Long-Shot for Sympathy in D.C.

By Brent Kendall
Daily Journal Staff Writer

WASHINGTON — The U.S. Supreme Court will face a mountain of petitions that have piled up over the quiet summer months when the justices gather behind closed doors today.

Most are long-shot attempts by litigants to breathe new life into cases that ended in disappointment. Very few of the 1,901 petitions will succeed.

One from the city of West Hollywood is particularly gutsy. The high court is being asked to protect the city from financial fall-out over its failure to curb the distribution of medical marijuana for nearly half a year after the high court outlawed cannabis clubs.

In its last-gasp petition, West Hollywood hopes to recoup \$300,000 it

loaned to a local marijuana club as part of a neighborhood revitalization project. *West Hollywood Community Redevelopment Commission v. U.S.*, 06-143.

The city's investment disappeared after the federal government moved to seize the club's property in 2002.

At issue is the Santa Monica Boulevard building which formerly housed the Los Angeles Cannabis Resource Center, which began operating in West Hollywood shortly after voters passed Proposition 215 in 1996.

The club later secured financial assistance from the city's redevelopment commission to buy the property, which was located in a blighted area.

But in 2001, the club's fortunes plummeted with the U.S. Supreme

See Page 6 — WEST

Court's ruling in *U.S. v. Oakland Cannabis Buyer's Cooperative*, 532 U.S. 483. The court ruled that there was no medical-necessity exception to federal drug laws prohibiting the manufacture and distribution of marijuana.

Five months after the decision, the Drug Enforcement Agency came calling in West Hollywood and shut the club down.

The federal government filed a complaint of forfeiture, and U.S. District Court Judge Manuel L. Real of Los Angeles granted all interest in the property to the feds in 2004.

Earlier this year, it took the 9th U.S. Circuit Court of Appeals all of three paragraphs to affirm Real in an unpublished opinion.

The city put forward an "innocent owner" defense against the property forfeiture, but Real and the 9th Circuit both flatly rejected the argument.

Once the Supreme Court had ruled against the Oakland cannabis club, West Hollywood was on notice that the activities of its local club violated federal law, the 9th Circuit said.

Nevertheless, the appeals court said, the city did nothing to stop the illegal action on the property it had

financed, and because of its inaction, its stake in the building was appropriately forfeited.

West Hollywood's city attorney, Michael Jenkins of Jenkins & Hogin, hopes to convince the high court that the city has been unfairly punished.

In his Supreme Court petition, Jenkins argued that West Hollywood acted reasonably in the months following the high court's decision in the Oakland case.

After all, Jenkins said, the city needed to take some time to evaluate the Supreme Court's ruling and decide on how it should proceed in light of that holding.

He said the five-month period between the Oakland ruling and the West Hollywood raid was "a very short time frame to try to understand the implications of that decision."

"There's a lot of confusion as to what the law actually is," he said.

In a bad sign for Jenkins and West Hollywood, the federal government did not bother to file a response to the city's petition. Nor has the Supreme Court asked the solicitor general to do so, which suggests that the justices have little interest in the case.

POT: Cannabis isn't as harmless as suggested

Cannabis is the most widely used illicit drug in the United States. But if you think it's hot to smoke pot, consider this: Two recent studies show that cannabis damages the vessels in your brain by constricting blood flow — putting you at risk for stroke.

It makes no difference whether you smoke it, eat it or take a pill. The active ingredient tetrahydrocannabinol (THC) is the culprit. The stronger its concentration — ranging from 1% in some herbal preparations to 65% in some hashish oils — the greater the danger. Long-term and heavy users are at risk.

Cannabis has long been associated with harmful changes in the brain; now sophisticated medical tools can pinpoint them. One study demonstrates that impairment of the brain's blood flow persists for at least a month after the last high. This eventually can lead to a stroke and its resulting paralysis, and problems with vision, memory and speech.

What about medical marijuana? Scientific studies are underway to nail down its usefulness and safety, especially as an aid for pain. **EW**

— Susan T. Lennon

USA WEEKEND • Sept. 16-18, 2005 13

LAYTONVILLE

Founder of Pot Clubs Fatally Shot in Robbery

A Laytonville man who founded two Mendocino County medical marijuana clubs was shot to death during a robbery in his home early Friday.

Two other people at Les Crane's home were beaten during the robbery. One suffered head injuries, the other a broken arm. Both have been released from the hospital.

Police have no suspects.

Laytonville is about 25 miles north of Willits.

From Times Staff and Wire Reports

Los Angeles Times

11-19-05

SAN LEANDRO

3 Sought in Robbery at Marijuana Dispensary

Police searched Saturday for three suspects involved in a robbery that erupted in gunfire at a medical marijuana dispensary, leaving one of the gunmen fatally injured.

The shootout occurred shortly after 11:30 a.m. Friday as employees and the store owner were preparing to open Natural Source and were met by five gunmen armed with semiautomatic rifles. The robbers forced the employees inside, then began taking marijuana and cash, said Lt. Dale Amaral of the Alameda County Sheriff's Department.

The owner grabbed a revolver that was kept inside the store and exchanged shots with the suspects, Amaral said.

One suspect was fatally shot in the exchange, sheriff's Sgt. Linda Thuman said. The coroner's office identified him as DeMarco Lowrey, 18, of Oakland. He was pronounced dead at Children's Hospital Oakland, where his accomplices dropped him off, Thuman said.

Authorities arrested one suspect at the scene.

From Times Staff and Wire Reports

Los Angeles Times

8-21-05

Modesto to shut down marijuana clinic

MODESTO The city is poised to become the first in the state to shut down a medical marijuana clinic, following the June U.S. Supreme Court ruling that authorities may prosecute sick people whose doctors prescribe marijuana to ease pain. The California Healthcare Collective was licensed by the city in October,

but earlier this month, a three-member safety committee recommended closing the dispensary through zoning laws. Modesto's council is scheduled to vote on the recommendations Sept. 6.

Santa Barbara News-Press

8-22-05

**The information contained in the
following 26 pages was compiled
and provided by the
Police Department of the City of Concord.**

ANAHEIM

May 19, 2004 a MMJ 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 MMJ 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 MMJ 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 MMJ 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 MMJ customer was robbed after leaving the "The Health Center" MMJ Dispensary (San Leandro). The victim was accosted by two subjects who possibly followed the victim away from the dispensary.

February 6, 2005 a MMJ 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 MMJ 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 MMJ 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 MMJ 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 MMJ Dispensaries (Unincorporated San Leandro and Hayward) Officer Initiated events may be vehicle stops or on-view arrests.
16043 East 14th 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 14th Street: 2003: 11 Officer initiated activity events, 2004: 3 loitering calls, 9 Officer initiated activity events, 2005: 5 Officer initiated activity events.

15998 East 14th 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

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. Citizens in the area saw the crime occur about four blocks from THC and called police on their cell phones..... 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." Amaral points out that no matter how armored the clinic buildings are, the people entering and exiting are still targets. He advises them to be aware of their surroundings and to drive to the nearest police station or flag down an officer if they think they are being followed. 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.....Clinic location has also had an impact on neighborhoods. 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)

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/fedmmjcases.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 MMJ Dispensary and was the intended target of the robbery.

October 2001, December 2001 and June 2002: The MMJ 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 MMJ 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

Excerpts from:

Pot club robbed for third time in a year

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. "I think it's a public nuisance and I think it needs to be closed," said City Councilmember Linda Mayotte. The 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. Medical Herbs responded to that by closing at 4 p.m. so it would only be open during daylight hours. The club hired a licensed security guard, installed video cameras, and it agreed to limit the amount of cash and pot on the premises, among other measures.... Two Latino men approached the front gate on University Avenue Wednesday about 2:30 p.m., said Geshuri. The men failed to show the identification cards that are required of every patient but were let through the gate because they claimed to know owner Ken Estes. The security guard relayed the message to general manager Randy Moses, who opened the building's main door to confirm the story, then closed the door without turning the lock, Geshuri said. At that point, one suspect pulled a gun and the other a knife, forcing their way into the building. The suspects told everyone to lie on the ground. They took the cash and marijuana and fled, Geshuri said. Geshuri said the club's security cameras were out for repairs Wednesday. Police who had been scouting the premises to prevent robberies had left only minutes before the incident, Geshuri said. One neighbor who did not want to be identified said he saw the two men meeting two other men waiting outside in a late model, tan vehicle in which they all got away. "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. But Geshuri said the incident was an aberration. "It's rare that we have that much product on site," she said, arguing that the club had just received a shipment and was in the process of dividing it up for patients. She said Medical Herbs keeps most of its supply off-site, at secure locations.

Berkeley

- Has four facilities operating in the City currently (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 MMJ 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/fedmmjcases.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)

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 MMJ 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)

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.

EL DORADO COUNTY

MMJ 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/fedmmjcases.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. Meanwhile, in a separate case, this subject won a landmark federal lawsuit for return of one ounce of pot seized by the DEA at the request of the Humboldt sheriff after the latter was ordered to return under Prop. 215. This subject is now missing and presumed dead since Aug 2003; police suspect foul play.

(Source <http://www.canorml.org/news/fedmmjcases.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/fedmmjcases.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

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. Crane's Ukiah cannabis dispensary, Hemp Plus, offered exotic varieties of pot that sell for as much as \$350 an ounce. He also had a dispensary in Laytonville. He called marijuana "the tree of life" and said God placed it on Earth to benefit man. 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 MMJ Dispensaries operating in West Hollywood. Several of the MMJ Dispensaries have generated calls for service.

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

February 19, 2005. A MMJ 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 MMJ 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

RECENT INVESTIGATIONS

The County Ordinance does not specify who may dispense medical marijuana and what dosage is appropriate for a particular illness. Furthermore, many dispensaries contract with physicians who issue the recommendations without examining the individual to verify they are in fact ill and using the marijuana for the illness. In May 2005, the LAPD began investigating Compassionate Caregivers Group (CCG) Inc., a medical marijuana dispensary located in West Hollywood, that bordered the City of Los Angeles. The dispensary was one of seven CCG medical marijuana dispensaries throughout the state. The owner of CCG, a marijuana trafficking fugitive from another state, also owned Green Medicine Group (GMG) that referred prospective patients to their group of doctors throughout the state. One of the GMG doctors saw as many as 49 patients a day charging from \$150-\$250 per patient. The same doctor saw 293 patients in one week. The doctor allegedly examined each patient from a closed-circuit television monitor and a clerk in another office where the patient was, handed out pre-signed medical recommendations. Because there is no ordinance, procedure, guideline or anything to regulate dispensaries and to whom or how they disperse drugs, they are free to distribute as much marijuana as they want and to anyone, whether they are adults or young people. Young people from all over Los Angeles County flocked to CCG to buy marijuana and then returned to their respective communities to conduct street sales of the drug. No one on the premises had medical or pharmaceutical training or licensing to distribute marijuana, edibles, plants and liquids. There was no first aid kit, defibrillator or trauma kit present at the location in case of a medical emergency. 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. Over \$1.7 million in cash alone was received during the month of March 2005. And, most importantly, only three medical marijuana recommendations were found for patients residing in Los Angeles County, yet they provided medical marijuana to an average of 300 patients per week. The 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 approval of the products. On March 23, 2006 in Oakland, "Beyond Bomb," one of a handful of manufacturers and distributors of edible marijuana products, who distribute edibles to medical marijuana dispensaries in California and the US, was searched by the Drug Enforcement Administration (DEA). 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. Beyond Bomb 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 legitimate products were found that had infringed copyrights and trademarks in this manner.

In addition, legitimate candy bars were opened and the chocolate 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 dispensaries 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 alcohol), drug facts, expiration date and other information, as required for over the counter drugs.

Lastly, the ordinance called for a security system and guards for each location. This requirement has not been an issue in the past. Medical marijuana dispensaries typically have had more extensive security systems than Sav-On, Rite Aide or Walgreen drug stores, and yet they still have been robbed and assaults and murders 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 dispensaries locally employ street gang members with extensive criminal histories as security guards and many of them are armed. In addition, where medical marijuana dispensaries have sprung up, the surrounding area has seen a 50 percent increase in Part I crime. Several unincorporated areas within the County of Los Angeles border the City of Los Angeles. Compounding this issue, the Los Angeles County Sheriff's Department has a policy of not enforcing the law at medical marijuana dispensaries. Therefore, if the City of Los Angeles does adopt the same ordinance, crime will significantly increase in these areas making it extremely difficult to enforce the law.

(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

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. As the News is quick to acknowledge, because marijuana is an illicit commodity, no one really knows how big the industry in the county is, so the paper relied on extrapolations based on the number of plants seized and on information it acquired about current wholesale (pound level and up) marijuana prices in the area. 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 MMJ 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/fedmmjcases.html>)

Soap store a front for pot outfit, cops say

Patrick Giblin Modesto Bee

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. Narcotics officers arrested Michael O'Leary, 37, of Modesto at the store, 4213 McHenry Ave. They are looking for his brother, Shannon O'Leary, 34, of Modesto, agent Kelly Rea said. "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. Michael O'Leary was booked into the Stanislaus County Jail in Modesto on charges of possession of marijuana for sale and criminal conspiracy. He was released on \$25,000 bail Friday afternoon.

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

ROBBERS INVADE OAKLAND POT CLUB

Oakland Tribune by Susan McDonough, (Excerpts from)

November 10, 2003 A medical marijuana club in Oakland's so-called Oaksterdam district was the target of an invasion-style armed robbery Sunday morning. Four men, one with a gun, tied up a bouncer outside Compassionate Caregivers at about 8:10 a.m. and barreled their way to where the cannabis club is located on the top floor of the three-story building, police said.

Several medical marijuana patients and staff members were inside the club at 1740 Telegraph Ave.....The gunmen tied up another person inside the dispensary and took several ounces of marijuana and a significant amount of cash before fleeing, police said..... Oakland Police Sgt. Hugh Kidd said no one was injured and no patrons or staff members were robbed individually. Oakland was one of the first U.S. cities to legitimize the use of medical marijuana by deputizing a former club on Broadway as a distributor. That dispensary was shut down by the U.S. Drug Enforcement Agency in 1998, but a number of marijuana-related businesses have sprung up in the neighborhood to replace it. Cannabis clubs in Berkeley and Sacramento have been hit by similar armed robberies in recent years.

(Source) <http://www.mapinc.org/newscmc/v03/n1750/a02.html>

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. Arrested are the owner and 11 other employees. DEA says products were packaged in eye-catching candy wrappers that might pose danger to kids. Supporters say that products were distributed for use by medical marijuana patients. (Source) <http://www.canorml.org/news/fedmmjcases.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 MMJ 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.

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 MMJ 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 MMJ Dispensary was indicted 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 MMJ 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/fedmmjcases.html>)

SAN DIEGO

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/fedmmjcases.html>)

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

ALLISON HOFFMAN Associated Press

Federal prosecutors accused six people Thursday of illegally trafficking pot under the cover of California's medical marijuana laws - in some cases processed into baked goods, "Reefer's" peanut butter cups and "Splif" peanut butter. Federal and state search warrants were executed at more than 11 locations throughout San Diego in a morning raid, and at least five people were arrested, authorities said. Federal charges were expected to be filed Friday, according to U.S. Attorney Carol Lam.

"They made thousands of dollars every day," Lam said. "Their motive was not the betterment of society. Their motive was profit." One federal indictment accuses John Sullivan, 38, of growing more than 100 marijuana plants for distribution and distributing marijuana or processed marijuana-based goods from his two dispensaries, the Purple Bud Room in Pacific Beach and THC in San Diego. Five managers of the Co-op San Diego were indicted separately on similar allegations. Wayne Hudson, 42; Christopher Larkin, 34; and Ross McManus, 39, are alleged to have distributed marijuana products through the co-op. Scott Wright, 40, and Michael Ragin, 34, are accused of growing hundreds of plants for the co-op at their homes. Messages left at the dispensaries were not immediately returned. Also, the San Diego County District Attorney has filed state charges against one of the men named in the federal indictment and nine others for selling marijuana and possessing marijuana for sale. State charges were filed against Sullivan's THC dispensary and four other independent operations in San Diego. 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. Dumanis said that her office has "no intention" of preventing people who suffer chronic illnesses like AIDS, glaucoma or cancer from using medically prescribed marijuana to ease their pain. But San Diego County has fought an ongoing battle to limit the impact of the medical marijuana law, which was approved in 1996 by 55 percent of voters. San Diego has ignored a state requirement that counties issue identification cards to registered medical marijuana users and maintain a registry of people who apply for the cards. In December, county supervisors sued the state of California and its director of health services in federal court, saying federal law that prohibits marijuana use trumps the state law. The county moved that lawsuit to state court in February to avoid bringing the case to the 9th U.S. Circuit Court of Appeals, which has sided in recent rulings with medical marijuana supporters. That suit is still pending. The men indicted by the federal grand jury face a maximum of 40 years in prison and \$2 million in fines for each of the allegations listed in the indictment, authorities 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

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. On Thursday, local and federal law enforcement officers went to the storefront on Rancho Santa Fe Road and seized all of the marijuana and products laced with the drug's byproducts as part of raids of dispensaries countywide. 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. Recently, Legal Ease asked the city to transfer its business license to a new location on Grand Avenue. The city rejected the request in a letter sent to Legal Ease last month. 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. Though the letter didn't say the city wanted to close the business, that conclusion is "painfully obvious," Gittings said. City officials will meet with Legal Ease's representatives next week to discuss the situation, he said. Gittings said he doesn't know when the dispensary would be closed. When reached earlier this week, Henry Friesen, Legal Ease's attorney, said that he hoped to clear up any miscommunication with the city. He said he thought the new location would be approved, based on discussions with representatives from the Sheriff Department's San Marcos substation and the Fire Department. 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/20060708-9999-1mi8smmari.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

June 23, 2005 3 S.F. pot clubs raided in probe of organized crime

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. Agents seized marijuana and other items from two cannabis clubs on Ocean Avenue in the Ingleside district and a third on Judah Street in the Inner Sunset district. The raids were the first in the Bay Area since the U.S. Supreme Court dealt a blow to the medical marijuana movement two weeks ago by ruling that the federal government had the authority to prosecute people whose activities are legal under state law.....Twenty people were charged in an indictment that federal authorities planned to unscal today. Authorities would not comment on the specific allegations against them. 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/fedmmjcases.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." He said that so far, none of the victims with whom the department has worked has been able to recover their inventory.

Emmalyn's proprietor John Baumgartner said he and his staff felt safe in their trade until Sunday. "We never felt threatened," he said in an interview Monday. "We usually have two people on duty. Because of the gay pride day, I happened to be out with other staff passing out fliers and left one person in the store. We left ourselves open."

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. They took everything in the place. They emptied out the cash registers and the counters." Baumgartner said the club will remain closed for the near future while he upgrades security. "They took all the inventory I had," he said, but 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

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..... About half an hour later, Jonathan left his brother, who was preparing to close the shop and head over to the Rainbow owner's home for dinner that night. What happened next is still somewhat of a mystery. 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.

When the owner, Suzie Andrews, was allowed back inside, a month after the shooting, everything appeared to be normal except for the bloodstain in the doorway leading to a small body-piercing room. 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. She finally closed the business permanently on New Year's Eve, sticking the remaining bong, handpipes, hookahs, T-shirts and porn tapes into storage, where they might eventually be sold on eBay. David Cruz's killer, meanwhile, has never been identified. Police can usually determine a murder suspect within 48 hours of a shooting, even if they're unable to apprehend him. 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 MMJ Dispensaries within their City Limits. They do however have employees of MMJ Dispensaries from other jurisdictions living in their city.

June 19, 2005: Suspects enter an unoccupied residence of a MMJ 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 MMJ 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 MMJ 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 MMJ Dispensary (Paperwork only, no cash)
(Source Mark Decoulode San Leandro PD)

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, resulting in minor injuries not requiring hospital treatment. 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

SANTA CRUZ COUNTY

Capitola 2004: Three suspects entered the victim's home armed with a handgun in search of the residents MMJ 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 MMJ. 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 MMJ 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. Authorities declined to identify the arrested pair, saying all information about the case was sealed by a federal judge.
(Source) <http://cannabisnews.com/news/12/thread12999.shtml>

September 29, 2004 The father of the owner of a MMJ 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 MMJ Dispensary and burglarize the business taking three pounds of Marijuana and cash.

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

April 15, 2005 Employees of a MMJ 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 MMJ Dispensary and stole a digital scale.

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

Mar 17, 2006 Suspects forced entry into a closed MMJ 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 MMJ 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 MMJ 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 MMJ Dispensaries under the guise of MMJ and then reselling the Marijuana to non MMJ 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/fedmmjcases.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)

TEHAMA 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/fedmmjcases.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/fedmmjcases.html>

TUSTIN

After a MMJ 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 MMJ 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

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)

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/fedmmjcases.html>

**The information contained in the
preceding 26 pages was compiled
and provided by the
Police Department of the City of Concord.**



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Robberies make medical pot-selling a

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SEAL



Chronicle's Mike Kepka

Angel Pasillas and Levi Williams guard the Health Center in San Leandro, which has had two burglary attempts in recent months.

San Francisco, CA Aug 29, 2005 -- Unlike their mellow brethren in San Francisco, the half-dozen or so medical marijuana clubs that have sprouted up in the urban no-man's-land between San Leandro and Hayward have turned into something out of the Wild West.

There's been a rash of armed robberies, a shootout that left one robber dead, and the possible attempted hit of a worker for cooperating with police.

"I don't think this is what the voters had in mind when they passed the medical pot law, but that's what we're dealing with," said Alameda County Sheriff's Lt. Dale Amaral, whose Eden Township beat includes the 2 square miles of unincorporated land where most of the clubs are.

The motivation behind the robberies -- big cash and big marijuana.

Here's a summary of the incidents that have occurred in recent months.

The first big hit went down on Super Bowl Sunday, Feb. 6, at the Compassionate

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"Do the math," said Sheriff's Detective Steve Lenthe. "All day long there's a steady stream of customers going in, and each spends about \$100. You could sit there with a clicker and count the cash."

No one keeps tabs on the daily take at the various clubs, but cops have been told by the operators that they take in upward of \$25,000 a day -- most, if not all of it, cash.

Another club, the Health Center on East 14th Street, has reported two attempted after-hours burglaries in recent months, including one in which the bandit cut all the wires going into the club, then tried cutting through the wall of the club with power saw.

The robbers answered with a volley of gunfire. The owner fired back, mortally wounding one of the assailants. No one else was hurt, but investigators shuddered when they found three slugs embedded in the wall of a neighboring apartment complex.

After forcing the owner to open the safe, the bandits made off with an undisclosed amount of cash and pot. The owner, however, grabbed a .357 Magnum and went after the robbers, ordering them to freeze.

This time five men, several of them armed with pistols and semiautomatic rifles, dropped down from the roof behind workers and stormed in as they were opening the club.

The outcome was much bloodier Aug. 19 at a third club, A Natural Source, on Foothill Boulevard in unincorporated San Leandro.

It was the second armed robbery of the club within three months. Only this time, an employee hit a silent alarm, so Hayward police were waiting for the robbers as they came out the door.

Again everyone was ordered to hit the floor, and again the robbers cleaned out all the cash and drugs they could grab.

About a month later, on Aug. 8, three armed robbers burst into the nearby Hayward Patient Resource Center.

Sheriff's detectives suspect the shooting was in retaliation for the club cooperating with the cops on the Super Bowl robbery.

The worker plowed through cyclone fence to make his getaway unharmed. No sooner did the worker hit the gas than the masked figure sprang out and fired four slugs into the car.

Last month, one of the same club's employees, while pulling into the parking lot, spied a masked man hiding in the bushes.

The bandits didn't move fast enough, however, and were caught making their escape by Hayward police.

in, tied up everyone and robbed the place of about \$50,000 in cash and an undisclosed amount of "product," i.e., marijuana.



"It's one of the reasons we have an armored service come and why we're starting to take credit cards," said Jack Norton, who runs the Health Center.

Angel Pasillas, whose HP Security guards watch over Norton's clinic and two other clubs in the area, likened the marijuana establishments to banks.

"But a bank has guards and all these cameras," Pasillas said. "Some of these clubs only have some big friend of the owner at the door."

The cops, however, said that there's another issue at play here -- one that may be going on far from the clubs themselves.

"I can't say there's any direct connection to the clubs, but the number of arrests for possession of marijuana at schools in the neighborhood went up from 21 to 34 last year," Amaral said.

The fear is that small-time dealers are getting medical cards, then using the clubs as their personal wholesale outlet.

These and other concerns prompted county supervisors to pass an ordinance limiting customers to 8 ounces of pot a month per club, and setting a 20-pound limit on the amount of marijuana that a club on unincorporated land may have on the premises.

The county is going to allow only three clubs to operate on unincorporated land. With the deadline for applications set for Tuesday, only one of the clubs now operating near San Leandro has applied.

Perhaps the others are wondering if staying in business is worth the risk.



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EAST BAY express

JULY 24, 2002 | VOLUME 24, NO. 41 | THE EAST BAY'S FREE WEEKLY

WHEN POT CLUBS GO BAD

For some things, happen when marijuana
is regulated less than candy.

BY CHRIS THOMPSON

FRED'S FRIENDS

How one man makes money —
and pals — at area colleges.

PAGE 9

GHETTO TO GO

High-end takeout food
is the post-9/11 dining trend.

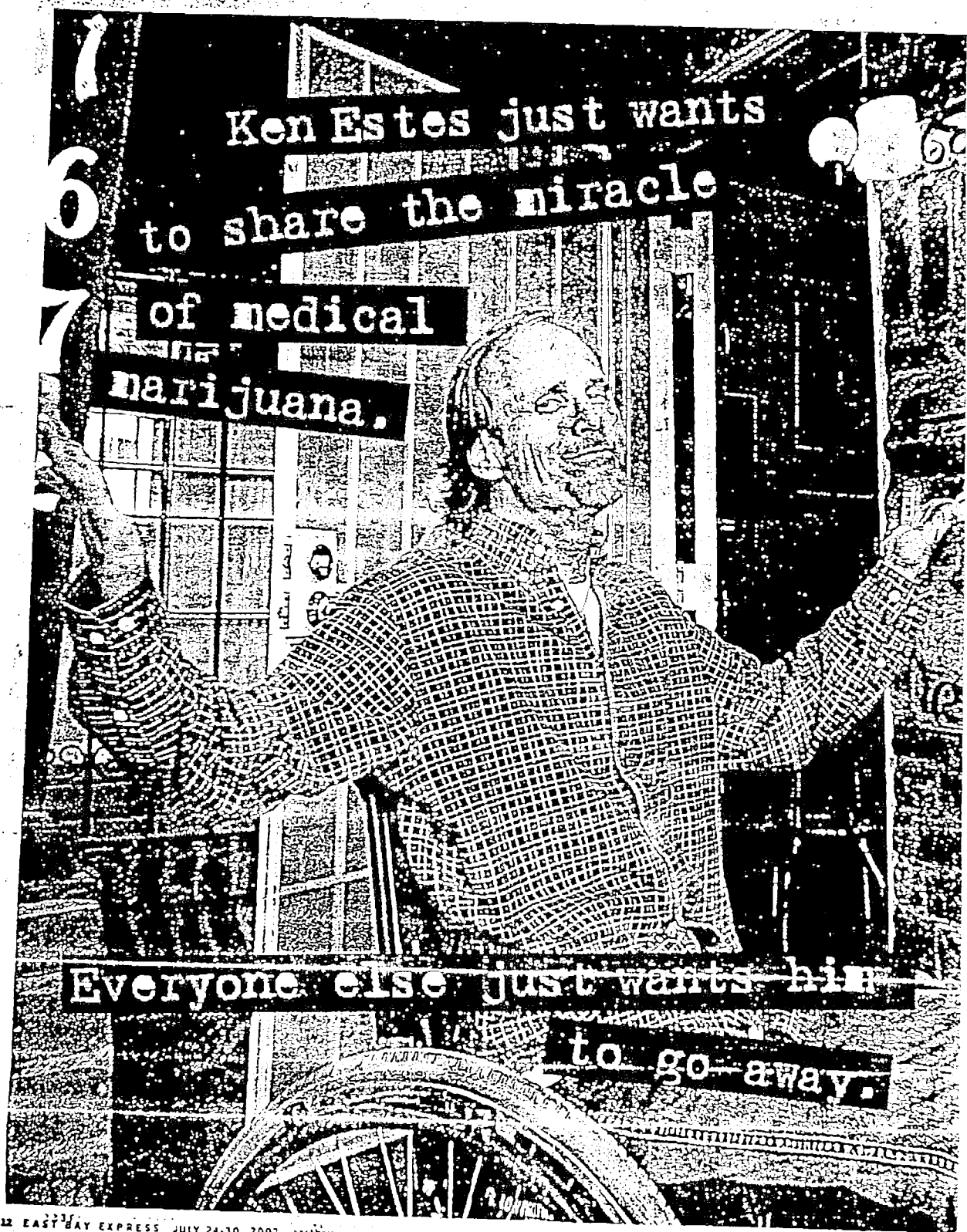
PAGE 31

ISRAELI GEARS

The Jewish Film Festival
declares its own truce.

PAGE 41

ATTACHMENT 1



When Pot Clubs Go Bad

NIGHBORHOOD 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 time, a gray Honda pulled to the curb and two Latino men got out the car and stepped up to the guard. One topped out at 250 pounds and wore a plaid burton-down shirt; the other was a skinny kid in a T-shirt. The guard walked back to the door, and shouted for Estes' brother that there were two guys at the door to see Ken. His brother cracked open 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. As terrified neighbors called the cops, the thieves ran out of the club, jumped in the car, and floored it.

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.

The thing is, Ken's a really nice guy. With a tanned face defined by a sandy goatee, long blond hair, and a disarming air of candor and vulnerability, he seems the very picture of California easy living. It's only when you notice the wheelchair supporting his shriveled legs, or the limp hand-shake born of two decades of nerve damage, that you catch a glimpse of the

tragedy that has been his companion since 1976. 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.

Berkeley Medical Herbs, which didn't exactly traffic in St. John's-wort, operated out of a cute little cottage that neighbors call the "hobbit warren." A modest wooden fence fronts the street and a path leads through a mulch

lawn to a white security door. Beneath the rich, sloping redwood ceiling, a spacious brick fireplace keeps patients toasty-warm in the winter. Once a week a woman comes in and provides free massages on a table in the corner. 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. But "Compassionate Ken," as his friends call him, doesn't seem to learn. 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

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Pot Club
continued from page 13

got involved in fights on the street. His fellow cannabis-club operators even tried to drive Estes out of town.

Whether Estes is a character out of *The French Connection* or one out of *The Gang That Couldn't Shoot Straight*, he couldn't exist without the peculiar politics of Proposition 215, which decriminalized medical marijuana in California. 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 super-legal, perhaps California's least-regulated ingestible substance. And yet marijuana remains a powerful intoxicant with a vast underground market, one whose dealers inhabit a shadowy criminal world populated by dangerous men.

In the absence of official regulation, it

was still thinking about keeping my body clean. But they said, 'Man, they're popping pills in you and morphine. This is a lot less than that.' So I said, 'Alright, lemme smoke.' That night, I slept all night. When I woke up I ate. They brought the doctors in, they said, 'Lookit, he's eating!' My doctor wrote it on the chart, he wrote that this marijuana is doing what you want the pills to do."

After that first toke, Estes put his life back together. He regained limited use of his arms, enrolled in junior college, and by the early '60s was offered another scholarship, this time to UC Santa Cruz. Estes decided instead to open a string of tanning, hair, and nail salons in Concord and Davis. He met his future girlfriend Stacey Trainor while she was working at a mini mart next to one of his salons. "I kept coming over there, and she would always have the banana drink ready for me, get the burrito ready," he says. Within a month of their first date, Trainor left her husband and moved in with Estes. Together they would raise three children.

But something always bothered Estes. Before he began growing his own, he typically took his business to Haight Street or Telegraph Avenue. It was a dangerous pastime; just because he wanted to relieve his

Estes advertised: First

has fallen to pot-club operators themselves to craft some sort of system. Over the last six years, groups like the Oakland Cannabis Buyers Cooperative and the Alliance of Berkeley Patients have, through a series of trials and sometimes embarrassing errors, arrived at a protocol for verifying medical ailments, providing security from criminals, and operating safely in quiet residential and commercial neighborhoods. But however sensible their rules may be, they have no means of forcing club operators to abide by them. 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.

discomfort, he was mugged three times and occasionally suffered the indignity of being dumped out of his chair. In the '80s, as AIDS swept through the country, Estes began clipping press accounts of "Brownie Mary," the elderly woman who used to walk the halls of San Francisco General Hospital, handing out marijuana-laced treats to the terminally ill. Slowly, he began to think that this wasn't just a drug, but a cause. 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. "Everyone thought I was crazy, but I said I wanted to pursue this," he recalls. "I'm tired of being looked at as a doper, as a pothead, as somebody less than somebody else because I used marijuana."

ESTES is that rare breed of Bay Area native who spent his teenage years here in the '70s and didn't smoke pot. Born in Martinez, he moved to Concord and became a star athlete at Ygnacio Valley High. He excelled at soccer and was offered a scholarship to Santa Clara University, but that all changed one day in 1976, a month after he graduated from high school. Estes was riding his motorcycle back from a Walnut Creek McDonald's, where he worked as a manager, when a car swerved into his lane and hit him head on. Estes flew over the car and broke his neck. The damage was so extensive that for the next two years, he couldn't even move his arms. He struggled through physical therapy hoping to regain just enough mobility to kill himself.

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 was wracked with chronic pain, living in a rehab center and dependent on others to bathe and clothe him. The morphine and the pills didn't help, and he began to waste away. "I probably got down to a hundred pounds, and I'm six feet," he says. "I couldn't eat, I couldn't sleep, the physical pain was horrible, a nightmare. But about six or eight months into it, a group of Vietnam vets I was in rehab with were smoking marijuana. They said, 'Look, man, we know you're not eating or sleeping, why don't you come over here with us?' I said no, 'cause I

STES began his cannabis activism by volunteering at the Oakland Cannabis Buyers Cooperative. From the beginning, the co-op has been at the cutting edge of the movement where San Francisco clubs have a looser, anarchic spirit; it's all business at the Oakland Co-op, whose members have pioneered security and medical protocols with a determined air of professionalism. Jeff Jones, the co-op's executive director, doesn't even smoke pot. Growing up in South Dakota, Jones watched his father waste away and die from a terrible illness and vowed to find a way to bring medical marijuana to the terminally ill. Jones first joined the co-op in 1995 and soon found himself making home deliveries of dope to AIDS and cancer patients. 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. Until the California legislature passes a law to govern distribution, neither the attorney general nor the state health department has the legal authority to innovate any such protocols. "Proposition 215 did not address prescriptions,"

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. The Oakland Cannabis Buyers Collective was at the forefront of this effort, keeping and verifying patient records, hiring security guards, and establishing a rigorous dual-identification system, in which patients had to pass through multiple checkpoints. "To be a member, they had to turn in a note from a licensed physician that we could verify," Jones says. "Even cancer and AIDS patients had to renew the note every year. They were a little mad about this, but we had to confirm that their medical status hadn't changed, and they still needed our services."

Once Oakland officials were assured that, unlike at San Francisco clubs, patients would never smoke dope at the site, relations between the co-op and the city have generally been cordial. The city council contracted with the co-op to distribute pot to seven thousand patients on its behalf, and

visit, first gram free.

says Hallie Jordan, spokeswoman for Attorney General Bill Lockyer. "The initiative did not authorize or spell out any specific scheme for dispensing marijuana. Nor did it say who is entitled to it, or how much marijuana is required for which ailment. I think everyone recognizes that Proposition 215 was not the best-written initiative. But the voters passed it."

With the state paralyzed, it has fallen to local governments to regulate medical marijuana. But most localities have adopted a strictly laissez-faire approach and done virtually nothing to ensure that the distribution of pot adheres to the spirit of Proposition 215. 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."

City Councilmembers Linda Maio and Denis Spingarn say the city can't even write up a specific-use permit for cannabis clubs, because doing so would violate federal law. 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. Anyone can distribute medical pot anywhere, in any fashion they please, and virtually no one is watching them.

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

the co-op's membership cards became the definitive means of identifying medical pot patients throughout the East Bay. Jones even teaches classes on medical marijuana to recruits at the Oakland police academy. "We've never given them a reason to question what we're doing here," he says. "The local police like us because we give them an alternative to going out on the street. Our group have never done anything that has been deemed illegal, and we've never gotten complaints from anyone — except the federal government."

Berkeley's three clubs went through the same process, experimenting with various security and patient-verification protocols. In the beginning of 2001, the Berkeley Patients Group on San Pablo Avenue, the Cannabis Buyers Cooperative on Shattuck, and the Patients Care Collective on Telegraph formed the Alliance of Berkeley Patients and agreed upon a ten-point platform. This included organizing as a collective or nonprofit, contacting physicians to confirm a patient's medical condition, scrupulously keeping patient records, hiring security guards, and maintaining good relations with their neighbors. "We agreed to police ourselves, so we don't have to have any outside regulators that might not have the patient's best interests in mind," says Berkeley Patients Group member Don Duncan.

There was just one problem: none of these regulations had the force of law behind them. 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.

COUNTS 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 continued on page 16

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Pot Club

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the baggies and sampled the wares to categorize their potency. Estes says he did both. But one thing seems clear: he and Jeff Jones didn't get along. "Jeff always thought Ken should cut his hair — look more appropriate for you guys, the media," says one co-op member who asked not to be named. "Ken was like, 'You know, I don't have to look right for the press. I'm a patient.'" Jones won't say much about what he thought of Estes, but Estes recalls, "Jeff said, 'Look, if you cut your hair, you'll go places around here.' I said, 'C'mon, you're sounding like the people on the streets I've been dealing with for years. You're sounding like the conservative white guy who doesn't like anyone lookin' different from himself.' So yeah, we had a lot of trouble. I told him one time, 'I wanna get out of my chair and beat your ass.'"

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 per-

at the co-op knew the two had done this; certainly the patients had no idea that their confidential information was being bandied about like just another mailing list. 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 hydroponic system in the garage; behind sheets of dark plastic, dozens of plants were growing on plastic trays and in children's swimming

Child Protective Services. In deference to Proposition 215, they left Estes with three plants and an ounce for his own use. But Estes complains Savage took all the kind buds, and left him just a bag of leafy shit.

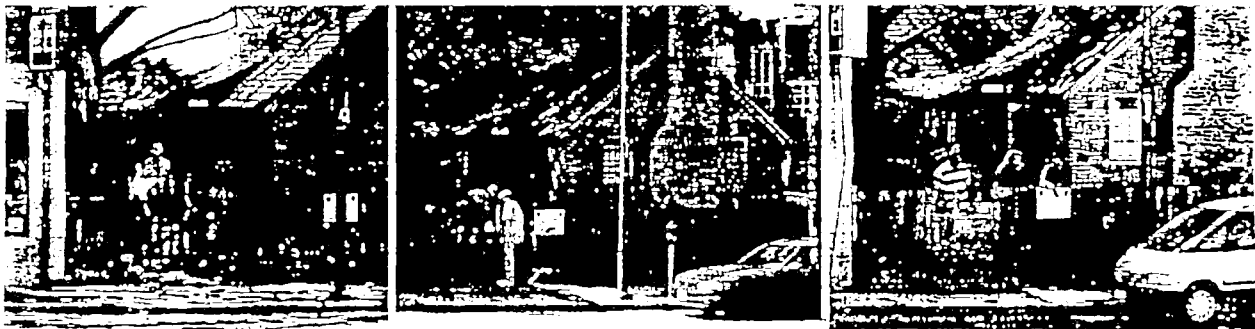
Fifteen months later, the cops would be back. By then, Estes had bought some property near Clear Lake, and Trainor had moved up north with the kids, growing more dope in a shed behind the house. Meanwhile, Estes' cousin Tim Crew had moved into the house to help him grow a crop that dwarfed his prior 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

more where that came from, and he was certainly happy to buy it. Grunner began hanging out at the club, and Estes thought every thing was working just fine. The massage table was up and running, patients were streaming through the door, the smoke was flowing freely. 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 grand 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 long-time 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 registra-

Surveillance photos taken of Berkeley



s students, congregations of idle young

sons who had no medical prescription for marijuana," her statement reads.

Jones denies paying Estes in under-the-table cash, but refuses to comment on whether he paid Estes with dope. Estes claims he received a paycheck, not cash. But he acknowledges the pot-for-labor arrangement. "I got herb for working," he says. "They gave me herb, that was the trade-off. I worked there till it closed, and then I went out and opened my new shop."

In October 1998, the feds managed to get an injunction prohibiting the Oakland co-op from dispensing marijuana. The co-op fought it all the way to the Supreme Court, where it eventually lost. Jones and his lawyers are preparing a new challenge, but except for a one-month period during which the injunction was lifted, the co-op has not handed out a dime bag since 1998. Seven thousand patients needed another supplier, 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. No one

Estes had an Oakland co-op card certifying him as a patient, as well as patient records indicating he was a legally valid caregiver. How much Jope did Proposition 215 allow him to have? "I got a judge on the phone, and I talked to the judge," Estes says. "I said, 'Please don't make me pull these plants out. These are good strains with medical benefits.'" In the end, the cops confiscated the plants and the growing system, and ranted him out to

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. His trial is set to begin on August 5.

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. Estes says Grunner told him there was

tion fee to get the note, \$200 per year. I got what I thought was an aggressive sales pitch. He said their doctor will help me get it. He looked at me and profiled me, said 'You're 51, you've got arthritis, we can help you.'... 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 Lieu-

tenant 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. ... He was advertising in the papers, he allowed tons of kids going through his place. He didn't have a screening process, didn't have security."

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. ... Trainor said that regardless of whether a buyer told Estes they had a medical problem or not, Estes would refer the buyer to Lucido to get the prescription."

one such note from Lucido's office. The patient is a mere 21 years old and suffers from back pain.

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. "I'm not connected with the clubs, and I don't refer people to the clubs," he says. "I'm sure people mention my name, but it's never the case that we work in conjunction with each other." Lucido said he couldn't remember Stacey Trainor.

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

custody dispute. "That's false, not true at all," he says. "No, I didn't sell the salons, I didn't sell cocaine. She was lying because she thought she was moving to Canada with the kids, and she thought that before she left, she could throw a bunch of stuff in the mix to mess me up in court. Because she downright hates me for dumping her."

It was bad enough when neighbors watched police raid the club and kids line up for weed — then the robberies began.

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 everything 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. Soon, the other pot-club operators came a-calling. The rob-

beries were 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, as the guards had drifted back into the club and Estes' employees began stacking the chairs, 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. "Some of it was in ounces, some of it in eighths, prepackaged in a variety of amounts," he says. "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

Medical Herbs seen to reveal lines of



men, and apparent on-premises smoking,

Trainor said she knew how Lucido operated because she went through the process herself. During her interview, she meticulously described her visit from start to finish. "Trainor went to the doctor's office, where she met a nurse who collected \$215 from her. She was brought into an exam room, where she waited until Lucido came in and asked her what she wanted. She told him she had a bad back and wanted a prescription for marijuana. Trainor said the doctor performed a mini physical, checked her blood pressure, and had her bend over backward to check the condition of her back. ... Lucido then wrote her a prescription for marijuana. Lucido did not ask her questions about treatment or diagnosis from any other physician. Lucido gave her no advice on the amount of marijuana to use and did not advise her of any other therapy or medication that might treat back problems. Lucido did not tell her to come back for a follow-up exam."

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. One neighbor, who asked not to be named, still has a copy of

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 Arcadio. 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," Arcadio wrote in his summary of Trainor's interview. "Trainor [sic] said the income from the cocaine business ran out in 1993, and Estes switched to selling marijuana."

Estes vehemently denies the charge and claims that Trainor, who declined to comment for this story, is lying as part of a child-

bery put new heat on all of them as City Councilmember Linda Maio started making noises. Don Duncan from the Berkeley Patients Group visited the club and found it pleasant enough, but Estes had clearly failed to implement even basic security procedures. "There weren't a lot of people around, the club was fairly deserted, and that was a security challenge," Duncan says. "And the front gate was a problem."

When Duncan suggested retaining security personnel, Estes responded by hiring a couple of guys he knew from around town. 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

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. "I called Don Duncan and his folks and said, you guys have to be part of the solution here," she says. "It's not okay that this happens, and it's not acceptable if this is just a rare thing. Don knows that this is not acceptable — he understands that this would jeopardize the whole movement if it's allowed to get worse."

Estes' new office manager, Dorrit Geshuri, sat down with City Manager Weldon Rucker and police officials, and other Alliance members, and together they hammered out a series of reforms. 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 continued on page 18

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Pot Club
continued from page 27

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.

"I don't think Ken is a bad guy, but it's no longer appropriate for him to operate in Berkeley," Duncan says. "The consensus of the Alliance is for Ken to leave the city, to either move on or find another career. That conclusion has been some time in coming. We're happy to have him as a friend, but it's in the best interest of the patients that Ken close for real."

Duncan's abandonment has left Estes fairly bitter. "Yeah, they don't want the competition," he says. "They can keep the prices high, and they can control the game. It's business, it's all about business. If you're Starbucks, you want Peet's out of town." Still, Estes has finally agreed to get out of town. 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. The numerous car dealerships have given in this part of town its historic name, "Auto Row," but it should really be called "Pot Row." Virtually all the pot clubs in Oakland are clustered in this neighborhood, and they're not happy to see Estes join them.

If Estes wants to defy Jones, his new neighbors, the cops, and the entire city of Oakland, there's not much anyone can do about it. Linda Malo was at a loss when it briefly looked like Estes had decided to stay in Berkeley; she ineffectually threatened to circulate a petition and prepare a nuisance complaint. As for, say, an undercover operation to catch Estes selling to customers without a valid doctor's note, she never considered that option for a second, and police won't say whether they did. If this is the best local government can do, Estes is in the clear.

But medical marijuana's era of raw capitalism may be coming to an end. State Senator John Vasconcellos has drafted a new bill regulating the industry, and now that it has the support of both the California District Attorneys' Association and the California State Sheriffs' Association, Governor Davis has indicated that he might sign it. The bill would establish a statewide registry of medical-marijuana patients and caregivers, who would receive a card certifying their medical status. Physicians would submit candidates for medical pot to the county Health Department, which would approve or reject applicants based on a review of the accuracy of the medical records. The state Department of Health Services would develop regulations that define how much pot dispensaries can grow and store, addressing the many nebulous questions surrounding how pot clubs currently get their wholesale product. Although the bill's primary intent is to protect patients facing reactionary and unjust arrests, the bill could have the secondary effect of regulating cultivators. This may explain why

Californians for Compassionate Use, organization that thought up Proposition 215, has joined the Committee on Medical Concerns in opposing the bill.

But get this: the registry system strictly voluntary. Vasconcellos' bill more focused on reining in the police, so it barely dwells on reining in medical cultivators. The new cards of absolute protection from scary Mok County sheriffs, but in return be patients and caregivers must operate responsibly. For operators in progress cities such as Berkeley and Oakland, we already can move in the light of day, there no incentive to sign onto the deal. And through a strange accident of history, marijuana seems likely to remain the least regulated ingestible substance in California.

Of course, good old-fashioned dr laws may solve the Ken Estes problem. 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 prosecutors determine whether someone is a legally sanctioned caregiver, or drug dealer? The answer is there is no answer. District attorneys around the state have relied on counting pot plant if you've got too many, you must be dealer. How many plants is too many? No one knows. While a handful of cities such as Berkeley have capped the amount of pot cannabis clubs can have on hand, prosecutors more typically eyeball the plants and make a simple judgment call. That's what they've done with Estes, but the system is hardly precise.

If Estes is convicted, he will pay a terrible price for this lack of precision; the charges carry a possible prison sentence of three years and eight months. But his complex reputation also could be laundered overnight. 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.

Stacey Trainor's allegations aside, Ken Estes seems a kind, generous man, ready to take you into his company at a moment's notice. But nothing out there can protect us from his tendency to trust the wrong people, of whom there are still plenty in the shadowy, twilight world of marijuana. Estes admits he's made some mistakes, and vows to improve his operation. "We began something here, and we didn't know where it would go," he says. "I've made mistakes in retrospect, but we tried to work it out. Stacey and all that stuff was a big problem — I had no problems before that. 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.

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September 8, 2005

Honorable Laura M. Hoffmeister
Mayor of Concord
1950 Parkside Drive
Concord, California 94519

Re: Marijuana club in Concord.

Dear Mayor Hoffmeister:

I recently had the opportunity to read the *Contra Costa Times* and understand that there are political pressures that were outlined in that newspaper article about a marijuana club wanting to open up in the City of Concord. I am very concerned about a marijuana club opening up in the Concord area for many reasons. One reason is that I have been in family practice associated with Mt. Diablo Hospital for the last 25 years. Currently, I am Medical Director of John Muir/Mt. Diablo Health System's Center for Recovery Drug Unit on the north campus of Mt. Diablo Hospital. We have detoxified 15,000 patients there and are cognizant of the drug/alcohol problems in this district.

Marijuana is definitely one drug that has been devastating to the population. This illegal drug is definitely addictive, causing family consequences, health consequences, legal consequences, psychological consequences, and job ailments. Many people describe this drug as a medicinal to many ailments. The physicians at Mt. Diablo and John Muir Hospitals have not seen any benefit for marijuana in its patients. We are not using it for glaucoma; we rarely use it for cancer patients who cannot eat. Its consequences far outweigh the benefits of the drug, and it is an illegal drug.

To: The Honorable Laura Hoffmeister

I am very familiar with the endocannabinoid research, which is a billion dollar market opening up. We have over 400 different chemicals in our body, and those are associated with receptor sites that are also in the brain and in almost every cell in the body. One of those chemicals is called our own endocannabinoids. Endocannabinoid is a chemical located in the brain that everyone has to a certain extent. The receptor sites are needed. Alcohol increases endocannabinoids and has an effect on that system. New research in the endocannabinoid system is directed towards obesity, pain control, and many other factors that are too complicated to list at this point in time. Marijuana is an external plant; we call it an exogenous chemical, and it does activate our inherent or endogenous receptor sites one way or another as an agonistic or a heightened stimulus to those receptor sites.

In the future, we will see new drugs coming out that are legal and that will be tested in a correct way to be an adjunct and facilitate these receptor sites in a medical way; research will tell. I believe that it is too early for the City of Concord representatives to okay a marijuana club when this is a drug that cannot be controlled in its quality and/or be utilized in a correct manner on a scientific basis. That is for research to work out for us in the next several years when we will have significant scientific findings.

During my experience in the chemical dependency field locally, I have seen many abuses of marijuana clubs. Many patients who do not have chronic pain who are detoxified by me are getting marijuana from these clubs, and they have no chronic pain or other conditions for which they obtain these drugs. I believe that the methodology of dispersing marijuana by these clubs leaves much to be desired. When push comes to shove in this situation in this area, I am very uneasy with marijuana clubs and how they disperse their medications and what their medications are dispersed for. Again, it is illegal. It also is not a healthy method of medicinal regulation, and it is definitely another factor that decreases the ability of our children to get an education.

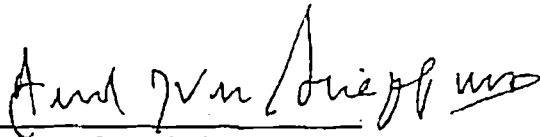
The proponents of marijuana state that marijuana stays in your system for only three hours, but people continue to have positive urine drug screens for one month. Urine drug screens do not tell us whether a person has a health and safety issue while on these drugs. Marijuana recommendation cards indicate that you cannot drive a vehicle under the influence of marijuana. The question is when are the levels high and when are the levels low? Scientific methodology in the quality regulation and understanding toxicity is out of the

To: The Honorable Laura Hoffmeister

question at this time. There are too many questions involved at this point in time. Again, I would not want a marijuana club or the dispersing of marijuana in the City of Concord.

If I can be of any further help, please contact me.

Sincerely,



Fred J. Von Stieff, M.D.
Medical Director, Center for Recovery,
Mt. Diablo Hospital/John Muir Hospital
American Society of Addiction Medicine
California Society of Addiction Medicine

FJV/lo/kl

D: 09/08/05
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Prescriptions for marijuana a gray area

Doctors balance multitude of concerns and the needs of patients

BY LISA LEFF
ASSOCIATED PRESS

COOL — When Dr. Mollie Fry opened a storefront clinic next to the only post office in this Gold Country town, she did not think that telling her patients where to get the medicine she recommended for pain, depression and nausea would be a problem.

The federal drug agents who raided her home and office thought otherwise. So did the grand jury that indicted Fry last year on felony charges of conspiring to distribute marijuana.

"I assumed the fact that I had 'M.D.' at the end of my name gave me the right to make judgments about people's health," said Fry, who estimates she has issued thousands of cannabis recommendations since setting up her thriving practice northeast of Sacramento in 1995.

Since California passed the nation's first medical marijuana law a decade ago, among the provisions that have been tested in courts and proven troublesome in lawyer's clubs and clinics like Fry's, was one requiring ill patients to obtain a doctor's written approval before they could legally grow or buy pot.

The tension between the mandate and federal drug laws that presume marijuana has no medicinal value has left room for plenty of errors and trials, as well as strained the conventional doctor-patient relationship.

Until the stalemate is resolved, doctors recommending marijuana do it with trepidation and a good deal of risk.

Medical marijuana advocates estimate that 150 doctors have authorized pot for at least one patient, most of them oncologists or AIDS specialists. But the vast majority of recommendations have come from a loose-knit cadre of about 15 self-appointed specialists, the so-called "pot docs" who charge \$150 and up to walk near the California Medical Association, but in a gray area between the clearly permissible and clearly impermissible categories of action.

After complaints from local law enforcement, just about all have been investigated by the state board that licenses and disciplines physicians. Four were doctors who devoted their practices to acting as medical marijuana consultants and ultimately received sanctions ranging from the public rebuke that Fry got to having their licenses suspended.

California's medical marijuana law, also known as Proposition 19, established a pivotal role for doctors in the measure's implementation, holding that seriously ill patients had the right to use pot "where medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit."

The law named a host of ailments for which marijuana might prove helpful in easing symptoms: cancer, anorexia, AIDS, glaucoma, arthritis, migraine. And unlike the medical marijuana laws that would eventually be enacted in 19 other states, the California measure also gave doctors discretion to certify patients with "any other illness for which marijuana provides relief."

That vague language left it up to doctors to decide what constituted a serious illness for which marijuana was the best treatment option and opened the door for recommendations being given to people who did not need them.

David Thornton, executive director of the California Medical Board, said an obvious red flag for the agency would be a doctor whose patients are primarily men between the ages of 18 and 25. But he allowed that until the board issued guidelines two years ago outlining what constituted "accepted medical standards" under the 1995 voter initiative, physicians pretty much had to figure it out on their own. Most concluded it was not worth the risk.

"The role of physicians was not that clearly explained (in the 1995 law), although it was left to physicians to be the



Dr. Mollie Fry is seen in front of her office Tuesday in Cool. Fry is under federal indictment for conspiring to distribute marijuana, but claims she is being prosecuted unfairly because she recommended pot for patients under California's medical marijuana law.

ones, in their informed opinion, to determine whether a patient would benefit from marijuana. Thornton said "Until federal and state laws harmonized, it's going to be difficult."

Although a federal appeals court ruled four years ago that the U.S. Drug Enforcement Administration cannot go after doctors merely because they recommend marijuana to patients, the state medical board's guidelines make it clear the ruling did not amount to immunity either from prosecution or disciplinary proceedings.

The board advises doctors, for instance, that owing to a patient's ward instead of prior medical records to determine whether a marijuana recommendation is appropriate could constitute medical negligence. Failing to conduct an independent exam or to consider whether another drug would be just as effective could similarly lead to charges of unprofessional conduct.

The California Medical Association is even more explicit, warning doctors never to tell patients where to get pot, urging them to remind patients of possible side-effects. Purchasing doses with patients, opining on whether they should smoke or eat marijuana, and signing a form that enables patients to obtain a state-issued medical marijuana ID card

also are steps the medical association cautions its members to avoid if they don't want to end up like Fry.

Frank Lucido, a Berkeley family physician who devotes about 30 percent of his practice to working with medical marijuana patients, said he abides by those recommendations, but thinks pot docs are being held to higher standards than doctors who prescribe lots of Viagra, prescription painkillers and other abused medications. Doctors who prescribe sleeping pills for patients who complain of insomnia, Lucido noted, are not at risk of being pulled aside if they don't do a hands-on exam or develop a long-term treatment plan.

"Neurosurgeons do a lot of brain surgeries. Are you going to call them brain surgery mills?" he said.

One outgrowth of Proposition 19 was the creation of a state-funded research center at the University of California, San Diego, that has jump-started federally supported clinical trials on the uses and risks of medical marijuana.

José Grant, director of the Center for Medicinal Cannabis Research, said the results have been promising, in reducing inflammation and muscle spasms and treating conditions such as high blood pressure and multiple sclerosis. By studying the brain receptors that stimulate ap-

petite when exposed to the chemicals in marijuana, scientists even are looking into possible treatments for obesity.

Grant predicts that if the research continues, the debate about the proper role for doctors in recommending marijuana for patients will be rendered obsolete by sound science and the development of marijuana-based drugs that can be prescribed with confidence and without fear. He compared where the country is now with medical marijuana where it was a century ago with opium.

"Opium are known to be lethal, so we have a way of dispensing them to patients who need them and avenues to do research," he said. "Marijuana has been stuck in this closet for a while for various reasons, but I think it will come out of that."

In the meantime, Fry, 50, who is awaiting trial, continues signing recommendation forms for patients who come to see her from throughout the state. She no longer sells her patients starter plants, but freely tells them about what she sees as the spiritual, emotional and economic benefits of growing their own pot.

"What did I take an oath to do? To do no harm and to alleviate pain and suffering," Fry said. "I'm going to be true to my oath, and I'm even willing to go to prison for it."

Medical marijuana at a crossroads 10 years later

BY DAVID KRAVETS
ASSOCIATED PRESS

SAN FRANCISCO — A decade ago, California voters were the nation's first to approve medical marijuana, and 10 other states have since followed suit. But the future of the landmark California statute is no clearer now than when voters headed to the polls Nov. 5, 1996.

The federal government still refuses to recognize Proposition 215, the Compassionate Use Act approved by 56 percent of voters. And U.S. authorities under both the Clinton and Bush administrations have won nearly every major legal battle over the measure.

"We refer to it as marijuana, not medical marijuana, regardless of its reported destination or use," said Drug Enforcement Administration spokeswoman Casey McEnry, noting that marijuana is an illegal controlled substance under federal law.

The government's war on drugs has also prompted a civil war of sorts within California: three of the state's 58 counties, headed by San Diego County, claim in a lawsuit filed in state court that the measure is illegal.

A hearing is set for Nov. 16 in the lawsuit, which threatens to derail the state's legal tolerance for the medicinal use of a

drug that federal law places in the same category as heroin, cocaine and LSD.

A victory for those renegade counties might also set legal precedent undermining medical marijuana laws in other states with such laws — Alaska, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Rhode Island, Vermont and Washington. Voters in South Dakota will consider a medical marijuana measure on Tuesday.

"The state cannot authorize somebody to do something that breaks federal law," said Thomas Bunton, senior deputy counsel for San Diego County.

Medical marijuana is used by thousands of people suffering from AIDS, cancer, anorexia, chronic pain, arthritis, migraines and other illnesses, according to the Marijuana Policy Project. The nation's medical marijuana laws generally allow those with a doctor's recommendation to grow or possess small amounts of the drug.

In 1999, a branch of the National Academy of Sciences expressed concerns about the health risks of smoking marijuana, but acknowledged in a report that "there is no clear alternative for people suffering from chronic conditions that might be relieved by smoking marijuana, such as pain or AIDS wasting."

Later research suggests it might reduce tumor prolifera-

ALSO

Doctors find themselves in a bit of a pickle with respect to medical marijuana prescriptions. Page B6

tion and a study this year by the University of California at San Francisco showed marijuana "may offer significant benefit" to those suffering from hepatitis C.

The Food and Drug Administration does not recognize marijuana as having medical benefits.

California is the epicenter of the federal-state medical marijuana battle. Communities including Los Angeles, San Francisco, Oakland and West Hollywood have authorized storefront medical marijuana dispensaries.

Proposition 215 does not expressly allow dispensaries, but Americans for Safe Access, a pro-marijuana lobbying group, estimates there are about 200 operating in California. For many backers of the law, it's an imperfect way for patients to get pot.

"I thought we would have had more of a standardized distribution system by now," said William Panzer, an Oakland criminal defense lawyer who was among the handful of attorneys who crafted the proposition.

Federal agents have raided more than two dozen California dispensaries over the past decade, according to Americans for Safe Access. Some communities are now assisting in the crackdown, including San Diego, which recently shuttered thirteen.

A dozen dispensaries found on the Internet and contacted by The Associated Press declined comment or did not return messages.

William Dolphin, spokesman for Americans for Safe Access, said dispensaries are also operating secretly in other states, even though they are illegal. "I know they are operating in Oregon, Washington and Colorado. It's underground," he said.

So far, the federal government has taken a piecemeal approach to enforcing federal drug laws, cracking down on a few scattered dispensaries.

Nowhere is medical marijuana more accepted than in San Francisco, birthplace of the movement. The city's top prosecutor, Kamala Harris, steadfastly supports Proposition 215.

"Sick people using medical marijuana as it relates to Proposition 215 are not criminals and will not be prosecuted," she said.

But she acknowledged that a handful of San Francisco dispensaries raided by federal agents "were out of control" because they were selling pot to customers without a doctor's recommendation.

"There were some abuses," Harris said.

The DEA says it is targeting dispensaries and other large-scale growing and selling operations, whether the marijuana is for medical or illicit use. Federal authorities say they might seize individual users' marijuana, but likely wouldn't arrest medicinal users because they are focused on the supply chain.

"Our mission is to come into contact with the cultivators and the distributors of marijuana," said the DEA's McEnry. "We don't target users."

One such user is Angei Raich, who already lost one case before the U.S. Supreme Court and is likely headed back.

The 41-year-old mother of two from Oakland suffers from scoliosis, a brain tumor, chronic nausea and other ailments. On her doctor's advice, Raich uses marijuana every couple of hours to ease her pain and bolster a nonexistent appetite. She smokes it, vaporizes it and cooks it into her food.

Last year, the Supreme Court came down against Raich in the court's second ruling against medical marijuana since 2001. Because Congress decided marijuana was illegal under the 1970 Controlled Substances Act, the justices ruled, users and suppliers could be prosecuted for breaching federal drug laws, even if they lived in a state where medical marijuana was legal.

Marijuana Abuse

By NIDA Director Nora D. Volkow, M.D.



More than 96 million Americans have smoked marijuana at least once. Marijuana abuse is particularly prevalent among adolescents: Of the more than 2 million people who abuse the drug for the first time every year, two-thirds are between 12 and 17 years of age.

The damaging effects of marijuana fall heavily on adolescents and young adults. Half of all patients admitted to treatment for marijuana abuse are younger than 21. Cognitive impairments caused by marijuana linger a month or more after an individual's last exposure, and the damage is dose dependent—the more a person smoked prior to abstinence, the more marked are the deleterious effects on visual perception, verbal and visual memory, executive function, and manual dexterity, among other mental capabilities (see "Cognitive Deficits in Marijuana Smokers Persist After Use Stops," *NIDA NOTES*, Vol. 18, No. 5, p. 8). Loss of social and intellectual growth because of these impairments may have a lifelong impact on a person's experience and achievement. As well, compared with teens who never smoke marijuana, a boy or girl who smokes marijuana before age 17 is more than twice as likely to abuse opioids, three times as likely to abuse cocaine or other stimulants, and nearly four times as likely to abuse hallucinogens later in life (see "Twins Study Links Early Marijuana Use to Increased Risk of Abuse or Dependence," *NIDA NOTES*, Vol. 18, No. 4, p. 11).

NIDA is intensifying efforts to fully understand the effects of marijuana exposure from the earliest ages through adolescence and young adulthood. This research (see RFA DA-04-016, "Consequences of Marijuana Use on the Developing Brain," at <http://grants2.nib.gov/grants/guide/rfa-files/RFA-DA-04-016.html>) will provide new insight into the mechanisms by which marijuana affects brain development, a continuum that begins before birth and lasts into early adulthood. We are encouraging research projects that focus

on the effect of marijuana during all phases of neurological development, from the neurogenesis and cell differentiation that takes place in the womb to the refinement of connections among cells that continues past adolescence. Our research initiative will produce a fuller understanding of normative brain development. It also will illuminate the importance of family and social contexts in adolescence as well as the differing biological and environmental factors that precede marijuana use or nonuse.

NIDA also is expanding support of research to develop treatments for marijuana abuse (see RFA DA-04-014, "Medications Development for Cannabis-Related Disorder," at <http://grants2.nib.gov/grants/guide/rfa-files/RFA-DA-04-014.html>). There is a clear public health need for interventions to alleviate withdrawal symptoms and to help chronic abusers deal with social and other factors that make stopping marijuana abuse difficult. NIDA's expanded research agenda will encourage development of medications to counter marijuana dependence through animal studies as well as Phase I and Phase II clinical trials with humans. Some medications will be aimed at marijuana-associated disorders such as intoxication, delirium, psychosis, and anxiety. Other medications may address specific aspects of addiction recovery, such as withdrawal, craving, relapse, and complications such as cognitive impairment, sleep disorders, and depression and other mood disorders that often accompany marijuana abuse.

Successful comprehensive treatment of marijuana-related disorders will require a multidisciplinary approach. Therefore, NIDA's marijuana medications development initiative will encourage investigation of treatments that include behavioral intervention. This broad focus, building on the insights to be gained through increased understanding of marijuana's developmental impact, will help reduce the health costs and alleviate the damage inflicted by widespread abuse of this dangerous drug. **NN**

FDA declares marijuana has no medicinal value

Doctors say contradiction of prestigious science agency's report is political

By GARDINER HARRIS
THE NEW YORK TIMES

WASHINGTON — The Food and Drug Administration said Thursday that “no sound scientific studies” supported the medical use of marijuana, contradicting a 1999 review by a panel of highly regarded scientists.

The announcement inserts the health

agency into yet another fierce political fight.

Susan Bro, an agency spokeswoman, said Thursday's statement resulted from a past combined review by federal drug enforcement, regulatory and research agencies that concluded “smoked marijuana has no currently accepted or proven medical use in the United States and is not an approved medical treatment.”

“Any enforcement based on this finding

would need to be by DEA, since this falls outside of FDA's regulatory authority,” she said.

Eleven states have legalized medicinal uses of marijuana, but the Drug Enforcement Administration and the nation's drug czar, John Walters, have opposed those efforts. A Supreme Court decision last year allowed

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■ FDA

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the federal government to arrest anyone using marijuana, even in states that have legalized its use.

Congressional opponents and supporters of medical marijuana have each tried to enlist the FDA to support their views. Rep. David Souder, R-Ind., a fierce opponent of medical marijuana initiatives, proposed legislation two years ago that would have required the FDA to issue an opinion on the medicinal properties of the drug.

Mr. Souder believes that efforts to legalize medicinal uses of marijuana are “a front” for efforts to legalize all uses of marijuana, said Martin Green, a spokesman for Mr. Souder.

The FDA statement directly contradicts a 1999 review by the Institute of Medicine, a part of the National Academy of Sciences, the nation's most prestigious scientific evaluative agency. That review found marijuana to be “moderately well suited for particular conditions, such as chemotherapy-induced nausea and vomiting and AIDS wasting.”

Dr. John Benson, co-chair of the Institute of Medicine committee that examined the research into marijuana's effects, said in an interview that the FDA statement and the combined review by other agencies were wrong.

The federal government “loves to ignore our report,” said Dr. Benson, a professor of internal medicine at the University of Nebraska Medical Center. “They would rather it never happened.”

Some scientists and legislators said that the agency's statement about marijuana demonstrates that politics is trumping science there.

“Unfortunately, this is yet another example of the FDA making pronouncements that seem to be driven more by ideology than by science,” said Dr. Jerry Avorn, a professor at Harvard Medical School.

Rep. Maurice Hinchey, D-N.Y., who has sponsored legislation seeking to allow medicinal uses of marijuana, said that the statement reflected the influence of the DEA, which he said had long pressured the FDA to help in its fight against marijuana.

Dan Troy, the FDA's former

general counsel, said that the FDA and DEA often disagree about drug policies, but marijuana “is a place where FDA and DEA can cooperate.”

The DEA has referred questions to Mr. Walters' office.

The FDA statement said that state initiatives that legalize marijuana use “are inconsistent with efforts to ensure that medications undergo the rigorous scientific scrutiny of the FDA approval process.”

But scientists studying marijuana said in interviews that the federal government has actively discouraged research into marijuana's benefits. Dr. Lyle Craker, a professor in the division of plant and soil sciences at the University of Massachusetts, said that he submitted an application in 2001 to the DEA to grow a small patch of marijuana to be used for research because the government-approved marijuana, grown in Mississippi, is of poor quality.

In 2004, the drug enforcement agency turned Dr. Craker down. He appealed and is awaiting a judge's ruling. “The reason there's no good evidence is that they don't want an honest trial,” Dr. Craker said.

Dr. Donald Abrams, a professor of

clinical medicine at the University of California San Francisco, said that he has studied marijuana's medicinal effects for years but has been frustrated because the National Institutes of Health has refused to fund such work.

With funding from the state of California, he undertook what he said was a rigorous, placebo-controlled trial of marijuana smoking in HIV patients who suffered from nerve pain. Smoking marijuana proved effective in ameliorating patients' pain, but he is having trouble getting the study published, he said.

“One wonders how anyone could” fulfill the FDA request for well-controlled trials to prove marijuana's benefits, he said.

Opponents of efforts to legalize marijuana for medicinal uses suggest that marijuana is a “gateway” drug that often leads users to try more dangerous drugs.

But the Institute of Medicine report concluded that there is no evidence that marijuana acts as a “gateway” to harder drugs. And it said that there was no evidence that medical use of marijuana would increase its use among the general population.

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MEMORANDUM

August 31, 2005

TO: Mayor Hoffmeister and Members of the City Council
FROM: Lydia E. Du Borg, City Manager *LD*
SUBJECT: Marijuana Dispensaries, Supplemental Information

This is to transmit a memo from Chief Livingston on potential general public safety effects of medical marijuana dispensary locations, and to provide a response to other questions raised regarding the proposed ordinance prohibiting the locating of medical marijuana dispensaries in Concord. The proposed ordinance is scheduled for hearing before the Council on September 6, 2005. To clarify, staff is not asking the Council to make a decision on medical use of marijuana, but on whether commercial marijuana dispensaries should be located in Concord.

Peter Dragovich, Director of City Management, researched the issue of whether there is a "synthetic marijuana" available through regular medical prescription. Staff does not purport to be medical experts, but did discuss this information with a local medical professional, and staff provides the information below and attached.

Marinol is an FDA approved "synthetic marijuana" also known as Dronabinol. The active ingredient in Marinol is a synthetic form of delta-9-THC, the active natural compound in marijuana. Marinol is available by prescription in California and other states and is used to treat nausea and vomiting in cancer and other patients and is also prescribed for appetite stimulation. "Medical marijuana" advocates will argue that while Marinol contains a synthetic form of the active ingredient in marijuana, it is not adequate for treating glaucoma, neurological conditions, or pain. Additional information is available at www.marinol.com. (Web face page attached).

Staff has also looked into the business license and taxable sales issues. Maricare, the self-described medical marijuana dispensary on Colfax Street, has come into City offices to apply for a business license, and was referred to Planning for zoning review. No application was made to Planning for review of conformance of the use with zoning, as is required as part of the process.

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Without zoning review, a business license is not issued. Holistic Solutions on Contra Costa Boulevard identifies itself as a retail seller of health care products, and was reviewed as such by Planning, and was issued a business license in May 2005.

According the State Board of Equalization, marijuana sales are taxable. Maricare and Holistic Solutions have not registered with the Board of Equalization, and are therefore not reporting any taxable sales.

Attachments

cc: Craig Labadie, City Attorney
Mark Boehme, Assistant City Attorney
Chief Dave Livingston

Synthetic Pot Aids Jailed Activist

Steve Kubby said he needed marijuana for his cancer, but THC pills are doing the trick.

By KELLY-ANNE SUAREZ
Times Staff Writer

A medical marijuana activist who long argued that he needed the drug to cope with his cancer surprised a judge and supporters Friday morning by announcing that a synthetic substitute provided to him in jail has proved an effective replacement.

Thanks to Marinol, a pill form of THC, the primary psychoactive ingredient in pot, Steve Kubby is "smiling and happy," lawyer Bill McPike said. "In fact, he said it's the best he's felt in years."

Kubby had asked that he be allowed to consume cannabis while in jail, and a judge in the Placer County town of Auburn had been set to consider that request Friday. Instead, McPike withdrew the request.

Kubby, 59, returned to California last month after spending the last five years in Canada dodging a 120-day prison sentence. On Tuesday, McPike asked that his client be allowed to continue using cannabis.

Kubby and his physicians had said that without pot to regulate the adrenal cancer's symptoms, which may lead to heart attack or stroke, his health would be jeopardized.

Since his diagnosis a quarter-century ago, the activist has smoked up to a dozen marijuana cigarettes a day.

So no one was more surprised than Kubby by his reaction to Marinol, McPike said in a telephone interview.

Kubby's positive response to the drug wasn't immediate. Upon arriving in Auburn on Jan. 27, shortly after a Canadian court denied his request for refugee status, the drug caused vomiting and nausea, McPike said. But since then, Kubby's condition stabilized, spurring his decision to stick with the synthetic.

A physician will continue examining Kubby daily to ensure the drug's effects persist, he said.

Dale Gieringer, director of California NORML, a cannabis advocacy group, said Kubby's decision to forgo pot will not affect the fight for medical marijuana.

"Some [medical] conditions respond to THC and some don't," he said, "so what's right for Steve won't necessary work for everyone."

Kubby, who helped draft California's medical marijuana law, is awaiting trial for a March 2001 conviction for possession of a peyote button and a hallucinogenic mushroom. A Placer County jury acquitted him of the more serious charge of selling pot grown in his basement garden.

Fear of jail time without access to marijuana propelled Kubby to flee the country two months later with his wife, Michele, and two young daughters. The family has resided in British Columbia ever since.

Around the same time, Placer judges bumped up his original convictions from misdemeanors to felonies. Kubby appealed the rulings, declaring them a miscarriage of justice.

Kubby now faces up to three years in prison — nine times his original sentence. But McPike said he hopes to resolve matters before trial.

A hearing to discuss Kubby's case is set for Feb. 15.

"I must say, following Steve is like being on a ship that rocks back and forth all the time," Gieringer said. "You never know what's going to happen."