



City of Anaheim
POLICE DEPARTMENT
Special Operations Division

To: Dave Morgan, City Manager
From: Chief John Welter
Date: April 30, 2007
RE: **Medical Marijuana Dispensary (MMD) Ban Ordinance**

PROPOSITION 215

Proposition 215, the Compassionate Use Act of 1996, was approved by California voters with the intent to “ensure seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of [specified illnesses].” This proposition is codified under the California Health and Safety Code as 11362.5, and allows personal possession and cultivation of marijuana for medical purposes. This section does not provide the patient with absolute immunity from arrest, but provides limited immunity allowing the patient to raise a medical use defense.

Senate Bill 420 was signed into effect January 1, 2004 to clarify the scope of Proposition 215, and to allow cities and counties to adopt and enforce rules and regulations regarding the Act.

PROBLEMS WITH PROPOSITION 215

Marijuana is still classified federally as a Schedule I substance under the Controlled Substances Act. Schedule I drugs, which include heroin and LSD, have a high potential for abuse and serve no legitimate medical purpose in the United States. The California Health and Safety Code also classifies marijuana as a Schedule I drug.

As originally enacted, there is no specificity as to the strength, quality or quantity of marijuana to be used for medical purposes. Since its origin is also unregulated by the government, marijuana is obtained by patients through a variety of sources. It may be obtained through a health care provider, a cannabis club, cooperative, or illicitly on the black market.

Delta 9 Tetrahydrocannabinol, or THC, is the active ingredient in marijuana. Its concentration in marijuana varies greatly depending on a variety of factors such as geographic origin, plant lineage, method of growth, etc. The percentage of THC present in marijuana commonly available ranges from 3.5 % to almost 40 %. The effects marijuana has on a user vary greatly depending upon the strength of the marijuana (amongst other factors).

The California Medical Marijuana Information Report by the United States Department of Justice indicates large-scale drug traffickers have been posing as “care givers” to obtain and sell marijuana. The local news is frequented with reports of large-scale marijuana grows being discovered on public lands, such as the Cleveland National Forest in Orange County recently, and the Angeles and Los Padres National Forests, just to our north. These large cultivations on public lands are of minimal cost to the growers, yet cost the State tens of millions of dollars to locate and eradicate. Since there is no “government grown” marijuana readily available for dispensaries, it is apparent the dispensaries obtain their marijuana from a variety of sources, including marijuana grown illegally on public land.

Marijuana is also obtained by the dispensaries through traditional illicit drug smuggling routes. Organized crime and other drug trafficking organizations are earning millions of dollars through the drug trade involving “medical marijuana.” Some marijuana may arrive in California through interstate routes; however international corridors through Canada and Mexico are most common. Billions of dollars have been spent nationally attempting to eradicate these sources of illegal drugs, yet Proposition 215 encourages their continued use and actually makes them even more profitable with less risk. Law Enforcement officials in Mexico are currently being killed with greater frequency in part due to increased demand for marijuana in the United States. California is probably the nation’s leading consumer of marijuana. Marijuana is now considered to be the nation’s and California’s highest grossing crop.

There are no scientific studies demonstrating a medical benefit from “smoking” marijuana. Marijuana is a “gateway drug” to other “harder” drug use and is dangerous, psychologically addictive and has a high potential for abuse. The Office of National Drug Control Policy has reported more persons are being admitted to treatment for marijuana use than heroin addiction.

Marijuana could never pass the Food and Drug Administrations pure drug standards. With hundreds of crude chemicals, including carcinogens stronger than those found in tobacco, the California and American Medical Associations and every other credible medical group oppose the use of medical marijuana. Since marijuana is not approved by the FDA, and is still a Schedule I drug, Prop 215 encourages citizens to violate Federal Law. There are only a few medical doctors who support marijuana’s medical use and, will actually issue marijuana recommendations. The overwhelming majority of physicians will not issue recommendations for marijuana. However, Proposition 215 and SB 420 actually protect physicians who choose to approve medical marijuana use.

Proposition 215 does not address the consumption of marijuana by minors. Although the age limit for smoking tobacco is 18 and for the consumption of alcohol it is 21, there is no age restriction for marijuana consumption under the provisions of Proposition 215.

Marijuana is the most widely available drug and most abused illegal drug in California and the United States. Juvenile aged high school student’s use of marijuana is a significant and growing problem. Marijuana is responsible for behavioral, intellectual and cognitive deficits. Marijuana use been linked to a higher incidence of throat cancer, and has severe pulmonary, reproductive and immune system side effects. Marijuana use is also known to trigger attacks of manic depression, schizophrenia and memory loss and an increase in teen suicides has reportedly been linked to marijuana use. Marijuana is a

predominant component of “polydrug” use, which is more frequently encountered today by law enforcement.

While marijuana dispensaries have attempted to “demonstrate their responsibility” by providing documentation to their customers indicating marijuana causes, “intoxication and effects on the nervous system which lead to slowed reaction time and loss of coordination which lasts for hours after ingestion and these affects make driving a car or operating machinery hazardous and therefore should be avoided while under the influence of marijuana.” The dispensaries fail to clarify the real picture.

Studies have been conducted where licensed aircraft pilots were given a small dose of THC. Twenty-four hours later the pilots were placed in a flight simulator and all ten of the test subjects experienced errors in landing. A second similar study supported the first. Roughly 80% of the test subjects displayed signs of impairment 24 hours after the drug was consumed. Only one of the test subjects was aware of the fact his performance was being affected 24 hours after marijuana use. These and other similar tests indicate marijuana impair one’s ability to operate a motor vehicle long after the noticeable effects have worn off.

In the past few years Anaheim has become aware of this phenomenon and has experienced a number of fatal traffic collisions involving subjects under the influence of marijuana. Non-fatal traffic collisions involving marijuana-impaired drivers occur regularly.

AVAILABILITY

In 1985 the Food and Drug Administration (FDA) approved a THC medication known as Dronabinol, which is marketed under the trade name Marinol in a capsule form. Dronabinol is a synthetic THC, laboratory produced and available through traditional Physician prescriptions and obtained at Pharmacies. The drug is used for the treatment of nausea and vomiting in cancer patients undergoing chemotherapy and treating AIDS related anorexia by stimulating the appetite. Dosages are regulated at 2.5, 5 and 10 milligrams. Since Marinol has been tested and regulated by the FDA, its strength and quality remain constant.

Proposition 215 and SB 420 do not specifically deal with the issue of “where” patients obtain marijuana for medical purposes. Simply put, there are no government owned or operated marijuana cultivations, warehouses or retail outlets for medical marijuana in California. The law only designates a “qualified patient” or “primary caregiver” to grow, obtain or possess medical marijuana. If a “qualified patient” or “primary caregiver” does not cultivate marijuana, it is obtained illicitly either by the patient or caregiver or someone else who supplies it to them. Patients may also purchase marijuana through mail order or internet services.

Patients attempting to obtain marijuana legally may do so through dozens of medical marijuana dispensaries, cannabis clubs, collectives and cooperatives in Southern California. Numerous dispensaries, etc. exist in Los Angeles County along with at least two in Orange County, including one currently operating in Anaheim. The number of businesses appears to be expanding rapidly in Southern California. Many of the dispensaries and primary caregivers will deliver the marijuana to the patient at home.

OTHER JURISDICTIONS

Different jurisdictions have dealt with the medical marijuana issues in a variety of ways throughout the state. One jurisdiction in Los Angeles County researched the concept of having a “City operated” and regulated dispensary; however the project was discontinued prior to implementation.

The Northern California City of Hayward adopted ordinances to regulate the establishment and operation of medical marijuana facilities. However, after experiencing many problems at and around their dispensary, Hayward passed an ordinance to ban dispensaries in 2006.

In July 2004, the Northern California City of Rocklin became the first city in the state to approve and adopt a zoning ordinance effectively prohibiting medical marijuana dispensaries in their jurisdiction. This ordinance has not been overturned. Numerous other cities in the state have followed Rocklin’s suit, banning MMD’s, including Costa Mesa and Cypress. Fullerton has been considering the modification of their zoning ordinance to prohibit MMD’s. They have currently extended their moratorium on opening MMD’s to further consider their solution.

According to the California League of Cities as of September 2006, 141 cities surveyed have taken some action regarding MMD’s. Seventy three cities have enacted moratoriums on these businesses allowing the city more time to study the issue. Twenty eight cities have chosen to allow MMD’s and forty cities are prohibiting MMD’s in their community. See Attachment 1.

Kurt Smith, the Director of Community Analysis and Technology for the City of Redlands summed up that community’s response to medical marijuana. “Prevalence should not equal acceptance. Furthering the distribution and availability of marijuana increases the opportunity for crime and may further destabilize neighborhoods and endanger those at highest risk for its use- children in our community.”

The Anaheim City Attorney’s Office, Planning Department and Police Department have worked to be leaders in researching the topic of medical marijuana and dispensaries. We have shared our experience with an MMD, documentation and research with numerous other jurisdictions in California. We are proud to say two of those cities in this county and at least one outside the county have adopted ordinances prohibiting marijuana dispensaries. See Attachment 2.

In October 2006, the City of Los Angeles announced, while they had previously regulated MMD’s, they have initiated a lengthy moratorium on the establishment of any new dispensaries. They have discovered the open dispensaries are not complying with regulations and appear to be in violation of criminal statutes.

Numerous recent raids by Federal DEA Agents on Dispensaries in Los Angeles and Palm Springs have resulted in criminal prosecutions and have uncovered other ongoing criminal enterprise at the MMD’s. Courts have also recently ordered some dispensaries close for violating city ordinances regarding business permits and other imposed restrictions.

IMPACT ON ANAHEIM

The “420 Primary Caregivers” at 421 N. Brookhurst Street, Suite # 130 obtained a business license from the City of Anaheim on May 19, 2004. The type of business was listed as a primary caregiver. By the fall of 2004 the Police Department began to receive complaints from neighboring businesses in the multi-unit complex regarding “420 Primary Caregivers.” In January 2005, the “420 Primary Caregivers” business and employees were robbed at gunpoint and physically beaten by three masked suspects who took both money and marijuana from the business.

On April 5, 2005 members of the Anaheim Police Department met with the Property Management Company, owners and representatives from the businesses at 421 N Brookhurst Street to discuss their concerns. The main issue had become safety for employees of businesses near “420 Primary Caregivers.” Many businesses believed they too would become victims of a robbery or shooting, based on the previous robbery. Patrons were also scared to use the public restrooms in the complex because of the perception that many customers at “420 Primary Caregivers” are criminals not patients. Other issues concerning the patrons included use of marijuana in the parking lot surrounding the complex, the strong marijuana odor in the ventilation system, and continued interruption of neighboring businesses by “420 Primary Caregivers” customers. Many businesses expressed they believed they were losing their own clients based on the clientele of “420 Primary Caregivers” loitering in the courtyard and parking area at the complex.

Two businesses terminated their lease at the property and moved. A law office, specializing in criminal defense, and a ten year occupant at the property, moved out of Anaheim to another city citing, “marijuana smoke has inundated [their office]...and they can no longer continue to provide a safe, professional location for...clients and employees.” A healthcare business moved after six years, citing their business was repeatedly interrupted and mistaken multiple times each day for “the store that has the marijuana.” The owner “fears he or his employee may be shot if they are robbed by mistake and the suspects do not believe they do not have marijuana.” The property manager indicated at least five other businesses had inquired about terminating their leases for reasons related to “420 Primary Caregivers.” Both businesses that left the development indicated their moving expenses were costly, but felt it was the only acceptable alternative.

“420 Primary Caregivers” is operating in close proximity to Brookhurst Junior High School, Juliette Low Elementary School, the Brookhurst Community Center, Brookhurst Park, Tiger Woods Learning Center, Dad Miller Golf Course and a day care center. Also nearby are Savanna, Gilbert-East, Fairmont and Servite High Schools and Melbourne Gauer Elementary School.

Arrests have been made of “qualified patients” purchasing marijuana with a Doctor’s recommendation, and then supply it to their friends for illicit use. Criminal investigation has also revealed the business is obtaining its marijuana from a variety of sources including marijuana smuggled into the United States from South or Central America. Besides selling a variety of qualities of dried marijuana, the business also sells marijuana plants and food products made with concentrated cannabis, heavily laden with THC.

Three subjects related to “420 Primary Caregivers,” including the business owner and his wife, have been arrested and charged by the Orange County District Attorney’s Office

with multiple felony counts including possessing marijuana for sale and child endangerment. A substantial sum of cash has also been seized from the defendants pursuant to asset forfeiture laws. The Police Department has conservatively estimated the “420 Primary Caregivers” business to be generating approximately \$ 50,000.00 a week income.

RECENT DEVELOPMENTS

Under the Federal Controlled Substances Law there is no Compassionate Use Act. However, eleven states including California have laws allowing medical marijuana or are sympathetic to the issue. The United States Supreme Court addressed the issue of medical marijuana distribution by dispensaries in *United States v. Oakland Cannabis Buyers’ Cooperative and Jeffrey Jones* (532 U.S. 483) in May 2001, ruling there is no medical necessity defense under federal law. This makes the distribution of marijuana through a medical marijuana dispensary illegal under federal law.

On June 6, 2005 the United States Supreme Court ruled on the *Raich and Monson v. Ashcroft* (352 F. 3d. 1222, 1228) case. The decision on this medical marijuana case from Northern California allows Federal Agencies to continue to enforce Federal Law in states with Compassionate Use/ Medical Marijuana laws.

Numerous investigations into California medical marijuana dispensaries and providers have resulted in seizures of marijuana and assets valued in the hundreds of millions of dollars. The United States Attorney has indicated the marijuana dispensaries are illegally cultivating marijuana, laundering money and distributing other illegal drugs.

Due to the extensive financial success of the “420 Primary Caregivers” in Anaheim, numerous individuals and groups have inquired about obtaining business licenses to open and operate marijuana dispensaries in Anaheim. The Planning Department has referred these applicants to the Police Department and most have been successfully discouraged from pursuing their interest here. One businessman was not dissuaded and signed a commercial lease for five years on North Harbor Boulevard to open a marijuana dispensary. The Police Department contacted the property owner prior to the business opening to inquire about the owner’s knowledge of the type of business. The owner was unaware of the businessman’s intent and the owner terminated the lease agreement. Another dispensary opened and when the employees became aware of the Police Department’s knowledge of their business, they quickly closed their operation.

The Raich decision caused the “420 Primary Caregivers” to cease selling marijuana from their business on Brookhurst temporarily. The business was still operating at the location to register new “patients,” take orders for delivery and to supply customers with a secret access code to order marijuana from the business via the internet.

Late in 2006 “420 Primary Caregivers” reopened its doors for retail sales of marijuana. Since reopening, the Police Department has received complaints from two businesses regarding the marijuana dispensary. One business in the complex at 421 N Brookhurst cited concerns regarding marijuana smoking on the property, the proximity to local schools and the children who pass directly by the business on their way to and from school. Another business, not in the complex but nearby, had been mistaken for being a marijuana dispensary and had expressed concern for its employees due to the aggressive nature of the subjects demanding marijuana.

In December 2006, the property management company did not renew the lease at 421 N. Brookhurst for 420 Primary Caregivers. The business moved a short distance away to 231 N Brookhurst and continues to operate. The Police Department has already received complaints regarding the activity in the mixed zoning residential/ commercial area.

On April 17, 2007 the Orange County Board of Supervisors met and discussed the County's Policy on the Medical Marijuana Program Act. The Board approved having Orange County Health Care propose a policy, which will be reviewed for possible implementation in 90 days. Senate Bill 420 requires counties to participate in the state program of verifying eligibility of individuals, validating prescriptions and processing identification cards on behalf of the State. As of March 2007, twenty five counties have implemented programs and thirty four have not. Riverside County is the only Southern California County with a program.

San Diego, San Bernardino, Merced and Riverside Counties had joined in a lawsuit against the State of California seeking to overturn the Compassionate Use Act. These counties cited the state law conflicts with federal law and an international narcotics treaty signed by the United States in 1961. The Superior Court rejected the lawsuit stating it does not conflict with federal law. San Diego County Board of Supervisors has decided to appeal the decision to the 4th District Court of Appeal. The court has not ruled on the case.

CONCLUSION

Jurisdictions deciding to allow and regulate medical marijuana dispensaries report experiencing numerous negative impacts or secondary effects on their communities. The information provided comes from the following jurisdictions: Roseville, Oakland, Hayward, Lake County and Fairfax, but many effects have already been felt in Anaheim.

These negative experiences include:

- Street level dealers selling to those going to the dispensary at a lower price.
- Public marijuana smoking around the dispensary and at nearby parks.
- Increased marijuana DUI accidents/ arrests.
- Increased burglaries and robberies at/near the dispensaries.
- Marijuana dealers obtain a doctor's recommendation to obtain marijuana from the dispensary, and then conduct illegal street sales to those who do not have a recommendation
- Criminals are robbing medical use patients of their cash and/or marijuana.
- Other illegal drugs are sold at the dispensaries.
- Dispensaries are obtaining marijuana from illicit dealers.
- Dispensaries attract criminals from outside the immediate area.
- Minors become involved illegally in marijuana use.

-Legitimate businesses near dispensaries experience problems with perceptions of lack of safety for clients and employees and suffer actual financial loss due to increased criminal activity decreasing clients desire to frequent the legitimate business.

All of these negative impacts on the community can be avoided if marijuana dispensaries are not allowed to open or operate in the community.

RECOMMENDATION

Establish a City Ordinance prohibiting the establishment and operation of Medical Marijuana Dispensaries in the City of Anaheim.