

Fullerton Police Department

Memo

To: Joel Rosen – Acting Director of Community Development
From: Captain Greg Mayes – Police Department
Date: September 20, 2006
Re: Medical Marijuana Dispensaries

In 1996, California enacted Proposition 215, the Compassionate Use Act. Despite this effort, it is still a Federal violation under the Controlled Substances Act, 21 U.S.C., section 841, to sell marijuana in the United States. The question about the Federal vs. State authority over this issue was answered on June 6, 2005 by the United States Supreme Court when they held that the Commerce Clause authority includes the power to prohibit the local cultivation and use of marijuana afforded by California Law. The inference is that Federal law does not allow for the sale and distribution of marijuana.

Beyond the illegality of the sale and distribution of marijuana, dispensaries themselves have no foundation for legal operation. Proposition 215 did not address medical marijuana facilities or sources, other than an individual or caregiver being allowed to cultivate and possess certain amounts of marijuana. Senate Bill 420 was signed into law in 2004; however, it also failed to address the medical marijuana dispensary question. It is important to note that Senate Bill 420 specifically stated that it does not authorize an individual or group to cultivate or distribute marijuana for profit. Senate Bill 420 does allow compensation of caregivers. Despite this, two court decisions (Peron & Frazier) have made it clear that dispensaries are not caregivers since a caregiver is defined as the individual who consistently assumes responsibility for the housing, health and safety of the person who has been prescribed marijuana. Also 11362.765(a) H&S states, "nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit." So even after the Senate Bill 420 legislation, sales and possession for sales are illegal. Under the law, the only way for a dispensary to work would be for them to claim they are a not-for-profit business but experience demonstrates otherwise. Also, some entities may attempt to claim they only sell to members of their "cooperative" or "collective" but this is also illegal. By their own definition both terms mean there can be no exchange of money at the time marijuana is provided to members and no sales to anyone at all outside of the cooperative. Research indicates that even after Prop 215 and Senate Bill 420, dispensaries are illegal, although I know some jurisdictions look the other way in the spirit of Proposition 215.

There is no question that once a marijuana dispensary is located in the City certain crimes will follow. Dispensaries will be of particular interest to criminals and will fall victim to armed robberies and commercial burglaries. A simple internet search for news related to dispensaries will support this claim. Putting large amounts of marijuana and money together at the same location creates a very enticing target for criminals. According to contacts at the Anaheim Police Department, the dispensary that went active in their city was taken over and robbed shortly after it opened. The investigation of the crime revealed that the facilitators of the dispensary were less than cooperative in reporting the crime and assisting in the investigation. This is common during investigations where the victims themselves are engaged in criminal activity.

Beyond those crimes where the dispensary is the actual victim, there will also most likely be crimes committed against patrons of the dispensaries after they leave. The Police Department will probably see street robberies or "follow away" robberies directly related to business conducted at the dispensary. Street sales of marijuana and, "pimping" marijuana (a "legal" purchaser may procure marijuana to sell to another waiting outside or nearby) may also become common place.

It is also likely that general disorder and complaints from residents in and around the area of the dispensary will increase. One may assume that most of the residents of the City are not in support of dispensaries and they will not be in support of the activities associated with them. The Police Department believes it is important to provide the greatest good for the greatest number. This includes a feeling of safety and peace of mind for our citizens.

The Orange County District Attorney's Office believes the concept of medical marijuana is illegal but that the investigation of such matters is cumbersome because the crime is being investigated on a State, not Federal, level. It is far more difficult for the District Attorney to prove many of the facets of the crime that thwart the provisions of Proposition 215 and Senate Bill 240 as a State case than a Federal one. As the operation of dispensaries increases, the District Attorney's Office will discover strategies and tactics for prosecuting these cases.

The Police Department opposes the operation of medical marijuana dispensaries within the City for the following reasons: 1) the sale of marijuana is illegal; 2) the operation of medical marijuana dispensaries is illegal; 3) there will be an increase in crime associated with the presence of dispensaries and a subsequent burden upon police resources; 4) there will be an increase in general disorder associated with the presence of dispensaries and a subsequent burden upon police resources; and 5) the peace of mind and feeling of security within the community will be adversely impacted.

Fullerton Police Department

Memo

To: Joel Rosen – Acting Director of Community Development
From: Captain Greg Mayes – Police Department
Date: October 25, 2006
Re: Medical Marijuana Dispensaries (MMDs)

In a previous Planning Commission Meeting, a request was made for statistical information or “pin maps” to support the subjective evaluation of the adverse impact MMDs could have on our community as detailed in my previous memo dated September 20, 2006. Our staff contacted all Orange County agencies having MMDs within their jurisdictions to develop statistics that would satisfy this request. The following information was gathered but is of limited statistical value. The information was obtained through conversations with personnel assigned to Narcotics Units in cities or counties in which MMDs are located. Each said the secondary issues associated with Medical are most times subjective, and the true impact of MMDs must be evaluated by the overall impact to the community – its businesses and residents.

CITY OF ANAHEIM:

Anaheim Police Department (APD) personnel stated the City of Anaheim currently has one operating MMD in their City. This dispensary is located in a small strip mall and there have been problems associated with the business. In January of 2005, three masked armed robbers took over the store at gun point, beat the employees and robbed the business of money and marijuana. Although this is the only reported robbery statistically, APD personnel have been told by the neighboring businesses that they believed the store had actually been robbed on at least one other occasion. These other incidents were apparently not reported by the owner since he did not want to draw police attention to the business. APD does not maintain statistics for unreported crimes.

The APD Narcotic Unit also arrested two subjects for selling marijuana in the MMD’s parking lot. These individuals purchased marijuana inside of the MMD then sold it in the parking lot at an increased rate to subjects who have no medical problems. APD personnel also said the problems with the dispensary have caused two other businesses to leave the complex. The first was a healthcare business that expressed frustration about people mistaking their business for the MMD and trying to purchase marijuana from them. The owner of the business was aware of the robberies at the MMD and was afraid his employees might get injured during a robbery at his location actually intended for the MMD. The second business (Law Offices) left after they could

find no solution for the marijuana smell permeating through their common wall. APD does not maintain statistics for businesses leaving the area of MMDs.

The owner of the Anaheim MMD has been arrested twice since he opened the store for business two years ago. The first arrest occurred in Garden Grove after police responded to a domestic dispute at his home and found large amounts of marijuana lying around. That arrest resulted in child endangerment charges being filed against the owner. APD detectives began an investigation of the owner and tied the business into an arrest where \$18,000 in cash wrapped in coffee grounds, 25 pounds of marijuana and concentrated cannabis (Hash), along with an additional \$15,000 was seized. The case has been filed by the D.A.

The marijuana dispensary did close down temporarily after the Supreme Court ruling; however, according to APD personnel they have reopened their doors and are again back in business.

CITY OF TUSTIN:

Tustin Police Department (TPD) personnel indicated the City of Tustin did have one MMD open for a short period of time but it has since been closed. TPD personnel stated they made several undercover purchases of marijuana from inside the dispensary and then served a search warrant on the location. They recovered about 25 pounds of marijuana, however, at this time the case has not been filed. There is a chance the federal government might file the case. Regarding secondary problems, Cartwright said the business was burglarized twice, however, neither was reported. TPD does not maintain statistics for unreported crimes.

There were also three unlawful marijuana sales arrests made in the parking lot around the MMD when it was open where buyers resold their marijuana to others for profit.

CITY OF LAKE FORREST:

Orange County Sheriff's Department (OCSD) personnel stated the City of Lake Forrest has one MMD operating in their city. The business has been open for about a year and to the best of his knowledge the business has not been robbed or burglarized. They do not proactively address issues at the MMD. OCSD does not maintain statistics for unreported crimes.

CITY OF YORBA LINDA:

Brea Police Department (BPD) personnel said one MMD opened up in an industrial complex in Yorba Linda, however, they did not get a business license and the department was unaware of their existence until they started receiving complaints from the other businesses in the complex. The business owners were upset about the smell of marijuana inside of their businesses.

BPD personnel went to the location and found the sale of marijuana occurring. A search warrant was obtained by BPD personnel and the employees were arrested for 11359 H&S after marijuana and money were located during the search. This case has been filed with the D.A.'s office.

CITY OF LONG BEACH:

Long Beach Police Department (LBPD) personnel said the City of Long Beach has six MMDs open in at this time. LBPD does not actively enforce violations occurring at the MMDs. LBPD Narcotics Detectives said since the dispensaries have opened, they receive daily calls from people complaining about the businesses. The complaints are usually from other business

owners in the area complaining about the smell of the marijuana in their businesses and marijuana being smoked and sold in the parking lots around the MMDs. LBPD does not maintain statistics for unreported crimes.

LBPD personnel said on one occasion they received a complaint from a resident in an apartment complex right next to the MMD. According to the complainant, a male subject believing her residence was a MMD walked unannounced into her apartment looking to buy marijuana.

CITY OF HAYWARD:

Hayward Police Department (HPD) personnel said there are two active MMDs currently operating in their City. They said there was a third location; however, it closed down after it was robbed twice. The two that are operating work under a permit issued by the City manager and the MMDs must comply with eleven different conditions.

HPD personnel said they are convinced there are illegal sales of marijuana occurring off site but have not made any arrests to support this belief. They said the marijuana sold at the two locations is contained in prescription bottles and they have found those bottles on all over there city. He said it is common for people who do not have a Doctor's recommendation to get the old prescription bottles and make it appear as their own while actually obtaining the marijuana elsewhere. The HPD does not maintain statistics on unreported crimes.

It appears as though the conjecture contained in my previous memo is supported by the personal knowledge and expertise of the personnel from agencies having MMDs in their jurisdictions. There is both subjective and objective information that robberies and burglaries occur at the locations, and that some go unreported. There is both subjective and objective information that tends to show marijuana purchased from the MMDs is being resold in and around the area of the locations. There is both subjective and objective information that tends to show other secondary issues, such as the repackaging of "street" contraband into prescription containers to conceal its illegality, occurs in and around the area of the locations. There is subjective and corroborative information that tends to show other businesses in and around the area of the MMDs are adversely impacted by the manner in which MMDs conduct their business. There is subjective information that the peace of mind of residents in and around the MMDs is adversely impacted.

The Police Department continues to oppose the operation of medical marijuana dispensaries within the City for the following reasons: 1) the sale of marijuana is illegal; 2) the operation of medical marijuana dispensaries is illegal; 3) there will be an increase in crime associated with the presence of dispensaries and a subsequent burden upon police resources; 4) there will be an increase in general disorder associated with the presence of dispensaries and a subsequent burden upon police resources; and 5) the peace of mind and feeling of security within the community, both businesses and residents, will be adversely impacted.