

1996

Medical Use of Marijuana.

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Medical Use of Marijuana. Initiative Statute.

Official Title and Summary Prepared by the Attorney General

MEDICAL USE OF MARIJUANA. INITIATIVE STATUTE.

- Exempts patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana.
- Provides physicians who recommend use of marijuana for medical treatment shall not be punished or denied any right or privilege.
- Declares that measure not be construed to supersede prohibitions of conduct endangering others or to condone diversion of marijuana for non-medical purposes.
- Contains severability clause.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Adoption of this measure would probably have no significant fiscal impact on state and local governments.
-

Analysis by the Legislative Analyst

BACKGROUND

Under current state law, it is a crime to grow or possess marijuana, regardless of whether the marijuana is used to ease pain or other symptoms associated with illness. Criminal penalties vary, depending on the amount of marijuana involved. It is also a crime to transport, import into the state, sell, or give away marijuana.

Licensed physicians and certain other health care providers routinely prescribe drugs for medical purposes, including relieving pain and easing symptoms accompanying illness. These drugs are dispensed by pharmacists. Both the physician and pharmacist are required to keep written records of the prescriptions.

PROPOSAL

This measure amends state law to allow persons to grow or possess marijuana for medical use when recommended by a physician. The measure provides for the use of marijuana when a physician has determined that the person's health would benefit from its use in the

treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or "any other illness for which marijuana provides relief." The physician's recommendation may be oral or written. No prescriptions or other record-keeping is required by the measure.

The measure also allows caregivers to grow and possess marijuana for a person for whom the marijuana is recommended.

The measure states that no physician shall be punished for having recommended marijuana for medical purposes. Furthermore, the measure specifies that it is not intended to overrule any law that prohibits the use of marijuana for *nonmedical* purposes.

FISCAL EFFECT

Because the measure specifies that growing and possessing marijuana is restricted to medical uses when recommended by a physician, and does not change other legal prohibitions on marijuana, this measure would probably have no significant state or local fiscal effect.

For text of Proposition 215 see page 104

Argument in Favor of Proposition 215

PROPOSITION 215 HELPS TERMINALLY ILL PATIENTS

Proposition 215 will allow seriously and terminally ill patients to legally use marijuana, if, and only if, they have the approval of a licensed physician.

We are physicians and nurses who have witnessed firsthand the medical benefits of marijuana. *Yet today in California, medical use of marijuana is illegal.* Doctors cannot prescribe marijuana, and terminally ill patients must break the law to use it.

Marijuana is not a cure, but it can help cancer patients. Most have severe reactions to the disease and chemotherapy—commonly, severe nausea and vomiting. One in three patients discontinues treatment despite a 50% chance of improvement. When standard anti-nausea drugs fail, marijuana often eases patients' nausea and permits continued treatment. It can be either smoked or baked into foods.

MARIJUANA DOESN'T JUST HELP CANCER PATIENTS

University doctors and researchers have found that marijuana is also effective in: lowering internal eye pressure associated with glaucoma, slowing the onset of blindness; reducing the pain of AIDS patients, and stimulating the appetites of those suffering malnutrition because of AIDS 'wasting syndrome'; and alleviating muscle spasticity and chronic pain due to multiple sclerosis, epilepsy, and spinal cord injuries.

When one in five Americans will have cancer, and 20 million may develop glaucoma, shouldn't our government let physicians prescribe any medicine capable of relieving suffering?

The federal government stopped supplying marijuana to patients in 1991. Now it tells patients to take Marinol, a synthetic substitute for marijuana that can cost \$30,000 a year and is often less reliable and less effective.

Marijuana is not magic. But often it is the only way to get relief. A Harvard University survey found that almost one-half of cancer doctors surveyed would prescribe marijuana to some of their patients if it were legal.

IF DOCTORS CAN PRESCRIBE MORPHINE, WHY NOT MARIJUANA?

Today, physicians are allowed to prescribe powerful drugs like morphine and codeine. It doesn't make sense that they cannot prescribe marijuana, too.

Proposition 215 allows physicians to recommend marijuana in writing or verbally, but if the recommendation is verbal, the doctor can be required to verify it under oath. Proposition 215 would also protect patients from criminal penalties for marijuana, but ONLY if they have a doctor's recommendation for its use.

MARIJUANA WILL STILL BE ILLEGAL FOR NON-MEDICAL USE

Proposition 215 DOES NOT permit non-medical use of marijuana. Recreational use would still be against the law. Proposition 215 does not permit anyone to drive under the influence of marijuana.

Proposition 215 allows patients to cultivate their own marijuana simply because federal laws prevent the sale of marijuana, and a state initiative cannot overrule those laws.

Proposition 215 is based on legislation passed twice by both houses of the California Legislature with support from Democrats and Republicans. Each time, the legislation was vetoed by Governor Wilson.

Polls show that a majority of Californians support Proposition 215. Please join us to relieve suffering and protect your rights. VOTE YES ON PROPOSITION 215.

RICHARD J. COHEN, M.D.

*Consulting Medical Oncologist (Cancer Specialist),
California-Pacific Medical Center, San Francisco*

IVAN SILVERBERG, M.D.

Medical Oncologist (Cancer Specialist), San Francisco

ANNA T. BOYCE

Registered Nurse, Orange County

Rebuttal to Argument in Favor of Proposition 215

AMERICAN CANCER SOCIETY SAYS: ". . . *Marijuana is not a substitute for appropriate anti-nausea drugs for cancer chemotherapy and vomiting. [We] see no reason to support the legalization of marijuana for medical use.*"

Thousands of scientific studies document the harmful physical and psychological effects of smoking marijuana. It is not compassionate to give sick people a drug that will make them sicker.

SMOKING MARIJUANA IS NOT APPROVED BY THE FDA FOR ANY ILLNESS

Morphine and codeine are FDA approved drugs. The FDA has not approved smoking marijuana as a treatment for any illness.

Prescriptions for easily abused drugs such as morphine and codeine must be in writing, and in triplicate, with a copy sent to the Department of Justice so these dangerous drugs can be tracked and kept off the streets. Proposition 215 requires absolutely *no* written documentation of any kind to grow or smoke marijuana. It will create legal loopholes that would protect drug dealers and growers from prosecution.

PROPOSITION 215 IS MARIJUANA LEGALIZATION—NOT MEDICINE

- Federal laws prohibit the possession *and* cultivation of marijuana. Proposition 215 would encourage people to break federal law.
- Proposition 215 will make it legal for people to smoke marijuana in the workplace . . . or in public places . . . next to your children.

NOT ONE MAJOR DOCTOR'S ORGANIZATION,
LAW ENFORCEMENT ASSOCIATION OR
DRUG EDUCATION GROUP SUPPORTS
PROPOSITION 215—IT'S A SCAM CONCOCTED AND
FINANCED BY DRUG LEGALIZATION ADVOCATES!
PLEASE VOTE NO.

SHERIFF BRAD GATES

*Past President, California
State Sheriffs' Association*

ERIC A. VOTH, M.D., F.A.C.P.

Chairman, The International Drug Strategy Institute

GLENN LEVANT

Executive Director, D.A.R.E. America

Argument Against Proposition 215

READ PROPOSITION 215 CAREFULLY • IT IS A CRUEL HOAX

The proponents of this deceptive and poorly written initiative want to exploit public compassion for the sick in order to legalize and legitimize the widespread use of marijuana in California.

Proposition 215 DOES NOT restrict the use of marijuana to AIDS, cancer, glaucoma and other serious illnesses.

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

NO WRITTEN PRESCRIPTION REQUIRED

• EVEN CHILDREN COULD SMOKE POT LEGALLY!

Proposition 215 does not require a written prescription. Anyone with the "oral recommendation or approval by a physician" can grow, possess or smoke marijuana. No medical examination is required.

THERE IS NO AGE RESTRICTION. Even children can be legally permitted to grow, possess and use marijuana . . . without parental consent.

NO FDA APPROVAL • NO CONSUMER PROTECTION

Consumers are protected from unsafe and impure drugs by the Food and Drug Administration (FDA). This initiative makes marijuana available to the public without FDA approval or regulation. Quality, purity and strength of the drug would be unregulated. There are no rules restricting the amount a person can smoke or how often they can smoke it.

THC, the active ingredient in marijuana, is already available by prescription as the FDA approved drug Marinol.

Responsible medical doctors wishing to treat AIDS patients, cancer patients and other sick people can prescribe Marinol right now. They don't need this initiative.

NATIONAL INSTITUTE OF HEALTH, MAJOR MEDICAL GROUPS SAY NO TO SMOKING MARIJUANA FOR MEDICINAL PURPOSES

The National Institute of Health conducted an extensive study on the medical use of marijuana in 1992 and concluded that smoking marijuana is not a safe or more effective treatment than Marinol or other FDA approved drugs for people with AIDS, cancer or glaucoma.

The American Medical Association, the American Cancer Society, the National Multiple Sclerosis Society, the American Glaucoma Society and other top medical groups have not accepted smoking marijuana for medical purposes.

LAW ENFORCEMENT AND DRUG PREVENTION LEADERS SAY NO TO PROPOSITION 215

- The California State Sheriffs Association
The California District Attorneys Association
The California Police Chiefs Association
The California Narcotic Officers Association
The California Peace Officers Association
Attorney General Dan Lungren

say that Proposition 215 will provide new legal loopholes for drug dealers to avoid arrest and prosecution . . .

- Californians for Drug-Free Youth
The California D.A.R.E. Officers Association
Drug Use Is Life Abuse
Community Anti-Drug Coalition of America
Drug Watch International

say that Proposition 215 will damage their efforts to convince young people to remain drug free. It sends our children the false message that marijuana is safe and healthy.

HOME GROWN POT • HAND ROLLED "JOINTS" • DOES THIS SOUND LIKE MEDICINE?

This initiative allows unlimited quantities of marijuana to be grown anywhere . . . in backyards or near schoolyards without any regulation or restrictions. This is not responsible medicine. It is marijuana legalization.

VOTE NO ON PROPOSITION 215

- JAMES P. FOX
President, California District Attorneys Association
MICHAEL J. MEYERS, M.D.
Medical Director, Drug and Alcohol Treatment Program, Brotman Medical Center, CA
SHARON ROSE
Red Ribbon Coordinator, Californians for Drug-Free Youth, Inc.

Rebuttal to Argument Against Proposition 215

SAN FRANCISCO DISTRICT ATTORNEY TERENCE HALLINAN SAYS . . .

Opponents aren't telling you that law enforcement officers are on both sides of Proposition 215. I support it because I don't want to send cancer patients to jail for using marijuana.

Proposition 215 does not allow "unlimited quantities of marijuana to be grown anywhere." It only allows marijuana to be grown for a patient's personal use. Police officers can still arrest anyone who grows too much, or tries to sell it.

Proposition 215 doesn't give kids the okay to use marijuana, either. Police officers can still arrest anyone for marijuana offenses. Proposition 215 simply gives those arrested a defense in court, if they can prove they used marijuana with a doctor's approval.

ASSEMBLYMAN JOHN VASCONCELLOS SAYS . . .

Proposition 215 is based on a bill I sponsored in the California Legislature. It passed both houses with support from both parties, but was vetoed by Governor Wilson. If it were the kind of irresponsible legislation that opponents claim it was, it would not have received such

widespread support.

CANCER SURVIVOR JAMES CANTER SAYS . . .

Doctors and patients should decide what medicines are best. Ten years ago, I nearly died from testicular cancer that spread into my lungs. Chemotherapy made me sick and nauseous. The standard drugs, like Marinol, didn't help.

Marijuana blocked the nausea. As a result, I was able to continue the chemotherapy treatments. Today I've beaten the cancer, and no longer smoke marijuana. I credit marijuana as part of the treatment that saved my life.

- TERENCE HALLINAN
San Francisco District Attorney
JOHN VASCONCELLOS
Assemblyman, 22nd District
Author, 1995 Medical Marijuana Bill
JAMES CANTER
Cancer survivor, Santa Rosa

asserting as a defense or otherwise relying on any of the antitrust law exemptions contained in Section 16770 of the Business and Professions Code, Section 1342.6 of the Health and Safety Code, or Section 10133.6 of the Insurance Code, in any civil or criminal action against it for restraint of trade, unfair trading practices, unfair competition or other violations of Part 2 (commencing with Section 16600) of Division 7 of the Business and Professions Code.

(d) The remedies contained in this chapter are in addition and cumulative to any other remedies provided by statute or common law.

Article 14. Severability

1399.960. (a) If any provision, sentence, phrase, word, or group of words in this chapter, or their application to any person or circumstance, is held to be invalid, that invalidity shall not affect other provisions, sentences, phrases, words, groups of words or applications of this chapter. To this end, the provisions, sentences, phrases, words and groups of words in this chapter are severable.

(b) Whenever a provision, sentence, phrase, word, or group of words is held to be in conflict with federal law, that provision, sentence, phrase, word, or group of words shall remain in full force and effect to the maximum extent permitted by federal law.

Article 15. Amendment

1399.965. (a) This chapter may be amended only by the Legislature in ways that further its purposes. Any other change in the provisions of this chapter shall be approved by vote of the people. In any judicial proceeding concerning a legislative amendment to this chapter, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this chapter.

(b) No amendment shall be deemed to further the purposes of this chapter unless it furthers the purpose of the specific provision of this chapter that is being amended.

Article 16. Definitions

1399.970. The following definitions shall apply to this chapter:

(a) "Affiliated enterprise" means any entity of any form that is wholly owned, controlled, or managed by a health care business, or in which a health care business holds a beneficial interest of at least twenty-five percent (25%) either through ownership of shares or control of memberships.

(b) "Available for public inspection" means available at the facility or agency during regular business hours to any person for inspection or copying, or both, with any charges for the copying limited to the reasonable cost of reproduction and, when applicable, postage.

(c) "Caregiver" or "licensed or certified caregiver" means health personnel licensed or certified under Division 2 (commencing with Section 500) of the Business and Professions Code, including a person licensed under any initiative act referred to therein, health personnel regulated by the State Department of Health Services, and health personnel regulated by the Emergency Medical Services Authority.

(d) "Health care business" means any health facility, organization, or institution of any kind that provides, or arranges for the provision of, health services, regardless of business form and whether or not organized and operating as a profit or nonprofit, tax-exempt enterprise, including all of the following:

(1) Any health facility defined herein.

(2) Any health care service plan as defined in subdivision (f) of Section 1345 of the Health and Safety Code.

(3) Any nonprofit hospital service plan as governed by Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(4) Any disability insurer providing hospital, medical, or surgical coverage as governed by Section 11012.5 and following of the Insurance Code.

(5) Any provider of emergency ambulance services, limited advanced life support, or advanced life support services.

(6) Any preferred provider organization, independent practice association, or other organized group of health professionals with 50 or more employees in the aggregate contracting for the provision or arrangement of health services.

(e) "Health care consumer" or "patient" means any person who is an actual or potential recipient of health services.

(f) "Health care services" or "health services" means health services of any kind, including, but not limited to, diagnostic tests or procedures, medical treatments, nursing care, mental health, and other health care services as defined in subdivision (b) of Section 1345 of the Health and Safety Code.

(g) "Health facility" means any licensed facility of any kind at which health services are provided, including, but not limited to, those facilities defined in Sections 1250, 1200, 1200.1, and 1204, and home health agencies, as defined in Section 1374.10, regardless of business form, and whether or not organized and operating as a profit or nonprofit, tax-exempt or non-exempt enterprise, and including facilities owned, operated, or controlled, by governmental entities, hospital districts, or other public entities.

(h) "Private health care business" means any health care business as defined herein except governmental entities, including hospital districts and other public entities. "Private health care business" shall include any joint venture, partnership, or any other arrangement or enterprise involving a private entity or person in combination or alliance with a public entity.

(i) "Health insurer" means any of the following:

(1) Any health care service plan as defined in subdivision (f) of Section 1345 of the Health and Safety Code.

(2) Any nonprofit hospital service plan as governed by Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(3) Any disability insurer providing hospital, medical, or surgical coverage as governed by Section 11012.5 and following of the Insurance Code.

Proposition 215: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds a section to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Section 11362.5 is added to the Health and Safety Code, to read:

11362.5. (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 a 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.*

SEC. 2. If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

Proposition 216: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

Division 2.4 (commencing with Section 1796.01) is added to the Health and Safety Code to read:

DIVISION 2.4. THE PATIENT PROTECTION ACT

CHAPTER 1. PURPOSE AND INTENT

1796.01. *This division shall be known as the "Patient Protection Act." The people of California find and declare all of the following:*

(a) *No health maintenance organization (HMO) or other health care business should be able to prevent doctors, registered nurses, and other health care professionals from informing patients of any information that is relevant to their health care.*

(b) *Doctors, registered nurses, and other health care professionals should be able to advocate for patients without fear of retaliation from HMOs and other health care businesses.*

(c) *Health care businesses should not create conflicts of interest that force doctors to choose between increasing their pay or giving their patients medically appropriate care.*

(d) *Patients should not be denied the medical care their doctor recommends just because*

their HMO or health insurer thinks it will cost too much.

(e) *HMOs and other health insurers should establish publicly available criteria for authorizing or denying care that are determined by appropriately qualified health professionals.*

(f) *No HMO or other health insurer should be able to deny a treatment recommended by a patient's physician unless the decision to deny is made by an appropriately qualified health professional who has physically examined the patient.*

(g) *All doctors and health care professionals who are responsible for determining in any way the medical care that a health plan provides to patients should be subject to the same professional standards and disciplinary procedures as similarly licensed health professionals who provide direct care for patients.*

(h) *No hospital, nursing home, or other health facility should be allowed to operate unless it maintains minimum levels of safe staffing by doctors, registered nurses, and other health professionals.*

(i) *The quality of health care available to California consumers will suffer if health becomes a big business that cares more about making money than it cares about taking care of patients.*

(j) *It is not fair to consumers when health care executives are paid millions of dollars in salaries and bonuses while consumers are being forced to accept more and more restrictions on their health care coverage.*

(k) *The premiums paid to health insurers should be spent on health care services for*