



Americans for Safe Access

Activist Newsletter

Defending Patients' Access to Medical Marijuana

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ASA's 2009 YEAR IN REVIEW

New Federal Policy on Medical Marijuana

In a reversal of previous federal policy, the U.S. Department of Justice has softened its stance on medical cannabis. In a memo issued in October, U.S. Attorneys were told they should not expend resources prosecuting medical cannabis patients and their caregivers in states that have adopted laws allowing medical use.

The memo came shortly after ASA Executive Director Steph Sherer, Government Affairs Director Caren Woodson and Special Advisor David Krahl met with Justice Department officials in Washington D.C. and explained the need for a written directive.

The memo's tacit recognition of both the legitimate medical applications of cannabis and the rights of patients whose doctors advise them to use it marks a policy reversal from previous administrations, which have attempted to subvert state medical cannabis laws. The change makes good on a campaign promise of President Barack Obama which was previously affirmed by Attorney General Eric Holder.

AMA Urges Reclassifying Marijuana

The oldest national doctors' group has said cannabis should be classified as a medicine and called for more research into the drug's potential. The move by the American Medical Association, the largest organization of physicians with nearly 250,000 members, urges the federal government to reschedule marijuana to a level with other medicines and make it available for more cannabinoid drug development research and clinical trials.



Dr. Sunil Aggarwal

The decision by the AMA marks a change in policy for the organization, which has historically supported the federal government's contention that there are no currently accepted medical uses for cannabis. Led by ASA Medical and Scientific Advisory Board member Dr. Sunil Aggarwal, the AMA's Medical Student Section pushed the larger organization to change its position based on the thousands of published, peer-reviewed scientific articles exploring the therapeutic use of cannabis and cannabinoids, including 33 controlled clinical trials in the U.S.

"It's been 72 years since the AMA has officially recognized that marijuana has medical utility," said Dr. Aggarwal, who was one of the expert reviewers for the AMA and a co-author of a recently published review of those 33 clinical

trials. "The AMA has written an extensive, well-documented, evidence-based report."

Bill to Allow Federal Medical Defense

Patients who use medical cannabis under state programs would no longer fear federal prosecution, if a new bill before Congress becomes law. ASA is lobbying hard to see that it does. The bipartisan "Truth in Trials" act, introduced by Rep. Sam Farr (D-CA) with more than twenty original co-sponsors, would allow defendants in federal marijuana cases to present evidence that they were in



Caren Woodson

compliance with their state's medical marijuana law. ASA is one of nearly 40 health organizations and advocacy groups endorsing the bill, but Farr's press release on its introduction quoted ASA's Government Affairs Director Caren Woodson to explain the importance of the bill:

"The Truth in Trials bill seeks to restore the balance of justice and bring fundamental fairness to federal medical marijuana trials," said Woodson. "This legislation complements the recent Justice Department guidelines for federal prosecutors and is now more necessary than ever."

Bill to Reschedule, Protect Patients

Another bipartisan bill in the House would dramatically transform federal policy on medical marijuana. The bill seeks to change the classification of marijuana from a Schedule I drug, defined as having no medical value, to a Schedule II drug, which could be prescribed like other medications. Known as the "Medical Marijuana Patient Protection Act" or HR 2835, the act would also provide federal legal protections for all qualified patients and caregivers in states that have legalized the use of medical marijuana, as well as any entity authorized under local or state law to distribute medical marijuana. The bill was introduced by Representative Barney Frank (D-MA) along with a dozen other members.

Research Request; HHS Solicits Proposals

More medical cannabis will be available for research soon, if members of Congress have their way. After lobbying by ASA, sixteen members of Congress sent a letter to Attorney General Eric Holder, urging the Drug Enforcement Administration (DEA) to act "swiftly to amend or withdraw" an order that significantly curtails medical marijuana

research in the United States. Just seven months after the DEA again rejected a judge's recommendation that a university be granted a license to grow research cannabis, a federal "Request for Proposals" has been issued for the production and distribution of cannabis. For more than 40 years, the University of Mississippi has had an exclusive contract with the National Institute on Drug Abuse (NIDA) to produce cannabis for research.

ASA Suit Says Feds Must Correct Info

On April 14, ASA argued before the federal Ninth Circuit Court of Appeals that federal agencies are required by law to correct the inaccurate information they disseminate about medical marijuana. ASA is appealing a lower court decision on its petition under the "Data Quality Act," which says government statements must rely on sound science; the district court ruled that law does not provide for judicial review, regardless of the merits of any factual claims.



Joe Elford, Alan Morrison and Steph Sherer

Arguing on behalf of ASA that the laws Congress passes have consequences that federal agencies cannot ignore was noted legal scholar Alan Morrison, who founded Public Citizen's Litigation Group and taught administrative law at Stanford. A decision is expected in 2010.

US Supreme Court Affirms Two ASA Cases

The validity of state medical marijuana laws was affirmed by the U.S. Supreme Court in two separate decisions on cases argued by ASA, one involving the implementation of California state law and the other the return of cannabis by police to a qualified patient.

The first case before the high court alleged that the federal prohibition of marijuana preempts the state law that allows legal access for qualified patients. Officials in three California counties argued they could not be forced to implement an identification card program for medical marijuana patients mandated by the legislature. State courts all the way to the

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California Supreme Court had said they must, and the U.S. Supreme Court refused to consider the counties' challenge, letting state law stand. The U.S. Supreme Court also refused review of a landmark decision in which a succession of California courts found that state law requires local police to return medical cannabis seized by local police from a qualified patient. A basis of the ruling is that state medical marijuana programs are not preempted by federal law.

ASA Chief Counsel Joe Elford argued the 2007 appeal on behalf of medical marijuana patient



Joe Elford

Felix Kha, when the City of Garden Grove said its officers could not return the less than \$200 worth of cannabis seized from Kha, because to do so would violate federal law. A district court had already ordered cannabis returned, and the appeals court found that "it is not the job of the local police

to enforce the federal drug laws." The California state supreme court upheld the appellate ruling in March 2008.

Garden Grove's resistance proved expensive. As part of a settlement to resolve their unsuccessful challenge to the state's medical marijuana law, Garden Grove officials reimbursed ASA for \$139,000 in attorneys' fees; the city's cost of litigating is estimated to exceed \$250,000.

The rulings in the ID card case laid the foundation for ASA to file suit in Solano County to compel officials to implement the state program. Five months later, county supervisors voted to make the optional cards available to qualified patients, and more than half of the

dozen counties that had not complied now did, with the others receiving notice from ASA that they must or face litigation.

ASA Gets Calif. DMV Change

Californians who use cannabis on the advice of their doctors no longer need fear the summary revocation of their driver's licenses. An ASA legal challenge to the California Department of Motor Vehicles (DMV) yielded an official change in policy in March that ended discrimination against state medical marijuana patients. Then in December, a court ordered DMV to reimburse ASA for \$69,400 in attorneys' fees.

The change stems from an ASA lawsuit filed in 2008 on behalf of a 53-year-old woman with 37 years of clean driving record whose license was revoked solely because she is a qualified medical cannabis patient. The DMV Driver Safety Procedure Manual now says that "use of medicinal marijuana approved by a physician should be handled in the same manner as any other prescription medication which may affect safe driving."

Distribution Plans for Medical Cannabis

Colorado has joined California and other states in allowing the distribution of medical cannabis through storefronts, thanks in part to the work of the ASA affiliate Sensible Colorado. Patient advocates were successful in organizing a huge grassroots response that convinced the Colorado Board of Health to accept an expansive model of medical marijuana distribution that allows for cash sales. That policy decision was reinforced by a year-end court ruling that sales must be allowed under the constitutional amendment approved by state voters in 2000.

Rhode Island, Maine and the District of Columbia are also embracing the dispensary model as a safe, effective way of ensuring patient access. Legislators in Rhode Island legislators expanded their state's medical marijuana

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na law to establish a dispensary distribution program for qualified patients, overriding their governor's veto with a near-unanimous vote. Voters in Maine approved a measure to establish medical cannabis dispensaries in their state. The nation's capitol will also have dispensaries soon, as lobbying by ASA helped convince Congress to lift the ban on the initiative providing for them that local voters passed in 1998.

ASA Argues Dispensary Bans Illegal

Cities and counties in California will be barred from banning medical cannabis dispensaries if ASA prevails in a state appellate court. ASA Chief Counsel told the court that the state medical cannabis law supersedes local bans. The case involves a small dispensing collective in Anaheim that had been operating for five months when the city council passed a ban in July 2007 and closed them down.

While a decision was expected by the end of the year, the Fourth Appellate District Court has asked for additional briefing on the intent of the legislature in adopting the Medical Marijuana Program act of 2003, which specifically exempts patients, caregivers, and patient collectives from state laws prohibiting cultivation, possession and distribution of marijuana.

LA Instituting Dispensary Regulations

The nation's second-largest city will soon have an ordinance regulating medical cannabis dispensaries. The Los Angeles City Council is nearing the end of a contentious four-year process to establish rules for the more than 500 dispensaries now operating. While the LA city attorney and district attorney have both urged the council to prohibit dispensaries, arguing that no sales of cannabis to patients are legal, ASA California Director Don Duncan has been working closely with city officials to provide the patient perspective, and ASA Chief Counsel Joe Elford has notified the city that any ban on sales will result in litigation.



Don Duncan

In December, the city council rejected the DA and city attorney's advice and said dispensaries will be able allowed to provide services in compliance with state law. The council expects to finalize the ordinance in January.

ACTION ALERT: Support Our Prisoners!

With the holidays just behind us, please think of those who don't have their freedom. Will you write a personal letter of support to a medical cannabis prisoner?

Although the actions of many of these prisoners were legal under state law, defendants cannot bring up a medical defense in federal court. To see a list of medical cannabis prisoners and tips for writing, visit: AmericansForSafeAccess.org/prisoners.

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