



Americans for Safe Access

Activist Newsletter

Defending Patients' Access to Medical Marijuana

November 2009

Volume 4, Issue 11

Federal Policy on Medical Marijuana Turns Corner *Justice Department Tells Prosecutors to Respect State Law*

In a sharp departure from previous federal policy, the U.S. Department of Justice has softened its stance on medical cannabis. In a memo issued last month, the Justice Department told U.S. Attorneys that they should not expend resources prosecuting medical cannabis patients and their caregivers in states that permit medical use.

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 spent the past 13 years undermining state medical cannabis laws. The change makes good on a campaign promise of President Barack Obama, who said he sympathized with patients and opposed using federal resources to interfere with state medical cannabis programs.

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.

"Medical marijuana patients and advocates have worked long and hard for this victory," said Sherer. "We're grateful that President Obama is keeping his promise not to undermine state medical marijuana laws, but we still need a comprehensive national policy that promotes research and protects all patients."

The official DOJ memo addresses continuing federal raids and prosecutions targeting medical cannabis patients and providers in California and other states. While President Obama had said on the campaign trail that he

would end the raids, Drug Enforcement Administration actions continued as his nominee for Attorney General, Eric Holder, went

(continued page 2)

Ordinance Battle in LA *Dispensary Moratorium Invalid*

Medical cannabis patients in Los Angeles are caught in a political battle between the City Council on the one hand and the city attorney and district attorney on the other.

At issue are storefront collectives that dispense cannabis to member patients. Hundreds of such dispensaries are operating openly in the city, and have been for years. And for years, advocates and officials alike have said the city needs a workable ordinance to regulate them.

Two years ago, the council imposed a moratorium on new dispensaries, but did so in a way that led many to believe they could open anyway under a "hardship" exception -- and hundreds did. The city has so far rejected all the hardship requests, but a state judge has now invalidated the moratorium as unconstitutional, throwing the process into disarray.

Meanwhile, the LA City Council has asked the newly elected city attorney, Carmen Trutanich, for a workable ordinance. But he now says any cash sale of cannabis is illegal under state law, so all dispensaries are operating illegally and must close or face prosecution.

The city council isn't buying it, for a number of reasons. Dispensaries are well established and well regulated in other cities around the state. California Attorney General Jerry Brown has already issued guidelines for their legal operation. And the state's medical cannabis initiative instructs local officials "to implement a plan to provide for the safe and affordable distribution of marijuana." As a result, the council has insisted on new language for an ordinance, which is now in its fifth official draft.

Led by California Director Don Duncan, ASA has been working closely with Los Angeles city officials since 2005 to craft responsible regulations. ASA has also been organizing patients

(continued page 2)

Bill To Allow Medical Defense in Federal Trials

Patients who use medical cannabis under state programs would no longer fear federal prosecution, if a new House bill becomes law.

The bipartisan "Truth in Trials" act, introduced by U.S. Representative 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 compliance with their state's medical marijuana law.

Federal rules of evidence currently exclude any type of medical defense to marijuana charges, even when a patient is using cannabis under the direction of a physician and is in compliance with a state's medical cannabis program. Thirteen states have laws that allow authorized patients to use and possess cannabis, but federal law classifies marijuana as a drug with no accepted medical use.

Americans for Safe Access is one of nearly 40 health organizations and advocacy groups endorsing the bill, but Farr's press release on its introduction quoted ASA 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 Caren Woodson, ASA's Government Affairs Director. "This legislation complements the recent Justice Department guidelines for federal prosecutors and is now more necessary than ever."



Caren Woodson

While the newly released guidelines from the Justice Department caution federal prosecutors against bringing cases against individuals operating under state medical marijuana law, those individuals still lack legal protection.

"This is a common sense bill that will help stop the waste of law enforcement and judicial resources that have been spent prosecuting individuals who are following state laws," Rep. Farr said in a statement on introducing the bill. "This legislation is about the fair treatment of defendants in medical marijuana trials, plain and simple."

More than two dozen federal cases involving medical cannabis are currently pending.

(continued page 2)

(NEW POLICY, continued from page 1)

through the confirmation process, including four coordinated raids in Los Angeles on the day Holder was sworn in.

Following those raids in early February, a White House spokesman reiterated President Obama's intention to make good on his promise of a new policy, but said that change hinged on the appointment of new officials at the DEA and other agencies. Three weeks later, Attorney General Holder, appearing at a news conference with the DEA's acting administrator by his side, said that the President's campaign promise "is now American policy."

ASA had sought a written statement of that policy to guide federal prosecutors and judges. U.S. Attorneys in California and elsewhere had said that it would be business as usual with prosecuting medical cannabis cases until they were told to stop. Some federal judges have recently balked at imposing federal prison sentences and have sought clarification from the Justice Department about how the new policy affects federal defendants.

While the memo states that the new policy does not change federal law or alter the rules for federal marijuana trials, where evidence of medical necessity or compliance with state law is routinely excluded as irrelevant, advocates hope it will have an effect on the more than

two dozen federal prosecutions of medical cannabis cases currently underway.

"The change of direction is what's most important," said ASA Chief Counsel Joe Elford. "This memo gives prosecutors a reason to think twice about bringing charges and judges a chance to reduce sentences or eliminate prison time."

Since California voters approved a medical cannabis initiative in 1996, federal officials have resisted and court battles have ensued. The Clinton Administration threatened to sanction any doctors who discussed medical cannabis with their patients, but the U.S. Supreme Court ruled that Constitutional free-speech protections prevented interference.

That did not preclude prosecution of patients, however, as the Supreme Court also said in a separate case that the federal government can bring charges against medical users who comply with state law. In the Bush Administration, nearly 100 patients and caregivers were prosecuted in California alone, and the DEA carried out more than 200 "smash and grab" raids, where property was damaged and medicine and cash seized, but no arrests were made.

Fourteen states with a total population of more than 78 million have enacted laws providing some protection for patients who use cannabis on the advice of their doctors.

(LA DISPENSARIES, continued from page 1)

and advocates, and every committee and council meeting on the issue has been filled by people speaking eloquently on the need for safe access.



Protestors at a training on "eradicating" dispensaries.

ASA also organized a protest when it came to light that the city attorney and District Attorney Steve Cooley would both be appearing at a law enforcement training on "eradicating" dispensaries. More than 100 peaceful protestors picketed the luncheon sponsored by the California Narcotics Officers' Association, a group opposed to medical cannabis.

"Elected officials should have no part in an anti-medical marijuana road show that trains police how to flaunt state law," said ASA California Director Don Duncan. "Statewide law enforcement organizations should be helping to implement safe methods of medical marijuana distribution, not working to undermine access."

Popular support for legal access to medical cannabis and regulated means of distribution has only increased. Recent polling in Los Angeles found that 77% of the county's voters support "uniform licensing and regulation" of medical cannabis dispensaries. Only 14% said they support the goal of the city attorney and DA to shut all dispensaries.

Nonetheless, the Los Angeles Police Department has begun raiding medical cannabis dispensaries and arresting their operators, even some who have been operating for years under the pre-moratorium rules.

(NEW BILL, continued from page 1)

Because medical cannabis patients and their providers are allowed no medical defense at trial or mention of state law, convictions are nearly assured, and many defendants take plea bargains in an effort to reduce mandatory sentences of up to 20 years in prison.

Rep. Farr's bill is similar to ones offered without success in previous sessions of Congress. But supporters hope that the change in federal policy indicates President Obama would sign the bill, something that may help push the measure forward.

Among the groups joining ASA in endorsing the bill are the American Civil Liberties Union (ACLU), National Association of People With AIDS (NAPWA), National Minority AIDS Council (NMAC), and AIDS Action Council.

ACTION ALERT: Urge Your U.S. Representative to Co-sponsor Truth in Trials!

One in four Americans now lives in a state with laws governing medical marijuana. Unfortunately, law-abiding citizens can still be prosecuted on federal marijuana-related charges.

Even with the Obama Administration's new guidelines, federal prosecutors can still block defendants from showing that they were in compliance with state law.

The "Truth in Trials" Act, H.R. 3939, would end this injustice by ensuring that federal defendants could present evidence showing that they were following state law. Introduced by U.S. Representative Sam Farr, this important legislation would give law-abiding citizens the ability to defend themselves in federal court.

Urge your Member of Congress to cosponsor "Truth in Trials" today. Take action online at AmericansForSafeAccess.org/house or call 202-224-3121 for the House switchboard.

Become a Member

(check one) Monthly One-time \$100 \$50 \$35 Other Amount \$ _____

Name _____ Check or Money Order Enclosed.

Address _____ Visa Mastercard AMEX Discover

City, State, Zip _____ Card Number: _____

Phone _____ Signature: _____

Email _____ Expiration Date: ____/____/____

Mail to: Americans for Safe Access, 1322 Webster St., Suite 402, Oakland, CA 94612

www.AmericansForSafeAccess.org