

from federal prosecution for recommending marijuana by the *Conant* U.S. court decision.

WHAT ILLNESSES ARE COVERED?

Prop. 215 lists “cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, *or any other illness for which marijuana provides relief.*” It also says that its purpose is “to ensure that *seriously ill* Californians have the right to obtain and use marijuana.” An appellate court decision, *People v. Spark*, held that the question of whether the patient’s medical condition is “serious” is to be made by a physician only. Physicians have recommended marijuana for hundreds of indications, including such common complaints as insomnia, PMS, post-traumatic stress, depression, and substance abuse.

WHERE CAN MARIJUANA BE SMOKED?

SB420 disallows marijuana smoking in no smoking zones, within 1000 feet of a school or youth center except in private residences; on school buses, in a motor vehicle that is being operated, or while operating a boat. Patients are advised to be discreet or consume oral preparations in public. Some state colleges have refused to allow medical marijuana on campus, even in designated smoking areas; the legality of these bans is disputed.

WHERE CAN I GROW MEDICINE?

Although Prop. 215 allows patients to grow their own medicine, landlords are not legally obliged to allow it. California law does not allow property forfeiture for small-scale cultivation. Property with large gardens may be subject to federal forfeiture.

PRISONERS AND PROBATIONERS

SB420 allows probationers, parolees, and prisoners to apply for permission to use medical marijuana. However, it does not require correctional facilities to accommodate medical marijuana use by prisoners or arrestees.

CAN PATIENTS BE DRUG TESTED?

The California Supreme Court has ruled that employers have a right to drug test and fire patients who test positive for marijuana, regardless of their medical use (*Ross v RagingWire*, 2008). Some

employers will excuse patients if they present a valid 215 recommendation. Others won’t. Applicants are advised to inquire beforehand about companies’ policies. Marijuana is never permitted in jobs subject to federal drug testing regulations, such as the transportation industry. If you must take a drug test, the best defense is a Marinol prescription.

WHEN ARE RECOMMENDATIONS VALID?

Under Prop. 215, a recommendation is valid so long as the doctor says it is. However, SB420 requires ID cards to be renewed annually, and many police refuse to recognize recommendations that are older than a year or so. Courts have ruled that patients must have a valid approval at the time of their arrest, though this can have been oral..

WHAT ABOUT MINORS?

Patients under 18 should have parental consent.

SHOULD I GET AN I.D. CARD?

Patients are not required to get an ID card to enjoy the protection of Prop. 215. All that is needed is a physician’s statement saying that marijuana is “approved” or “recommended.” However, many police refuse to recognize recommendations and arrest patients anyway, in which case patients must go to court to prove their legality.

A state ID card is supposed to provide protection from arrest under SB 420. Unfortunately, many counties still have not implemented ID cards as of this time. The state ID card system has safeguards to protect patient privacy. Police cannot track down patients through the registry. Not a single registered patient has been harassed by the DEA.

The Oakland Cannabis Buyers’ Coop (www.rxcbc.org) offers ID cards for all California residents. OCBC cards are not officially recognized by SB 420, but are honored by many clubs and police.

WHERE CAN I GET MEDICAL MARIJUANA?

Even though Prop. 215 doesn’t explicitly legalize sales, scores of quasi-legal patients groups, hundreds of clubs and caregivers are presently providing marijuana to patients. For a list, see www.canorml.org/prop/cbclist.html.

California NORML Guide To Your Rights Under Prop. 215



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PROPOSITION 215, the California Compassionate Use Act, was enacted by the voters and took effect on Nov. 6, 1996 as California Health & Safety Code 11362.5. The law removes criminal penalties for personal use possession and cultivation of marijuana for medical purposes by patients (and their designated “primary caregivers”) who have a physician’s recommendation or approval.

SB420, a legislative statute, went into effect on January 1, 2004 as California H&SC 11362.7-.83. This law broadens Prop. 215 to transportation and other offenses in certain circumstances; allows patients to “collectively or cooperatively” cultivate for medical purposes; and sets limits on how much marijuana patients may have. The law also establishes a statewide, voluntary ID card system, which is supposed to be furnished by county health departments. Unfortunately, not all counties have yet implemented the ID cards. Patients who do have state ID cards are supposed to be protected from arrest if they follow the specified quantity limits.

HOW MUCH CAN I POSSESS OR CULTIVATE?

SB420 establishes a baseline statewide limit per patient of 6 mature or 12 immature plants, and 1/2 pound (8 oz.) processed cannabis. Patients can be exempted from these limits if their physician specifically states that they need more. In addition, individual cities and counties are allowed to enact higher, but not lower, limits than the state standard. Local limites are posted at: www.canorml.org/prop/local215policies.html.

The legality of the limits in SB 420 is disputed. Prop. 215 advocates maintain that they do not absolutely determine legality, but are only guidelines for arrest, and that patients who exceed them still have a legal defense in court. Most courts have accepted this theory, but a few have not. To be safe, anyone exceeding the limits is advised to get a physician’s exemption.

WHAT OFFENSES ARE COVERED?

Prop. 215 explicitly covers marijuana possession and cultivation (H&SC 11357 and 11358) for personal medical use. Hashish and concentrated cannabis, including edibles, (HSC 11357a) are also included. Transportation (HSC 11360) has also been allowed by the courts, and is covered for state cardholders under SB 420. Within the context of a *bona fide* caregiver relationship and quantity limits, SB 420 provides qualified protection against charges for possession for sale (11359); transportation, sale, giving away, furnishing, etc. (11360); providing or leasing a place for distribution of a controlled substance (11366.5, 11570).

WHO IS PROTECTED BY PROP. 215?

Patients with a physician’s recommendation and their primary caregivers, defined as, “The individual designated by the person exempted under this act who has consistently assumed responsibility for the housing, health, or safety of that person.” Examples: spouse or partner, professional caregiver or nurse. Prop. 215 does not officially recognize multiple primary caregivers, although many patients use more than one caregiver for their medicine. Caregivers may have more than one patient. However, SB 420 restricts individual caregivers to **no more than one patient outside their own “city or county.”** Prop. 215 advocates challenge the constitutionality of this provision, but the courts have not ruled on it.

CAN I STILL BE ARRESTED OR RAIDED?

YES, unfortunately. There is nothing in Prop. 215 to compel police to accept a patient as being valid. Many legal patients have been raided or arrested for having dubious recommendations, for growing amounts that cops deem excessive, on account of neighbors’ complaints, etc. A major purpose of the state ID card system is to help avoid undue arrests.

Once patients have been charged, it is up to the courts to pass judgment on their medical claim.

A landmark State Supreme Court decision,

People vs. Mower, holds that patients have the same right to marijuana as to any legally prescribed drug. Under *Mower*, patients who have been arrested can request dismissal of charges at a pre-trial hearing. If the defendant convinces the court that the prosecution hasn’t established probable cause that it was for other than medical purposes, criminal charges are dismissed. If not, the patient goes on to trial, where the prosecution must prove “beyond a reasonable doubt” that the defendant was guilty. Those who have had their charges dropped may file to have their property returned, and possibly claim damages.

In many cases, police raid patients and take their medicine without filing criminal charges. In order to reclaim their medicine, patients must then file a court suit on their own. For legal assistance in filing suit for lost medicine, contact Americans for Safe Access (safeaccessnow.org).

WHAT ABOUT FEDERAL LAW?

Under the federal Controlled Substances Act, possession of any marijuana is a misdemeanor and cultivation is a felony. A recent Supreme Court ruling, *Gonzalez v Raich* (June 2005), upheld the federal law against a constitutional challenge by two patients who argued that their personal use and cultivation of marijuana was legal under state law and did not affect interstate commerce, and should therefore be exempt from federal law. Although the Supreme Court upheld the federal ban on medical marijuana, federal officials have stated that they do not intend to go after individual patients, only large-scale suppliers.

WHO QUALIFIES AS A PHYSICIAN?

Prop. 215 applies to physicians, osteopaths and surgeons who are licensed to practice in California. It does not apply to chiropractors, herbal therapists, etc. For a list of medical cannabis specialists, see www.canorml.org/prop/215physicians.html. Prop. 215 requires physicians to state that they “approve” or “recommend” marijuana. Physicians are protected