

**PUBLIC SAFETY ISSUES RELATED
TO MEDICAL MARIJUANA IN
ORANGE COUNTY**

Orange County Chiefs of Police and Sheriff's Association

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Acknowledgements

Orange County Chiefs of Police and Sheriff's Association working group on Medical Marijuana in Orange County.

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The Orange County Chiefs of Police and Sheriff's Association (OCCSA) recognizes that medical marijuana dispensaries and its related issues can have an impact on public safety in Orange County. Agencies are receiving reports of significant crimes, (robberies, burglaries, assaults), occurring at or in the immediate area of dispensaries. These businesses have been known to associate with organized criminal gangs, receive their product (marijuana) from large sophisticated grow operations and are receiving a significant financial profit. Orange County communities and citizens are asking law enforcement to address these and other related issues.

As such, the OCCSA has implemented a working group to analyze the issue and give potential tools to remedy identified public safety concerns. The mission of the working group is to:

Identify potential public safety issues of medical marijuana and possible solutions to those issues. The primary focus will be on the applicable criminal and civil laws, dispensaries and delivery businesses. The purpose of the committee is not to consider the medicinal values of marijuana.

Medical Marijuana Laws

To understand the public safety issues of medical marijuana dispensaries and delivery services it is important to understand the history and current status of the related laws.

In 1996, "The Compassionate Use Act" (CUA), was passed by the voters of California. The CUA decriminalized marijuana possession and cultivation for specific patients or their primary caregiver. Basically, the CUA provides an affirmative defense against cultivation and possession of cannabis for a patient's personal medical treatment, with the oral or written recommendation of a physician. In addition, the patient's primary caregiver is provided the same protections.

The Act was codified in Health and Safety Code 11362.5, which specifically states, 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," and 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."

Under federal law, marijuana is classified as a Schedule I drug, which means it has no recognized medical use. In 2005, the United States Supreme Court ruled in *Gonzales v. Raich* that the federal Controlled Substances Act is valid even as applied to the use of marijuana for personal medical use on the advice of a physician. While the ruling states marijuana remains illegal under federal law, the ruling has no direct impact on California law relating to medical marijuana.

In 2003, the California State Legislature passed Senate Bill 420, which became the Medical Marijuana Program (MMP) and took effect on January 1, 2004. The MMP further defined the definition of "patient" and "primary caregiver". It required the California Department of Public Health to establish and manage a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport medical marijuana without being subject to arrest.

The California Department of Health Services (CDHS) manages the State's MMP. Each county is responsible for implementing their own Medical Marijuana Program. Orange County has named their program the Medical Marijuana Identification Card Program (MMIC). Orange County residents may access the MMIC through the Public Health Services - Health Care Agency website, <http://ochealthinfo.com/mmic>. Each card has a unique identification number, which can be verified by law enforcement through a database (www.calmmp.ca.gov).

The MMP also established limits on the amount of marijuana and plants a single qualified person could possess (Health and Safety Code 11362.77). The MMP states qualified patients and primary caregivers may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. In addition, a doctor may recommend additional amounts of marijuana to treat a specific patient's condition. Additionally, counties and cities could adopt local regulations that allowed qualified persons to possess medical marijuana in amounts exceeding the above possession guidelines. This section of the MMP was found to be an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess (People v. Kelly [2008]). Thus, for the purposes of a criminal prosecution, the Section 11362.77 limitations are inapplicable. The prosecutor must prove that the amount possessed was not reasonably related to the defendant's current medical needs. And, because the CUA provides an affirmative defense, the defendant bears the burden of providing evidence on that issue.

However, the CUA does not provide a *protection against arrest* -- which was one of the stated purposes of the MMP. As such, to the extent that the MMP limits the quantity of marijuana (8 ounces, 6 mature plants or 12 immature plants) a person may have to prevent an arrest for possession or cultivation, those limits are viable. Accordingly, the limits may still be used by law enforcement to determine whether they have legal authority to arrest a person -- protection from arrest is provided only for those MMP card holders who comply with the quantity limitations of Health and Safety code 11362.77 (See Section 11362.71(e)). After arrest, it will be up to the prosecutor to determine whether the defendant has a potential affirmative defense to a criminal prosecution under the "reasonableness" standard - and then up to the defendant to provide evidence supporting the difference.

As it relates to dispensary or storefront marijuana distribution, the MMP created a limited affirmative defense to criminal prosecution for qualifying individuals (patients and caregivers) that collectively gather to cultivate medical marijuana and from criminal sanctions for conduct such as possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use or distribution of marijuana for a person who qualifies as a "patient," a "primary caregiver," or as a member of a legally recognized "cooperative," as defined within the statutory scheme. However, there is no law or provision that expressly authorizes or protects the establishment of a storefront marijuana distribution business.

The CUA authorized a patient or a patient's "designated primary caregiver" to cultivate and possess cannabis for the patients' medical use. As such, marijuana "dispensaries" started to take root in communities. Operators were designated as a "primary caregiver" by "patients" – often by the hundreds and even thousands. As the "caregiver", the dispensary operator would provide medical marijuana to the "patients" for a fee. However, the CUA did not authorize any individual or entity (pharmacy, cannabis buyers' clubs or dispensaries) to sell, or even give, cannabis to a patient or caregiver. In fact, the California Supreme Court ruled that a person whose "care giving" consists principally of supplying marijuana and instructing on its use, and who otherwise only sporadically takes some patients to medical appointments, cannot qualify as a "primary caregiver" under the CUA. (People v. Mentch (2008)). Specifically, a "primary caregiver" must prove that they:

- Consistently provide care giving.
- Independent of any assistance in taking medical marijuana.
- At or before the time he/she assumed responsibility for assisting with medical marijuana.
- A primary caregiver must be the principal, lead, or central person responsible for rendering assistance in the provision of daily life necessities.

The MMP also addressed "primary caregivers" and provided a specific definition. Under Health and Safety Code 11362.7(d), "primary caregiver means the individual, designated by a qualified patient or by a person with an identification card, **who has consistently assumed responsibility for the housing, health, or safety of that patient or person.**"

Law enforcement agencies should also be aware of the court decision from City of Garden Grove v. Superior Court. The Court ruled a defendant has a due process right under the 14th Amendment to the return of property where the marijuana was found to be lawfully possessed with the meaning of the CUA and/or the MMP. Defendants requesting that marijuana be returned to them should be directed to obtain a court order for the return. If obtained, the court order should be followed by the law enforcement agency. A number of Orange County law enforcement agencies have returned marijuana to defendants of various criminal marijuana cases.

Collectives and Collaborative

Since the Mentch decision, medical marijuana storefronts have essentially stopped the practice of identifying themselves as "primary caregivers." However, the MMP recognizes that patients and caregivers may associate in order to collectively or cooperatively cultivate medical marijuana. Specifically, the MMP added Health and Safety code 11362.775, which provides that "patients and caregivers who associate within the State of California in order to collectively or cooperatively cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions" for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. Typically medical marijuana storefronts in Orange County operate under the model or title of a "Collective" or "Cooperative."

In August 2008, the California Attorney General's office issued "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use." http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf.

The AG's Guidelines stated that a "cooperative" is a legal entity. As such, they must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. It must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year.

The AG Guidelines also addressed a "collective," which is not defined under California law. The AG's Guidelines states a "collective" should be an organization that merely facilitates the collaborative efforts of patient and caregiver members. According to the guidelines neither collectives nor cooperatives should purchase cannabis from, or sell to, non-members. The guidelines also suggested practices for operating "collective growing operations" including:

- Non-Profit
 - o Nothing allows collectives, cooperatives or individuals to profit from the sale or distribution of marijuana.
- Business Licenses, Sales Tax, and Seller's Permits
 - o The State Board of Equalization determined medical marijuana transactions are subject to sales tax.
- Membership Application and Verification
 - o Suggests a written application.
 - o Verification of the individual's status as a qualified patient or primary caregiver.
 - o Have the individual agree not to distribute marijuana to non-members.
 - o Have the individual agree not to use the marijuana for other than medical purposes.

- Maintain membership records on-site or reasonably available.
- Track member's medical marijuana recommendation.
- Enforce conditions of membership.

Permissible Reimbursements and Allocations: Marijuana grown at a collective/corporative for medical purposes may be:

- Provided free to members.
- Provided in exchange for services rendered.
- Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses.

As noted above, nothing in the CUA or MMP expressly allows for the storefront sales of marijuana. In Orange County these storefronts have used the titles of "dispensaries", "collectives", "cooperatives" and "alternative health care" to name a few. Typically, these businesses distribute/sell marijuana outside of California law.

As noted previously, California State law, specifically the CUA under Health and Safety code 11362.5 and the MMP under Health and Safety Code sections 11362.7 through 11362.83, provides an affirmative defense to charges of possession or cultivation of marijuana for individuals who have a physician's recommendation for the use of marijuana to treat specified illnesses, or their primary caregivers. However, this affirmative defense does not apply to any storefront operation in which there is the distribution or sale of marijuana, except in limited circumstances where persons with a valid physician's recommendation or their primary caregivers associate to *collectively or cooperatively cultivate marijuana* for medical purposes. Outside of these parameters, a storefront is most likely an illegal operation.

The simple act of having a customer sign a membership form (collective or otherwise), and selling marijuana without any other relationship to cultivate marijuana is likely illegal. Investigations have revealed these storefronts are involved in the illegal distribution and sale of marijuana for money and not the simple possession of marijuana by qualified patients and their primary caregivers for the personal medical purposes of the patient.

Medical Marijuana Dispensaries and Delivery Services

Medical marijuana dispensaries and delivery services in Orange County consistently advertise their services on internet sites such as <http://legalmarijuanadispendary.com/>, <http://www.canorml.org/>, www.weedmaps.com and in the OCWeekly publication. There is even a mobile telephone application, iPot, to locate marijuana dispensaries. Many are operating out of locations that do not specifically advertise their business as a medical marijuana business, such as natural herbs or health food stores. There are even dispensary colleges to educate business owners on operating dispensaries. Two are located in Los Angeles - Dispensary University and Oaksterdam University and two in Orange County - Cannabis State in Sunset Beach and Otherside Farms in Costa Mesa. Frequently, these dispensaries have close business relationships with physicians who specialize in providing examinations of people seeking a medical marijuana recommendation. Dispensaries have distributed advertising flyers and discount coupons for physicians.

Delivery services appear to be increasing in numbers as more law enforcement agencies are taking enforcement action against dispensaries. The associated public safety concerns can be just as significant as with a dispensary. Anecdotal evidence suggests that many crimes associated with delivery services go unreported to law enforcement. Local licensing and other legal business requirements are rarely followed. Identifying and locating these delivery businesses can be difficult for agencies.

Law enforcement officials estimated at the end of 2009 that there were between 600-800 dispensaries in the City of Los Angeles alone (Los Angeles Times estimated 966). There are approximately 60-80 in Long Beach. The Los Angeles Police Department and the Los Angeles District Attorney's Office have taken an aggressive enforcement position with regards to these dispensaries.

The following page lists the number of known Medical Marijuana Dispensaries (85) and delivery services (14) in Orange County as of January 1, 2010. It is important to understand that the number and locations of dispensaries and delivery services in Orange County changes frequently.

Orange County Medical Marijuana Dispensaries and Delivery Services

Jurisdiction	Number of Known Medical Marijuana Dispensaries	Number of Known Medical Marijuana Delivery Services
Aliso Viejo	0	0
Anaheim	5	5
Brea	0	0
Buena Park	0	0
Costa Mesa	11	4
Cypress	0	0
Dana Point	5	0
Fountain Valley	1	0
Fullerton	0	0
Garden Grove	3	0
Huntington Beach	0	0
Irvine	3	0
La Habra	0	0
La Palma	0	0
Laguna Beach	0	0
Laguna Hills	2	0
Laguna Niguel	3	0
Laguna Woods	0	0
Lake Forest	11	0
Los Alamitos	0	0
Mission Viejo	0	0
Newport Beach	2	0
Orange	2	0
Placentia	0	0
Rancho Santa Margarita	0	0
San Clemente	0	0
San Juan Capistrano	0	0
Santa Ana	31	5
Seal Beach		
Stanton	0	0
Tustin	0	0
Unincorporated County Area	6	0
Villa Park	0	0
Westminster	0	0
Yorba Linda	0	0
Orange County totals	85	14

Public Safety Incidents in Orange County

To understand the impact on public safety, it is valuable to know about specific experiences law enforcement agencies have had with dispensaries and delivery services. The incidents help to put a perspective on the seriousness of the issue. The following are descriptions of actual incidents:

Costa Mesa

- An individual who owned a legitimate massage establishment rented a suite directly across from a business alleged to be dispensing marijuana. The massage business reported they could smell the burning marijuana permeating their business and wanted to relocate their massage business. However, Costa Mesa currently has a moratorium on massage establishments and therefore the business is unable to relocate.
- A business owner rented a suite in a business complex that is surrounded by several businesses allegedly involved in dispensing marijuana. The business owner reported a high volume of foot traffic and the numerous "clientele" on the premises were negatively impacting their business. Therefore, the business owner plans to relocate the business.

Huntington Beach

- An undercover police detective attempted to buy medical marijuana from a medical marijuana dispensary. He was told he would first need to obtain a recommendation from a physician. The dispensary employee gave the detective a single-page flyer advertising a physician who could provide the required recommendation. The flyer included a discount coupon for the physician's services. The detective visited the physician's office expecting an examination. Instead, the detective completed a short medical questionnaire, spoke with the physician for less than five minutes and then was given a recommendation card. There was no physical examination. There were no standard medical equipment (blood pressure monitor/cuff, stethoscope) devices and no medical certificates displayed. The detective had just told the physician of previous headaches and that when he, detective, smoked marijuana the headaches went away. The physician agreed that marijuana was good for headaches. However, the physician told the detective he would need to return to the doctor in three months for another examination. The detective paid the physician \$125.00 which included a 25% discount since the detective had the flyer. The detective was then able to return to the dispensary and purchase marijuana.
- Police detectives received information there was going to be a "420 party" at a local tobacco products, or "smoke shop", business. "420" is a slang term referring to marijuana. The party was to include live entertainment and an illegal raffle. The business was not licensed or permitted for any of these activities. Detectives

advised the business that the planned party would be illegal. The business agreed to not host the event. However, the business did hold a marijuana party at a vacant storefront adjacent to the smoke shop. This party included a physician who would provide an examination, for a fee, and then issue a medical marijuana recommendation card. The doctor described himself as a "caregiver." After receiving the card the detectives would be able to purchase marijuana from a printed price list inside the business. The business was having a "Valentines day" special.

Several weeks later, detectives made contact with a person working at the business and arranged for a delivery of medical marijuana to a local hotel.

Brea

- An individual contacted the city about a business permit for a medical marijuana dispensary. He was told the city had an ordinance prohibiting such establishments. He opened up a dispensary anyway under the guise of a food shop selling brownies, popcorn, etc. The paperwork he provided was falsified and the products were laced with marijuana. One of the Brea Police Department narcotics detectives saw the business's advertisement on the internet. The detective obtained a marijuana recommendation card from a physician in Lake Forest. With that recommendation card, the detective purchased marijuana at the shop at current street level prices. The individual was charged with municipal code violations and felony sales.

Yorba Linda

- Detectives received numerous complaints of a business that had excessive foot traffic and the smell of burning marijuana. The location was not licensed for any type of business through the City. Detectives entered the business under the guise of being prospective customers. The entrance was monitored by cameras and a manned cage. Once inside, the detectives locked down the business and obtained a search warrant. While waiting for the search warrant, numerous males, 18-25 years old, with no obvious physical ailments were turned away. One individual arrived with a back-pack full of marijuana with the purpose of selling to the business. He and two people working the counter were arrested for sales. Property records turned up fictitious names for the actual lessee and the true business owner was never located. The case on the two counter workers trailed for over a year in criminal court. The defendants had free legal council from NORML (The National Organization for the Reform of Marijuana Laws) who brought people on crutches and in wheel chairs into court.
- Brea Police located a subject from Lake Elsinore making deliveries of marijuana to Orange County with his first stop being Yorba Linda. He was located on the internet. He was arrested after a controlled buy in the east end of the city.

Orange

- The East Hills Patient Association applied for a business license tax application. However, the business did not fully disclose its intentions of providing medicinal marijuana. The license clearly stipulated "No retail sales." The applicant indicated on the application the business was providing consultation and general services to outpatient and elderly patients. The applicant clearly stated he would not be a marijuana dispensary.

At a later time, detectives observed an advertisement in the OC Weekly publication reference the same location distributing marijuana. The advertisement also indicated a discounted price for first time customers.

Detectives created a fraudulent physician recommendation card, which listed a fictitious doctor's name. Detectives entered the business, in an undercover capacity, provided the recommendation card to the business owner and were instructed to wait in the lobby while the legitimacy was confirmed. The business operator called the phone number provided on the fraudulent recommendation, which was another detective's phone number, and inquired if the patient/detective was provided with the recommendation card. The other detective, who was waiting in a vehicle outside of the business, confirmed on his cell phone, the patient/detective's recommendation was legitimate.

The patient/detective was escorted to a secured room. The detective did not see any uniformed security present during the entire transaction. The room possessed a display case, which contained several different types of cannabis. There was an exchange of U.S. currency for marijuana, which was in violation of the Orange Municipal Code. A criminal complaint was ultimately filed through the Superior Court.

- Detectives received a "We-Tip" report about the Orange County Healing Patients Association. Detectives learned there was no existing license for that location and the business owner attempted to circumvent the system by not applying for a City of Orange business tax license. Detectives entered the business, in an undercover capacity, to determine whether or not they were operating a medicinal cannabis dispensary. Detectives created a fraudulent physician recommendation card, which listed a fictitious doctor's name. The fictitious recommendation card was provided and the patient/detective was able to purchase marijuana. The seller was cited for Business Tax Certificate code violation.

Although it was difficult to determine whether or not customers had a legitimate physical disability or illness, the average patients entering the businesses while detectives were present was in their early twenties. During the hours of surveillance, detectives did not see anyone enter the business with the assistance of a walking cane, crutch, wheelchair, or caregiver.

Fullerton

- On February 13, 2008 at about 1100 hours, police detectives inspected several Cannabis Dispensaries operating in the City of Venice, California. These locations were published on the "NORML" web site. In an undercover capacity, detectives entered a two-story building with a sign reading "Medical Kush." Detectives did not see any wheelchair access to the second floor. Detectives were told by a receptionist that a doctor was on site and the detective could be examined that day. The detective was told that if "qualified", the detective would receive a medical marijuana card, which would enable the detective to purchase medical marijuana at their location in Venice or any location in the State of California. The detective filled out the medical questionnaire and was told to produce a valid photo identification card. The detective provided a photo ID card which had been issued by the North Orange County School of Continuing Education. The detective was escorted to a room to be interviewed by a male who identified himself as a physician. Later the detective was able to confirm the doctor was, in fact, a licensed physician and surgeon in good standing. The interview/examination lasted 3-5 minutes. The detective told the doctor he wanted a medical marijuana card so he could legally possess marijuana. He told the doctor he smoked marijuana when he woke up in the morning with a sore neck and also found marijuana helpful when having difficulty sleeping at night. The doctor told the detective he qualified under State law to use medical marijuana to treat his medical conditions and suggested eating marijuana as opposed to smoking it. The detective asked the doctor how much marijuana he would need to eat to feel relief from his medical conditions. The doctor told him he did not know and suggested that he experiment with marijuana to determine the correct dose. The detective returned to the reception area where he paid \$75.00 for a laminated Medical Marijuana Card. The price of the cards ranged from \$75.00 for 3-months to \$140.00 for 12-months

The detective was allowed access to the dispensary and smoking room. He saw five or six young people who appeared to be in their late teens or early twenties lying on sofas smoking cannabis. A female behind a Plexiglas window showed the detective various samples of marijuana and hashish. He purchased 1/8 ounce of marijuana for \$60.00, which was marketed as "Orange Crush". He also selected a small amount of hashish which he was charged an additional \$40.00. The sale was not rung up on a cash register or computer and he was not offered a receipt for the transaction.

- A detective called "OC Private Caregivers" 949-887-7246. He had obtained this phone number from the "NORML" web site as one of 19 services that delivers medical marijuana in Orange County. The detective spoke to a subject who identified himself as "Jeff". The detective told "Jeff" that he had a medical marijuana card issued to him by a physician and wanted to order marijuana. Jeff told him that he could usually deliver anywhere in Orange County within one hour, depending on the current traffic conditions. Jeff said his service is open

from 10am to 12am, 7 days-a-week. He said that he was running a "Valentines Special" today and the detective could save \$40.00 off the purchase of an ounce of marijuana. The detective ordered one ounce of marijuana for \$300.00.

The detective obtained a room at a local motel and waited for the delivery of his order. A short time later, a male arrived at the motel carrying a clipboard. This subject identified himself as "Tim". The police surveillance team had observed the subject arrive in a 1994 Mercedes Benz. "Tim" entered the motel room and the detective presented him with the medical marijuana card. "Tim" verified the detective had \$300.00 in cash and exited the room telling him that the marijuana was in his car. He returned a short time later carrying two white paper bags that contained two round plastic pill vials with marijuana.

- Patrol officers were dispatched to a location in regards to a shooting that just occurred. One subject, who had been shot multiple times, was down on the street and was holding a handgun. Officers arrived and found this subject still alive and still in possession of the handgun. There was also a plastic bag near him which contained approximately three ounces of marijuana. He was safely detained and transported for medical treatment. A second shooting victim had driven himself out of the neighborhood to a gas station at Harbor and Bastanchury. Officers located him and he was also transported for medical care due to a single gun shot wound to his chest.

Investigators discovered that both shooting victims had arrived at the location together and were shot during an attempted drug deal. The two "victims" attempted to rob the dope dealer of his Medical Marijuana. Further investigation revealed that the two "victims" were La Habra gang members. The shooter/dope dealer in this case was later arrested and charged with two counts of attempted murder and drug charges. Both shooting victims survived and the initial shooting victim is paralyzed.

Orange County Sheriff's Department

- Deputies were dispatched to an alarm call at a medical marijuana dispensary business. Upon their arrival, deputies saw three suspects running away from the business. Within a few minutes, four suspects were taken into custody. The investigation revealed that the suspects tunneled into the business from an adjoining business while wearing gloves and ski masks. According to the dispensary owner, the business had been burglarized two weeks prior. The owner did not report the break-in, in which a safe containing \$20,000 of marijuana was stolen. As a result of the first burglary, the owner installed the alarm system that resulted in the arrests during the second burglary.

- A home invasion robbery occurred at a residence in an unincorporated area of Santa Ana. The robbery stemmed from the victim cultivating marijuana at the residence. In addition, the victim was involved in supplying a collective and operating a marijuana delivery service. At 1:00 AM, the victim woke up when he heard the side door of his residence forced open. Moments later, two suspects attacked the victim inside the master bedroom area. The victim was struck numerous times around the head area with a tire iron. The assailants then tied up the victim with duct tape. The victim was asked repeatedly by the assailants about the marijuana and other items relating to marijuana sales. The suspects ransacked the house and fled with approximately three pounds of recently harvested marijuana, electronics, and misc. items.

The victim had a fully operational indoor hydroponic marijuana grow located in the residence. The marijuana grow was found in two separate rooms. Marijuana plants and processed marijuana were found. The marijuana grow included sophisticated ventilation, hydrating, fertilizing and lighting systems. The victim claimed to be a member of a marijuana collective with a medical marijuana license. Items relating to the suspected illegal cultivation and sales of marijuana, including a large amount of US currency were collected by Sheriffs' Investigators.

- An investigation and search warrants tied to dispensaries in Laguna Niguel and Irvine led to the owner's residence in Nellie Gail (Laguna Hills). At the location, investigators found PVC containers with mud on the outside. Inside the containers, they found packaging consistent with bulk money laundering. A further search of the residence revealed over \$100,000 in currency.

During the search at the Irvine storefront, documents showing a storage unit rental in Ladera Ranch were identified. Investigators obtained a search warrant for the location the same evening. A search of the unit located additional PVC containers and over \$200,000 in currency. Documentation and physical evidence demonstrated the owners were burying the PVC containers with bulk currency in their backyard.

- A number of undercover investigators have received medical marijuana recommendations from various doctors throughout Orange County. In some instances doctors who advertise their cannabis service on-line will not issue a recommendation without a diagnosis from another physician. The "cannabis doctor" conducts a cursory review of diagnoses and prescriptions records from the prior treating physician. The "cannabis doctor" concurs with the diagnoses, and then writes a recommendation for medical marijuana.

Other doctors that specialize in marijuana recommendations will diagnose and recommend from their office or rented hotel rooms. In every case these doctor's provide 24/7 recommendation verification for dispensaries, which is a

significant selling point. With round-the-clock verification, customers believe they do not need to obtain a State Medical Marijuana Card.

- The Sheriff's Department investigative process has resulted in search warrant service for seven dispensaries in Lake Forest, Laguna Niguel, Dana Point, Irvine and Unincorporated La Habra. In addition, each storefront has a number of residences related to each location. While post seizure analysis is being conducted on many of these investigations, two locations have resulted in case filings. In addition, two suspects have pled guilty to various charges with one operator pleading to a four year prison term.

Westminster

- A police informant reported there had been an armed "takeover" robbery at a medical marijuana dispensary. The business had not reported the crime. The loss included marijuana, cash and personal records. When contacted by the police, the dispensary operators, after some time, confirmed the crime had occurred. However, the operators refused to provide any details of the crime or cooperate with the investigation.

Related Governmental Agencies and their Potential Impact on the Issue

The State Board of Equalization, Franchise Tax Board and the California Medical Board all have a unique role when dealing with medical marijuana. It is important to understand the requirements and restrictions each of these agencies must follow. The following are descriptions of areas of jurisdiction relating to the issue:

STATE BOARD OF EQUALIZATION

According to the Board of Equalization (BOE), the retail sale of medical marijuana does require a seller to obtain a permit and pay sales tax. The BOE has always considered medical marijuana taxable and began issuing permits in 2005. The BOE also indicated that medical marijuana dispensaries do not qualify for an exemption under Sales and Use Tax Regulation 1591, because the FDA has not approved medical marijuana as a medicine. The BOE does actively follow-up on businesses that have not obtained the required seller's permits and/or have not paid their sales tax, including medical marijuana dispensaries. The BOE is currently involved in a "door to door" program to ensure compliance.

FRANCHISE TAX BOARD

According to the Franchise Tax Board (FTB), any business, including a medical marijuana dispensary, must elect their business structure, e.g. sole proprietorship, partnership, LLC etc., and then file their income tax in accordance with the specifications established for the structure selected. If the FTB learns that a particular business is not filing their income tax returns, they will follow-up to ensure compliance and take potential legal action.

CALIFORNIA MEDICAL BOARD

The Medical Board of California has provided a written statement on www.medbd.ca.gov/med.cal/Marijuana.html regarding physicians who choose to participate in the implementation of the Compassionate Use Act. The Board's position is:

"On November 5, 1996, the people of California passed Proposition 215. Through this Initiative Measure, Section 11362.5 was added to the Health & Safety Code, and is also known as the Compassionate Use Act of 1996. The purposes of the Act include, in part:

"(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the 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; and

(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."

Furthermore, Health & Safety Code section 11362.5(c) provides strong protection for physicians who choose to participate in the implementation of the Act. - "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."

The Medical Board of California developed this statement since medical marijuana is an emerging treatment modality. The Medical Board wants to assure physicians who choose to recommend medical marijuana to their patients, as part of their regular practice of medicine, that they WILL NOT be subject to investigation or disciplinary action by the MBC if they arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility. The mere receipt of a complaint that the physician is recommending medical marijuana will not generate an investigation absent additional information indicating that the physician is not adhering to accepted medical standards. These accepted standards are the same as any reasonable and prudent physician would follow when recommending or approving any other medication, and include the following:

STANDARDS OF CARE

1. History and good faith examination of the patient.
2. Development of a treatment plan with objectives.
3. Provision of informed consent including discussion of side effects.
4. Periodic review of the treatment's efficacy.
5. Consultation, as necessary.
6. Proper record keeping that supports the decision to recommend the use of medical marijuana.

In other words, if physicians use the same care in recommending medical marijuana to patients as they would recommending or approving any other medication, they have nothing to fear from the Medical Board.

Here are some important points to consider when recommending medical marijuana:

1. Although it could trigger federal action, making a recommendation in writing to the patient will not trigger action by the Medical Board of California.
2. A patient need not have failed on all standard medications, in order for a physician to recommend or approve the use of medical marijuana.

3. The physician should determine that medical marijuana use is not masking an acute or treatable progressive condition, or that such use will lead to a worsening of the patient's condition.
4. The Act names certain medical conditions for which medical marijuana may be useful, although physicians are not limited in their recommendations to those specific conditions. In all cases, the physician should base his/her determination on the results of clinical trials, if available, medical literature and reports, or on experience of that physician or other physicians, or on credible patient reports. In all cases, the physician must determine that the risk/benefit ratio of medical marijuana is as good, or better, than other medications that could be used for that individual patient.
5. A physician who is not the primary treating physician may still recommend medical marijuana for a patient's symptoms. However, it is incumbent upon that physician to consult with the patient's primary treating physician or obtain the appropriate patient records to confirm the patient's underlying diagnosis and prior treatment history.
6. The initial examination for the condition for which medical marijuana is being recommended must be in-person.
7. Recommendations should be limited to the time necessary to appropriately monitor the patient. Periodic reviews should occur and be documented at least annually or more frequently as warranted.
8. If a physician recommends or approves the use of medical marijuana for a minor, the parents or legal guardians must be fully informed of the risks and benefits of such use and must consent to that use.

Physicians may wish to refer to CMA's ON-CALL Document #1315 titled "The Compassionate Use Act of 1996", updated annually for additional information and guidance: (http://www.cmanet.org/bookstore/freeoncall2.cfm/CMAOnCall1315.pdf?call_number=1315&CFID=745764&CFTOKEN=27566287).

Although the Compassionate Use Act allows the use of medical marijuana by a patient upon the recommendation or approval of a physician, California physicians should bear in mind that marijuana is listed in Schedule I of the federal Controlled Substances Act, which means that it has no accepted medical use under federal law. However, in Conant v. Walters (9th Cir.2002) F.3d 629 the United States Court of Appeals recognized that physicians have a constitutionally-protected right to discuss medical marijuana as a treatment option with their patients and make oral or written recommendation for medical marijuana. However, the court cautioned that physicians could exceed the scope of this constitutional protection if they conspire with, or aid and abet, their patients in obtaining medical marijuana.

Department of Health Care Services / California Department of Public Health - California Medical Marijuana Program

If the Medical Board of California (MBC) Complaint Unit receives a complaint directed towards a physician, and believes the accusations pertaining to the physician's conduct has not met the applicable standards of care, they will initiate an investigation.

The investigative unit will determine whether or not the physician is adhering to the Standards of Care, which are listed and highlighted in red on Page 2. In addition, they will determine if the physician is making decisions based on what a reasonable physician would do based on the same training and experience.

Upon conclusion of the MBC complaint unit's investigation, they will forward their findings, if applicable, to the Attorney General's (AG) office for review. The AG's will present their case to the Administrative Law Judge, who will make a determination.

The Medical Board will then impose disciplinary actions against the physician. Those disciplinary actions include, but are not limited to the following: administrative penalties, fines, probation, suspension, and revocation of licenses.

Furthermore, in regards to physicians recommending the use of medicinal cannabis to their patients, they shall adhere to the previously listed eight items of "Consideration".

Local Orange County Law Enforcement officers should contact the a MBC office to address local complaints and initiate a parallel investigation, which will be conducted by the Medical Board Complaint Unit.

The MBC has the discretion to investigate and must believe there is substantial evidence of criminal conduct or conduct that fails to meet their appropriate standards of care.

Strategies to Address Associated Public Safety Issues

- Regulation of land use – this can be one of the most effective means of regulating dispensaries and delivery services. Recent case law has supported the efforts of cities and counties to regulate or prohibit these businesses. Cities and counties have a legal right to ban dispensaries and delivery services with the establishment of zoning ordinances. At least 80 California cities and 6 counties have enacted laws banning dispensaries. The courts have ruled that cities and counties may not create an ordinance that is in conflict with State or Federal law (California Government Code 37100).
- Investigate and prosecute illegal dispensaries and delivery services – these investigations are usually time and labor intensive, however, can be productive in eliminating a specific business within a jurisdiction. Past investigations have found these businesses possessing weapons, significant cash and links to organized crime. The target of these investigations should be to identify who is supplying the marijuana, who is operating the dispensary, who is profiting, is the dispensary engaging in over-the-counter marijuana sales and the dispensary is not associating to collectively or cooperatively cultivate marijuana for medical purposes.

A critical component of the investigation is for the law enforcement agency to contact and collaborate with the district attorney's office at the start of the investigation. There may also be the need to contact the agency's city attorney if local ordinances and/or land use issues will be involved.

Note: As of February of 2009, the Drug Enforcement Administration will not pursue criminal investigations involving marijuana dispensaries if the dispensaries are following State laws.

- Collaborate with other law enforcement agencies – operators of marijuana dispensaries and delivery services tend to move from jurisdiction to jurisdiction. Orange County law enforcement should capitalize on its long history of County-wide collaboration and community support to address all the related issues.
- Provide training to law enforcement personnel – L.A. Clear/HIDTA provides a training class "Illegal Medical Marijuana Dispensaries Investigations" (www.lahidtatraining.org) and the Los Angeles Sheriff's Department hosts training on "Medical Marijuana for Patrol Officers" (gdwalsh@lasd.org). Both classes can be highly beneficial.
- Resources – "White Paper on Marijuana Dispensaries" by the California Police Chiefs Association's Task force on Marijuana Dispensaries (<http://www.californiapolicechiefs.org/>)