

Exhibit B

Excerpts from Research on the Secondary Impacts of Medical Cannabis
Facilities

WHITE PAPER ON MARIJUANA DISPENSARIES

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES**

ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

George Anderson, California Department of Justice
Jacob Appelsmith, Office of the California Attorney General
John Avila, California Narcotics Officers Association
Phebe Chu, Office of San Bernardino County Counsel
Scott Collins, Los Angeles County District Attorney's Office
Cathy Coyne, California State Sheriffs' Association
Lorrac Craig, Trinity County Sheriff's Department
Jim Denney, California State Sheriffs' Association
Thomas Dewey, California State University—Humboldt Police Department
Dana Filkowski, Contra Costa County District Attorney's Office
John Gaines, California Department of Justice/Bureau of Narcotics Enforcement
Craig Gundlach, Modesto Police Department
John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

Nate Johnson, California State University Police
Mike Kanalakis, Monterey County Sheriff's Office
Bob Kochly, Contra Costa County Office of District Attorney
Tommy LaNier, The National Marijuana Initiative, HIDTA
Carol Leveroni, California Peace Officers Association
Kevin McCarthy, Los Angeles Police Department
Randy Mendoza, Arcata Police Department
Mike Nivens, California Highway Patrol
Rick Oules, Office of the United States Attorney
Mark Pazin, Merced County Sheriff's Department
Michael Regan, El Cerrito Police Department
Melissa Reisinger, California Police Chiefs Association
Kimberly Rios, California Department of Justice, Conference Planning Unit
Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement
Crystal Spencer, California Department of Justice, Conference Planning Unit
Sam Spiegel, Folsom Police Department
Valerie Taylor, ONDCP
Thomas Toller, California District Attorneys Association
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

TABLE OF CONTENTS

	<u>Pages</u>
ACKNOWLEDGMENTS	i-ii
EXECUTIVE SUMMARY	iv-vi
WHITE PAPER ON MARIJUANA DISPENSARIES	
INTRODUCTION	1
FEDERAL LAW	1-2
CALIFORNIA LAW	2-6
LAWS IN OTHER STATES	6
STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES	6-7
HOW EXISTING DISPENSARIES OPERATE	7-8
ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES	8
ANCILLARY CRIMES	8-10
OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES	11
SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE	11-14
ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS	14
POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES	14-17
LIABILITY ISSUES	18-19
A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES	19-30
PENDING LEGAL QUESTIONS	31-39
CONCLUSIONS	40
ENDNOTES	41-44
NON-LEGAL REFERENCES	45-49

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

EXECUTIVE SUMMARY

INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

CALIFORNIA LAW

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

PROBLEMS POSED BY MARIJUANA DISPENSARIES

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthy mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

LOCAL GOVERNMENTAL RESPONSES

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

LIABILITY

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

ENFORCEMENT OF MARIJUANA LAWS

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

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INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (See *Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.¹ The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”²

Gonzales v. Raich addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.³ “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”⁴ (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.⁵ California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.⁶

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.⁷ The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician”⁸ The codified section is known as the Compassionate Use Act of 1996.⁹ Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.¹⁰ This act expanded the definitions of “patient” and “primary caregiver”¹¹ and created guidelines for identification cards.¹² It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.¹³ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,¹⁴ as well as to the crimes of marijuana 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 those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.¹⁵ If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.¹⁶

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.¹⁷ A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.¹⁸ He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.¹⁹ (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).)

“Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: “One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party ‘who has consistently assumed responsibility for the housing, health, or safety’ of that purchaser as section 11362.5(e) requires.”)

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as “primary caregivers.” Those included in the list clearly show the Legislature’s intent to restrict the definition to one involving a significant and long-term commitment to the patient’s health, safety, and welfare. The only facilities which the Legislature authorized to serve as “primary caregivers” are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

4. Cooperatives and Collectives

According to the California Attorney General’s recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that “Patients and caregivers who associate within the State of California in order collectively or cooperatively to 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. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California’s marijuana laws.

Further, the common dictionary definition of “collectives” is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁰ Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal **or** state law.

LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.²¹

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.²² Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.²³ Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.²⁴ These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.²⁵ Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.²⁶ Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁷ Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.²⁸ Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.²⁹

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their “primary caregiver” (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the “contribution” will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so “contributions” are made to reimburse the dispensary for its time and care in making “product” available. However, if a calculation is made based on the available evidence, it is clear that these “contributions” can easily add up to millions of dollars per year. That is a very large cash flow for a “non-profit” organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the “primary caregivers” of patients. This is a spurious claim. As discussed above, the term “primary caregiver” has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has “consistently assumed responsibility for the housing, health, or safety of a patient.”³⁰ The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it “**consistently** had assumed responsibility for [a patient’s] **housing, health, or safety**.”³¹ The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health: the responsibility for the patient’s health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business’s relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant “primary caregiver” relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient’s act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILIARLY OPERATING COOPERATIVES

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.³² And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”³³

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.³⁴ And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout.³⁵ He did not survive.³⁶

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.³⁷

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.³⁸ Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.³⁹

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.⁴⁰

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.⁴¹

B. BURGLARIES

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.⁴² And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.⁴³

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.⁴⁴ Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.⁴⁵ After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise”⁴⁶

C. TRAFFIC, NOISE, AND DRUG DEALING

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,⁴⁷ as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.⁴⁸ Sharing just purchased marijuana outside dispensaries also regularly takes place.⁴⁹

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,⁵⁰ “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.⁵¹ Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old”⁵² Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”⁵³

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.⁵⁴ And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.⁵⁵ It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.⁵⁶ The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.⁵⁷ Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,⁵⁸ which seem to go hand in hand with medical marijuana cultivation and dispensaries.⁵⁹

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.⁶⁰ The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.⁶¹ Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.⁶²

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.⁶³ Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,⁶⁴ and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.⁶⁵

E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.⁶⁶ The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.⁶⁷

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.⁶⁸

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."⁶⁹ Other individuals just make up their own phony doctor recommendations,⁷⁰ which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.⁷¹ Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.⁷²

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to “high priced McMansions”⁷³ Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.⁷⁴ In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.⁷⁵ Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the “THC-rich ‘B.C. bud’ strain” of marijuana originally produced in British Columbia “can be grown only in controlled indoor environments,” and the Canadian market is now reportedly saturated with the product of “competing Canadian gangs,” often Asian in composition or outlaw motorcycle gangs like the Hells Angels.⁷⁶ Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.⁷⁷ With a street value of \$3,000 to \$5,000 per pound” for high-potency marijuana, and such multiple harvests, “a successful grow house can bring in between \$4.5 million and \$10 million a year”⁷⁸ The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.⁷⁹

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift “no code” electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, “Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord.” Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.⁸⁰ Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, “We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints.” House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.⁸¹

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.⁸² Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.⁸³ To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.⁸⁴

D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.⁸⁵ In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.⁸⁶

E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.⁸⁷ Dispensaries also sell marijuana to minors.⁸⁸

F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,⁸⁹ and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,⁹⁰ all of which are dangerous to any children or adults who may be living in the residence,⁹¹ although many grow houses are uninhabited.

G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,⁹² and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.⁹³

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.⁹⁴

B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.⁹⁵ Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.⁹⁶

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.⁹⁷ And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.⁹⁸ It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.⁹⁹ To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.¹⁰⁰

C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

“Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
 - a. Cultivation lighting shall not exceed 1200 watts;
 - b. Gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
 - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
 - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
 - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
 - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
 - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
 - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
 - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
 - b. Include written permission from the property owner.
 - c. City Building Official must inspect for California Building Code and Fire Code.
 - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
 - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
 - a. A 300 foot radius from any existing residential zoning district,
 - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
7. Source of medical marijuana.
- a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
 - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
 - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
- a. Staff screening process including appropriate background checks.
 - b. Operating hours.
 - c. Site, floor plan of the facility.
 - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
 - e. Screening, registration and validation process for qualified patients.
 - f. Qualified patient records acquisition and retention procedures.
 - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
 - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
 - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
- a. No dispensing medical marijuana more than twice a day.
 - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
 - c. Display the client rules and/or regulations at each building entrance.
 - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
 - e. Persons under the age of eighteen (18) are precluded from entering the premises.
 - f. No on-site display of marijuana plants.
 - g. No distribution of live plants, starts and clones on through Use Permit.
 - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
 - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
 - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
 - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "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." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

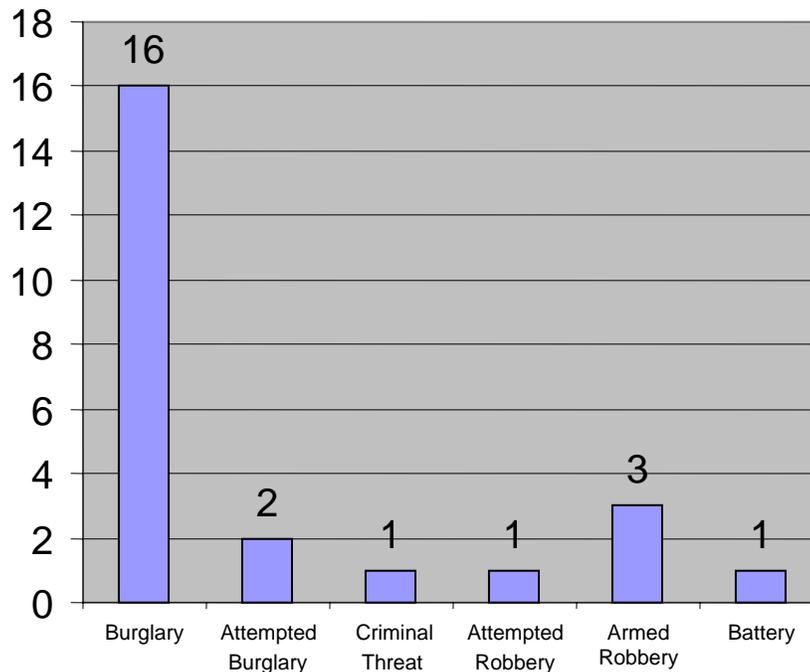
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law **and** California law.

Press Materials:

**Reported Crime at Marijuana Dispensaries
From January 1, 2005 through June 23, 2006**



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

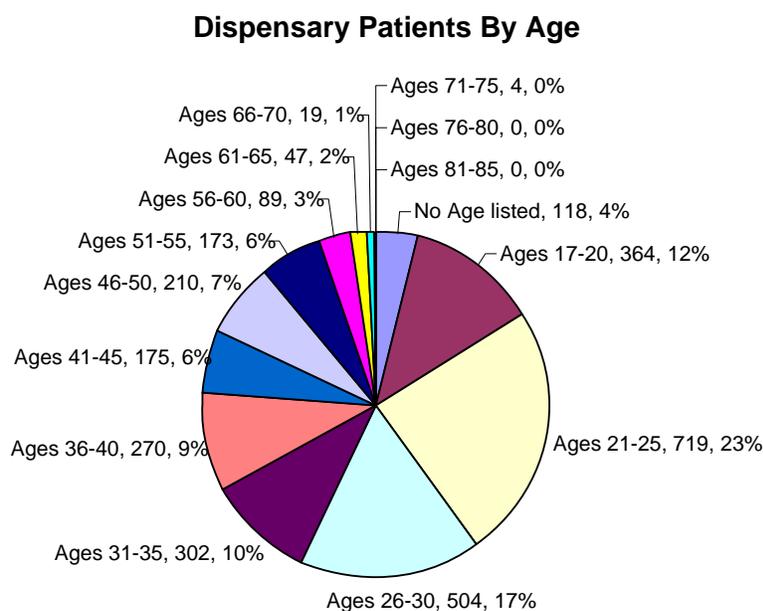
Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician’s recommendation



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician’s recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars “as a joke.” They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend “Brandon,” who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a “blunt” (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician’s recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing “honey oil” for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special “honey oil” extractor tube. The butane extraction operation *exploded* with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the “honey oil” with marijuana and butane that they brought up from one of Estes’ San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the “designated driver.” When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.¹⁰¹ A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

- 1. Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

ANSWER

- 1. Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.¹ Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

¹ As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."² If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.³

ANALYSIS

A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

² A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

³ Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.⁴

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

⁴ Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. State Law

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)⁵ Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

⁵ Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.") By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.^{6 102}

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

⁶ Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.¹⁰³ Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

ENDNOTES

¹ U.S. Const., art. VI, cl. 2.

² U.S. Const., art. I, sec. 8, cl. 3.

³ *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.

⁴ *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.

⁵ *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.

⁶ Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at <http://www.latimes.com/news/local/la-me-medpot19-2009mar19.0.4987571.story>

⁷ See *People v. Mower* (2002) 28 Cal.4th 457, 463.

⁸ Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.

⁹ H&S Code sec. 11362.5(a).

¹⁰ H&S Code sec. 11362.7 *et. seq.*

¹¹ H&S Code sec. 11362.7.

¹² H&S Code secs. 11362.71–11362.76.

¹³ H&S Code sec. 11362.77.

¹⁴ H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.

¹⁵ H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.

¹⁶ H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.

¹⁷ H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.

¹⁸ *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.

¹⁹ *Id.* Emphasis added.

²⁰ Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.

²¹ Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.

²² For a statewide list, see <http://canorml.org/prop/cbclist.html>.

²³ Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.

²⁴ H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4th 747 at p. 764.

²⁵ *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.

²⁶ *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.

²⁷ Israel Packel, 4-5. Italics added.

²⁸ H&S Code sec. 11362.7(d)(1).

²⁹ See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.

³⁰ H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2), (3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.

³¹ *People v. Mower*, 28 Cal.4th at 476. Emphasis added.

³² Glenda Anderson, "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home; No Suspects but Officials Believe Killing Related to Pot Growing," *Santa Rosa Press Democrat*, 19 November 2005, available at <http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/1033/>

³³ "Medical Marijuana Shop Robbed," *Santa Barbara Independent*, 10 August 2006, available at <http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/>

³⁴ Mark Scaramella, "No Good Deed Goes Unpunished," *Anderson Valley Advertiser*, 16 June 2004, available at <http://www.theava.com/04/0616-cerelli.html>

-
- ³⁵ Ricci Graham, "Police Arrest Suspect in Deadly San Leandro Pot Club Robbery," *Oakland Tribune*, 8 August 2006, available at http://findarticles.com/p/articles/mi_qn4176/is_20060808/ai_n16659257
- ³⁶ Ricci Graham, "Man Faces Murder Charge in Pot Robbery," *Oakland Tribune*, 24 August 2005, available at <http://www.highbeam.com/doc/1P2-7021933.html>
- ³⁷ Ricci Graham, "Another Medical Marijuana Clinic Robbed," *Oakland Tribune*, 10 September 2005, available at http://findarticles.com/p/articles/mi_qn4176/is_20050910/ai_n15809189/print
- ³⁸ Laura Clark, "Pot Dispensary Owner Slain at Home." *Ukiah Daily Journal*, 19 November 2007, available at <http://www.marijuana.com/drug-war-headline-news/24910-ca-pot-dispensary-owner-slain-home.html>
- ³⁹ Laura Clark, "Breaking News: Medical Marijuana Supplier Les Crane Killed," *Ukiah Daily Journal*, 19 November 2005; Laura Clark, "Les Crane Murder Investigation Continues," *Ukiah Daily Journal*, 27 November 2005; Glenda Anderson, "Laytonville Marijuana Guru Shot to Death," *Santa Rosa Press Democrat*, 19 November 2005; Glenda Anderson, "Pot Activist Likely Knew Killers: Police Believe Gunmen Who Robbed Laytonville Man Familiar With Home," *Santa Rosa Press Democrat*, 20 November 2005, available at <http://www.equalrights4all.us/content/view/192/50/>
- ⁴⁰ Mark Scaramella, "The Mendo Pot Chronicles," *Anderson Valley Advertiser*, 3 October 2007, available at <http://www.theava.com/04/0616-cerelli.html>
- ⁴¹ Kirk Johnson, "Killing Highlights Risk of Selling Marijuana, Even Legally," *New York Times*, 13 March 2007, available at <http://www.nytimes.com/2007/03/02/us/02cannabis.html?ex=1181880000&en=c609936094adda50&ei=5070>
- ⁴² Tami Abdollah & Richard Winton, "Pot Theft Claimed in Boy's Shooting Death," *Los Angeles Times*, 23 January 2007, available at http://www.californiapolicechiefs.org/nav_files/marijuana_files/bellflower_shooting_death.pdf
- ⁴³ Will Bigham, "Claremont Marijuana Dispensary Burglarized," *Inland Valley Daily Bulletin*, 27 January 2007, available at http://www.dailybulletin.com/ci_5104514
- ⁴⁴ Planning Commission Agenda, available at <http://www.el-cerrito.org>; see also Alan Lopez, "El Cerrito Moves to Ban Dispensaries," *Contra Costa Times*, 24 June 2006, available at <http://www.thc-ministry.net/forum/archive/el-cerrito-moves-to-ban-cannabis-clubs-6974.htm>
- ⁴⁵ Fred Ortega, "City Bans Outlets for Medical Marijuana," *San Gabriel Valley Tribune*, 17 August 2006, available at <http://www.lca-uk.org/lcaforum/viewtopic.php?f=6&t=2436&start=0&sid=15b6da115a0da43facb17644195cbb>
- ⁴⁶ Ortega.
- ⁴⁷ Greg Beato, "Pot Clubs in Peril: Are San Francisco Zoning Boards a Bigger Threat to Medical Marijuana Than the DEA?" *Reason Magazine*, February 2007, available at <http://www.reason.com/news/show/118314.html>; Craig T. Steckler, *City of Fremont Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts*, 20 June 2006; Tim Miller, *City of Anaheim Police Department: Special Operations Division Memorandum re Medical Marijuana Dispensary (MMD) Ban Ordinance*, 13 June 2007.
- ⁴⁸ Jeff McDonald, "15 Held in Raids on Pot Stores," *San Diego Union-Tribune*, 7 July 2006, available at http://www.signonsandiego.com/uniontrib/20060707/news_7m7pot.html
- ⁴⁹ McDonald; Beato.
- ⁵⁰ Cal. H&S Code sec. 11362.5.
- ⁵¹ Ethan Stewart, "The Medical Marijuana Movement Grows in Santa Barbara: Emerald Dreams and Smoky Realities," *Santa Barbara Independent*, 3 May 2007, available at <http://independent.com/news/2007/may/03/medical-marijuana-movement-grows-santa-barbara/>; see also Adam Ashton, "DEA Busts Pot Store Day After Council Talk," *Modesto Bee*, 28 September 2006.
- ⁵² McDonald.
- ⁵³ Stewart.
- ⁵⁴ Stewart.
- ⁵⁵ Stewart.
- ⁵⁶ National Drug Intelligence Center, *Domestic Cannabis Cultivation Assessment 2007*, February 2007; available at <http://www.usdoj.gov/ndic/pubs21/22486/>; Jaxon Van Derbeken, Charlie Goodyear, & Rachel Gordon, "3 S.F. Pot Clubs Raided in Probe of Organized Crime," *San Francisco Chronicle*, 23 June 2005, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL>; LAPD report information, 2007.

-
- ⁵⁷ Van Derbeken, *et al.*
- ⁵⁸ Kate Heneroty, "Medical marijuana indictment unsealed," *Jurist*, 24 June 2005, available at <http://jurist.law.pitt.edu/paperchase/2005/06/medical-marijuana-indictment-unsealed.php>; Stacy Finz, "19 Named in Medicinal Pot Indictment: More Than 9,300 Marijuana Plants Were Seized in Raids," *San Francisco Chronicle*, 24 June 2005, available at <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/24/BAGV9DEC4C1.DTL>
- ⁵⁹ Organized Crime Behind 'Medical' Marijuana Dispensary in California," *Pushingback*. 29 September 2006, available at http://pushingback.com/blogs/pushing_back/archive/2006/09/29/791.aspx; "Ashton.
- ⁶⁰ City of San Diego, *Crime Statistics*, 2007, available at <http://www.sandiego.gov>
- ⁶¹ National Drug Intelligence Center, *Marijuana*, January 2001, available at <http://www.usdoj.gov>
- ⁶² George Anastasia, "Viet Gangs on the Rise Again—The Emerging American Underworld—Gangs' Plant-filled Houses a Growing Part of Drug Trade," *Chronicle of Boredom*, 18 April 2007.
- ⁶³ Will Bigham, "Houses Linked to Asian Gangs," *Inland Valley Daily Bulletin*, 23 September 2007, available at <http://www.dailybulletin.com/news/6980682>
- ⁶⁴ Bigham, 23 September 2007.
- ⁶⁵ Feds Came and Went—Now What? *Humboldt County News*, 30 June 2008, available at <http://news.humcounty.com/archives/2008/6>
- ⁶⁶ LAPD Report Number DR#060625000, 16 August 2006.
- ⁶⁷ LAPD Report Number DR#060625001, 16 August 2006.
- ⁶⁸ Tim Miller, City of Anaheim Police Department: Special Operations Division Memorandum re Marijuana Dispensary (MMD) Ban Ordinance, 25 October 2006; Johnson; Craig T. Steckler, City of Fremont Police Department; Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts, 20 June 2006.
- ⁶⁹ Stewart.
- ⁷⁰ Johnson.
- ⁷¹ Ashton.
- ⁷² "What has the U.S. DEA said about medical marijuana?" "Medical Marijuana ProCon.org, 2005; "What has federal law enforcement said about medical marijuana?" Medical Marijuana ProCon.org., 2009, available at <http://medicalmarijuana.procon.org/viewanswers.asp?questionID=000630>
- ⁷³ Jim Avila, "Marijuana McMansions: Cops Say Organized Crime Is Sending Families Into the Suburbs to Grow Marijuana," ABC News, 14 June 2007, available at <http://abcnews.go.com/print?id=3242760>
- ⁷⁴ Avila; Anastasia; "DEA Raids Miami Grow House," CBS5.com, 30 April 2008, available at <http://cbs5.com/national/dea.raid.miami.2.712958.html>
- ⁷⁵ Anastasia.
- ⁷⁶ Bigham, 23 September 2007; Ethan Baron, "Angel Linked to Grow-op," *The Province (CNBC)*, 22 May 2005, available at <http://www.mapinc.org/newstcl/v05/n823/a02.html>
- ⁷⁷ Bigham, 23 September 2007.
- ⁷⁸ Bigham, 23 September 2007.
- ⁷⁹ Heather Allen, "Marijuana Grow Houses Flourish as Southwest Florida Market Drops," *HeraldTribune.com*, 24 July 2007, available at <http://www.heraldtribune.com/article/20070724/NEWS/707240498>
- ⁸⁰ Eric Bailey and Tim Reiterman, "Where Mary Jane is the girl next door," *Los Angeles Times*, 31 May 2008, available at <http://articles.latimes.com/2008/may/31/local/me-pot31>
- ⁸¹ Eureka House Fire the Result of You-know-what," *Humboldt County News*, 7 September 2008, available at <http://news.humcounty.com/>; written remarks of Arcata Police Chief Randy Mendosa, 1 March 2009.
- ⁸² Jesse McKinley, "Marijuana Hotbed Retreats on Medicinal Use," *New York Times*, 9 June 2009, available at http://www.nytimes.com/2008/06/09/us/pot.html?_r=1&em&ex=1213329
- ⁸³ Deputies: Fire Damages Holiday Marijuana Grow Home, *tampabay.com*, 15 February 2008, available at <http://blogs.tampabay.com/breakingnews/2008/02/holiday-fire-ma.html>
- ⁸⁴ Don Ruane, "Grow Houses Can Impact Utility Bills, Public Safety," *News-press.com*, 12 April 2008, available at <http://www.news-press.com/apps/pbcs.dll/article?AID=/20080412/NEWS0103/804120394>
- ⁸⁵ "DEA Raids Miami Grow House."
- ⁸⁶ Sandy Louey, "Arrests Take Toll on Local Gang," *The Sacramento Bee*, 14 August 2008, available at <http://www.sacbee.com/elkgrove/v-print/story/1152310.html>
- ⁸⁷ Avila.

-
- ⁸⁸ Scott Glover, "Morro Bay Pot Dispensary Owner Found Guilty of Federal Charges," *Los Angeles Times*, 6 August 2008, available at <http://articles.latimes.com/2008/aug/06/local/me-pot6>
- ⁸⁹ Bailey and Reiterman.
- ⁹⁰ Janis Ramsay, "Special Report: Grow-op House Can Still Be Dream Home: Realtor Says," *The Barrie Advance*, 25 August 2008, available at <http://www.mapinc.org/drugnews/v08/n818/a06.html>
- ⁹¹ Avila.
- ⁹² Bailey and Reiterman.
- ⁹³ Steve Davis, "Grow Security," *Cannabis Culture Magazine*, 6 August 2004, available at <http://www.cannabisculture.com//articles/3441.html>
- ⁹⁴ Bailey and Reiterman.
- ⁹⁵ See *People v. Urziceanu*, 132 Cal.App.4th 747.
- ⁹⁶ City of Pleasant Hill Presentation to Its Planning Commission by Planning Division Staff on April 24, 2007.
- ⁹⁷ Office Consolidation: By-law 361-2004 of the City of Brampton, Ontario, Canada.
- ⁹⁸ Bill McCollum, "Landmark Bill Targeting Marijuana Grow Houses Becomes Law," Attorney General Bill McCollum News Release, 17 June 2008, available at <http://myfloridalegal.com/newsrel.nsf/newsreleases/AFAE7E2BCC1688D18525746B0070D23B>
- ⁹⁹ "Asian Gangs Move Grow-ops," *The Asian Pacific Post*, 27 September 2007, available at http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003_asian_gangs_move_grow_ops.do.html
- ¹⁰⁰ See Asian Gangs Move Grow-ops.
- ¹⁰¹ See "Does Marijuana Contribute to Psychotic Illnesses?" *Current Psychiatry Online* 6(2), February 2007.
- ¹⁰² See, e.g., http://www.californiapolicechiefs.org/nav_files/research/ordinances.html
- ¹⁰³ National Drug Intelligence Center.

NON-LEGAL REFERENCES

- Abdollah, Tami, and Richard Winton. "Pot Theft Claimed in Boy's Shooting Death," *Los Angeles Times*, 23 January 2007. Retrieved January 8, 2009, from http://www.californiapolicechiefs.org/nav_files/marijuana_files/bellflower_shooting_death.pdf
- Allen, Heather. "Marijuana Grow Houses Flourish as Southwest Florida Market Drops." *HeraldTribune.com*, 24 July 2007. Retrieved January 9, 2009, from <http://www.heraldtribune.com/article/20070724/NEWS/707240498>
- Anastasia, George. "Viet Gangs on the Rise Again—The Emerging American Underworld—Gangs' Plant-filled Houses a Growing Part of Drug Trade." *Chronicle of Boredom*, 18 April 2007. Retrieved January 8, 2009, from <http://www.xanga.com/tihailua/584859568/viet-gangs-on-the-rise-again.html>
- Anderson, Glenda. "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home." *Santa Rosa Press Democrat*, 19 November 2005. Retrieved January 8, 2009, from <http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/>
- Anderson, Glenda. "Pot Activist Likely Knew Killers: Police Believe Gunmen Who Robbed Laytonville Man Familiar With Home." *Santa Rosa Press Democrat*, 20 November 2005. Retrieved January 8, 2009, from <http://www.equalrights4all.us/content/view/192/50/>
- Ashton, Adam. "DEA Busts Pot Store Day After Council Talk." *Modesto Bee*, 28 September 2006.
- "Asian Gangs Move Grow-ops." *The Asian Pacific Post*, 27 September 2007. Retrieved January 8, 2009, from http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003_asian_gangs_move_grow_ops.do.html
- Avila, Jim. "Marijuana McMansions: Cops Say Organized Crime Is Sending Families Into the Suburbs to Grow Marijuana." *ABC News*, 14 June 2007. Retrieved January 8, 2009, from <http://abcnews.go.com/print?id=3242760>
- Bailey, Eric, and Tim Reiterman. "Where Mary Jane Is the Girl Next Door." *Los Angeles Times*, 31 May 2008. Retrieved January 8, 2009, from <http://articles.latimes.com/2008/may/31/local/me-pot31>
- Baron, Ethan. "Angel Linked to Grow-op." *The Province (CNBC)*, 22 May 2005. Retrieved January 8, 2009, from <http://www.mapinc.org/newstcl/v05/n823/a02.html>

-
- Beato, Greg. "Pot clubs in peril: Are San Francisco Zoning Boards a Bigger Threat to Medical Marijuana Than the DEA?" *Reason Magazine*, February 2007.
Retrieved January 8, 2009, from <http://www.reason.com/news/show/118314.html>
- Bigham, Will. "Claremont Marijuana Dispensary Burglarized." *Inland Valley Daily Bulletin*, 27 January 2007. Retrieved January 9, 2009, from http://www.dailybulletin.com/ci_5104514
- Bigham, Will. "Houses Linked to Asian Gangs." *Inland Valley Daily Bulletin*, 23 September 2007. Retrieved January 8, 2009, from http://www.dailybulletin.com/newsci_6980682
- Brown, Edmund G., Jr. *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, August 2008.
- City of Pleasant Hill. Presentation to Its Planning Commission by Planning Staff, April 24, 2007.
- City of San Diego. *Crime Statistics*, 2007. Retrieved January 9, 2009, from <http://www.sandiego.gov>
- Clark, Laura. "Breaking News: Medical Marijuana Supplier Les Crane Killed." *Ukiah Daily Journal*. 19 November 2005.
- Clark, Laura. "Les Crane Murder Investigation Continues." *Ukiah Daily Journal*. 27 November 2005.
- Clark, Laura. "Pot Dispensary Owner Slain at Home." *Ukiah Daily Journal*, 19 November 2005. Retrieved January 9, 2009, from <http://www.marijuana.com/drug-war-headline-news/24910-ca-pot-dispensary-owner-slain-home.html>
- Davis, Steve. "Grow Security." *Cannabis Culture Magazine*, 6 August 2004. Retrieved January 8, 2009, from <http://www.cannabisculture.com//articles/3441.html>
- "DEA Raids Miami Grow House." CBS News, 30 April 2008. Retrieved January 8, 2009, from <http://cbs5.com/national/dea.raid.miami.2.712958.html>
- "Deputies: Fire Damages Holiday Marijuana Grow House." *tampabay.com*, 15 February 2008. Retrieved January 8, 2009, from <http://blogs.tampabay.com/breakingnews/2008/02/holiday-fire-ma.html>
- "Does Marijuana Contribute to Psychotic Illnesses?" *Current Psychiatry Online* 6(2) (February 2007).
- "Eureka House Fire the Result of You-know-what." *Humboldt County News*, 7 September 2008. Retrieved January 8, 2009, from <http://news.humcounty.com/>

“Feds Came and Went — Now What?” *Humboldt County News*, 30 June 2008. Retrieved January 8, 2009, from <http://news.humcounty.com/archives/2008/6>

Finz, Stacy. “19 Named in Medicinal Pot Indictment: More Than 9,300 Marijuana Plants Were Seized in Raids.” *San Francisco Chronicle*, 24 June 2005. Retrieved January 8, 2009, from <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/24/BAGV9DEC4C1.DTL>

Glover, Scott. “Morro Bay Pot Dispensary Owner Found Guilty of Federal Charges.” *Los Angeles Times*, 6 August 2008. Retrieved January 8, 2009, from <http://www.latimes.com/news/local/la-me-pot6-2008aug06,0,516054.story>

Graham, Ricci. “Man Faces Murder Charge in Pot Robbery.” *Oakland Tribune*, 24 August 2005. Retrieved February 28, 2009 from <http://www.highbeam.com/doc/1P2-7021933.html>

Graham, Ricci. “Another Medical Marijuana Clinic Robbed.” *Oakland Tribune*, 10 September 2005. Retrieved February 24, 2009, from http://findarticles.com/p/articles/mi_qn4176/is_20050910/ai_n15809189/print

Graham, Ricci. “Police Arrest Suspect in Deadly San Leandro Pot Club Robbery.” *Oakland Tribune*, 8 August 2006. Retrieved February 24, 2009, from http://findarticles.com/p/articles/mi_qn4176/is_20060808/ai_n16659257

Heneroty, Kate. “Medical Marijuana Indictment Unsealed.” *Jurist*, 24 June 2005. Retrieved January 8, 2009, from <http://jurist.law.pitt.edu/paperchase/2005/06/medical-marijuana-indictment-unsealed.php>

Johnson, Kirk. “Killing Highlights Risk of Selling Marijuana, Even Legally.” *New York Times*, 13 March 2007. Retrieved January 8, 2009, from <http://www.nytimes.com/2007/03/02/us/02cannabis.html?ex=1181880000&en=c609936094adda50&ei=5070>

LAPD Report Information, 2007.

LAPD Report Number DR#060625000, 16 August 2006.

LAPD Report Number DR#060625001, 16 August 2006.

Lopez, Alan. “El Cerrito Moves to Ban Cannabis Clubs.” *Contra Costa Times*, 6 January 2008. Retrieved January 8, 2009, from <http://www.thc-ministry.net/forum/archive/el-cerrito-moves-to-ban-cannabis-clubs-6974.htm>

Louey, Sandy. "Arrests Take Toll on Local Gang." *The Sacramento Bee*, 14 August 2008. Retrieved January 8, 2009, from <http://www.sacbee.com/elkgrove/v-print/story/1152310.html>

McClure, Laura. "Fuming Over the Pot Clubs." *California Lawyer Magazine*, June 2006.

McCollum, Bill. "Landmark Bill Targeting Marijuana Grow Houses Becomes Law." Attorney General Bill McCollum News Release, 17 June 2008. Retrieved January 9, 2009, from <http://myfloridalegal.com/newsrel.nsf/newsreleases/AFAE7E2BCC1688D18525746B0070D23B>

McDonald, Jeff. "15 Held in Raids on Pot Stores," *San Diego Union-Tribune*, 7 July 2006. Retrieved February 24, 2009, from http://www.signonsandiego.com/uniontrib/20060707/news_7m7pot.html

McKinley, Jesse. "Marijuana Hotbed Retreats on Medicinal Use." *New York Times*, 9 June 2008. Retrieved March 19, 2009, from http://www.nytimes.com/2008/06/09/us/09pot.html?_r=1&em=&ex=1213329

"Medical Marijuana Shop Robbed." *Santa Barbara Independent*, 10 August 2006. Retrieved January 9, 2009, from <http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/>

Meyer, Josh, and Scott Glover. "U.S. Won't Prosecute Medical Pot Sales," 19 March 2009. Retrieved March 21, 2009, from <http://www.latimes.com/news/local/la-me-medpot19-2009mar19,0,4987571.story>

Miller, Tim. *City of Anaheim Police Department: Special Operations Division Memorandum re Medical Marijuana Dispensary (MMD) Ban Ordinance*, 25 October 2006.

National Drug Intelligence Center. *Domestic cannabis cultivation assessment 2007*, 26 February 2007. Retrieved January 9, 2009, from <http://www.usdoj.gov/ndic/pubs21/22486/>

Office Consolidation: By-law 361-2004 of the Corporation of the City of Brampton, 22 November 2004.

"Organized Crime Behind 'Medical' Marijuana Dispensary in California." *Pushingback*, 29 September 2006. Retrieved January 9, 2009, from http://pushingback.com/blogs/pushing_back/archive/2006/09/29/791.aspx

Ortega, Fred. "City Bans Outlets for Medical Marijuana," *San Gabriel Valley Tribune*, 28 August 2006. Retrieved January 9, 2009, from <http://www.lca-uk.org/lcaforum/viewtopic.php?f=6&t=2436&staart=0&sid=15b6da115a0da43facb44195cbb>

Packel, Israel. *The Organization and Operation of Cooperatives*, 4th ed. Philadelphia: American Law Institute, 1970.

Ramsay, Janis. “Special Report: Grow-op House Can Still Be Dream Home: Realtor Says.” *The Barrie Advance*, 25 August 2008. Retrieved January 9, 2009, from <http://www.mapinc.org/drugnews/v08/n818/a06.html>

Ruane, Don. “Grow Houses Can Impact Utility Bills, Public Safety.” News-press.com, 12 April 2008. Retrieved January 9, 2009, from <http://www.news-press.com/apps/pbcs.dll/article?AID=/20080412/NEWS0103/804120394>

Scaramella, Mark. “The Mendo Pot Chronicles.” *Anderson Valley Advertiser*, 3 October 2007. Retrieved January 9, 2009, from <http://www.theava.com/07/1003-mendopot.html>

Scaramella, Mark. “No Good Deed Goes Unpunished.” *Anderson Valley Advertiser*, 16 June 2004. Retrieved January 9, 2009, from <http://www.theava.com/04/0616-cerelli.html>

Stanton, Sam. “Pot Clubs, Seized Plants, New President—Marijuana’s Future Is Hazy.” *Sacramento Bee*, 7 December 2008, 19A.

Steckler, Craig T. *City of Fremont Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts*, 20 June 2006.

Stewart, Ethan. (2007, May 3). “The Medical Marijuana Movement Grows in Santa Barbara: Emerald Dreams and Smoky Realities.” *Santa Barbara Independent*,” 3 May 2007. Retrieved January 9, 2009, from <http://independent.com/news/2007/may/03/medical-marijuana-movement-grows-santa-barbara/>

Van Derbeken, Jaxon, Charlie Goodyear, and Rachel Gordon. “3 S.F. pot clubs raided in probe of organized crime.” *San Francisco Chronicle*, 23 June 2005. Retrieved January 9, 2009, from <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL>

“What has federal law enforcement said about medical marijuana?” Medical Marijuana ProCon.org, 2009. Retrieved February 24, 2009, from <http://medicalmarijuana.procon.org/viewanswers.asp?questionID=000630>

“What has the U.S. DEA said about medical marijuana?” Medical Marijuana ProCon.org, 2005.

Armed Robbery of New Horizons Medical Dispensary

On August 13, 2012 at 10:22

a.m., the El Paso County Sheriff's Office was notified of an armed robbery which just occurred at New Horizons marijuana dispensary located at 1460 Woolsey Heights.

Deputies from the Sheriff's Office responded to the business and learned a white male in his late twenties with crooked yellow teeth, armed with a black and silver semi-automatic handgun had robbed the business and fled on foot. The suspect was described as wearing a white long sleeve shirt, black pants, camouflage fisherman hat, and silver aviator sunglasses. He was carrying a large black backpack which he used to place items from the business inside. No one was injured during the robbery.

The area was searched but the suspect was not found. Detectives from the Sheriff's Office Investigations Division responded and assumed the investigation. A grey sedan was seen passing the business on two occasions just prior to the robbery and is a vehicle of interest. Surveillance footage from the business was obtained and the Sheriff's Office asks for help from anyone who may recognize the suspect or have information about the crime to call Detective Otto at 520-7189 or the non-emergent line at 390-5555.

Armed Takeover Robbery at Medical Marijuana Clinic

Police seek three men in an armed robbery and shooting at a marijuana dispensary near Downtown Los Angeles on July 17, 2012.

They believe one of the men is Cornell White, 25, who, they say, is a regular customer of "Nature's Wonder."

White and two others walked into the clinic in the 1300 block of West Olympic Boulevard around 11 a.m.

An LAPD release states that White signed in to enter the clinic, distracting the security guard. The two other men took him to the ground.

One held him at gunpoint, while the others ransacked the clinic. The guard followed them after they left through the back door, and was shot in the arm.

Police released the video above Friday afternoon to help them in the search for the three, who are still at large.

A fourth getaway driver was arrested and released on bail.

Anyone with information about this incident can contact Rampart Area Gang Detectives, Detective Ross Nemeroff at (213) 484-3663, or Detective Carlos Garcia at (213) 484-3631.

Pot Dispensary Robbery Caught On Video

Surveillance cameras captured the armed robbery of a medical marijuana dispensary in Otay Mesa. Three men donned masks and robbed The Progressive Medical Collective on Aug. 11, 2011. The suspects threatened store clerks with a semi-automatic handgun and got away with about \$6,000 worth of marijuana police said. On the video, you can see three men enter the shop around 8 p.m. They were wearing masks and gloves. One was wearing an Oakland A's cap. After they finished grabbing the marijuana, they were last seen driving south towards State Route 905. No one was injured. Detectives are asking anyone with information on the identity and or location of the persons responsible for this crime to call the Crime Stoppers anonymous tip line at (888) 580-8477. There is a

\$1,000 reward offered in this case.

Source: Video Captures Dispensary Robbery NBC San Diego

Guard Thwarts Armed Pot Dispensary Robbery

Dramatic Video Shows Botched Robbery at Pot Dispensary SANTA FE SPRINGS-- Police have released dramatic surveillance video as they search for a pair of suspects involved in a botched robbery at a medical marijuana dispensary.

It happened at AP Natural Solutions located in the 9800 block of Alburdis Avenue in Santa Fe Springs on August 10, 2010 as first reported by the San Gabriel Valley Tribune.

The suspects posed as customers to gain entry to the business. The surveillance video shows the men signing a guest sheet. Once inside, one of the suspects pulled a gun and pointed it at the security guard. The second suspect grabbed the guard's gun and the two began to struggle, according to Whittier police.

Several shots were fired into the metal security door when the suspects found out they were locked inside the business. When they couldn't get out, the suspects then threatened the guard and forced him to unlock the door. They got away without any cash or marijuana, but did flee the scene with the guard's gun, police said.

The guard was hurt during the incident, but it's unclear if he was taken to the hospital or the extent of his injuries.

Man robbed of marijuana, shot

By Staff reports

Updated: 10/05/2013 04:54:17 PM PDT

CLEARLAKE, CA -- On Saturday at 7:11 a.m. Clearlake Police responded to the 3800 block of Mullen Avenue in response to a man inside a home calling for help. Officers on the scene learned that the person calling for help had a gunshot wound upper body.

Medical assistance was requested from Lake County Fire Protection District. Prior to being transported the victim, a 45-year-old man, stated he was confronted by four masked armed men between 3 to 4 am. He told police he was shot by one of the suspects and four people left with an unknown amount marijuana from the home.

Clearlake Police Detectives were notified and responded to take over the investigation.

The victim was taken to Santa Rosa Memorial Hospital for surgery.

Clearlake Police Department warns those with a Proposition 215 card for possessing marijuana for medical purposes to be vigilant and report suspicious people or vehicles around their property to law enforcement.

Denver DA's version of violent medical marijuana industry questioned

By Jeremy P. Meyer

The Denver Post

Posted: 07/30/2013 06:26:08 PM PDT

Denver D.A Mitch Morrissey (*Denver Post file*)

Before Denver City Council's decision Monday to ask voters to approve a 5 percent sales tax for marijuana, Denver District Attorney Mitch Morrissey held the floor and presented a startling statistic about the pot industry.

"We have had 12 homicides related directly to medical marijuana," Morrissey said. "We have had over 100 aggravated robberies and home invasions. Many of you probably didn't read about the double-execution-style homicide that we had here in Denver, where people were laid down on the floor and executed because they were running a medical marijuana outlet."

But on Tuesday, Morrissey said the numbers he presented the day before to the council were "loose figures" and none of the homicides was in an established medical marijuana facility.

Medical marijuana industry officials at Monday's meeting had been taken aback by Morrissey's statements.

Michael Elliott, executive director of the Medical Marijuana Industry Group, argued after the meeting that the district attorney was unfairly casting a bad light on the legally regulated storefronts when the city is preparing its regulatory framework for a new industry to sell marijuana to adults in retail facilities.

"All of this violence associated with marijuana is being blamed on the good players," he said. "The implication is that it is our fault. There needs to be a distinction (of those incidents) between those who are doing it legally and those who are doing it illegally."

Morrissey's office Tuesday sent an e-mail containing news accounts of nine homicides since 2007 that it said were marijuana-related. The Denver Post interviewed homicide detectives in Denver and Aurora to review his claims.

The Post found that many of the cases were home invasions — not robberies of brick-and-mortar businesses — and it was unclear whether victims in the homes were legally growing and selling marijuana.

At Monday's meeting, Morrissey stressed that the council needs to know about the violence exploding in the cash-driven medical marijuana industry and that council members should expect the same thing when Colorado begins selling retail marijuana.

"You don't read about the impacts of medical marijuana, and one of the impacts is 12 murders," he told the council. "That is what you are seeing unreported by all of the media outlets. That is what I find most disturbing about this. Twelve people have lost their lives, laid down on the floor and were killed. ... And nobody is talking about it."

Morrissey said his office will need extra money to prosecute the crimes that will come with the expanding marijuana industry.

The council later agreed to ask Denver voters in November to approve a 5 percent sales tax to help pay for expenses predicted for all city departments.

The most dramatic incident that Morrissey recounted to the council was the double homicide that occurred March 24, 2011, at the Windsor Court Apartments.

Amara Kamoh Sayon, 22, and Cherise Houston, 25, were shot to death. Morrissey said they were killed execution-style. The case remains unsolved. A Denver homicide investigator on Tuesday would not say whether there was a marijuana connection.

He did say one suspect in that crime was killed a week later in an Aurora home invasion. In that March 31, 2011, slaying, Athina Munoz used an assault-style rifle to kill Jovan Rivers and Harrell King at the Sable Landing Condos. Morrissey said Munoz was a medical marijuana caregiver protecting her home.

Aurora police said Rivers and King came to the condo because they believed medical marijuana was being sold out of the home. Charges were not filed against Munoz because the shooting fell under the state's Make My Day Law, which allows homeowners to lethally defend themselves. The woman, who was not a caregiver, was illegally growing marijuana, Aurora police said.

Morrissey also pointed to other incidents involving caregivers growing and selling marijuana out of their home.

Caregiver Richard Nack was killed in May 2012 at his home, and medical marijuana activist Ken Gorman was killed in his west Denver home in 2007. Peter Bellar was sentenced to life in prison without parole for the January 2010 killing of medical marijuana provider Douglass Singleton.

Morrissey also cited another 2010 incident in which people living in a home near the University of Denver were growing and selling medical marijuana. Would-be robbers burst in the home and tied up the residents. But one resident got free, wrested the gun from the robber and shot him dead. The dead man was Daniel Deleon, and the shooter, who was never named by police, was cleared under the Make My Day Law.

"My point is people are targeting and turning these folks into victims because there is large quantities of cash there," Morrissey said. "They are all part of the medical marijuana business, in my mind. When you are setting the reasonable tax on this, you should consider these impacts as well as the other impacts."

Councilwoman Susan Shepherd said she wondered whether Morrissey's statements were an indictment on the industry or the black market.

"It was certainly dramatic, for sure," she said. "It's hard not to listen to that and not be influenced by it."

Marijuana dispensary robbery attempt in Los Angeles leaves armed suspect shot

By City News Service

POSTED: 10/29/13, 5:38 AM PDT |

LOS ANGELES - A suspect shot by a security guard during an attempted armed robbery of a recently opened marijuana dispensary in South Los Angeles was hospitalized Tuesday.

After an initial struggle for the suspect's handgun, the security guard fired his weapon, wounding the man in his late-20s in the lower abdomen, said Los Angeles Police Department Lt. Darrell Belphius of the 77th Street station.

The attempted robbery occurred at the storefront at 7404 S. Western Ave., between 8-8.30 p.m. Monday.

Both suspects escaped the scene. The suspect who had been shot was taken by an unknown person to Centinela Hospital Medical Center, where he was arrested, Belphius said.

The suspect was transferred to Harbor-UCLA Medical Center, Belphius said.

Belphius said one of the two suspects pulled a handgun after entering the dispensary.

The attempted robbery was captured on an in-store video camera at dispensary that has been open for less than two weeks, Belphius said.

Santa Cruz: Marijuana dispensary robbers escape during high-speed chase

By Stephen Baxter

Santa Cruz Sentinel

POSTED: 11/28/2012 06:21:47 PM PST

PLEASURE POINT -- An armed robbery at a marijuana dispensary on Portola Drive on Tuesday night led to a high-speed chase to Monterey County.

None of the three men who robbed the shop were apprehended, said Santa Cruz County sheriff's deputy April Skalland.

Three men arrived at Green Acres medical marijuana dispensary at 3912 Portola Drive about 8 p.m. One of the men had a gun, and all three wore baggy clothes and had their faces covered.

They demanded cash and marijuana, took the items and fled. Deputies said there were about two customers and at least one employee in the shop. No one was injured.

Seconds later, an employee saw a deputy drive by the shop and described the robbery. The suspects initially left in a Honda, then fled to another Honda in a doughnut shop parking lot about a block from the dispensary at 3791 Portola Drive.

Deputies chased the car south on Highway 1.

California Highway Patrol officers took over the chase, which reached 90 mph, Skalland said.

The driver fled to Salinas Road in Monterey County, then to Elkhorn and Hall roads. The chase continued to Hall and Sill roads just east of Las Lomas.

About 8:20 p.m., the car crashed near Miller and Overpass roads. Three men scattered.

CHP officers, Watsonville police and deputies from Santa Cruz and Monterey counties participated in a search. A Watsonville police K-9 also helped.

Officers found a large bag of marijuana and a beer bottle apparently thrown from the car off Highway 1 at Salinas Road.

No one had been arrested as of 1 p.m. Wednesday, Skalland said.

Deputies seized both Hondas. The first Honda was reported stolen from Watsonville, Skalland said.

No suspect descriptions have been released. Deputies are reviewing surveillance images from the shop.

"Their clothes were baggy and they didn't want to be seen by cameras," Skalland said.

The store was open for business on Wednesday.

Drive-By Shooting at Medical Pot Dispensary in South Seattle

posted by **BEN LIVINGSTON** on *TUE, AUG 13, 2013 at 9:35 AM*

Seattle police **tweeted** news of a drive-by shooting on Rainier Avenue last night around 5:30. **Local media mentioned** the incident, but nobody noticed that the location in the story is a medical cannabis dispensary.

Seattle Police Department spokesman Mark Jamieson confirmed that the shooting occurred outside **Columbia City Holistic Health**, located at 5262 Rainier Avenue South. I contacted the dispensary for comment, but like most weed dealers I've ever known, **their voicemail is full**.

This is one of two medical pot dispensaries within 200 feet of my home, and I walk past CCHH nearly every day, so I'm a bit startled by the random gunshots. Admittedly, **shootings** seem a **regular** occurrence in my neighborhood, and **dispensaries** get robbed in the south end, too. I think gun-toting young men consider south Seattle pot shops fish in a barrel, seeing as there are at least eight such businesses in a three mile stretch of Rainier Avenue from the International District to Columbia City.

Surveillance captures thieves stealing \$250,000 worth of pot from local dispensary in Denver

Fox Street Wellness offering \$5,000 reward

Posted: 09/05/2013
Last Updated: 147 days ago

Molly Hendrickson

DENVER - Denver police are searching for two people who broke into a marijuana dispensary early Monday morning and stole more than \$250,000 worth of marijuana.

The theft occurred at the Fox Street Wellness at 4773 N. Fox St., near West Warner Place, in the Globeville neighborhood.

Surveillance video shows a pair of brazen burglars on the hunt for pot. The video captures two men, one in a black hooded sweatshirt, the other in a grey hooded sweatshirt grabbing marijuana plants two at a time. The men appear to be unfazed by the sounding alarm.

"It seemed like they were pretty comfortable with what they were doing," said Dylan Hunter of Fox Street Wellness.

Dylan Hunter was still understandably upset Friday night by what their camera's caught.

"It makes me really angry especially for our patients who have come to know our quality and consistency. Everything is hand lifted, hand watered and hand trimmed. We're a very tight-knit family here," Hunter told 7NEWS.

Hunter said the pair got away with \$250,000 worth of product in less than 20 minutes. The plants and strains he said were still curing and drying and weren't yet on the store's shelves.

The dispensary is now offering a \$5,000 reward hoping someone will recognize the men before they strike again.

"We've definitely beefed up security, we've beefed up everything to make sure nothing like this will ever happen again. I think we'll come out stronger," Hunter said.

On its website, Fox Street Wellness touts that its marijuana strains are organic, hand watered, hand trimmed, and shown the utmost care. Most of its marijuana sells for \$288 an ounce.

If you recognize either of the people pictured, called Denver police Detective Larry Dale at 720-913-0532. You can also call Crime Stoppers to remain anonymous and be eligible for a \$2,000 reward. Crime Stoppers' tip line is 720-913-7867. It is answered 24 hours a day, seven days a week.

Purple Star Pot Club: Gus Murad's Dispensary Was Robbed of Its Weed

By Chris Roberts Wed., Aug. 14 2013 at 6:45 AM

Categories: Development and Real Estate, Marijuana

You might not recall who Gus Murad is, but you probably remember his bar. To children of the mid-2000s, no evening of Mission debauchery was complete without a visit to Medjool and its legendary rooftop bar.

Political types, of course, will never forget Murad, the Gavin Newsom intimate who used the bar to curry favor with City Hall (which led to embarrassment when it came out that the rooftop party space violated height exemptions).

These days, Murad is out of the restaurant business, but he's still a landlord -- and still involved with selling drugs out of the space at 2520 Mission Street, though of a different kind, and to a different clientele. Last week, the Murad-funded Purple Star medical marijuana dispensary -- downstairs from the roof and the former hostel space that now houses veterans -- was robbed by armed gunmen. The robbers barged into the dispensary last Thursday and reportedly got away with about 20 jars of medical-grade weed, according to reports. The suspects were arrested shortly after in the Western Addition, with the weed in hand.

It's not clear how they got past security, although we hear Purple Star had an "open-door" policy that differs from most well-secured dispensaries. Murad did not respond to a telephone call seeking comment from *SF Weekly*, nor did the individual listed as a partner in the Purple Star collective effort on Department of Public Health records return our message.

Some will recall that Murad resigned his seat on the Small Business Commission after it was revealed that Medjool's roof was too damn high (which was around the same time he was pushing for different zoning controls on the New Mission Theater/Giant Value parcel up the road). It was around that time that Murad announced a fire sale, putting everything from the Medjool space to the theater space on the market.

The theater/store sold and will open soon as Alamo Drafthouse theater/brewery, but Murad still owns the Medjool building at 2520 Mission. Over the past couple of years, he leased the restaurant space to the team that runs Beretta, and put some Section 8 housing for formerly homeless veterans in the space that used to house a hostel. On the ground floor, plans to put in a medical marijuana dispensary sailed through the Planning process in a few months' time (other dispensaries have taken years to clear all the permitting hurdles).

There's no love lost with some of Murad's old friends from the neighborhood: Before the medical cannabis dispensary was approved, members of the Mission Miracle Mile Business Improvement District -- including one who attended Murad's wedding in Morocco -- sent a letter to U.S. Attorney Melinda Haag, demanding federal authorities intervene and shut down the dispensary if it was allowed to open.

Purple Star is up and running -- and meanwhile, a dispensary called Shambhala Healing Center down the road is the target of a federal Justice Department asset forfeiture effort.

Unfortunately for Murad and for the city's medical marijuana dispensaries, this is exactly the kind of incident medical cannabis's enemies love. Police have all along argued that dispensaries engender crime. Although that notion has exploded as pure falsehood before, armed robberies are indeed crime.

Medical-marijuana dispensary robbed in North Park

By Susan Shroder 8:59 P.M. AUG. 26, 2010

A medical-marijuana dispensary was robbed Thursday night in North Park, the fourth armed robbery at a cannabis dispensary in San Diego since early July.

The robbery occurred about 6:48 p.m. at San Diego Holistic Center on 30th Street near Monroe Avenue. A man displayed a handgun and took cash from the dispensary and from two customers who were in the dispensary, said San Diego police Officer David Stafford. No one was injured.

The robber was described as black, in his 20s, and about 180 pounds. He was wearing a blue hoodie and jeans and was carrying a backpack.

A week ago, two masked armed men robbed San Diego Medical Collective on Camino del Rio South in Mission Valley of cash and marijuana.

On July 21, two armed men robbed Tri City Holistic, a medical-marijuana dispensary in Little Italy. On July 6, five men armed with handguns stole about \$20,000 worth of pot from the SuperCanna dispensary in Normal Heights.

Police said last week that the first three cases did not appear to be related or part of a series.

Tips lead police to Colorado Springs medical marijuana store theft suspects

By [Andrea Sinclair](#) Updated: December 19, 2013 at 6:08 pm • Published: December 19, 2013 | 8:45 am

Colorado Springs police credited the public's help with the arrest of three men suspected of burglarizing a medical marijuana dispensary Wednesday.

Farreal Williams, 37, Joseph Kennedy, 23, and 31-year-old Larry Gardner were arrested on suspicion of second-degree burglary, criminal mischief, theft and conspiracy, police said. They were booked into the El Paso County jail, records show.

According to police reports, officers were dispatched to a burglary-in-progress at The Organic Seed, 2304 E. Platte Ave., about 9:50 p.m., when someone spotted three men running out of the store carrying plants.

While police were at the burglarized store, they received a call from a second witness who claimed to have seen three men carrying marijuana plants into a residence at the Courtyard at Willamette Apartments. Officers arrested one suspect for burglary at the apartments, police said.

Further investigation led police to a home on the 2500 block of East Dale Street, where they recovered two of the stolen marijuana plants and two men were taken into custody.

Suspects break into Colorado Springs medical marijuana center

by Rachel Welte

Posted: 11.24.2013 at 5:57 PM

COLORADO SPRINGS, COLO. -- The Colorado Springs Police Department is looking for four suspects who robbed a medical marijuana center early Sunday morning.

It happened just before 5:30 a.m. at Discreet Treats located on S. Academy Boulevard, near Airport Road.

Officers said the suspects forced their way into the business and took an unknown amount of marijuana products.

They said a K-9 attempted to track them down, but did not have any luck.

Three of the suspects were wearing dark clothing, and the fourth had a crow bar and was wearing a gray hoodie and jeans.

Masked, armed men robbed medical marijuana dispensary

Posted: 11/15/2013
Last Updated: 77 days ago

Deb Stanley | [Email Me](#)

LONGMONT - Two armed men wearing masks robbed a medical marijuana dispensary on Thursday night.

Deputies from the Boulder County Sheriff's Office and officers with the Longmont Police Department were called to the 100 block of South Sunset at 6:45 p.m.

Workers told investigators that two men wearing masks came into the shop and robbed them. The workers said the two men took marijuana and a small amount of cash. Both men were armed, workers said.

Police said the two robbers have not been identified and investigators did not release any description of the suspects.

Two killed in Bakersfield, Calif. medical marijuana dispensary robbery

By William Breathes in Dispensaries, News

Thursday, July 18, 2013 at 1:20 pm

Two men were shot and killed in an apparent medical marijuana dispensary robbery in Bakersfield, California yesterday while the two alleged robbers remain at large.

Police say that 23-year-old Devin Scott Daniels and 55-year-old Tony Conrad Sherman. Though police didn't identify whether the two who were killed worked at the center, other news sources have identified them as security guards who worked for the dispensary.

Police say that they have identified one of the robbery suspects as 32-year-old Aaron Patrick Burris. The woman he was with remains unidentified. There is currently a \$2 million warrant out for Burris. The woman he was with is described as being in her 20s and about 5 feet, two inches tall. The two escaped in a dark-colored SUV.

According to ABC 23 Bakersfield, police went door-to-door early Thursday morning looking for Burris but came up with nothing. Any information on this case should call the Bakersfield Police Department at 661-327-7111

Bakersfield recently enacted a ban on dispensaries that goes into effect August 1.

Unfortunately, this type of crime isn't likely to go away so long as dispensaries are forced out of their bank accounts from banks scared of federal intervention. These shops become cash-

heavy, often stocking large amounts of money in safes and paying employees in cash - all issues that can be avoided with simple business bank accounts.

Suspects arrested in Mission marijuana dispensary robbery

Saturday, Aug. 10, 2013

KTVU.com and wires

SAN FRANCISCO —

Three San Francisco men were arrested midday Thursday in connection with a robbery at a medicinal marijuana dispensary in San Francisco's Mission District, a police spokeswoman said.

The robbery at the dispensary in the 2500 block of Mission Street occurred around 10 a.m.

The three men allegedly entered the business and pointed guns at four employees, according to San Francisco police Officer Tracy Turner.

The workers were instructed to lie on the ground, while the suspects allegedly took 20 jars of medical marijuana, according to police.

The trio then fled to a car parked about three blocks away, police said.

About two hours later, police pulled over a car matching the suspect vehicle description at Webster Street and Golden Gate Avenue, Turner said.

The three men inside were identified as city residents Tremayne Brown, 20; Almjermyn Tyler, 38; and Deangelo Redd, 30, according to Turner.

All three were taken into custody, police said.

Turner said a "green leafy substance" believed to be the stolen marijuana was found in the car.

SAN BERNARDINO: Pot dispensary robbed; three arrested (UPDATE)

JANUARY 29, 2014 BY RICHARD BROOKS

A robbery at a San Bernardino marijuana dispensary that triggered a standoff with SWAT, street closures and an evacuation led to three arrests, police said.

An emergency alarm alerted the police just before 9:30 p.m. Tuesday, Jan. 28, at 154 S. E St. when three people — at least one armed with a handgun — went into the store, robbed a volunteer who was working there and began looting the shop, according to a San Bernardino police news release.

When officers arrived, two of the suspects were standing in front of the store. They tried to run but officers captured and arrested them. Officers then arrested another suspect they found crawling on the ground near the business.

Witnesses told officers there were four workers and possibly another robber inside the building, so police surrounded the store, blocked traffic near the shop and called in reinforcements.

A SWAT van arrived about 10:25 p.m. and by 10:30 workers at a neighboring tattoo shop had been evacuated.

Jesse Rooker, a 32-year-old Redlands resident, works at Pirate City Tattoo — the only other business in the strip mall open during the robbery. Rooker was not working Tuesday, but came to San Bernardino when he learned of the trouble and watched as the standoff developed.

“I got a call ... from my co-workers,” he said. “They said the cops were making them stay in the back of the shop.”

Shortly after 11 p.m., police began using a public address system to order any robbers out of the store.

“Come outside through the open door with your hands up,” an officer said repeatedly. “This is the Police Department.”

By 11:15 p.m., there was no response. By 11:35 p.m., officers had entered — and exited — the building and determined no one was inside.

When the incident began, up to 10 workers and customers were at the store and no one was hurt

Bakersfield pot dispensary hit in armed robbery

By BakersfieldNow.com staff Published: Jan 12, 2014 at 2:48 PM PST Last Updated: Jan 13, 2014 at 11:42 AM PST

BAKERSFIELD, Calif. (KBAK/KBFX) — A worker at a medical marijuana dispensary was robbed at gunpoint Sunday morning.

Police said the robbers got away in a light-colored SUV with large rims.

The store employee, who was held down by one of the thieves, was not injured.

Police were called around 8:15 a.m. for a possible robbery in the area of South Chester Avenue and Geneva Drive. As officers arrived, they learned the robbery happened inside the Safe Collective Marijuana Dispensary.

Three people were seen in the getaway vehicle, but only two men entered the store. One man pointed a gun at the store employee, while the other held the employee down. The gunman then removed marijuana from what police described as the sales area. Both men then ran from the store and got into a waiting SUV.

The getaway driver was wearing a jersey and beanie cap. The gunman was described as a 6-foot and 300 pounds, black, and wearing a hooded sweatshirt. His accomplice, who reportedly held down the store employee while the gunman grabbed marijuana, was described as a black man in his 20s, just over 5-feet and 120 pounds, wearing a hat, dark shirt and jeans.

Three suspects in marijuana dispensary robbery arrested, fourth at large

Posted: Friday, April 20, 2012 12:00 am

By Bay City News |

San Rafael, CA Three men suspected of robbing the Going Green marijuana dispensary in San Rafael were arrested Thursday after a police pursuit and search, a Marin County sheriff's sergeant said.

A fourth male suspect is still at large, Sgt. Mark Hale said this morning.

The men entered the dispensary at 294 N. San Pedro Road through an unlocked back door at 4:45 p.m., ordered occupants on the ground at gunpoint and stole cash and marijuana, Hale said.

One of the suspects also fired a gun inside the dispensary, he said.

The suspects left in a four-door, black Toyota east on North San Pedro Road toward China Camp, Hale said.

Deputies pursued the suspects, who sped away from an attempted traffic stop and drove on Oak Drive in San Rafael, according to Hale.

The California Highway Patrol's helicopter and San Rafael and Novato police also responded, Hale said.

The suspects then fled from the vehicle and were found in a marsh in the area of Oak and Marine drives in unincorporated Marin County, Hale said.

A handgun was found beside the Toyota, he said.

Deputies also found dark clothing worn by the fourth suspect, Hale said.

Alonzo Eriberto Sandoval, 18, of San Rafael, Ruben Torres, 22, of Santa Venetia, and Brandon Mervin James Spencer, 19, of Santa Venetia, were arrested between 5 p.m. and 6:30 p.m. and booked into Marin County Jail on suspicion of burglary, robbery and conspiracy to commit a crime.

They are being held under \$75,000 bail and are scheduled to be arraigned Monday morning in Marin County Superior Court.

Going Green is adjacent to the former location of medical marijuana dispensary Tree of Life, which reportedly closed in 2010 after a county investigation into the operation. There had been complaints about its proximity to a school.

Hale said the Tree of Life dispensary was "shut down several times" and "went out of business several times."

He said he wasn't sure if there was a connection between the Tree of Life. Tree of Life was last located at 292 N San Pedro Rd Suite B, according to Yelp.

"It was a surprise to all of us there was a dispensary open there," Hale said, regarding Going Green.

Shots Fired During Armed Robbery of Pot Dispensary

Oct 16, 2013

LACEY, Wash. -- Multiple shots were fired during an armed robbery Tuesday night at a Lacey medical marijuana dispensary, according to the Lacey Police Department.

According to police, three men with guns entered Earth Alternative Medicine at 1123 Sleater Kinney Rd. S.E. around 8:15 p.m. and ordered three employees into the restroom.

As the men were packing up marijuana and other products, three customers entered the dispensary and were detained, as well, according to police.

An employee followed one of the men out of the building, and the man reportedly fired multiple shots. But, no one was injured.

Officers arrived and were unable to find any of the robbers.

Brothers arrested in robbery at marijuana dispensary

The incident took place at the Garden Grove Patient's Group on Harbor Boulevard and involved an armed security guard.

By SEAN EMERY / THE ORANGE COUNTY REGISTER

Published: June 12, 2012 Updated: Aug. 21, 2013 1:17 p.m.

GARDEN GROVE – Two men were arrested this week during an investigation into a robbery at a medical marijuana dispensary, police said.

Anthony Thomas Kim, 34, was arrested in connection to the robbery, while his brother, Paul Richard Kim, 30, was arrested as a result of drugs and weapons that investigators found while carrying out a search warrant, Garden Grove police Lt. Jeff Nightengale indicated in a written release.

Officers responded at about 4:40 p.m. June 7 to reports of an armed security guard being robbed at the Garden Grove Patient's Group, a medical marijuana dispensary in the 13900 block of Harbor Boulevard, police said.

Investigators believe a man armed with a silver and black handgun entered the business and robbed the security guard of his loaded 9mm handgun, three loaded magazines, handcuffs, pepper spray and collapsible baton. Surveillance cameras showed the man leaving in a pickup.

No cash or marijuana was reported stolen, and no employees were injured, police said.

Investigators identified Anthony Kim as a suspect in the robbery and served a search warrant at his home Saturday.

Police say the search turned up the items taken from the security guard, as well as a .357 revolver and an assault rifle with a high-capacity magazine, several police badges and police duty belts, methamphetamine and packaging supplies.

Authorities believe the items may have been used in unreported robberies of medical marijuana dispensaries.

Anthony Kim and Paul Kim, both of La Mirada, were taken into custody.

According to Orange County Superior Court records, a man with the same name and birth date as Anthony Kim was charged with felony counts of second-degree robbery and dissuading a witness by force. He pleaded not guilty to the charges Tuesday, court records show.



U.S.

Banks Say No to Marijuana Money, Legal or Not

By SERGE F. KOVALESKI JAN. 11, 2014

SEATTLE — In his second-floor office above a hair salon in north Seattle, Ryan Kunkel is seated on a couch placing \$1,000 bricks of cash — dozens of them — in a rumpled brown paper bag. When he finishes, he stashes the money in the trunk of his BMW and sets off on an adrenalized drive downtown, darting through traffic and nervously checking to see if anyone is following him.

Despite the air of criminality, there is nothing illicit in what Mr. Kunkel is doing. He co-owns five medical marijuana dispensaries, and on this day he is heading to the Washington State Department of Revenue to commit the ultimate in law-abiding acts: paying taxes. After about 25 minutes at the agency, Mr. Kunkel emerges with a receipt for \$51,321.

“Carrying such large amounts of cash is a terrible risk that freaks me out a bit because there is the fear in my mind that the next car pulling up beside me could be the crew that hijacks us,” he said. “So, we have to play this never-ending shell game of different cars, different routes, different dates and different times.”

Legal marijuana merchants like Mr. Kunkel — mainly medical marijuana outlets but also, starting this year, shops that sell recreational marijuana in Colorado and Washington — are grappling with a pressing predicament: Their businesses are conducted almost entirely in cash because it is exceedingly difficult for them to open and maintain bank accounts, and thus accept credit cards.

The problem underscores the patchwork nature of federal and state laws that have evolved fitfully as states have legalized some form of marijuana commerce. Though 20 states and the District of Columbia allow either medical or recreational marijuana use — with more likely to follow suit — the drug remains illegal under federal law. The Controlled Substances Act, enacted in 1970 classifies marijuana as a Schedule I drug, the most dangerous category, which also includes heroin, LSD and ecstasy.

As a result, banks, including state-chartered ones, are reluctant to provide traditional services to marijuana businesses. They fear that federal regulators and law enforcement authorities might punish them, with measures like large fines, for violating prohibitions on money-laundering, among other federal laws and regulations.

“Banking is the most urgent issue facing the legal cannabis industry today,” said Aaron Smith, executive director of the National Cannabis Industry Association in Washington, D.C. Saying legal marijuana sales in the United States could reach \$3 billion this year, Mr. Smith added: “So much money floating around outside the banking system is not safe, and it is not in anyone’s interest. Federal law needs to be harmonized with state laws.”

The limitations have created unique burdens for legal marijuana business owners. They pay employees with envelopes of cash. They haul Chipotle and Nordstrom bags containing thousands of dollars in \$10 and \$20 bills to supermarkets to buy money orders. When they are able to open bank accounts — often under false pretenses — many have taken to storing money in Tupperware containers filled with air fresheners to mask the smell of marijuana.

The all-cash nature of the business has also created huge security concerns for business owners. Many have installed panic buttons for workers in the event of a robbery and have set up a constellation of security cameras at their facilities beyond what is required, as well as floor sensors to detect break-ins. In Colorado, Blue Line Protection Group was formed a few months ago, specializing in protecting dispensaries and facilities that

grow marijuana, and in providing transportation security. The firm largely uses military veterans who have Special Operations experience.

Marijuana business owners have devised strategies to avoid the suspicions of bankers. A number of legal operations have opened accounts by establishing holding companies with names that obscure the nature of their business. Some owners simply use personal bank accounts. Others have relied on local bank managers willing to take chances and bring them on as clients, or even offer tips on how to choose nondescript company names.

But the financial institutions eventually shut down many of these accounts after managers conclude the businesses are too much of a risk. It is not unusual for a legitimate marijuana business to go through a half-dozen bank accounts in a few years. While they are active, however, these accounts may have informal restrictions placed on them — some self-imposed — so they do not draw the scrutiny of bankers who may file suspicious-activity reports or would be required to report deposits over \$10,000 in cash. The account holders may make only small deposits, and only at night and at certain branches. Mr. Kunkel of Seattle has such an account.

At the largest credit union in Washington State, BECU, about 20 accounts have been shut down in the last three years after it was discovered they were for businesses in the legal marijuana trade, Todd Pietzsch, a spokesman for the credit union, said.

Kristi Kelly, 36, who owns two dispensaries and several marijuana growing operations in the Denver area, said six bank accounts of hers had been canceled in the last 18 months. “Opening the account is not necessarily the problem,” she said. “Our cash deposit levels flag a bank’s compliance division.”

Ms. Kelly, who had just paid \$10,000 in cash to the City of Denver for licensing and application fees to expand her business, said that several times a week she carried around tens of thousands of dollars in a bag. “I never felt as illegitimate as the day I had to buy a cash counter,” she said,

adding that she spends three hours or so a day just managing the cash from her business's multiple locations.

A.T.M.s are common in marijuana outlets, but the business owners often have to use their own cash in the machines in case law enforcement authorities conduct a raid and seize the money.

Those marijuana operations that do have bank accounts or use the personal ones of their owners can use a cashless A.T.M. service in which a debit card is swiped at a dispensary and the money is transferred into the recipient's account.

"It is operating over the A.T.M. network and not the credit card network," said Lance Ott, whose company, Guardian Data Systems, provides this service. "The A.T.M. networks are not as regulated. This is the loophole."

Since legal marijuana operations, for the most part, cannot get bank loans, these small businesses have to rely on short-term loans from individuals, usually with higher interest rates.

To help, High Times magazine is starting a private equity fund to invest in marijuana businesses. But many investors may feel uneasy about marijuana businesses that do not have bank accounts. And without bank references, entrepreneurs say, it is much tougher to get lines of credit from vendors.

Leaders in the marijuana trade point out that giving accounts to businesses would allow for more transparency and meticulous regulation and would help ensure that jurisdictions receive the taxes they are entitled to.

Marijuana entrepreneurs and banks both would like clear guidelines from the government on how financial institutions can serve the industry. On Friday, six members of Colorado's congressional delegation sent a letter to the Treasury and the Justice Department requesting that they "expedite" that guidance.

In August, the Justice Department issued a memo indicating that it would not crack down on legal marijuana as long as eight regulatory

requirements were met, like preventing revenue from the sale of marijuana from going to criminal enterprises and preventing the distribution of marijuana to minors. The memo did not address banking.

The Treasury Department's Financial Crimes Enforcement Network hopes to circulate recommendations by the end of this month to officials at the Treasury and the Justice Department for their opinions, an official briefed on the situation said. There is no timetable for formal guidelines.

Richard Riese, senior vice president for regulatory compliance at the American Bankers Association, said banks wanted clear and comprehensive guidelines on how to do business with the legal marijuana industry.

Mr. Riese said, for instance, that banks would want to know that they were not "aiding and abetting" a criminal enterprise if they provided services to marijuana businesses. "Banks will need a lot of detail from regulators to get the satisfaction and comfort they are looking for," he said.

Sheelagh McNeill contributed research.

A version of this article appears in print on January 12, 2014, on page A1 of the New York edition with the headline: Banks Say No to Marijuana Money, Legal or Not.



October 26, 2013

Few Problems With Cannabis for California

By ADAM NAGOURNEY and RICK LYMAN

LOS ANGELES — In the heart of Northern California's marijuana growing region, the sheriff's office is inundated each fall with complaints about the stench of marijuana plots or the latest expropriation of public land by growers. Its tranquil communities have been altered by the emergence of a wealthy class of marijuana entrepreneurs, while nearly 500 miles away in Los Angeles, officials have struggled to regulate an explosion of medical marijuana shops.

But at a time when polls show widening public support for legalization — recreational marijuana is about to become legal in Colorado and Washington, and voter initiatives are in the pipeline in at least three other states — California's 17-year experience as the first state to legalize medical marijuana offers surprising lessons, experts say.

Warnings voiced against partial legalization — of civic disorder, increased lawlessness and a drastic rise in other drug use — have proved unfounded.

Instead, research suggests both that marijuana has become an alcohol substitute for younger people here and in other states that have legalized medical marijuana, and that while driving under the influence of any intoxicant is dangerous, driving after smoking marijuana is less dangerous than after drinking alcohol.

Although marijuana is legal here only for medical use, it is widely available. There is no evidence that its use by teenagers has risen since the 1996 legalization, though it is an open question whether outright legalization would make the drug that much easier for young people to get, and thus contribute to increased use.

And though Los Angeles has struggled to regulate marijuana dispensaries, with neighborhoods upset at their sheer number, the threat of unsavory street traffic and the stigma of marijuana shops on the corner, communities that imposed early and strict regulations on their operations have not experienced such disruption.

Imposing a local tax on medical marijuana, as Oakland, San Jose and other communities have done, has not pushed consumers to drug dealers as some analysts expected. Presumably that is

because it is so easy to get reliable and high-quality marijuana legally.

Finally, for consumers, the era of legalized medical marijuana has meant an expanded market and often cheaper prices. Buyers here gaze over showcases offering a rich assortment of marijuana, promising different potencies and different kinds of highs. Cannabis sativa produces a pronounced psychological high, a “head buzz,” while cannabis indica delivers a more relaxed, lethargic effect, a “body buzz.”

Advocates for marijuana legalization see the moves in Colorado and Washington as the start of a wave. A Gallup poll released last week found that 58 percent of Americans think the drug should be made legal.

“There is definitely going to be a legalization here at some point, one way or another, like in Colorado and Washington,” said Tom Ammiano, a Democratic state assemblyman from San Francisco who has pushed the Legislature to legalize recreational marijuana use.

Still, even as public opinion in support of legalizing marijuana has grown, opposition remains strong among many, including some law enforcement organizations, which warn that the use of the drug leads to marijuana dependence, endangers the health of users and encourages the use of other drugs.

“Unfortunately, many have been convinced that marijuana is harmless, and many in policing do not believe that is the case,” Darrel W. Stephens, the executive director of the Major Cities Chiefs Association, wrote in an e-mail.

Craig T. Steckler, a former chief of the Police Department in Fremont, Calif., who is now the president of the International Association of Chiefs of Police, said the problems in Los Angeles and robberies of cash-rich marijuana farms in Northern California were just two of the reasons states should hesitate before legalizing the drug.

“If it’s more readily accessible, if the parents and the siblings are doing it, then it becomes available to the younger kids — it’s going to be in the house, it’s going to be in the car,” he said.

“Where does it stop?” Mr. Steckler asked. “You make all drugs legal? Or just marijuana for now and suffer for that? What happens when you find out this wasn’t such a good idea?”

After California, medical marijuana was legalized in 19 states and the District of Columbia, according to the National Conference of State Legislatures.

Although the law in California applies only to people who have a medical need for marijuana, like glaucoma or cancer, the requirements for getting the card to buy the drug are notoriously lax.

Doctors can recommend its use for ailments as common as sleeplessness and headaches. And marijuana in California has become almost as culturally accepted, and in some parts of the state nearly as widely used, as alcohol.

“Marijuana users are much more representative of the overall adult population in California than medical marijuana populations in other states,” said Amanda Reiman, the state policy director for the Drug Policy Alliance, an organization working toward the decriminalization of marijuana.

The percentage of California drivers with traces of marijuana in their systems, 7.4 percent, was slightly higher than the 7 percent of drivers found to have alcohol in their system during a spot check last year, according to a report from the California Office of Traffic Safety. The report found that 14 percent of those checked tested positive for some kind of drug that might impair driving.

In a broad study on the ramifications of legalizing recreational marijuana about to be published in *The Journal of Policy Analysis and Management*, two economics professors said a survey of evidence showed a correlation between increased marijuana use and less alcohol use for people ages 18 to 29.

The researchers, D. Mark Anderson of Montana State University and Daniel I. Rees of the University of Colorado, said that based on their study, they expected younger people in Colorado and Washington to use marijuana more and alcohol less.

“These states will experience a reduction in the social harms resulting from alcohol use: Reducing traffic injuries and fatalities is potentially one of the most important,” the professors said.

Mark A. R. Kleiman, a professor at the University of California, Los Angeles, and an expert on marijuana policy who was the chief adviser to Washington on its marijuana law, said the connection between alcohol and marijuana use, if borne out, would be a powerful argument in favor of decriminalization.

“If it turns out that cannabis and alcohol are substitutes, then by my scoring system, legalizing cannabis is obviously a good idea,” Mr. Kleiman said. “Alcohol is so much more of a problem than cannabis ever has been.”

Still, he said, it will take time before long-term judgments can be made.

“Does it cause problems?” he said. “Certainly. Is it on balance a good or bad thing? Ask me 10 years from now.”

Mr. Rees also said his study found no evidence of increased drug use among high school students in Los Angeles during the period when medical marijuana shops opened here, probably because dispensaries were vigilant about not risking their thriving ventures by selling to underage consumers.

“The dispensary numbers went through the roof,” he said. “But nothing happens to marijuana use among teenagers.”

The marijuana cultivation business in Northern California has been an economic boon for many communities, creating tax revenues, an industry of ancillary industries, and local wealth, visible by expensive cars parked along once dusty streets.

“A lot of cottage industries have popped up that service the marijuana industry,” said Scot Candell, a lawyer in San Rafael who specializes in medical marijuana clients. “Labs that do testing, hydroponic stores that provide growing equipment, software developers, insurance companies that specialize in dispensaries.”

Steve DeAngelo, the founder of the Harborside Health Center in Oakland, one of the state’s largest marijuana dispensaries, said his dispensary collected \$1.2 million last year in marijuana sales tax for the city.

Medical marijuana, he said, has “created a whole new cast of people who have a vested interest in cannabis.”

“What was inevitable is that the movement, at some point, would go into hyper-speed, and that is what’s happening now,” he said.

This has altered the economy of places like Mendocino County.

“I am not aware of any business in Mendocino County that doesn’t consider marijuana as part of their business plan, and that can be good and bad,” said Sheriff Thomas D. Allman.

Mr. Candell said that while regulation was important, overregulation could be counterproductive. In California, several communities outlawed all marijuana dispensaries, giving rise to delivery services, which are not subject to regulation.

In Mendocino the issue is not dispensaries, but cultivation. There has been a spectacular rise in the amount of marijuana being grown there because, under county law, individuals with medical marijuana cards can have up to 25 plants for personal use.

Sheriff Allman said he spent about 30 percent of his resources on medical marijuana cases,

especially between April and October, the growing season. The No. 1 call to 911 in October is complaints about the overwhelming smell of a next-door plot.

In Los Angeles, repeated attempts to regulate the stores have failed, causing an uproar in quiet neighborhoods like Larchmont and Mar Vista. Yet there is a lesson here: San Francisco, Oakland and Berkeley, which imposed strict regulations on the shops from the start, have had few problems.

“Those cities really took charge in 1996, saying: ‘We have to figure out how we are going to regulate this. We need to figure out how marijuana could be sold, how it will be regulated, what it will mean for tax revenue,’ ” Ms. Reiman said. “As a result, those three cities have seen little to no issues in terms of crime or public safety issues.”

Consumers of marijuana are also benefiting. Competition among growers has resulted in powerful strains, raising the levels of THC, the active ingredient in marijuana, to as high as 25 percent. Previously, levels ranged from 6 percent to 9 percent.

And since cities have competing dispensaries, prices have tended to decrease or at least keep pace with street prices. At Harborside in Oakland, marijuana buds run anywhere from \$240 to \$360 an ounce, though patients tend to buy smaller amounts like an eighth or a quarter of an ounce.

The array of products has exploded, and now includes not only smokable buds but also hashish, marijuana-rich oils that are drunk or smoked, edible cakes and other food products, and topical ointments intended to ease skin or joint pain without providing a high.

California has learned a lot in its years of dealing with a legal form of marijuana, Mr. Candell said. “But there are a lot of states that are just now going through it, and there are things they need to know.”

This article has been revised to reflect the following correction:

Correction: November 3, 2013

An article last Sunday about California’s experience as the first state to legalize medical marijuana misstated the percentage of California drivers found with traces of marijuana in their systems during a spot check last year. According to a report from the California Office of Traffic Safety, it was 7.4 percent — not 14 percent, the total number who tested positive for some kind of drug that might impair driving.

CA Medical Marijuana Dispensary Numbers Shrink in Two-Pronged War of Attrition [FEATURE]

By *psmith*

Created 2013/06/27 - 11:01am

by [Phillip Smith](#) [1], June 27, 2013, 11:01am, (Issue #789 [2]) Posted in: [Court Rulings](#) [3] [DEA](#) [4] [Executive Branch](#) [5] [Marijuana Industry](#) [6] [Medical Marijuana](#) [7] [News Feature](#) [8] [State & Local Executive Branches](#) [9] [State & Local Legislatures](#) [10] [State Courts](#) [11]



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<i>Indica</i>		<i>Hybrid</i>	
Blackberry Kush	26 40	Yummy Green	47 57
Jack	26 40	Jack the Hammer	18 20
Old Fashion	48 55	Indubasic	44 50
OG Kush	54 57	Firecracker	50 54
Blackberry Kush	26 40	Original Diesel	50 54
OG Kush	54 57	Maximum Kush and Lemon	55 55
		Cherry Pie	74 84
<i>Sativa</i>		Hippie's Choice	47 57 44 50
Blueberry	26 40	Green Jack	54 55 54
Blueberry	26 40	Blackberry Kush	50 50 50 50
Blueberry	26 40		
Blueberry	26 40	<i>Edible</i>	
Blueberry	26 40		

California's medical marijuana dispensary numbers are shrinking under a two-pronged local and federal attack, leaving patients in the lurch. Advocates want more of a fightback.

California medical marijuana dispensaries -- and their patients -- are under a sustained, two-pronged attack, and that is having a dramatic impact on patient access across the state. Under pressure from the federal government on one hand and newly-emboldened local officials on the other, dispensary numbers are shrinking and ever larger swathes of the state that legalized medical marijuana nearly 17 years ago are without anywhere to get medical marijuana.



Anyone who is following the situation in the Golden State at all closely has seen a numbing litany of reports of dispensaries forced out of business, including from some of the most venerable, respected, and law-abiding operations in the state. What had been the occasional raid or prosecution by the DEA or federal prosecutors during the early years of the Obama administration has turned into a heightened onslaught since the issuance of the notorious Cole memo [12], written by Assistant Attorney General James Cole, two years ago next week and the announcement by California's four US Attorneys that fall that they were declaring open season on dispensaries.

And while recalcitrant city and county law enforcement and elected officials had managed to make access to medical marijuana a patchwork affair across the state through moratoria and bans, pressure from local officials has only escalated since the state Supreme Court's decision in City of Riverside v. Inland Empire Patients Health and Wellness Center [13] early last month. In that case, the court ruled unanimously that localities could indeed use their zoning powers to ban dispensaries, not just regulate them. Since that ruling, localities that had hesitated to impose or enforce existing bans have responded with alacrity.

Reading the writing on the wall, Inland Empire closed its doors the day after the ruling. In other places, officials weren't waiting for dispensaries to shut down -- they were ordering them to. In May, Stockton took its first steps toward a dispensary ban, San Bernardino bragged that it had shut down 18 dispensaries and was working to close the remaining 15, Palm Springs was working to shut down five, a Thousand Palms dispensary closed its doors with the owner saying he didn't want Riverside County deputies to do it for him, Garden Grove ordered all 62 dispensaries there to shut down or face prosecution (and reported days later that they had), Los Angeles voted to shrink its number of dispensaries from 500 or more to 135, and Anaheim ordered its last 11 dispensaries (down from 143 in 2007) to close.

The big chill continued this month, with Bakersfield moving to ban dispensaries, Riverside County threatening to arrest the owner of one of its three remaining dispensaries (down from 77 in 2009) until he closed his doors, and Santa Ana reporting it had shut down 42 dispensaries (bringing the total closed there to 109) and was siccing the DEA on the remaining 17.

"We think the Inland Empire decision just maintains the status quo -- more than 200 local governments had banned distribution outright in their jurisdictions -- but now, you're seeing local government wielding a bigger stick to shut down dispensaries operating in defiance of existing bans," said Kris Hermes, communications director for Americans for Safe Access [14] (ASA). "Anaheim, San Bernardino, Long Beach, Riverside, mostly in Southern California, where dispensaries were flouting those bans, they are now being forced to shut down."

"Cities that weren't moving forward are now," said Lanny Swerdlow, founder of Inland Empire and member of the Patient Advocacy Network. "A number of cities in Riverside have been closing collectives real fast, with San Bernardino being the most aggressive at the present time. Palm Springs is the only city in the Inland Empire that actually has zoning for collectives, and they have three operating there. The county is moving more slowly -- most collectives have not even been served notices yet -- but it's just a matter of time," he predicted.

Meanwhile, according to ASA, federal prosecutors have sent out more than 600 "threat letters" since their offensive began, including 103 sent to Los Angeles dispensaries earlier this month. The letters warn either dispensary operators or landlords or both with asset forfeiture and/or criminal prosecution, with the threat of lengthy federal prison sentences hanging over their heads. Not surprisingly, they have been quite effective.

"Before the 103 letters sent out this month, we estimated that about 500 letters had been sent out and about as many closures had occurred as a result of the US Attorneys' efforts to threaten dispensary operators and landlords, said Hermes. "With the combined momentum of the federal attacks and the state Supreme Court decision, I think we've seen more than 700 dispensaries shut down over the past couple of years."

Some of the iconic operations that helped define the dispensary movement are gone, such as the Marin Alliance for Medical Marijuana, scared out of business by federal threats, or Richard Lee's Coffee Shop Blue Sky, shuttered by DEA raiders. Others like San Francisco's Shambala are under attack, while it seems that only the biggest players, such as the Berkeley Patients Group and Harborside Health Care Centers in Oakland and San Jose, have the wherewithal to fight the feds in court. Those latter dispensaries are both contesting federal asset forfeiture actions right now.

Sometimes it's the federal government; sometimes it is recalcitrant local officials. Sometimes, the two work hand in hand.

"The city of Riverside sent letters to the Justice Department requesting they come in and close collectives down, and they've gone to a couple in San Bernardino and closed them down, too," said Swerdlow.

Many dispensaries remain open for business -- ASA's Hermes estimated their number at a thousand or more -- some because local authorities have embraced them instead of trying to run them out on a rail, others because the US Attorneys simply don't have the resources to devote all their time to shutting them down. But the unquestioned reduction in dispensaries numbers, perhaps a decline of as much as 40% over the past couple of years, means that patients are having a more difficult time getting access to their medicine.



Steve DeAngelo and his Harborside Health Center are still open for business, but under federal assault (ssdp.org)

"We've been hearing from patients about access problems," said Ellen Komp, deputy director for California NORML [15], who added that it's not just dispensaries. "More and more places are passing cultivation ordinances, people are having their gardens torn up or being visited by code enforcement. We're reeling from it," she said.

"Patients should not have to drive hundreds of miles to get their medicine, and the tragedy of it is that there are still dozens of localities that have regulatory ordinances that are functioning quite well," said Hermes. "Those facilities are not going away unless they are shut down by the federal government, which has usually stayed away from those places. There is a community of dispensaries across the state, but the access is haphazard."

And there are broad areas of the state with no effective access.

Indica		Hybrid	
Blueberry Kush	2.00 - 8.00	Hybrid Queen	2.00 - 8.00
Apple	2.00 - 8.00	Sea of Cortez	2.00 - 8.00
OG Kush	2.00 - 8.00	Headband	1.80 - 8.00
PHOENIX	2.00 - 8.00	Purple Punch	1.80 - 8.00
OG Kush	2.00 - 8.00	Green Gelato	1.80 - 8.00
LEON	2.00 - 8.00	Whitey Red Amnesia	1.80 - 8.00
		Dark Matter	1.80 - 8.00
Sativa		Cherry Kush	1.80 - 8.00
Red Diesel	2.00 - 8.00	Exotic	1.80 - 8.00
OG Kush	2.00 - 8.00	White Diesel	1.80 - 8.00
OG Kush	2.00 - 8.00		
Phenolic Compound	2.00 - 8.00	Edible	
Dutch	2.00 - 8.00		

Sorry, Riverside patients. This menu is now null and void. (norml.org)

"It is unacceptable that dispensaries are located only where local governments are tolerant enough to allow them," said Hermes. "The entire county of San Diego has been rid of dispensaries because of intolerance at the local and federal level. The entire Central Valley is virtually devoid of dispensaries, so is almost all the San Francisco peninsula from San Mateo down. Sacramento County is devoid of dispensaries thanks to the federal crackdown."

"What's going on now is absolutely horrid," said Swerdlow. "The only people benefiting from this are the criminals and the police. Patients are having to drive hundreds of miles to cities with collectives, or get their medicine the old-fashioned way, on the black market."

To change the situation is going to require battling at the state, local, and federal level. One immediate response has been an explosion of medical marijuana delivery services, but one immediate reaction has been to move to ban them, too, as Riverside County is considering.

"We've been getting lots of inquiries about starting delivery services," said CANORML's Komp.

Another, ongoing, response is to attempt to pass statewide legislation to regulate dispensaries. That effort in Sacramento is dead for this year, but could be revived next year.

Another possible response is a statewide initiative that would regulate and emphatically legalize dispensaries, but no one is ready to go on the record about that yet.

Ultimately, it's about getting the federal government off California's back. While bills have been filed in Congress, no one is holding their breath on that score. And the Obama administration appears content to maintain its status quo war of attrition.

If the California dispensary industry wants to survive and thrive, it might want to look in the mirror -- part of the problem for California dispensaries, said Swerdlow, was the industry's failure to organize effectively.

"If the DEA sent out letters to gun stores saying they were going to shut them down, there would be a couple of thousand people demonstrating," he argued. "We've done a piss poor job of doing the things that need to be done to protect our rights. Money-grubbing collective owners never formed any useful or meaningful trade associations to protect their rights. Those jerks got what was coming to them," he said bitterly.

If dispensary operators were short-sighted, Swerdlow said, patients have not been much better, despite the efforts of groups like ASA and CANORML to organize them.

"Most patients don't do anything," he said. "They just want to get the marijuana."

Protecting patients and collectives requires effective political action at the local level, Swerdlow said. He has pioneered -- for the medical marijuana movement, at least -- the creation of groups within the Democratic Party to press the party at the local level, known as Brownie Mary Clubs.

"We were the first medical marijuana affinity group ever chartered here, and we've made progress here. We're working for political candidates, and I was a delegate to the state Democratic convention. That's the kind of thing that can make a difference," he said.

But medical marijuana advocates need to understand that this isn't everybody's issue, even if others are sympathetic.

"Everyone is sympathetic, most Democrats get it, at least all the ones I meet," he explained, "but this isn't their issue. They're about health care or the environment or schools. They will support us, but we have to be there to get that support."

There is work to be done to protect patient access to medical marijuana in California. There are various options. It is up to medical marijuana patients and dispensary operators, as well as those ancillary businesses profiting from them, to more effectively take up the cudgel.

But it is ultimately a fight for federal recognition of medical marijuana, or at least, of states' rights to experiment with marijuana policy. That's not just up to California patients and dispensary operators, but all of us.

[For extensive information about the medical marijuana debate, presented in a neutral format, visit MedicalMarijuana.ProCon.org [16].]

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COPS AND COURTS

Colorado's medical pot industry fuels illegal trade, review shows

By Kirk Mitchell and Ryan Parker

The Denver Post (<mailto:kmitchell@denverpost.com?subject=The Denver Post> :)

POSTED: 08/02/2012 03:54:02 PM MDT

UPDATED: 08/02/2012 04:49:28 PM MDT

Colorado's medical marijuana industry has spawned illegal drug networks that are marketing pot across the U.S., illustrating that state laws aren't keeping the drug in the hands of people entitled to use it, regional drug officials say.

A Rocky Mountain High Intensity Drug Trafficking Area team spent three weeks examining data gathered in the two years following the enactment on Jan. 1, 2010, of state laws governing the cultivation, manufacture and retail sale of medical marijuana and related products.

The review found more than 70 instances of the diversion of medical marijuana to criminal drug operations. In the report, the Drug Enforcement Administration suggested Colorado is on track to become a primary source of supply for high-grade marijuana throughout the country.

Colorado patients, caregivers and dispensaries all have diverted medical marijuana to illegal use in 23 states, according to the review.

"We felt it was probably being diverted, but didn't expect it to be this pronounced, especially with such a small-scale study," said Rocky Mountain HIDTA director Tom Gorman. "This is just the tip of the iceberg."

But Brian Vicente, executive director of Sensible Colorado, said Colorado has the most complex and strict medical marijuana laws in the country. If medical pot is being sold illegally, he said, officials need to crack down on offenders.

"It's just disingenuous to say that marijuana didn't exist in other states and that all of a sudden it does because of medical marijuana laws in Colorado," Vicente said.

The Rocky Mountain HIDTA, which coordinates local, state and federal drug enforcement activities in Colorado, Montana, Utah and Wyoming, cited drug arrests in which seized pot originated from cities including Colorado Springs, Denver, Longmont, Boulder, Avon, Thornton and Carbondale.

In one case, a Kansas Highway Patrol officer stopped a driver headed to Richmond, Va. carrying 10 pounds of marijuana. The driver allegedly told police he got the drugs from Fort Collins dispensaries.

In April of 2011, the North Metro Task Force found marijuana, \$4,700 and five guns including an AK-47 at a Commerce City home. The owner had been illegally selling medical marijuana to people who didn't have medical cards.

Authorities have intercepted hundreds of pounds of medical marijuana shipped to the East Coast. Denver police have discovered that Craigslist dispensaries have been the source for illegal sales.

Colorado's medical pot industry fuels illegal trade, review shows

By Kirk Mitchell and Ryan Parker
The Denver Post
Posted:

DenverPost.com

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Colorado patients, caregivers and dispensaries all have diverted medical marijuana to illegal use in 23 states, according to the review.

In one case, a man gave medical marijuana "edibles" to a 14-year-old boy, according to the report.

Chicago police reported that medical marijuana was being shipped from Colorado to Illinois by UPS, FedEx and USPS packages just as often as it had previously been sent from California and Oregon.

Thornton police Sgt. Jim Gerhardt, who serves on the North Metro Task Force, said there has been an explosion of illegal marijuana cases in the past two years, ranging from patients selling drugs to suppliers growing large quantities of marijuana for illegal sales.

As recently as 2010, Thornton cops would get only one or two calls for illegal marijuana grow operations a year. Now they can get multiple calls in a single day. Most supply some people with valid medical marijuana cards, but have hundreds of plants more than they should, he said. Many of the growers have armed themselves to protect themselves against home invasions.

"It's becoming a huge, huge problem," Gerhardt said. "At the local law enforcement level it feels like its spinning out of control in a lot of ways."

He said instead of focusing on complex international drug cartels bringing cocaine into Colorado, the task force is dealing with numerous illegal marijuana cases.

Vicente said that the cases cited by authorities represent only a tiny portion of the more than 1 million legal medical marijuana transactions each year in Colorado. There were only a relatively few in 2012, an indication the situation is getting better, he said.

Michael Elliott, executive director of Medical Marijuana Industry Group, said the use of medical marijuana has had positive benefits to society. He said while illicit marijuana use across the country is increasing it is decreasing among kids in Colorado and the drug may have helped drop the suicide rate in Colorado.

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Print - Denver marijuana dispensary owners deny alleged ties to Colombian drug cartels | 9news.com

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Denver marijuana dispensary owners deny alleged ties to Colombian drug cartels

1:52 PM, Nov 23, 2013

DENVER - The owners of one of Colorado's largest marijuana clinics are denying allegations their business has ties to Colombian drug cartels.

Federal agents raided several dispensaries in Denver and Boulder on Thursday, including VIP Cannabis a Federal Boulevard and Alameda Avenue, but so far have made no arrests.

The raids also left dozens of VIP Cannabis workers without jobs.

9Wants to Know watched federal agents pulling out box-after-box from two VIP Cannabis locations on Thursday, during the largest federal raid since medical marijuana became legal in Colorado.

All case documents are sealed.

Sources close to the investigation tell 9Wants to Know, agents are gathering evidence, trying to prove profits made from cannabis grow operations are flowing back to Colombian drug cartels.

9Wants to Know spoke with two people named in the federal search warrant, VIP Cannabis president Carlos Solano and owner Gerardo Uribe.

Both men are not charged with any crime.

Solano and Uribe claim to run an honest business, with no drug cartel ties of any kind.

"If we were in a cartel, we wouldn't be here," Solano said.

"You would be stupid to get into this business and be part of a cartel. I mean, camera, camera, camera, camera, IRS. We wouldn't get into this business and be part of a cartel. That would be a stupid decision," Uribe said.

Solano and Uribe tell 9Wants to Know, federal agents took more than \$2 million worth of marijuana plants and products from their businesses, forcing them to lay off almost 100 employees at two dispensary locations.

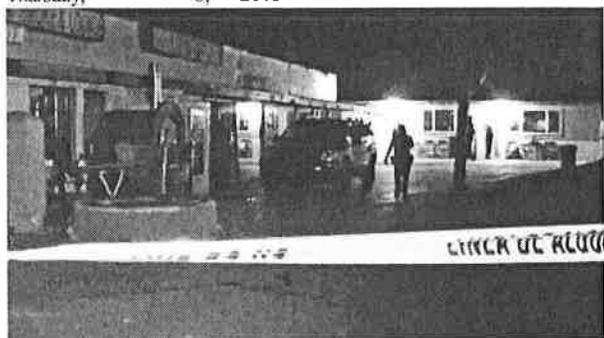
They plan to partially reopen within the next week, but will only do a fraction of their normal business until their supplies are replenished.

Solano and Uribe feel the feds targeted them for running a successful business, as one of the largest marijuana dispensaries in Colorado.

They plan to issue further statements through their attorney in the coming days.

Robbery turns to shoot-out at Palmdale medical marijuana dispensary

Thursday, 8, 2013



PALMDALE, Calif. (KABC) -- A security guard was shot at during an attempted robbery at a medical marijuana dispensary in Palmdale Wednesday

The incident occurred at Green Cactus Collective on the 36100 block of Sierra Highway around 7 p.m.

Police say three suspects that targeted the business were wearing ski masks. An exchange of gunshots was reported.

The security guard was shot several times and rushed to a local hospital. He is expected to survive.

No arrests have been made. No information on the suspects was released.

Anyone with information about the incident was urged to contact the Palmdale Sheriff's Station at (661) 272-2400.

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Denver DA charges three in armed-robbery of medical pot dispensary

By Ryan Parker The Denver Post The Denver Post
Posted:

9-4-2013

DenverPost.com

Three people have been charged with the armed robbery of a medical marijuana dispensary in Denver last month, and a fourth person is in custody.

Khamis Horn, 26, James Hughes, 20, and Lynn Shangreaux, 18, were each charged with first-degree kidnapping and two counts of aggravated robbery on Wednesday, according to a news release from the Denver District Attorney's Office.

Christopher Bletson, 24, was arrested, but not yet formally charged in the case, according to the release.

The charges stem from the robbery of a medical marijuana dispensary on Aug. 22 in the 4400 block of Zenobia Street, the release states.

Horn, Hughes and Bletson allegedly robbed the dispensary at gunpoint while Shangreaux drove the getaway car, according to the release.

All four remain in custody with their bonds set at \$50,000, according to the release.

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LOCAL NEWS

Denver council to vote on whether to push pot tax onto Nov. ballot

By Jeremy P. Meyer

The Denver Post

POSTED: 07/29/2013 02:33:04 PM MDT [22 COMMENTS](#)

UPDATED: 07/30/2013 08:19:05 AM MDT

FILE -- Marijuana (Associated Press file photo)

Denver City Council will consider asking voters to approve a 5 percent sales tax on retail marijuana and the authority to raise the tax as high as 15 percent.

A 5 percent tax would raise the cost of an eighth of an ounce of marijuana to \$30.66 from \$25 now, a total that includes state sales and excise taxes that also must be approved by voters.

New taxes that would begin to be imposed in January are meant to offset costs the city believes will come with the sale of marijuana to anyone 21 or over — expenses the city says will include more police, anti-drug education campaigns and improved oversight.

Some worry, however, that city and state taxes could drive the business back to the black market.

Michael Elliott, director of the Medical Marijuana Industry Group, said the industry already is the most taxed business in the country because of a federal law prohibits marijuana businesses from taking tax deductions.

On Monday, the city council met in a committee to decide what to do about a tax.

The committee has met through the year to discuss how to implement Amendment 64, the statewide measure passed in 2012 to allow the legal sale of marijuana to adults.

Denver Mayor Michael Hancock earlier in the year asked the council to impose a 5 percent tax, and city Chief Financial Officer Cary Kennedy recently presented the council with a laundry list of expenses the city expects to occur.

On Monday, Denver District Attorney Mitch Morrissey said the city's residents are unaware of the escalating violence and crime associated with medical marijuana that will likely increase with retail pot sales.

He counted 12 homicides related to the medical marijuana industry and hundreds of robberies — some brazen, bank robbery-style takeovers of dispensaries.

"This is an ugly secret," he said.

Morrissey's office was unavailable Monday evening to provide details for those crimes.

There is weak consensus among the 13-member council on what to pursue on the Nov. 5 ballot when the city asks voters the tax question, a requirement of the Taxpayers Bill of Rights.

On Monday, a minimum of seven councilors agreed voters should be asked whether to approve a floating tax rate of 3.5 percent to 15 percent that would be subject to change by the council when needed. Seven council members also agreed voters should be asked to approve the starting rate of 5 percent.

The discussion now goes into the council process, requiring majority approval in two separate council meetings with a public hearing and final vote set for Aug. 19.

Councilwoman Robin Kniech abstained Monday because she wants to know how the money will be spent before approving a tax increase for the ballot.

But Councilwoman Debbie Ortega approved of the 5 percent hike and 15 percent upper limit because she thinks the city should be able to cover its costs, especially the "social implications to the children."

Denver Councilman Charlie Brown, chairman of the committee, said the black market will always exist and he doesn't believe a \$5 tax increase on an eighth of pot will send people "into Civic Center."

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Read more: [Denver council to vote on whether to push pot tax onto Nov. ballot - The Denver Post](http://www.denverpost.com/ci_23754439/denver-council-vote-whether-push-pot-tax-onto#ixzz2re40CVPI) http://www.denverpost.com/ci_23754439/denver-council-vote-whether-push-pot-tax-onto#ixzz2re40CVPI

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