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Medical Marijuana Dispensaries Need More Regulation

Tristan Scott

Tristan Scott is a reporter for The Missoulian. In the following viewpoint, he reports that Montana legislators are likely to amend the state's medical marijuana law with an eye toward more effective regulations for marijuana dispensaries. Proposals to reform the law, Scott explains, aim to prevent fraud and exploitation by enhancing oversight of caregivers who can legally provide medical marijuana to patients through a comprehensive tracking system. Another goal, Scott adds, is to limit the number of licensed dispensaries. Scott contends that many lawmakers are looking to the example of California, where lax oversight and regulations have caused intense controversy, for what not to do.

Tristan Scott, "More Regulations in the Works for Medical Marijuana Dispensaries," *The Missoulian*, January 17, 2011. Copyright © 2011 by The Missoulian. All rights reserved. Reproduced by permission.

As you read, consider the following questions:

1. According to Scott, how many registered caregivers are there in Montana who can legally provide medical marijuana to patients?
2. How does Missoula County Attorney Fred Van Valkenburg view the concept of licensed caregivers, according to Scott?
3. According to Scott, how many state medical marijuana laws have been amended at least once?

Proposed regulations to reshape Montana's medical marijuana law are likely to crop up next legislative session, with special consideration on how to govern the rising number of marijuana dispensaries.

Improving Patient Care

Medical marijuana advocates, licensed pot growers, lawmakers and law enforcement officials say tighter regulations could improve care to patients the incipient law is meant to serve, while preventing profiteers from exploiting and undermining the law.

"I certainly expect there to be a lot of legislative debate this next year about the medical marijuana law, and I expect to make some proposals myself for improving the law," said Tom Daubert, the president of Patients and Families United who helped craft the 2004 Medical Marijuana Act. "Some of my proposals address the same concerns that law enforcement have. When you get down to it, there is more common ground between law enforcement and patients than you might imagine."

Key Issues

A key issue will be better oversight of the nearly 2,000 registered caregivers who can legally provide medical marijuana to patients. Recently, some of those caregivers have opened medical

marijuana dispensaries out of their homes, as well as storefront operations that cater to hundreds of patients.

The dispensaries have risen to the fore since last October [2009], when the Obama administration announced it would not interfere with states' medical marijuana laws. In the 14 states with medical marijuana laws, the announcement has been a watershed event, emboldening growers to advertise and promote their services.

Requiring Accountability

Daubert says new legislation requiring caregivers to document the quantity of marijuana they produce and show where it is distributed would lend more accountability to what's become a legal gray area.

"There needs to be a better means of accountability, and there needs to be a tracking system to show that 100 percent of what is grown goes to patients with legitimate needs," Daubert said. "I would expect that some of the people trying to profit right now, people who are exploitative of the law, would not bother under those circumstances. I think good regulation would flush that kind of thing out. After all, the point of this isn't profiteering, it's patient service."

Limiting the Growth of the Industry

Missoula County Attorney Fred Van Valkenburg said the Montana Legislature has a responsibility to take a hard look at the Medical Marijuana Act, which was born of a voter-approved initiative. Dispensaries in particular need to be regulated, he said, to ensure they don't expand boundlessly.

"I hope to see (the dispensaries) reigned in quite a bit because it just seems like the whole business of medical marijuana has gotten out of control, in Montana and elsewhere," Van Valkenburg said. "People have been able to expand their operations tremendously. I don't think we should do away with dispensaries altogether, but this has become a big-time business,

What Are Medical Marijuana Dispensaries?

Medical marijuana dispensaries are storefront locations where patients and caregivers with a doctor's prescription are allowed to obtain their medication, without the fear of repercussion or prosecution of the law. Many of these medical marijuana dispensaries have a variety of cannabis, from smoking the medical marijuana to consumables like candy bars, cakes, cookies, beverages, ice cream, and even hot sauce. With one location that provides all your needs, many medical marijuana patients prefer this method of obtaining their medication, as opposed to illegally obtaining their medication from an unknown, dangerous source.

Source: "Medical Marijuana Dispensary."
www.medicalmarijuanadispensary.net, 2011.

and that is not what I think was ever intended by the caregiver provision of the Medical Marijuana Act. If somebody is an actual caregiver, they really ought to have a relatively limited number of people they are providing marijuana for, in the ballpark of five patients. These people think the law allows them an unlimited number, and they just become a retail operation."

The Concept of Caregivers

Van Valkenburg said the idea behind licensed "caregivers" when the Medical Marijuana Act was first proposed was to benefit patients who were unable to cultivate the drug without assistance; it was not intended as a business model.

"I think the idea of a caregiver when this was initially passed was to help people who were in the throes of death, people with

cancer who were desperate for some kind of pain relief who could not grow marijuana themselves," Van Valkenburg said. "It wasn't meant to sanction clinics that OK someone because they have a headache, or some other condition that technically meets the letter of the law."

The spike in the number of people who have applied to be patients and caregivers in recent months is a good indication that additional legislation is needed, he said.

Amending the Law

In the 14 states with medical marijuana laws on the books, six laws have been amended at least once, and proposals to Montana and Washington law will likely emerge in 2011.

Alison Holcomb, drug policy director for the American Civil Liberties Union in Washington state, says she hopes the new legislation will focus on safeguarding the rights of patients with a legitimate need for medical marijuana.

Holcomb would like to see dispensaries in Washington regulated in a way that ensures patients who can benefit from medical marijuana have access to it, while avoiding the shortcomings of state laws like California's, whose provisions are viewed by some as lax and subject to abuse. Dispensaries in California are not subject to any regulation.

"We want to avoid the political backlash that has occurred in the wake of what's happening in California," Holcomb said. "We don't want to see public support of medical marijuana diminish because the law is being abused by profiteers."

Learning from California's Mistakes

Medical marijuana laws in states such as New Mexico, and last week in New Jersey, include safeguards to ensure the drug is prescribed for a true medical need and have highly regulated systems for licensing dispensaries and monitoring their operations.

"The laws are recent enough that we haven't had a lot of time to see how well they play out on the ground, but I suspect it's

going to be a very different experience than what we've seen in California where there are no rules for how a dispensary is supposed to operate," Holcomb said.

Derek Deese is a medical marijuana caregiver in Missoula with about eight active patients. He worries that too many providers are operating *carte blanche*, with an emphasis on profits rather than on following the law. That could have a negative impact on providers who want to be legitimate, he said.

"Some people are using this as a front. They're using it as a cover to still deal drugs," Deese said. "There's so many gray areas in the law right now that it's really wide open. It's being interpreted like a set of tarot cards. People are interpreting it and twisting it to their own advantage."

"They need to make stricter guidelines," Deese said.

More Regulation Is Necessary

Tom Berry, a Republican state lawmaker whose son was killed by a drug dealer in 2000, says he's not altogether opposed to medical marijuana, but intends to carry bills next session to create more rigorous oversight of caregivers, and implement guidelines for licensing marijuana dispensaries.

"After observing the situation with the caretakers these past several months, I will look at imposing more regulations on how they produce and distribute the medical marijuana," Berry said. "The way it stands, it appears we have more restrictions for beer and wine licenses than we have for opening a marijuana dispensary."

"Such restrictions reflect marijuana's dual identity in California: It is simultaneously medicine and menace."

Excessive Regulation of Medical Marijuana Dispensaries Is Discriminatory

Brian Doherty

Brian Doherty is an author and senior editor at Reason. In the following viewpoint, he suggests that the stringent regulations on marijuana dispensaries passed by the Los Angeles city council are discriminatory and reveal US culture's inconsistent attitude toward the drug. Much of the push behind tighter regulations, Doherty argues, comes from neighborhood activists worried about blight and increased crime in areas with dispensaries or officials worried about patients gaming the system to get legal access to marijuana. Some activists, the author explains, are also worried that the visibility and widespread acceptance of medical marijuana in mainstream US culture will lead to full legalization.

Brian Doherty, "L.A.'s Pot Revolution," *Reason*, May 2010. Copyright © 2010 by the Reason Foundation. All rights reserved. Reproduced by permission.

How Should Access to Medical Marijuana Be Managed?

As you read, consider the following questions:

1. According to Doherty, how many marijuana dispensaries are there in Los Angeles?
2. According to an October 2009 poll of Los Angeles residents cited in the viewpoint, what percentage supported regulating marijuana dispensaries?
3. What percent of the people entering Los Angeles area marijuana dispensaries were "young men," according to a report by the *LA Weekly* cited by Doherty?

On a warm, bright winter day in January [2010], I spent a few hours driving around two neighborhoods in Los Angeles, looking at marijuana stores.

You know, marijuana stores. Where you (well, not necessarily *you*) can walk in and, if you can prove a doctor has recommended marijuana to you for relief of an ailment, walk out with a brown bag full of buds, pot brownies, or cannabis candy bars. Los Angeles has more than 500 of these stores. My companions on the drives were two citizen activists who didn't like seeing so many marijuana shops and who regularly let the Los Angeles City Council know of their unhappiness.

Michael Larsen, a 43-year-old family man, is public safety director for the Eagle Rock Neighborhood Council. He doesn't like to discuss his day job in the press, saying it has drawn too many hostile medical marijuana supporters to his work-related websites in the past.

Eagle Rock

Eagle Rock, a neighborhood in northeast Los Angeles, is visibly aging but remains dignified and distinct, with commercial areas occupied mostly by low-slung, pale old buildings housing storefront doctor's offices, service businesses such as beauty salons and tax preparers, and independent restaurants and boutiques rather than chain stores. As we cruise a mile or so up and down Eagle

Rock, York, and Colorado boulevards, Larsen points out more than 10 pot dispensaries. "Eagle Rock is about being a small community with a small-town feel, and we want to retain that," he says.

Responding to criticisms he's received from medical marijuana activists, Larsen insists: "I'm not being uncompassionate. I may be a NIMBY [Not in My Back Yard], but I'm fine with that. Eagle Rock is struggling to maintain the character of the neighborhood, for my kids or other people and their kids." Larsen tells me about the healthy-looking young men who sometimes congregate in parking lots or on streets near dispensaries, smoking pot or blasting music. He points out one such young man entering AEC, a dispensary on Colorado Boulevard, while we are in its parking lot. He tells me about a local woman in her 80s who can't understand what kind of world she's living in, where marijuana is sold on her corner.

Larsen also points out some grubby-looking auto repair shops along his neighborhood's main strip and tells me how the locals managed to curb their profusion through the city's planning process. He talks about the auto repair shops in much the same way he discusses the pot shops. He does not think either should be completely eliminated, but he believes they constitute a blight on the neighborhood when they are too conspicuous.

Larsen and I pass one marijuana dispensary, the Cornerstone Collective, that I visited the day before. If you didn't know it was there, you wouldn't know it was there. It has no pot leaf images, no neon signs announcing "Alternative" or "Herbal," no commercial signage at all. The owner, Michael Backes, told me with amused pride that a while back, when a runaway car plowed straight through his wall, a local news crew identified the place as a "dentist office," which is what it looks like from its waiting room. Backes is "doing it right," Larsen tells me.

Studio City

My drive through Studio City, in the southeast San Fernando Valley just over the mountains from Hollywood, is similar.

Barbara Monahan Burke, a 64-year-old horticulturalist who serves as the neighborhood council's co-chair for government affairs, doesn't say anything about increases in crime associated with the marijuana dispensaries (a connection often asserted by public officials), but she does complain about occasional pot smoking in front of them, which can annoy commercial neighbors. "I personally believe in compassionate use of medical marijuana and voted for it," she says.

Within a couple of miles on Ventura Boulevard, a dozen dispensaries seem to be open for business on this weekday afternoon. (Burke told me in mid-February that by then she was only sure that six of them were still open for business.) "It's about preservation of communities," she says. "We want this to be a place where families can live. It's about, what do the people who live here want our branding to be as Studio City?" That branding, she thinks, should not be linked to green crosses and billboards for Medicann, a medical marijuana doctors' consulting service, every couple of blocks on her neighborhood's major commercial strip.

The Wild West of Weed

Newsweek dubbed Los Angeles "the wild West of weed" in October 2009, and that phrase often echoed through the city council's chamber as it haggled over a long-awaited ordinance regulating the dispensaries. Both the *Los Angeles Times* and the *L.A. Weekly* regularly jabbed at the city council for fiddling while marijuana burned, supplied by storefront pot dispensaries that were widely (but inaccurately) said to total 1,000 or more.

On January 26 [2010], after years of dithering and months of debate, the city council finally passed an ordinance to regulate medical marijuana shops. In addition to dictating the details of lighting, record keeping, auditing, bank drops, hours of operation, and compensation for owners and employees, the ordinance requires a dramatic reduction in the number of dispensaries. The official limit is 70, but because of exemptions for some

pre-existing dispensaries the final number could grow as high as 137. The ordinance allocates the surviving dispensaries among the city's "planning districts" and requires that they be located more than 1,000 feet from each other and from "sensitive areas" such as parks, schools, churches, and libraries. It also requires patients who obtain marijuana from dispensaries to pick one outlet and stick with it.

Discriminatory Policies

As those rules suggest, city officials are not prepared to treat marijuana like any other medicine, despite a 1996 state ballot initiative that allows patients with doctor's recommendations to use it for symptom relief. It's hard to imagine the city council arbitrarily limiting the number of pharmacies, insisting that they not do business near competitors, creating buffer zones between parks and Duane Reade locations, or demanding that patients obtain their Lipitor from one and only one drugstore. Such restrictions reflect marijuana's dual identity in California: It is simultaneously medicine and menace. At the same time, the regulations do serve to legitimize distribution of a drug that remains completely prohibited by federal law—a stamp of approval welcomed by many dispensary operators.

When I asked activists, businessmen, or politicians why L.A.'s medical marijuana market needed to be regulated, they almost invariably replied, "It was unregulated." When I delved beyond that tautology, I found motives little different from those that drive land use planning generally. The activists who demanded that the city bring order to the "wild West" of medical marijuana were motivated not by antipathy to cannabis so much as mundane concerns about "blight," neighborhood character, and spillover effects. While responding to these concerns, every member of the city council voiced support for medical access to marijuana in theory, and none openly sided with the federal law enforcement officials who view the trade as nothing more than drug dealing in disguise.

The L.A. Experience with Marijuana Dispensaries

Los Angeles became the medical marijuana capital of America thanks to a combination of entrepreneurial energy and benign political neglect. What happened here is instructive for other jurisdictions that already or may soon let patients use the drug. In the last 14 years, the voters or legislators of 14 states and the District of Columbia have legalized marijuana for at least some medical purposes. Medical marijuana campaigns, via either legislation or ballot initiative, are active in 13 other states. National surveys indicate broad public support for such reforms. An ABC News/*Washington Post* poll conducted in January found that 81 percent of Americans think patients who can benefit from marijuana should be able to obtain it legally.

But L.A.'s experience also shows that majority support for medical marijuana is not necessarily enough. An October poll of Los Angeles residents commissioned by the Marijuana Policy Project found that 77 percent supported regulating dispensaries, while only 14 percent wanted them closed. But patients and the entrepreneurs who served them still had to contend with a noisy minority, clustered in political institutions such as neighborhood councils, the police department, and government lawyers' offices, who resisted the normalization of marijuana. That process culminated in an ordinance with onerous restrictions that could nearly eliminate the current medical pot business and cause great hardship for tens of thousands of Los Angeles residents who use marijuana as a medicine.

Still, for those who lived through the ferocious cultural and political war over pot during the second half of the 20th century, it's amazing that the strife in pot-saturated Los Angeles has had more to do with land use regulation than with eradicating an allegedly evil plant. Even with pot readily available over the counter at hundreds of locations to anyone with an easily obtained doctor's letter, the most common complaints were essentially aesthetic. . . .

The Lie of Medical Marijuana

California's medical marijuana law created a special category of people who are allowed to do something that others would be arrested for doing, and it gave a guild of licensed professionals the nearly unlimited power to define this category. Although physicians who issue recommendations for nonmedical reasons theoretically can be disciplined by the state medical board, that has happened only 12 times since 1996, and only one doctor lost his license as a result. The discretion permitted by the law is so broad that proving misconduct is very difficult.

That broad discretion helps patients who might be denied their medicine under a stricter regime, and at the same time it helps people who want pot for recreational purposes. Medical marijuana activists often say that *all* marijuana use is essentially medical, if that category is understood to include quotidian psychological and emotional problems that the drug alleviates. If physicians can prescribe pharmaceuticals to treat stress, anxiety, shyness, and depression, the activists say, why can't they recommend marijuana for the same reasons? Stephen Gutwillig, California state director of the Drug Policy Alliance, offers a partly tongue-in-cheek take on the question: Given how bad for your health it is to get caught up in the criminal justice system because you have marijuana, he says, removing that threat is a form of preventive medicine.

Politically, though, the malleability of the medical category is a problem. Anyone who locates a sympathetic, trusting, or simply greedy doctor can obtain the legal right to possess pot in California. That fact, plus the hundreds of outlets that sprang up in Los Angeles to supply those patients, fostered a fairly accurate public perception that during the last few years anyone willing to put in a little effort could travel a short distance and buy pot over the counter.

The Right Reasons

The medical model attaches great importance to motive and state of mind, which is why dispensary operators often say, when

justifying themselves to politicians or the press, that they're in the business "for the right reasons," unlike some of their competitors. Combined with the federal ban on marijuana, medicalization leads to a world where customers can shop at only one store; where the cash they pay for a product is not the price but a "contribution to the collective"; where businesses are expected to avoid turning a profit; where a medicine is subject to sales tax, unlike other pharmaceuticals, and isn't regulated like any other pharmaceutical; where you are complying with the law if what you possess is "reasonable" related to some need that may have been invented by a doctor to begin with; where it's legal for you to have pot but you are still apt to be arrested for growing or transporting it.

The medical model also fosters a weirdly contradictory attitude toward pot use, one that seemed to animate the *L.A. Weekly's* surprisingly negative coverage of the issue: Even people who don't care about pot smoking in general get upset when they think stoners are gaming a system that is supposed to serve patients with doctor-certified needs. The *L.A. Weekly* angrily reported in November that 70 percent of the people its reporters saw entering dispensaries were "young men—corroborating D.A. Cooley's claim that the real market for all this activity is everyday users, not people suffering serious disease." (Medical activists tend to respond to that sort of talk with the riposte that all sorts of maladies for which pot provides relief aren't diagnosable by strangers watching from yards away.)

The Wrong Reasons

In Los Angeles, such outrage over pot being used for the "wrong" reasons led to a bad and unsustainable ordinance. In March, Americans for Safe Access challenged the new regulations in state court. Its lawyer Joe Elford said in a press release that "The requirement to find a new location within 7 days [if the old one is zoned out of compliance] is completely unreasonable and undermines the due process of otherwise legal medical marijuana

dispensaries." The suit seeks to have the ordinance declared "unlawful and unconstitutional."

The ordinance also faces a challenge in the form of a citizen referendum spearheaded by Dan Halbert, who needs 27,000 signatures to get it on the next available L.A. ballot in 2010. But as long as medical use is the only marijuana use officially permitted, dispensaries will remain hamstrung by stupid and unworkable restrictions. Full legalization, an idea long avoided by many medical marijuana activists, may be the only way to make sure all patients who can benefit from the drug have access to it without creating the sort of situation that gave rise to the crackdown in L.A.

The Pot Culture

While the latest ordinance may or may not succeed in shutting down hundreds of functioning storefronts, the freewheeling culture of quasi-legal pot will be harder to crush. L.A. is home to at least four ad-filled magazines serving the pot community, a branch of "Oaksterdam University" where potpreneurs and patients learn medical marijuana science and law, an endless series of cannabis-related expositions and conventions, and websites such as Weedtracker (featuring discussions of dispensary quality and local politics) and weedmaps.com (which finds the dispensary nearest you). The Medical Cannabis Safety Council meets at Oaksterdam on occasional Saturday nights to discuss, among other things, the molds that can bedevil growers and self-regulation as a way of fending off heavy-handed government interference.

Is America ready for a world in which pot is as culturally and physically prevalent as it has become in L.A.? In a national Zogby poll conducted in April 2009, 52 percent of respondents supported treating marijuana more or less like alcohol, while other recent polls put the percentage in the 40s. Support for legalization is higher in California: A Field Poll of California voters taken the same month as the Zogby survey put support for legalization at 56 percent statewide and 60 percent in Los Angeles

County. This fall we will see whether those opinions translate into voter support for a California ballot initiative that would, at long last, legalize and tax adult possession of marijuana.

Full Legalization

Don Duncan, as dean of L.A.'s medical marijuana suppliers and activists, doesn't want to opine about full legalization. But his take on why all sides have fought so ferociously over the city's medical pot ordinance applies to the legalization debate as well. "The normalization of medical marijuana—certain elements in law enforcement and other civic leaders see it as a threat," he says. "If L.A. is in fact a medical marijuana town with safe access regulated, then that ends the debate for California. . . . Once the state's largest and most populated community has sensible regulations, foes of medical cannabis in law enforcement know they've lost the battle in California. They see it as a line in the sand, so ideologically they can't give up L.A. By the same token, that's why ideologically we can't either."

The fight to define what happened in L.A. during the "wild West" days of what amounted to legal over-the-counter pot is the same sort of battle. If the complaints that led to the regulatory crackdown are understood as arising from anti-pot prejudice, NIMBYism [the conviction that such activity should occur "Not in My Back Yard"], and the occasional sighting of "undesirables," rather than real threats to public order and safety, it will seem pretty silly to continue spending billions of dollars and millions of man-hours each year to stop people from exchanging money for pot. The accidental result of a city attorney who didn't want to legitimize marijuana and a city council that didn't want to think about it could be the realization that it's better to allow a pot free-for-all than to continue to wage war on marijuana.