

RESOLUTION 10-02-2014

DIGEST

Medical Marijuana: Regulation of Physicians, Dispensaries and Cultivation Sites

Adds multiple sections to the Business and Professions Code and the Health and Safety Code to regulate the prescription of medical marijuana and institute licensing for dispensaries and cultivation sites.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds multiple sections to the Business and Professions Code and the Health and Safety Code to regulate the prescription of medical marijuana and institute licensing for dispensaries and cultivation sites. This resolution should be approved in principle because it would provide a responsible, health-based regulatory scheme that upholds local control, addresses public safety concerns and includes important health and safety requirements.

This resolution would regulate not only the medical marijuana industry but also physicians. It would require county health departments to issue unique identification cards to patients and caregivers, and permit them to cultivate marijuana; require a doctor-patient relationship and an appropriate prior exam before a physician may recommend medical marijuana; and require the California Department of Public Health to license facilities and cultivation sites with specified oversight and enforcement.

While federal law continues to criminalize marijuana, a bill proposed by a bipartisan coalition of House members recently passed restricting the Drug Enforcement Administration from using funds to pursue medical marijuana operations that are legal under state laws. As a result, the proposed regulation is a good start to California's taking control of the issues arising from the production and dispensing of medical marijuana.

This resolution takes its language from the original version of SB 1262 (Correa) which, after some amendment, was passed by the State Senate with unanimous approval. SB 1262 was introduced with the support of law enforcement and the League of California Cities in the belief the regulatory structure it creates ensures Proposition 215 works as originally envisioned to assist patients with legitimate medical needs in a manner that works for law enforcement, city and county governments, local community organizations and medical professionals.

Related to Resolution 10-01-2014.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of the Business and Professions Code, and to add Article 7 (commencing with Section 111657) to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, to read as follows:

Business and Professions Code

1 Article 25. Recommending Medical Marijuana

2
3 § 2525.

4 (a) Prior to recommending marijuana to a patient pursuant to Article 2.5 (commencing
5 with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code, a physician
6 and surgeon shall meet all of the following requirements:

7 (1) Have a bona fide doctor-patient relationship, with medical marijuana
8 recommendations to be made by a patient's primary care physician or by a physician and
9 surgeon to whom the patient is referred by their primary care physician.

10 (2) Conduct an in-person examination to establish the patient's need for medical
11 marijuana.

12 (3) Consult with the patient as necessary and periodically review the treatment's efficacy.

13 (b) A physician and surgeon that recommends medical marijuana shall do all of the
14 following:

15 (1) Address, in the recommendation, the quantity of use and method of delivery,
16 including a discussion of side effects. If the recommended method of delivery is smoking, the
17 recommendation shall state the reasons for selecting this method of delivery in the context of
18 health issues created by smoking.

19 (2) Address, in the recommendation, what kind of marijuana to obtain, including high
20 tetrahydrocannabinol (THC) levels, low THC levels, high cannabidiol (CBD) levels, low CBD
21 levels, and explain the reason for recommending the particular strain. Under no circumstances
22 shall a physician and surgeon recommend butane hash oil.

23 (3) Maintain a system of recordkeeping that supports the decision to recommend the use
24 of medical marijuana for individual patients.

25 (c) A recommendation for medical marijuana provided to a minor shall include a specific
26 justification for the recommendation and why the benefit of use is more important than the
27 possible neurological damage that could be caused by the minor using marijuana. A
28 recommendation for a minor shall be approved by a board certified pediatrician. A
29 recommendation for a minor shall be for high CBD marijuana and all recommendations for
30 minors must be for nonsmoking delivery.

31
32 § 2525.1.

33 (a) A physician and surgeon who recommends medical marijuana shall report to the
34 California Medical Board the number of recommendations issued, with supporting
35 documentation on patient medical need. The board shall forward these reports to the State
36 Department of Public Health.

37 (b) A physician and surgeon who makes more than 100 recommendations in a calendar
38 year shall be audited by the California Medical Board to determine compliance with Article 2.5
39 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.

40
41 § 2525.2.

42 The California Medical Board shall establish a certification process for physicians who
43 wish to issue medical marijuana recommendations, including a mandatory training in identifying

44 signs of addiction and ongoing substance abuse.

45

46 § 2525.3.

47 In addition to all other remedies available pursuant to this chapter, violation of any
48 provision of this article shall be punishable by a civil fine of up to five thousand dollars (\$5,000).

49

50 Article 7. Medical Marijuana

51

52 § 111657.

53 For purposes of this article, the following definitions shall apply:

54 (a) “Department” means the State Department of Public Health.

55 (b) “Licensed cultivation site” means a facility that grows or grows and processes
56 marijuana for medical use and that is licensed pursuant to Section 111657.1.

57 (c) “Licensed dispensing facility” means a dispensary, mobile dispensary, marijuana
58 processing facility, or other facility that provides marijuana for medical use that is licensed
59 pursuant to Section 111657.1.

60

61 § 111657.1.

62 (a) Except as provided in Section 11362.5 of, and Article 2.5 (commencing with Section
63 11362.7) of Chapter 6 of Division 10 of, the Health and Safety Code, a person shall not sell or
64 provide marijuana other than at a licensed dispensing facility.

65 (b) Except as provided in Section 11362.5 of, and Article 2.5 (commencing with Section
66 11362.7) of Chapter 6 of Division 10 of, the Health and Safety Code, a person shall not grow or
67 process marijuana other than at a licensed cultivation site.

68 (c) The department shall require, prior to issuing a license to a dispensing facility or a
69 cultivation site, all of the following:

70 (1) The name of the owner or owners of the proposed facility.

71 (2) The address and telephone number of the proposed facility.

72 (3) A description of the scope of business of the proposed facility.

73 (4) A certified copy of the local jurisdiction’s approval to operate within its borders.

74 (5) A completed application, as required by the department.

75 (6) Payment of a fee, in an amount to be determined by the department not to exceed the
76 amount necessary, but that is sufficient to cover, the actual costs of the administration of this
77 article.

78 (7) Any other information as required by the department.

79

80 § 111657.2.

81 The department shall, after consulting with outside entities as needed, establish standards
82 for quality assurance testing of medical marijuana, to ensure protection against microbiological
83 contaminants. Nonorganic pesticides shall not be used in any marijuana cultivation site,
84 irrespective of size or location.

85

86 § 111657.3.

87 (a) A licensed dispensing facility shall not acquire, possess, cultivate, deliver, transfer,
88 transport, or dispense marijuana for any purpose other than those authorized by Article 2.5
89 (commencing with Section 11362.7) of Chapter 6 of Division 10.

90 (b) A licensed dispensing facility shall not acquire marijuana plants or products except
91 through the cultivation of marijuana by that facility, if the facility is a licensed cultivation site, or
92 another licensed cultivation site.

93

94 § 111657.4.

95 (a) A facility licensed pursuant to this article shall implement sufficient security measures
96 to both deter and prevent unauthorized entrance into areas containing marijuana and theft of
97 marijuana at those facilities. These security measures shall include, but not be limited to, all of
98 the following:

99 (1) Allow only registered qualifying patients, personal caregivers, and facility agents
100 access to the facility.

101 (2) Prevent individuals from remaining on the premises of the facility if they are not
102 engaging in activity expressly related to the operations of the facility.

103 (3) Establish limited access areas accessible only to authorized facility personnel.

104 (4) Store all finished marijuana in a secure, locked safe or vault and in a manner as to
105 prevent diversion, theft, and loss.

106 (b) A facility licensed pursuant to this article shall notify appropriate law enforcement
107 authorities within 24 hours after discovering any of the following:

108 (1) Discrepancies identified during inventory.

109 (2) Diversion, theft, loss, or any criminal activity involving the facility or a facility agent.

110 (3) The loss or unauthorized alteration of records related to marijuana, registered
111 qualifying patients, personal caregivers, or facility agents.

112 (4) Any other breach of security.

113 (c) A licensed cultivation site shall weigh, inventory, and account for on video, all
114 medical marijuana to be transported prior to its leaving its origination location. Within eight
115 hours after arrival at the destination, the licensed dispensing facility shall re-weigh, re-inventory,
116 and account for on video, all transported marijuana.

117
118 § 111657.5.

119 (a) Enforcement of this article shall be the responsibility of the county health
120 departments, with oversight by the department.

121 (b) An enforcement officer may enter a facility licensed pursuant to this article during the
122 facility's hours of operation and other reasonable times to do either of the following:

123 (1) Conduct inspections, issue citations, and secure samples, photographs, or other
124 evidence from the facility, or a facility suspected of being a dispensing facility or cultivation site.

125 (2) Secure as evidence documents, or copies of documents, including inventories required
126 pursuant to subdivision (c) of Section 111657.4, or any record, file, paper, process, invoice,
127 video, or receipt for the purpose of determining compliance with this chapter.

128 (c) A written report shall be made and a copy shall be supplied or mailed to the owner of
129 the facility at the completion of an inspection or investigation.

130 (d) Upon request by the department, local governments shall provide the department with
131 reports on the number and types of facilities operating within their jurisdiction.

132
133 § 111657.6.

134 In addition to the provisions of this article, a license granted pursuant to this article shall
135 be subject to the restrictions of the local jurisdiction in which the facility operates or proposes to
136 operate. Even if a license has been granted pursuant to this article, a facility shall not operate in a
137 local jurisdiction that prohibits the establishment of that type of business.

138
139 § 111657.7.

140 Violation of this provision shall be punishable by a civil fine of up to thirty-five thousand
141 dollars (\$35,000) for each individual violation.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: While AB 604 (Ammiano, Steinberg, Leno) has been introduced to respond to the need for a regulatory apparatus and legitimate enforcement concerns, that legislation and any regulation of medical cannabis has been opposed by two powerful lobbying groups, the California Police Chief Association and the California League of Cities. As a result, a needed regulatory scheme has not been implemented. SB 1262, on which this resolution is based, is sponsored by those two groups, and this resolution agrees with the provisions of SB 1262 which place regulatory control of commercial medical cannabis activity in the Department of Health, which provide for safety and operational standards for dispensaries, and recognizes the right of local jurisdictions to ban medical cannabis patients' associations, as upheld in *Riverside v. Inland Empire Patients Health & Wellness, Inc.* (2013) 56 Cal.4th 729.

The Solution: This resolution would require the State Department of Public Health to license dispensing facilities and cultivation sites that provide, process, and grow marijuana for medical use, and would make these licenses subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. The department would establish standards for quality assurance testing of medical marijuana and would prohibit the use of nonorganic pesticides in any marijuana cultivation site. Licensed dispensing facilities and licensed cultivation sites would be required to implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing marijuana and theft of marijuana at those facilities, including establishing limited access areas accessible only to authorized facility personnel, and would require these facilities to notify appropriate law enforcement authorities within 24 hours after discovering specified breaches in security. Enforcement of these provisions would be the responsibility of the county health departments, with oversight by the department. Violation of these provisions would be punishable by a civil fine of up to \$35,000 for each individual violation. However, this resolution disagrees with the provisions of SB 1262 imposing severe restrictions on doctors who recommend medical cannabis, and opposes the such heavy-handed regulation of medical professionals as unsupported by any documented problem and unnecessary.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

This Resolution would amend SB 1262 (Correa), introduced on February 21, 2014.

AUTHOR AND/OR PERMANENT CONTACT: Frank Leidman, Law Offices of Frank Z. Leidman, 345 Franklin Street, San Francisco, CA 94102; (415) 982-0322; Frank@LeidmanLaw.com

RESPONSIBLE FLOOR DELEGATE: Frank Leidman

COMMENTS TO RESOLUTION 10-02-2014

SACRAMENTO COUNTY BAR ASSOCIATION

DISAPPROVE: On behalf of the Sacramento County Bar Association, the Sacramento Delegation to the Conference of California Bar Associations respectfully opposes Resolution 10-02-2014, which would require the State to license dispensing facilities and cultivation sites that provide, process, and grow marijuana for medical use. The resolution would make these licenses subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate, and would specifically oppose the provisions of SB 1262 which seeks to impose severe restrictions on doctors who recommend medical cannabis. We recommend this resolution be disapproved because:

- 1) We believe the comprehensive bureaucracy included in the resolution is a foil for the larger issue of state and federal legalization of an otherwise controlled substance, and therefore an unnecessary and distracting effort;
- 2) Federal law enforcement continued its very aggressive crackdown on medical marijuana in California jurisdictions that boasted some of the most carefully crafted medical marijuana control regulations in the state (namely Mendocino County) suggesting that a statewide medical marijuana infrastructure would do little to protect people engaged in the marijuana pipeline, while there have been no notable law enforcement actions taken in the states that boldly determined to legalize marijuana; and
- 3) Until the larger issue of legalization is addressed, we believe local jurisdictions should retain authority to control zoning and other related issues that the resolution seeks to address.

Cannabis may provide relief to users throughout the state. However, the plant's "medical status" provides only mythological legal protection to a substance that remains illegal at both the state and federal levels. Continuing to modify this quasi-legitimate status is an unreasonable approach to dealing with the larger, and more significant, issue of the legality versus illegality of marijuana. The comprehensive regulatory scheme proposed in Resolution 10-02-2014 is a cumbersome effort that is likely wasted on activities, substances and behaviors that continue to avoid the issue of legalized marijuana production, distribution and sale. Furthermore, there is no advantage gained in the fight for legalization from the bureaucracy proposed in this resolution, nor would the passage of this resolution provide legal relief or protection to marijuana users.

Our opposition to 10-02-2014 is not rooted in a position relative to the legalization of marijuana.

Rather, our opposition is limited to the resolution at hand, a resolution that seeks to continue to treat the existence of medical cannabis as somehow legal. Marijuana remains illegal, both within California and nationwide, despite any medicinal value it provides. Until its legality is settled, we disapprove of approaches, like those contained in 10-02-2014, that would seek to impose restrictions on doctors who recommend medical cannabis.