

RESOLUTION 14-05-2017

DIGEST

Medical Marijuana: Increase Amount a Qualified Patient Can Possess

Amends Health and Safety Code sections 11362.7 and 11462.77 to allow a qualified patient to possess an amount of marijuana consistent with their needs and expand the eligibility of a primary caregiver.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolution found.

Reasons:

This resolution amends Health and Safety Code sections 11362.7 and 11462.77 to allow a qualified patient to possess an amount of marijuana consistent with their needs and expand the eligibility of a primary caregiver. This resolution should be approved in principle because it will allow a patient to possess an amount of marijuana consistent with their needs, and align the statute to the Compassionate Use Act and current case law.

Prior to the ruling in *People v. Kelly* (2010) 47 Cal.4th 1008, a qualified patient or primary caregiver could possess no more than eight ounces of dried marijuana per qualified patient, and no more than six mature or twelve immature marijuana plants per qualified patient. The court in *Kelly* invalidated these limitations and held that a patient may possess an amount of marijuana reasonably related to the patient's current medical needs. Accordingly, this resolution would reconcile the statutes with this ruling.

Additionally, the resolution eliminates the requirement that a designated caregiver must live in the same city or county as the patient, which is ambiguous, and provides instead that the primary caregiver must live within 25 miles of the patient. Given the size of counties in California, it makes more sense to limit the distance based on a defined twenty-five mile radius, and not to a county or city.

The Resolutions Committee notes that after submission of this resolution, legislation was enacted that made changes to the language of Health & Safety Code section 11362.77, effective June 27, 2017. (Stats. 2017, Ch. 27, Sec. 139. eff. June 27, 2017 (Sen. Bill 94).) The changes to the section do not impact the goal of the resolution.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code sections 11362.7 and 11362.77 to read as follows:

1 § 11362.7

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

3 (a) "Attending physician" means an individual who possesses a license in good standing
4 to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic
5 Medical Board of California and who has taken responsibility for an aspect of the medical care,
6 treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical
7 examination of that patient before recording in the patient's medical record the physician's
8 assessment of whether the patient has a serious medical condition and whether the medical use of
9 marijuana is appropriate.

10 (b) "Department" means the State Department of Health Services.

11 (c) "Person with an identification card" means an individual who is a qualified patient
12 who has applied for and received a valid identification card pursuant to this article.

13 (d) "Primary caregiver" means the individual, designated by a qualified patient or by a
14 person with an identification card, who has consistently assumed responsibility for the housing,
15 health, or safety of that patient or person, and may include any of the following:

16 (1) In any case in which a qualified patient or person with an identification card receives
17 medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1
18 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to
19 Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons
20 with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section
21 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2
22 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed
23 pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or
24 no more than three employees who are designated by the owner or operator, of the clinic,
25 facility, hospice, or home health agency, if designated as a primary caregiver by that qualified
26 patient or person with an identification card.

27 (2) An individual who has been designated as a primary caregiver by more than one
28 qualified patient or person with an identification card, if every qualified patient or person with an
29 identification card who has designated that individual as a primary caregiver resides in the same
30 ~~city or county as the primary caregiver~~ or up to 25 miles from the primary caregiver.

31 (3) An individual who has been designated as a primary caregiver by a qualified patient
32 or person with an identification card who resides in a ~~city or county~~ other than that of the
33 primary caregiver or greater than 25 miles from the primary caregiver, if the individual has not
34 been designated as a primary caregiver by any other qualified patient or person with an
35 identification card.

36 (e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is
37 the parent of a minor child who is a qualified patient or a person with an identification card or
38 the primary caregiver is a person otherwise entitled to make medical decisions under state law
39 pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

40 (f) "Qualified patient" means a person who is entitled to the protections of Section
41 11362.5, but who does not have an identification card issued pursuant to this article.

42 (g) "Identification card" means a document issued by the State Department of Health
43 Services that ~~document~~ identifies a person authorized to engage in the medical use of marijuana
44 and the person's designated primary caregiver, if any.

45 (h) "Serious medical condition" means all of the following medical conditions:

46 (1) Acquired immune deficiency syndrome (AIDS).

47 (2) Anorexia.

48 (3) Arthritis.

- 49 (4) Cachexia.
50 (5) Cancer.
51 (6) Chronic pain.
52 (7) Glaucoma.
53 (8) Migraine.
54 (9) Persistent muscle spasms, including, but not limited to, spasms associated with
55 multiple sclerosis.
56 (10) Seizures, including, but not limited to, seizures associated with epilepsy.
57 (11) Severe nausea.
58 (12) Any other chronic or persistent medical symptom that does either of the following:
59 (A) Substantially limits the ability of the person to conduct one or more major life
60 activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
61 (B) If not alleviated, may cause serious harm to the patient’s safety or physical or mental
62 health.
63 (i) “Written documentation” means accurate reproductions of those portions of a
64 patient’s medical records that have been created by the attending physician, that contain the
65 information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the
66 patient may submit to a county health department or the county’s designee as part of an
67 application for an identification card.

68
69 § 11362.77

70 (a) A qualified patient, a person with an identification card, or any designated primary
71 caregiver may possess no more than eight ounces of dried marijuana per qualified patient any
72 amount of marijuana consistent with the medical needs of that qualified patient or person with an
73 identification card. In addition, a qualified patient or primary caregiver may also maintain no
74 more than.

75 (b) (1) A person with an identification card or a primary caregiver with an identification
76 card shall not be subject to arrest for possessing eight ounces or fewer of dried marijuana per
77 person with an identification card, and maintaining six or fewer mature or 12 or fewer immature
78 marijuana plants per qualified patient person with an identification card.

79 (2) Nothing in this section is intended to affect any city or county guidelines insofar as
80 the amounts contained in those guidelines exceed the quantities set forth in paragraph (1).

81 (b)(c) If a qualified patient or primary caregiver has a doctor’s recommendation that this
82 quantity does physician determines that the quantities in subdivision (b) do not meet the qualified
83 patient’s medical needs, the qualified patient of the person with an identification card, that
84 person or that person’s or primary caregiver with an identification card may possess an amount
85 of marijuana consistent with the patient’s those medical needs and shall not be subject to arrest
86 for possessing that amount.

87 (e) ~~Counties and cities may retain or enact medical marijuana guidelines allowing~~
88 ~~qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).~~

89 (d) Only the dried mature processed flowers of female cannabis plant or the plant
90 conversion shall be considered when determining allowable quantities of marijuana under this
91 section.

92 (e) The Attorney General may recommend modifications to the possession or cultivation
93 limits set forth in this section. These recommendations, if any, shall be made to the Legislature
94 no later than December 1, 2005, and may be made only after public comment and consultation

95 with interested organizations, including, but not limited to, patients, health care professionals,
96 researchers, law enforcement, and local governments. Any recommended modification shall be
97 consistent with the intent of this article and shall be based on currently available scientific
98 research.
99 ~~(f) A qualified patient or a person holding a valid identification card, or the designated~~
100 ~~primary caregiver of that qualified patient or person, may possess amounts of marijuana~~
101 ~~consistent with this article.~~

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: In the 90's, Californians passed the Compassionate Use Act, which allows (as an affirmative defense) patients to have any amount of medical marijuana consistent with their medical needs. In the early 2000's, the legislature passed a law to provide for a medical marijuana ID card, where if someone possesses less than a certain amount of marijuana and has the ID card, he or she will not be arrested. A drafting error, however, ended up incorporating those limits on amount also for the affirmative defense, in violation of the Compassionate Use Act. That part was invalidated by the ruling in *People v. Kelly*, 146 P.3d 547 (Cal. 2006). Another part of existing law limits primary caregivers to living in the same county as the patient. Someone may live on the outskirts of a county and know someone who lives close by in an adjacent county, but such person is ineligible to be the person's primary caregiver.

Additionally, Proposition 64, which legalized possessing a small amount of marijuana for recreational purposes, did not change these provisions.

The Solution: This resolution implements the California Supreme Court's ruling in *Kelly*, by ensuring medical marijuana patients can have any amount consistent with their medical needs. It also expands the eligibility of primary caregivers by permitting them to live within 25 miles of the patient, rather than just the same county.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

SB 1494 (2004).

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