

complaints as insomnia, PMS, post-traumatic stress, depression, and substance abuse.

WHERE CAN MARIJUANA BE SMOKED?

SB420 disallows marijuana smoking in no smoking zones, within 1000 feet of a school or youth center except in private residences; on school buses, in a motor vehicle that is being operated, or while operating a boat. Patients are advised to be discreet or consume oral preparations in public.

WHERE CAN I GROW MEDICINE?

Although Prop. 215 allows patients to grow their own medicine, landlords are not legally obliged to allow it. A few cities, such as San Diego and Ukiah, have ordinances restricting outdoor gardens.

CAN I SELL MY EXCESS MEDICINE?

In general sales of marijuana are NOT permitted under Prop 215. However, SB 420 authorizes legal caregivers and collective/cooperative members to charge for their expenses in growing for others on a "non-profit" basis.

HOW CAN I START A COLLECTIVE?

The A.G. has issued guidelines for operation of cannabis collectives and coops. For details, see <http://canorml.org/prop/collectivetips.html>.

PRISONERS AND PROBATIONERS

SB420 allows probationers, parolees, and prisoners to apply for permission to use medical marijuana. However, it does not require correctional facilities to accommodate medical marijuana use by prisoners or arrestees.

CAN PATIENTS BE DRUG TESTED?

The California Supreme Court has ruled that employers have a right to drug test and fire patients who test positive for marijuana, regardless of their medical use (*Ross v RagingWire*, 2008). Some employers will excuse patients if they present a valid 215 recommendation. Others won't. Marijuana is never permitted in jobs with federal drug testing regulations, such as the transportation industry.

WHEN ARE RECOMMENDATIONS VALID?

Under Prop. 215, a recommendation is valid so

long as the doctor says it is. However, SB420 requires ID cards to be renewed annually, and many police refuse to recognize recommendations that are older than a year or so. Courts have ruled that patients must have a valid approval at the time of their arrest, though this can have been oral..

WHAT ABOUT OUT-OF-STATERS?

Out-of-state recommendations are not recognized in CA, though they are in MT, RI and MI. While Prop. 215 arguably applies to anyone with a recommendation from a California physician, most physicians refuse to recommend to out-of-staters.

WHAT ABOUT MINORS?

Patients under 18 should have parental consent.

SHOULD I GET AN I.D. CARD?

Patients are not required to get an ID card to enjoy the protection of Prop. 215. All that is needed is a physician's statement saying that marijuana is "approved" or "recommended." However, many police refuse to recognize recommendations and arrest patients anyway, in which case patients must go to court to prove their legality.

The state ID card is supposed to provide protection from arrest under SB 420. State cards are available through county health departments. Unfortunately, a few counties still have not implemented ID cards as of this time. The state ID card system has safeguards to protect patient privacy. Police cannot track down patients through the registry. Not a single registered patient has been harassed by the DEA.

The Patients' ID Center in Oakland and LA (www.patientcenter.org) offers ID cards for all California residents. PIDC cards are not officially recognized in SB 420, but are honored by many clubs and police.

WHERE CAN I GET MEDICAL MARIJUANA?

Even though Prop. 215 doesn't explicitly legalize sales, hundreds of collectives are presently providing marijuana to patients in accordance with SB 420 and the A.G.'s guidelines. For a list, see www.canorml.org/prop/cbclist.html.

California NORML Guide To Your Rights Under Prop. 215



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PROPOSITION 215, the California Compassionate Use Act, was enacted by the voters and took effect on Nov. 6, 1996 as California Health & Safety Code 11362.5. The law removes criminal penalties for personal use possession and cultivation of marijuana for medical purposes by patients (and their designated “primary caregivers”) who have a physician’s recommendation or approval.

SB420, a legislative statute, went into effect on January 1, 2004 as California H&SC 11362.7-.83. This law broadens Prop. 215 to transportation and other offenses in certain circumstances; allows patients to form medical cultivation “collectives” or “cooperatives”; and sets limits on how much marijuana patients may have. The law also establishes a statewide, voluntary ID card system, which is supposed to be furnished by county health departments. Patients with state ID cards are supposed to be protected from arrest if they follow the specified quantity limits.

HOW MUCH CAN I POSSESS OR GROW?

SB420 establishes a baseline statewide limit per patient of 6 mature or 12 immature plants, and 1/2 pound (8 oz.) processed cannabis. Patients can be exempted from these limits if their physician specifically states that they need more. In addition, individual cities and counties are allowed to enact higher, but not lower, limits than the state standard. Local limits are posted at: <http://canorml.org/prop/local215policies.html>.

The legality of the limits in SB 420 is disputed. Two appellate court decisions, *Kelly* and *Phomphakdy*, ruled that the six-plant limit is an unconstitutional limitation on Prop. 215. The matter has been referred to the state supreme court. To be on the safe side, patients are strongly advised to follow the limits.

WHAT OFFENSES ARE COVERED?

Prop. 215 explicitly covers marijuana possession and cultivation (H&SC 11357 and 11358) for personal medical use. Hashish and concentrated cannabis,

including edibles, (HSC 11357a) are also included. Transportation (HSC 11360) has also been allowed by the courts. Within the context of a *bona fide* collective or caregiver relationship, SB 420 provides protection against charges for possession for sale (11359); transportation, sale, giving away, furnishing, etc. (11360); providing or leasing a place for distribution of a controlled substance (11366.5, 11570).

WHO MAY CULTIVATE UNDER PROP. 215?

Patients with a physician’s recommendation and their primary caregivers, defined as, “The individual designated by the person exempted under this act who has consistently assumed responsibility for the housing, health, or safety of that person.” According to a state supreme court decision, *People v Mentch* (2008), caregivers must supply some other service to patients than just providing marijuana.

As an alternative, SB 420 allows patients to grow together in non-profit “collectives” or cooperatives. Collectives may scale the SB 420 limits to the number of members, but large gardens are always suspect to law enforcement. In particular, grows over 100 plants risk five-year mandatory minimum sentences under federal law.

CAN I STILL BE ARRESTED OR RAIDED?

YES, unfortunately. There is nothing in Prop. 215 to compel police to accept a patient as being valid. Many legal patients have been raided or arrested for having dubious recommendations, for growing amounts that cops deem excessive, on account of neighbors’ complaints, etc. A major purpose of the state ID card system is to avoid undue arrests.

Once patients have been charged, it is up to the courts to pass judgment on their medical claim.

A landmark State Supreme Court decision, *People vs. Mower*, holds that patients have the same right to marijuana as to any legally prescribed drug. Under *Mower*, patients who have been arrested can request dismissal of charges at a pre-trial hearing. If the defendant convinces the court that the prosecution hasn’t established probable

cause that it was for other than medical purposes, criminal charges are dismissed. If not, the patient goes on to trial, where the prosecution must prove “beyond a reasonable doubt” that the defendant was guilty. Those who have had their charges dropped may file to have their property returned, and claim damages.

In many cases, police raid patients and take their medicine without filing criminal charges. In order to reclaim their medicine, patients must then file a court suit on their own. For legal assistance in filing suit for lost medicine, contact Americans for Safe Access (www.safeaccessnow.org).

WHAT ABOUT FEDERAL LAW?

Under the U.S. Controlled Substances Act, possession of any marijuana is a misdemeanor and cultivation is a felony. A Supreme Court ruling, *Gonzalez v Raich* (June 2005), upheld the CSA against a constitutional challenge by two patients who argued that their personal use cultivation of marijuana should be exempt from federal prosecution because it did not affect interstate commerce. Despite the Raich decision, federal officials have stated that they do not intend to go after individual patients, only large-scale suppliers.

WHO QUALIFIES AS A PHYSICIAN?

Prop. 215 applies to physicians, osteopaths and surgeons who are licensed to practice in California. It does not apply to chiropractors, herbal therapists, etc. For a list of medical cannabis specialists, see www.canorml.org/prop/215physicians.html. Prop. 215 requires physicians to state that they “approve” or “recommend” marijuana. Physicians are protected from federal prosecution for recommending marijuana by the *Conant* U.S. court decision.

WHAT ILLNESSES ARE COVERED?

Prop. 215 lists “cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, *or any other illness for which marijuana provides relief*.” Physicians have recommended marijuana for hundreds of indications, including such common