

Chapter 2: Legal Protections of the Oregon Medical Marijuana Act



A truce in Oregon's war against sick people

The passage of Ballot Measure 67—Oregon Medical Marijuana Act (OMMA)—in November of 1998 was a watershed event for Oregon's Cannabis-using patients. Before the OMMA, patients in Oregon were routinely prosecuted for any Cannabis possession and cultivation. If a district attorney could stack on other charges—conspiracy, possession near a school—he would routinely do so. The climate was ugly. Diane Densmore, a Portland patient and Director of the Alternative Health Center, was arrested and convicted in 1997 for operating a dispensary serving patients. Diane received this treatment from an enforcement system which simply rolled over people in need while echoing the War on Drugs party line. Other sad dramas of a criminal “justice” system gone mad were all too common. (These stories still abound in many states.) Patients had no defense, and judges routinely disallowed any “desperation defenses.” If patients were “lucky,” they had their medicine taken by police and were shackled to their homes with electronic monitoring bracelets. The less fortunate fell victim to the legal extortion of district attorneys who would fine the patient thousands of dollars in exchange for dropping charges.

Mercifully, this situation changed when Oregon voters passed the OMMA, finally reining in state-supported abuse of sick and dying Oregonians. Indeed, the passage of the OMMA into Oregon law completely changed the relationship between police and Cannabis-using patients. Its passage sent a clear signal to Oregon's law enforcement officers to stand clear of patients. And, by and large, they have. This is not to say that police supported the OMMA. Many didn't. A few high-profile law-enforcement officials, most notably Multnomah County Sheriff Dan Noelle and Molalla Police Chief Rob Elkins, campaigned actively against the initiative. They claimed that its passage would undermine the ability of law enforcement to prosecute any Cannabis-related crime. Instead, they offered voters Ballot Measure 57, which had been passed by the legislature and signed into law by Governor John Kitzhaber, a physician. (It was *referred* back to voters as a *referendum*, by collecting enough signatures to send it to the voters.)

Ballot Measure 57, otherwise known as “recrim” would have *increased* Cannabis penalties against sick and well people alike. Ballot Measure 57 went up in flames at the ballot box and the OMMA was



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born, all in the same election. Chapter 7 recounts some of the highlights of the campaign.

Understanding the Attorney General's guidelines

Once the Oregon Medical Marijuana Act was passed, Hardy Myers, the state's Attorney General, assembled law-enforcement groups to formulate general guidelines for police. The effort yielded modest results. While the work-group did clearly recommend that officers investigate the circumstances of the situation before acting, they deferred to local authorities on most of the complicated issues. This lack of leadership had the potential to create the same vacuum of a lack of consistency that has plagued implementation of California Prop. 215.¹

The Attorney General's OMMA Guidelines state the obvious: patients registered through the Oregon Health Division are legally protected from prosecution for using Cannabis. Police should therefore investigate only to see if the situation in question falls outside the boundaries of the law. The Guidelines are quite clear and specific on this point. Unresolved issues center around a variety of situations police may encounter which do not fall into clear categories.

First, the Attorney General's Guidelines question the legality of transporting Cannabis on the interpretation that *any* possession of plants or Cannabis on public highways constitutes "public use" which is forbidden by the OMMA. But the Attorney General's claim that *any* transporting of Cannabis constitutes "public use" is a circular argument which only serves to cloud rather than clear interpretation of the OMMA. This interpretation also leaves open the possibility that local law-enforcement may prosecute patients for transporting Cannabis or plants. (There is no indication that this has yet occurred in Oregon.)

This should not be an issue. The OMMA intended that registrants would be permitted to transport Cannabis *and* plants on Oregon's highways. (In fact, the OMMA intended to allow *any* designated primary caregiver to transport plants and usable Cannabis to *any* registered patient. Also, any registered patient may transport Cannabis and plants to any other registered patient. A patient may also transport plants and Cannabis to any registered caregiver. Thus, *anyone* who is registered in the State Health Division's Medical Marijuana Program, may transport plants and usable Cannabis to any other registrant as long as quantity limits are not exceeded.)

Second, the Attorney General's Guidelines draw a hard line in interpreting complex situations involving more than one registered patient living at the same address.

The Guidelines question the legal right of patients to each possess up to seven plants. "Statutory Disqualification's" 7 (b) i states:

Section 7 of the Act does not expressly state whether a different limit applies when several registrants are present at a single location where marijuana is being produced. The Act can be interpreted to limit the total amount of marijuana grown on

that location to seven plants. This interpretation is premised on the assumption that each registrant at the location simultaneously possesses the same marijuana.

Alternately, the Act may be interpreted to permit seven growing plants for each registrant who is present at the growing site. In consultation with the appropriate prosecuting attorney, law enforcement agencies should adopt policies for officers to follow when multiple registrants are encountered at the same location.

This wording appears to ignore the implied allowances written into the OMMA—seven plants for each patient. The *absence* of wording to describe this scenario is construed by the Attorney General to mean that it may not be legal. Again, the intent of the OMMA was clear: any patient registered with the Oregon Health Division has the legal right to grow and possess seven plants. If two patients live at the same address they have the right to collectively possess up to 14 plants. By deferring to local law-enforcement agencies the interpretation of this question, patients in different parts of Oregon will be treated differently. (This local interpretation of state law is one reason why California has had monumental difficulty in implementing Prop. 215.)

In similar fashion the Guidelines muddle the issue of a designated primary caregiver who cares for multiple patients and who grows seven plants for *each* patient.

Section 7 of the Act does not expressly state whether a different limit applies when one person is the primary caregiver for multiple patients. Under one interpretation, a primary caregiver may not exceed the seven-plant limit on property under his or her control, regardless of the number of patients under his or her care. Accordingly, if the primary caregiver for three patients is growing three mature plants and four immature plants for one patient on property that is under the control of the primary caregiver, the marijuana for the other two patients must be grown on property that is under the control of the patients themselves. (II B (7) b ii.)

The Guidelines attempt to resolve this problem by suggesting that legislative intent is to allow a caregiver to grow Cannabis for more than one patient if several conditions are met. These include:

- (a) The multiple sites consist of an address under the control of the primary caregiver and other addresses under the control of the patients, but not more than one address for any of these persons;
- (b) Any address where marijuana is grown is registered with the Health Division;
- (c) The presumptive limit regarding the quantity of plants and usable marijuana is not exceeded at any of these addresses; and



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(d) The person is not otherwise disqualified from the exception.

Although this language does not answer the question of whether the caregiver can grow more than seven plants, it does draw boundaries around it. Thus, caregivers who intend to cultivate multiples of seven plants for more than one patient should first check with local law-enforcement agencies. Some localities, like Benton County, promote a more flexible interpretation. ²

Third, the Attorney General's Guidelines suggest that police officers should conduct detailed interviews of patients in an effort to establish the legitimacy for their claim of medical use. These interviews are to include questions relating to medical diagnoses as well as other personal medical information. The Guidelines make no suggestion that the police officer should obtain a release of medical information. This interview (investigation) would thus occur without patients being informed of their *right to refuse* to answer questions (the Miranda warning). Additionally, "knock-and-talk" searches involve intimidating interviews in an attempt to coerce persons to voluntarily relinquish their privacy rights. The omission of clarifying language serves to increase legal burdens on sick people who have little rhetorical skill in a meeting with well-trained police officers.

There are also situations that are not adequately addressed by the Guidelines such as the legal right patients have to grow more than seven plants. Oregon Revised Statutes 475.319(c) allows patients to use the affirmative defense for a charge of possession or production of Cannabis if the patients:

Possess or produces marijuana only in the amount allowed in ORS 475.306 (1), or in excess of those amounts if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician...to mitigate the symptoms or effects of the person's debilitating condition. (ORS475.319(c))

The only reference in the Guidelines is under Section III (B): "Seeking Evidence Regarding the Amount of Marijuana Grown or Possessed." It states:

If the amount of marijuana manufactured or possessed exceeds the presumptive limits established by the Act...the person cannot establish the affirmative defense unless the person proves by a preponderance that "the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's debilitating medical condition.

This statement does tell officers that patients may possess greater amounts in certain circumstances. But it neglects to describe a process for officers to follow when they contact a patient with more than seven plants, other than that they may destroy the "extra" plants or arrest the

patient. (Many patients find that seven plants are inadequate to produce a reliable supply of medicine. OMMA requires that they prove this greater medical need by a “preponderance” of evidence, that is to say, more than half.) Most officers are told to harvest plants above seven in number. Few patients seem to know that they could contest this limit with their physician’s support, namely that more plants are indeed medically justified.

The Guidelines define “usable” marijuana as dried leaves and flowers, but make no mention of a patient or caregiver’s legal protection when transporting or possessing uncured or fresh flowers. Since fresh flowers are around 75 % water by weight, patients and caregivers *may transport up to three (3) ounces of fresh flowers*, if not more. Registrants may transport and possess an amount of Cannabis which, *when dried down*, would equal up to one ounce. Registrants may also transport up to seven live Cannabis plants, but must ensure that the plants are “not exposed to public view” (must be covered) during transport.

In relatively simple situations the Guidelines clearly state the obvious. But in less-clear circumstances, they defer to local interpretation. Fortunately, some local law-enforcement agencies have assumed a flexible approach that acknowledges the social mandate of the OMMA, as well as law-enforcement priorities. The first Oregon locality to draft policies was Benton County. During the first half of 2000, Corvallis Police Chief Pam Roskowski and District Attorney Scott Heiser began a process of clarifying the circumstances that fell outside of the Guidelines. The policy was drafted in coordination with all county law-enforcement agencies. It demonstrated an important priority in quickly distinguishing medical Cannabis patients from others by suggesting that officers evaluate the patient’s circumstances.

While acknowledging that obvious violations of the law—selling Cannabis—would be prosecuted, the Benton County Guidelines improve upon the Attorney General’s Guidelines in one key way: It explicitly allows multiple registrants in a house to *each* grow up to seven plants. Although the number of situations this will occur is probably small, it acknowledges a more tolerant attitude on the part of Benton County law-enforcement. When officers encounter a “grow” with more than seven plants, they are expected to use reasonable judgement as to what the law allows. The Benton County policy recommends that:

In cases where the grow does not substantially (emphasis added) exceed the 7 plants authorized (3 mature and 4 immature), the officer should simply harvest all plants in excess of the seven plants authorized, but should NOT seize the growing equipment. (1.3.2 (2))

This policy recommendation makes no mention of arresting the patient, only harvesting the excess plants. It also makes no mention of the possibility that the patient may be entitled to grow more than 7 plants. Although the policy is relatively new, Benton County law



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Patients and caregivers should clearly understand that OMMA **DOES NOT** provide any legal protection against federal laws that prohibit use and cultivation of Cannabis.



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The exception permits the use, possession, cultivation and transport of Cannabis and plants to persons who are registered in Oregon's Medical Marijuana Program.

enforcement officials have clarified important issues of police scrutiny regarding medical Cannabis patients. This protects patients and prioritizes police resources into more important areas. As of 2000, no other Oregon locality had assumed responsibility to adapt the Attorney General's Guidelines for local use.

The three defenses

There are three specific defenses written into the OMMA for use by Cannabis-using patients. These legal strategies are each distinct. Patients and caregivers should study them and prepare for the day when they may be needed—before the officer knocks at the door. The three defenses are:

1. An “*exception*” from Oregon criminal laws forbidding Cannabis; (the registry card program),
2. An “*affirmative defense*” to a charge of unlawful possession; and
3. A “*choice of evils*” defense.

Patients and caregivers should clearly understand that OMMA **DOES NOT** provide any legal protection against federal laws that prohibit use and cultivation of Cannabis. Patients in many states are arrested and prosecuted under federal statutes. Federal prosecutors in Oregon have expressed no interest in locating and prosecuting patients who grow small amounts of Cannabis, but this posture could change at any time. Patients and caregivers should clearly understand this risk before deciding to participate in the Medical Marijuana Program.

The “exception”

The exception from criminal laws regarding Cannabis is a legalistic way of saying that those patients who participate in the “registry card program” are not subject to the regular laws regarding Cannabis in Oregon. It offers these patients a defense from prosecution and is the foundation for the Oregon Health Division's Medical Marijuana Program. The exception permits the use, possession, cultivation and transport of Cannabis and plants to persons who are registered in Oregon's Medical Marijuana Program. (Chapter 1 details the application procedure patients should follow to enter this program.) Registration is the preferable choice for most patients. Once registered patients are issued documentation by the Division, which certifies that they are permitted to use Cannabis. Police prefer this program because it quickly establishes the patient's protected status and it is backed by an official state agency, the Oregon Health Division.

Patients who are registered with the Medical Marijuana Program also have the legal protection of assigning caregiver responsibilities to another person, who is also registered with the Division. This “designated primary caregiver” may cultivate and transport Cannabis for the patient's benefit.

Patients and caregivers enrolled in the Medical Marijuana Program should also clearly understand what they are *NOT* permitted to do. Neither party can sell Cannabis or divert it to others for non-medical use. A caregiver cannot use Cannabis unless registered as a patient as well. Quantity limits are also written into the law. A patient or caregiver may grow a total of seven (7) plants.³

Up to three flowering plants are permitted at one time. The person cultivating the plants is allowed to possess up to one ounce of usable (dried and cured) Cannabis for each flowering plant, not to exceed 3 ounces. If the garden has two flowering plants the grower is allowed two ounces. The patient who is not cultivating is allowed to possess up to one ounce of usable Cannabis.

If patients are engaged in activity that is prohibited, like using Cannabis in a car or in public, they are breaking the law and may be prosecuted or lose their registry card. Patients and caregivers should also keep multiple copies of important papers in a safe place in case of contact with law-enforcement. They should carry the plastic laminated wallet card any time Cannabis or plants are transported. Patients should also be aware that a pending application to the program carries the same legal protection as a registry identification card. Once the application is post-marked the applicant is covered, until (and if) the application is rejected. Keeping copies of the application papers, including the physician recommendation, close at hand can save problems. Also, the pending application does not protect the designated primary caregiver, only the patient.

Police contacts

In order for police to know when patients are legally protected, OMMA contains an allowance for police to verify the status of anyone claiming to be a patient. This is accomplished usually by telephoning the Oregon Health Division to verify a patient's status. A patient, contacted by law-enforcement, may be asked if they are registered in the medical marijuana program. If the answer is "yes" the patient should be prepared to show the officer either the laminated wallet card, a copy of an application with proof of mailing, or the license form. Any of these documents will establish that the patient is covered by the exception. The police officer will inspect and copy the information on the document and verify it with the Health Division by telephone during business hours. If the Medical Marijuana Program manager verifies the patient's status to the police, no further action or contact should be taken. If the patient is not currently in the program, police may investigate further or initiate criminal proceedings. For this reason it is important to send any application *return receipt requested* from the post office. This ensures that the patient is notified that the Health Division has received the application. The return receipt postcard may also demonstrate to any officer that the application is pending. Keep the postcard with the copy of the application. If the officer observes



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If the officer observes Cannabis plants or dried Cannabis they will want verification of patient status. Once this proof has been shown the patient is under no obligation to cooperate further with the police.



Knock-and-talk searches are conducted at locations where the police DO NOT have sufficient reason to obtain a search warrant. Otherwise, police may only search a property if they request and receive permission from the occupant.



Essentially, the affirmative defense allows patients to escape conviction if they meet *all* the registry card provisions, but don't have a registry card.

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Knock-and-talk searches

Sometimes, police will want to conduct a “knock-and-talk” search of the premises. Knock-and-talk searches are conducted at locations where the police DO NOT have sufficient reason to obtain a search warrant.⁴

Otherwise, police may only search a property if they request and receive permission from the occupant. This process is intimidating and frightening for patients. It is meant to be. Police officers have extensive training in obtaining permission through coercive and intrusive questioning techniques. Patients must decide whether or not to allow the officer to search. Patients should clearly understand that *the presence of Cannabis plants, paraphernalia, or dried Cannabis is not sufficient grounds for a search if the patient is legally registered and not exceeding any limits. This includes any plants, up to seven in number, which are in plain sight of the officer.* The patient may, and many do, consent to a search in order to establish their legal compliance, but this is not necessary. All the patient needs to do is show the officer the registry card or copy of the pending application. The officer cannot require a search. A police officer who obtains consent to search and discovers some other unrelated criminal activity in the location (such as 25 Cannabis plants) may take legal action. But even in cases where the patient is growing more than seven plants, police should tread lightly. Many patients in Oregon would need to grow 15 to 30 plants to supply their needs, and they have a legal defense to do so.

In the event that a patient is verbally intimidated by a law officer in an encounter, the patient should terminate the conversation or call “911” and request help from the emergency dispatcher. There are few reports of police intimidation of Oregon patients since OMMA became law.

Understanding and using the affirmative defense

The *exception* from criminal laws provides a safety net over Cannabis-using patients and caregivers who grow Cannabis for these patients. Some patients refuse to participate in the Medical Marijuana Program for various reasons. These include fear and distrust of government, philosophical objections to intrusive drug laws or inability to pay the fee (\$150 in 2000.) The “*affirmative defense*” was written to include these people. Essentially, the affirmative defense has two parts. The first allows patients to escape criminal conviction if they meet all of the Medical Marijuana Program provisions, but are not registered. This defense still requires that a physician has previously diagnosed the patient as having a medical condition that qualifies under OMMA and has also advised the patient that “marijuana may help”.

The second, as stated by House Bill 3052, allows patients to grow more than seven plants if they have their physician’s written support.

These affirmative defense provisions were expanded to state:

... [I]t is an affirmative defense to a criminal charge of possession or production of marijuana, or any other criminal offense in which possession or production of marijuana is an element, that the person charged with the offense is a person who:

- (a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest and has been advised by his or her attending physician [that] the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition;*
 - (b) Is engaged in the medical use of marijuana; and*
 - (c) Possesses or produces marijuana only in the amounts allowed in Section 7 (1) chapter 4, Oregon Laws 1999, or in excess of those amounts if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person’s attending physician to mitigate the symptoms or effects of the person’s debilitating medical condition.*
- (ORS 475.319)


Nineteen ninety-nine legislative changes carried the legal requirements for asserting the affirmative defense one step further by stating:

Any defendant proposing to use the affirmative defense provided for by this section in a criminal action shall, not less than 5 days before the trial of the cause, file and serve upon the district attorney a written notice of the intention to offer such a defense that specifically states the reasons why the defendant is entitled to assert and the factual basis for such affirmative defense. If the defendant fails to file and serve such notice, the defendant shall not be permitted to assert the affirmative defense at the trial of cause unless the court for good cause orders otherwise.


(ORS 475.319 (4))

In plain English, the rules governing the affirmative defense are as follows:

1. The person must be diagnosed within the past year with a “debilitating medical condition,” and be under the care of an Oregon physician;
2. The patient must be advised by the physician that using Cannabis may help. (The patient does not have to have this recommendation in writing but the physician will probably have to state this in court. If the patient cannot get the physician to provide this recommendation, or if the patient has no physician then the patient may have to resort to the “choice of evils” defense.) For this reason it is critical that



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The affirmative defense provisions of OMMA were changed in HB 3052—the rewrite of OMMA by the 1999 Oregon Legislature.



The patient or patient's attorney must submit papers to the district attorney...stating that the patient intends to use the affirmative defense.



As its name implies [the choice of evils defense] is a "desperation defense for use when other defenses are not available."

patients discuss their use of Cannabis with the physician before legal troubles arise and request that documentation be made in the medical chart describing this use;

3. The patient must be using Cannabis.
4. The patient must be in compliance with the legal possession limits. (There is a provision for possession of greater amounts but the physician will have to verify that the greater amount is justified. Physicians will likely be nervous about the entire proceeding. If an additional complication, like more than seven plants, is added to the situation, physicians will probably be less supportive.)
5. The patient may grow more than seven (7) plants if he/she has written physician support that the larger number is medically necessary, on file with the Health Division.
6. The patient, or patient's attorney *must* submit papers to the district attorney, not less than 5 days before trial, stating that the patient intends to use the affirmative defense. The patient must also write out the reasons why they are using it and the "factual basis" for it. The factual basis could be met by referring to research, which demonstrates Cannabis' value at treating the condition. The reasons for use could be contained in detailed descriptions of how the patient is helped by using Cannabis. (An Affirmative Defense Notification Form is included in Appendix D)
7. The patient should not be already registered in the Medical Marijuana Program run by the Oregon Health Division.

Simple or not, these legalisms give many non-registered patients the tools to avoid conviction by understanding and using the affirmative defense. Unfortunately, this does assume that the patient will have to hire an attorney and possibly go to court. Preparing for and appearing in court is stressful and expensive. This defense also requires the participation of the physician to affirm that Cannabis is helping the patient. Since so many physicians are squeamish about providing documentation into the registry card program, it is hard to believe they would go to court and testify in the patient's behalf. This fact may disqualify many patients from being able to use the affirmative defense.

The choice of evils defense

The third and final defense is the "choice of evils". As its name implies, it is a desperation defense for use when other defenses are not available. The Oregon Attorney General Guidelines clearly define the choice of evils defense as:

A 'defense of choice of evils,' by which the person asserts that marijuana possession, delivery or manufacture is 'necessary as an emergency measure to avoid an imminent public or private

injury' and '[t]he threatened injury is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of the injury sought to be prevented' by the marijuana laws. The state would be required to disprove the defense beyond a reasonable doubt, but the defense is available only to persons who have taken a substantial step to comply with the Act.

(Section 6(3) of the Act; 1999 Or Laws, ch 825, 4; ORS 161.055(1); 161.190; 161.200)

The choice of evils defense does not require that the person suffer from a debilitating medical condition. But the patient is still required to prove that Cannabis use is an emergency measure that protects life and health. The important issue is that the patient must demonstrate that they have taken a *substantial step* to comply with the Act. This substantial step could be documentation, which demonstrates medical use or an application to the Medical Marijuana Program that has been rejected.

Ultimately, the three legal defenses can protect most Oregon patients. Hiring an attorney who understands them is very important. It is an unpleasant fact that Cannabis-using patients will require legal help and protection until the laws governing *non-medical* use are eliminated, since patients will continually get snarled in legal interpretations that vary from one Oregon county to another. Knowing these defenses allows the patient to make a conscious decision as to how best to proceed by understanding the strengths and limitations of each. This ultimately allows patients to interact with law-enforcement agencies from a position of knowledge and strength.

Patient rights and responsibilities

As increasing numbers of Cannabis-using patients find relief from their suffering and as medical research adds its blessing, the acceptance of legitimate medical use will also expand. (See Chapter 4 for a discussion of medical uses of Cannabis.) But for these uses to be legal for patients in Oregon the OMMA will have to evolve and legally embrace these expanded medical uses. Meanwhile, to be safe, Cannabis-using patients should become familiar with both their legal rights and their responsibilities under the current law.

These rights and responsibilities generally revolve around patients' legal protections and behaviors. Legal protections include understanding the defenses and which one is best fits the patient's situation. Legal protections also include adherence to the legal limits of OMMA and, if venturing into more nebulous areas of OMMA, such as increasing the number of plants grown, doing so based upon informed judgement. Behaviors, on the other hand, are relevant because patients have wide latitude of personal responsibility to grow, preserve and safely use their medicine. The ability of patients to refrain from diversion of Cannabis



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Patients have the right to grow the amount of Cannabis that meets their medical needs.



Patients have the right to organize.



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into the recreational market (selling) will also determine how the OMMA “experiment” goes. Selling medical Cannabis on the recreational market jeopardizes the security of OMMA by reinforcing the preconceptions of those legislators who would pounce on the issue as justification to destroy the OMMA. These behaviors and legal protections give the Oregon Medical Marijuana Act life. Adherence to them will keep patients on the safe side of the law, and also preserve it for others.

Patients have rights too. OMMA grants the freedom to patients to possess their medicine, be it in plant form or in consumable form, and to control the use of the drug. Patients have the right to medicate any time they need to in the privacy of a home, without fear of contact with police. Patients also may transport Cannabis and plants to others. (Under OMMA Cannabis is proliferating in many small gardens all over Oregon, by and for patients.) Patients have the right to grow the amount of Cannabis that meets their medical needs. Patients may grow more than the seven plants explicitly allowed by OMMA but must be prepared to back this up with written documentation from the physician affirming that increased amount. If the physician verifies the need for more than seven plants, the patient will probably be protected by OMMA.

Lastly, patients have the right to organize. Patients should consider searching out other patients in their area and forming collectives. This is valuable as a source of medicine when one person runs out, or a place to exchange plants and clones. Meeting together also allows patients to try many different varieties and locate the strain that works for them. Protected by law patients have the right to organize these types of support activities. The right to meet is perhaps the most important right. This allows knowledge to proliferate. Patients are taking care of themselves, and each other.

Police rights and responsibilities

Some parts of OMMA are confusing, and complicated. Police officers around Oregon have had little training in it, but they know the basics: Leave the patient alone if he has under seven plants and a card from the Oregon Health Division. Beyond that, things get murky fast, due in part to the complexity of the legal defenses written into OMMA. The Attorney General’s Guidelines to law enforcement helped somewhat, but they pushed the hard choices to the local jurisdictions. Fortunately for patients (and taxpayers) most law enforcement agencies are taking a low-key approach by simply de-emphasizing the priority of Cannabis in general, not just Cannabis-using patients. The profoundly destructive realities of heroin, methamphetamine, and violence keep intruding on the attention of police departments.

Police departments also have rights and responsibilities. These occupy some of the same issues as Cannabis-using patients but with some differences. The major difference is that the police wield a high

level of authority to intrude on the patient's time and life. Cannabis-using patients in Oregon fear, and distrust police. They remember the devastating results of dealing with police, the intimidating knock-and-talks, and the narcotics task-force raids. This psychic scarring is still fresh. The justified fear of police will, hopefully, fade as police interactions with patients are positive and do not harm the patient. Thus, the guiding principle of police contacts with Cannabis-using patients should be "*as little as possible and as short as possible.*" Police do have the right to ask questions of patients and conduct interviews and investigations. But that right is limited. They do not have the right to go to a patient's house unannounced and talk the patient into allowing a search. If the patient is not engaging in "disqualifying behavior" and shows proper documentation, any interview should be short.

Police organizations also have a responsibility to squarely deal with this complicated law by developing guidelines that protect patients in all circumstances. Increasing numbers of patients will use Cannabis, and many of them will have little or no documentation.

Today, patients must jump through legal hoops to prove their medical need. Nevertheless, prosecuting a cancer patient because he didn't have the registry card harkens back to the "old days" when patients were traumatized by police and prosecutors. If an officer contacts a person lacking a registry I.D. card, who claims a medical need, the officer should, at most, ask the patient for evidence to show their medical status. This could be pharmaceutical bottles, or medical documentation. The officer should simply recommend that the patient contact the Oregon Health Division and apply to the Medical Marijuana Program. The only time an officer should conduct further investigation is when there is a substantial discrepancy between the patient's actions and the law. For instance, police will be very concerned if they find evidence of sales. Since OMMA does not allow sales of Cannabis under any circumstances this would be considered a serious violation. However, if the officer finds the patient in possession of ten or fifteen plants, s/he should consider ignoring this situation, especially if the patient says seven plants is not enough. Although possession of seven plants is the basic limit of the law, police should understand that this is an inadequate number for many patients. OMMA does allow patients to cultivate more than seven plants, if they can show a medical need through their doctor. Officers in that situation should suggest that the patient get a letter from their physician supporting the greater amount. Although the law gives officers the right to harvest the plants above seven, this is a potentially traumatic and intrusive action to take upon a patient who is not engaged in egregious violations of the law. The bottom line for officers is that they should always tread lightly.

Lingering fear of police will be reduced when police agencies all across Oregon simply stop dealing with patients, unless there is a compelling reason. And when there is a reason, contacts should be considerate and short. This will save needless trauma to patients and



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allow police to focus on more important public safety issues. It will also begin to rebuild society’s trust in police, as the public servants entrusted with the safety and protection of, not just ill people, but all citizens.

Footnotes

¹ Prop. 215 has been variously interpreted from one locality to another since its passage in November 1996. While large metropolitan areas like San Francisco and Oakland have developed policies which favorably support licensing and oversight of Cannabis cooperatives, other rural localities continue to arrest and prosecute patients in direct defiance of California law. The previous Attorney General, Dan Lundgren, worked tirelessly to undercut and destroy Prop. 215. His successor, Bill Lockyear came to power on a pledge to fully implement the law. His efforts were unraveled by democratic Governor Gray Davis’ refusal to support statewide implementation efforts. Thus, California spins out of control because key political leaders lack the integrity to carry out the will of the people.

² The confusing language surrounding multiple patients or caregivers was compounded by the 1999 Oregon Legislature in an attempt to limit grow operations exceeding seven plants. Language was inserted which forbids the manufacture or production of marijuana “*at a place other than one address for property under the control of the patient and one address for property under the control of the primary caregiver...*” (HB 3052 Section 5 (e)). But Section 5 (f) prohibits the production of marijuana at more than one address. An attempt to add language which would forbid any caregiver from registering for more than one patient was withdrawn.

³ The Oregon Medical Marijuana Act allows cultivation of Cannabis in amounts in excess of seven plants, but the patient might have to prove the medical necessity of this increased quantity in the courts. The 1999 legislative revision added a clause to the affirmative defense stating that a patient who has their physician’s agreement that seven plants are not adequate can thereby prove that the greater amount is medically necessary. Thus it is possible that the patient could petition the Medical Marijuana Program for increased cultivation limits by obtaining written support from their doctor prior to action by law-enforcement that would bring the issue to the courts. A few patients have done so.

⁴ If the police have sufficient evidence that a law is being broken a judge will issue a warrant to search. If police announce that they have a warrant to search, they are legally entitled to enter and search the premises without the consent of the occupant. Of course, they must produce the warrant and show it to the occupant.