Chapter 7: Legislative History of Medical Cannabis in Oregon

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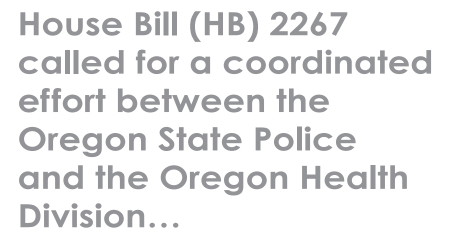
Part One: Pre-OMMA

House Bill 2267

The Oregon Medical Marijuana Act in some ways represents an end-point of focused attention and efforts by a considerable number of Oregonians over many years. It is also a beginning for Oregon patients.

The first legislative attempt in 1979 at creating a "medical marijuana bill" was, remarkably, passed and signed into law. House Bill (HB) 2267 called for a coordinated effort between the Oregon State Police and the Oregon Health Division (OHD) to channel confiscated Cannabis through the OHD to patients suffering from two specific conditions: cancer chemotherapy and glaucoma. This legislation was cosponsored by six Oregon Senators and nine Representatives. It also provided for the testing of confiscated Cannabis by the OHD for purity and safety. HB 2267 allowed physicians to "lawfully obtain, prescribe, and dispense marijuana..." to their patients. Essentially this meant that doctors would have to stock and supply Cannabis to their patients from their office. HB 2267 was never implemented because of the placement of Cannabis in Schedule One of the federal Controlled Substance Act. However, encouraged by the intent of the Oregon legislature in creating HB 2267 the OHD initiated a research study, approved by the DEA, to conduct an experimental program that would supply Cannabis cigarettes and THC capsules to patients. Although these Cannabis products were eventually received by several hospitals around Oregon, the research was never carried out.



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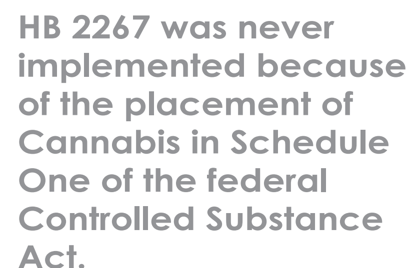
Legislative memory is short: less than a year after enactment, the OHD had undercut HB 2267 by claiming that they couldn't adequately test for purity. The Division's half-hearted effort to establish a therapeutic research program put a kind face upon this situation. Although this 1979 law quickly faded into legal obscurity, a small group of statewide activists continued to advocate for passage of such legislation.



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The 1980's ushered in Ronald Reagan as President, and Ronald Reagan ushered in a renewed War-on-Drugs. State legislatures nation-wide came under increasing federal pressure to not appear "soft on drugs" and Nancy Reagan promoted her "just say no" campaign. The prospects for medical Cannabis legislation appeared bleak as the federal position hardened. Nationwide, the issue was off the political radar screen save for the rescheduling petition submitted by the National

Organization for the Reform of Marijuana Laws (NORML). (During the eighties, NORML was widely derided for “riding the coattails of sick people” to advance their drug-legalization agenda. In fact, NORML was the only nationwide voice for medical Cannabis at a time when national media spouted drug-war rhetoric with little regard to accuracy or balance.) The Rescheduling Petition slowly worked its way through legal obstructions at the Department of Health and Human Services (HHS), finally to land at the Drug Enforcement Administration (DEA). In 1987, after long and detailed hearings in the matter, DEA Administrative Law Judge Francis Young issued a landmark ruling ordering Cannabis to be rescheduled from Schedule One to Schedule Two of the Controlled Substances Act. He called the laws forbidding medical Cannabis use “arbitrary and capricious.” Judge Young’s ruling was quickly overturned by DEA Administrator John Lawn who had no intention of backpeddaling in the War-on-Drugs. In part, this flagrant abuse of judicial power set the stage for statewide initiatives as drug-reform activists realized that the federal government would not give redress to the issue. Creative minds on the West Coast began to formulate a strategy to bypass federal legislative “constipation.” In 1995, Jon Gettman submitted a new rescheduling petition. This procedure is ongoing in 2001. This petition may eventually succeed where the previous one failed, because the scientific understanding of cannabinoid biochemistry has dramatically advanced.

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In Oregon, after a decade of inertia, 1990’s brought new activity in support of medical Cannabis. Three more legislative attempts were made to remove ill Oregonians from criminal prosecution for using Cannabis.

Senate Bill 865

In 1993 Laird Funk, a veteran activist of Oregon drug-reform, nearly single-handedly carried Senate Bill 865. Others assisted him in this process, including Sandee Burbank. Together, this small group effectively pushed the issue of medical marijuana onto the front of the ’93 legislatures’ plate. SB 865 was an important linkage between perennial initiative campaigns during the time when Democrat President Bill Clinton was revving up the prosecution of marijuana users nation-wide, beyond the scale even of George Bush (the first).

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Senate Bill 865 introduced some of the OMMA’s key provisions, including the development of a registry card program- in this case operated by the Oregon Board of Pharmacy. The bill also proposed allowing patients to grow up to six (6) Cannabis plants and had no possession limit. The physician was responsible to prescribe the dosage. The proposed legislation addressed the issue of qualifying medical conditions by requiring the physician to submit extensive medical documentation to the State Board of Pharmacy; but it did not specifically list approved conditions, as does the OMMA. It said, simply, that “any patient who uses or wishes to use marijuana in the therapeutic treatment of a medical condition shall register with the board…”

(The OMMA would eventually adopt the *disease* and *symptom* approach.) The beauty of this language was to put the decision-making authority into the hands of the patient and physician in deciding whether the patient should be covered. The OMMA, in contrast, mandated the Oregon Health Division to only allow specific diseases and symptoms and to conduct a debilitating medical conditions advisory panel to evaluate the inclusion of other conditions.

Senate Bill 865 called for the establishment of a five-year review board whose members would be appointed by the Governor. Its purpose was to determine "the appropriate classification, if any, of marijuana in the schedule of controlled substances." This review board would also, within one year, "present to the board recommendations for procedures to protect from prosecution individuals… and to provide for lawful supply channels."

These features came to represent the basic underpinnings of what would become the OMMA. The importance of the issue was illustrated through the sponsorship of SB 865 by an ailing state Senator named Frank Roberts. As a man suffering from cancer who was married to the Oregon Governor at that time, Sen. Roberts brought attention to the bill.

Senator Bill Bradbury, who would go on to become Oregon Secretary of State, assigned the bill to be heard in two different committees: The Health and Bioethics Committee, and the Judiciary Committee.

One prominent member of both of these committees was an aspiring Oregon State Senator named Gordon Smith, who was subsequently elected to the United States Senate after he toned down his religious conservative philosophy. Senator Smith opposed SB 865 and ultimately killed it.

Sandee Burbank was active during the hearings. She coordinated patient testimony, including that of Elvy Musikka, and Bob Randall, two of the handful of patients nationwide granted access to marijuana from the U.S. Government farm in Mississippi. Other prominent speakers included Drs. Tod Mikuriya and John Morgan (who testified via videotape).

In spite of Senator Smith's opposition, SB 865 was passed out of the Health and Bioethics Committee and into the Judiciary committee. However, the legislature was coming to an end with the customary crush of last-minute legislation. The Judiciary hearing was interrupted numerous times by legislators who left the hearing in order to cast votes. This disruption eliminated any chance of serious testimony. Senator Smith moved to table the bill, his motion was passed, and SB 865 died a sudden bureaucratic death. Sadly, Senator Roberts, who had courageously pushed this legislation, died before seeing protections for patients become law in Oregon.Thus began another initiative cycle which would evolve into HB 2970, the 1995 legislative bill.

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House Bill 2970

The 1995 Oregon Legislature considered HB 2970 sponsored by Rep. Repine. HB 2970, which died in committee, exempted Oregonians suffering from illnesses (not specified) who were under the care of a physician, from criminal sanctions for their use of Cannabis. This bill required the Oregon State Board of Pharmacy to maintain a registry database and issue "numbered certificates" to patients enrolled in the program. Unlike its predecessor, it did not allow police-confiscated Cannabis to be redirected. HB 2970 also did not describe quantity limits which could be possessed, specifying only that: "...the quantity of marijuana to be used and the method and frequency of use..." had to be included on the application.

In important ways, HB 2970 was the predecessor of the Oregon Medical Marijuana Act. It continued the refinement of language begun by SB 865, in simplified form. HB 2970 required patients to assume the expenses associated with running the registry program, as did BM 67. The registry card system, described in HB 2970, ultimately came to pass in the OMMA to be managed by the OHD, not the Board of Pharmacy. Both bills also required the applicant to submit an application to the state agency including a statement signed by a physician attesting to the patient's need for the drug. [1]

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One interesting difference between the two Acts was HB 2970's mandated 5 year review of the registry program which was to have convened an "advisory board" to evaluate: *"What medical conditions appear to be amenable to therapeutic use of marijuana..."*

Although HB 2970 died in a legislative committee in September of 1995, events in California were occurring which would quickly change the balance of power and engulf the states of Oregon, Washington, Alaska, Nevada and Arizona in rapid legislative change. The initiative and referendum process in these states would do what legislators and governors could not.

"The California Compassionate Use Act" of 1996

California's Proposition 215 in 1996 was the legislative equivalent of an explosion in the midst of the drug-war. Under-funded and written off by government and media, last minute contributions from wealthy supporters financed a signature gathering blitz which succeeded in collecting enough signatures to place it on the ballot. Then, in November of 1996, to the amazement of supporters and chagrin of detractors, Prop 215 was approved by a few percentage points. It was written by patients for patients, and did not conform to the detailed legalistic culture of California politics. It was vaguely written and to the point. It said, among other things:

HB 2900 died for lack of legislative attention. The chairman of the House Judiciary Committee, Rep. Minnis (who was also a police officer) refused to schedule the bill for a hearing.

> *Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon written or oral recommendation or approval of a physician.* (Section 1 (d) CCUA)

The drug-war establishment was dumbstruck, but quickly found its voice, in the form of prominent federal officials. Within days after Californians approved this sweeping revision to California law, federal officials reacted. In a Washington DC press conference retired General and Drug-Czar Barry McCaffery, Health and Human Services Secretary Donna Shalala, and Attorney General Janet Reno issued tough-talking threats to prosecute any California physician who complied with the law. This stance quickly angered physician groups nationwide and resulted in a lawsuit in federal court against the "gag-order."

Notwithstanding the tough talk, the watershed event had occurred. Federal interventions were weak and ineffective. Now California was doing what the federal government couldn't. The ramifications quickly spread to surrounding states like Oregon, which had also failed to legislatively protect patients.

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Oregon's 1997 legislature: Dueling bills

The Republican-led 1997 Oregon legislature reacted to the medical Cannabis uprising in the south by considering two contradictory bills, which continued for years to be tied together like two presidential candidates fighting endless ballot counts. Legislators wrote, argued for, and subsequently passed HB 3251 over the objections of a number of activists and patients. HB 3251 became quickly known as "Recrim." Governor John Kitzhaber signed it into law, 15 minutes before the automatic veto would send it back to the legislature to override. Governor Kitzhaber expressed reservations about signing it in his comments.

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Among other provisions, HB 3251 ratcheted up the penalties for simple possession to a class B Misdemeanor instead of being a simple citation with a fine of between $500 and $1000. (Governor Tom McCall, a Republican, signed a bill decriminalizing simple Cannabis possession into law in 1973, making Oregon the first state to do so.) Ironically, Recrim's most pernicious effect was invisible. By upgrading simple Cannabis possession into the category of a Misdemeanor crime, police could conduct warrantless searches. The Governor's signature initiated a mad scramble by Oregon's drug-reform organizations to refer the law back to Oregon voters as a referendum. [2]

The signature gathering had to be completed within 60 days, and it was. Thus, HB 3251 became Ballot Measure 57 and was scheduled to appear on the November 1998 statewide ballot.

House Bill 2900

Also during the 1997 legislature one lone Oregon Legislator, Rep. George Eighmey, introduced HB 2900. HB 2900 evolved and expanded the previous medical Cannabis legislation that had died in the 1995 legislature. It revived the certification process, this time using the State Board of Pharmacy as the agency to establish and maintain the central registry. The program would issue certificates to persons

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who had a statement from their physician stating that the patient was suffering from:

> *…serious physical illness or disease and that the use of marijuana would improve the person's health or relieve physical pain and suffering."* (HB 2900 Section 2 (e))

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Rep. Eighmey's bill was in some ways more restrictive than the OMMA but it continued a refinement process. Among other provisions, distribution of Cannabis to any other person was forbidden. It also required the Oregon State Police to inspect all grow operations. This was the first legislative attempt to permit cultivation, basing the allowable quantity of Cannabis and plants a patient could possess upon "the attending physician's dosage and use recommendations."

HB 2900 died for lack of legislative attention. The chairman of the House Judiciary Committee, Rep. Minnis (who was also a police officer) refused to schedule the bill for a hearing. (This was the same Legislative committee which had enthusiastically approved Recrim.) Rep. Eighmey's last-ditch attempt to attach his modest medical Cannabis bill to Recrim failed, and with it went any chance at legislative redress of the issue. Seeing no chance that a conservative Republican legislature would pass a law protecting sick people, Oregon activists were forced to use the initiative process.

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Medical Cannabis legislation in Oregon "hopscotched" back and forth from the initiative process to the legislature. Initiatives were resorted to after failures of the legislature to act. Each successive attempt built upon previous language. In many ways, the OMMA represented the culmination of this process. OMMA far surpasses any previous initiative or bill in its protection of patients.

Part Two: Ballot Measure 67

In 1997, after the demise of Rep. Eighmey's modest bill, Americans For Medical Rights (AMR), a political lobbying organization based in Santa Monica, California, began contacting Oregon activists in an attempt to write an initiative for the Oregon ballot. AMR had successfully waged California's groundbreaking medical marijuana initiative under the name "Californians for Medical Rights". In Oregon, The Sugerman Group was chosen to coordinate the campaign strategy.

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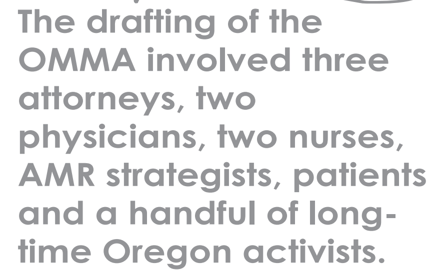
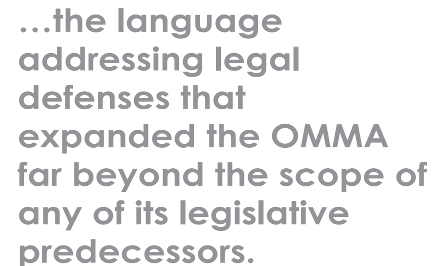
The drafting of the OMMA involved three attorneys, two physicians, two nurses, AMR strategists, patients and long-time Oregon activists. Meticulous writing, debating and reviewing yielded an initiative that expanded the protections to patients in several key ways. First, the OMMA expressly allowed cultivation of a specific number of plants—seven—and included provisions for patients to increase the number beyond seven if the greater need was "medically necessary." The OMMA also instituted a registry card system operated, this time, by the Oregon Health Division, as had its 1979 and 1993 predecessors. As another refinement, the OMMA specifically listed *symptoms* and *conditions* that would be allowed, intentionally omitting inclusion of

any psychiatric illness or symptoms. The decision to include symptoms on the list was a deliberate attempt to cast the net of allowance as wide as possible without exceeding the political reality of the time. In another significant expansion of past attempts, the language required the Health Division to create rules to govern the process of evaluating new conditions for the inclusion of new diseases or symptoms in the list of debilitating medical conditions. [3]

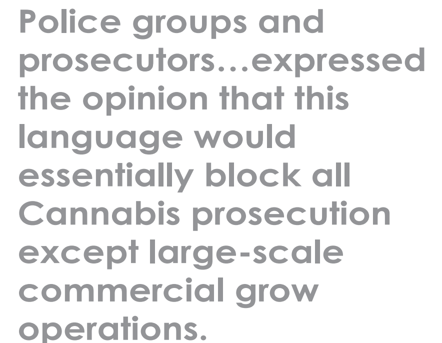


But it was the language addressing legal defenses that expanded the OMMA far beyond the scope of any of its legislative predecessors. This key provision was also hotly opposed by law-enforcement groups statewide. (Legal defenses available to patients are covered in detail in Chapter 2.) The legal protections written into the OMMA consisted of three successive defenses. The first layer was *possession of the registry card*. The second layer was the *"affirmative"* defense for those patients not registered and the third layer was the *"choice of evils"* defense. Police groups and prosecutors in characteristic oversimplification expressed the opinion that this language would essentially block all Cannabis prosecution except large-scale commercial grow operations.



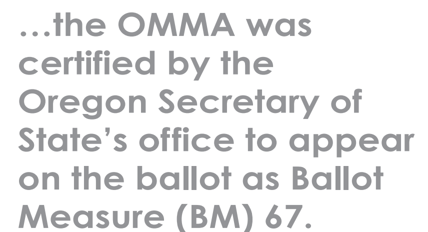
The OMMA also permitted *"designated primary caregivers,"* who would be registered and protected, to grow Cannabis away from the patient's residence and transport Cannabis and plants to the patient. It also prohibited any state licensing board from disciplining a licensee for his or her compliance with the law. This language protected doctors, nurses, and anyone who received a license from the state.

All in all, the initiative language drafted by the working group was a detailed and complete text, which far surpassed any previous legislative attempt. It substantially removed the burden of proof from patients, and placed it on prosecutors and police.



In the months leading up to the passage of Ballot Measure 67 (the ballot title assigned to the OMMA), furious signature gathering took place in Oregon, coordinated by "Progressive Campaigns." Boxes of hastily tabulated petition pages were submitted to the Secretary of State's office in Salem within the last few minutes before the deadline for signature gathering expired. Subsequent mathematical sampling of signatures for accuracy concluded that enough valid signatures were included to qualify the initiative on the November ballot, by 2220 signatures. Thus, OMMA was certified by the Oregon Secretary of State's office to appear on the 1998 ballot as Ballot Measure (BM) 67. And the campaign commenced.

Yes on 67, No on 57



Both BM 67 and BM 57 were ushered through the campaign by Oregonians who were funded by George Soros, John Sperling, and Peter Lewis, wealthy patrons of the drug-reform movement.[4] Oregonians for Medical Rights (OMR) faced off against Oregonians Against Dangerous Drugs (OADD), their law-enforcement counterpart.

OMR had a strategic problem. Ballot Measure 67, standing alone, appeared to have solid support among voters. But the "ugly sister"

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…voters were being asked by OMR, and the drug-reform movement to vote 'No" on BM 57 (Recrim), and "yes" on BM 67 (OMMA).

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Recrim was appearing on the same ballot, as BM 57. Since BM 57 (Recrim) had been passed by the legislature and signed by Governor Kitzhaber, it was law in Oregon, albeit on hold until after the election. The referendum, which went to the voters asked them to decide whether or not they wished the law to take effect. A "yes" vote would result in immediate activation of the law; a "no" vote would nullify it completely. Ballot Measure 67, on the other hand was asking voters to approve or reject the OMMA. A "yes" vote for BM 67 would make the ballot measure Oregon Law, a "no" vote would reject it. Thus, voters were being asked by OMR, and the drug-reform movement to vote 'No" on BM 57 (recrim), and "Yes" on BM 67 (OMMA).

While the Sugerman Group and OMR coordinated the campaign, another organization, Voter Power, filled in the activist gap. Headed by John Sajo, an articulate advocate of drug reform in Oregon, Voter Power designed and implemented the "Yes on 67, No on 57" campaign. Additionally, Voter Power coordinated a voter registration campaign at fairs and music festivals all over Oregon that added more than 10,000 Oregonians to the voter roles. Voter Power was instrumental in educating and motivating young, progressive, voting age Oregonians to show up at the polls. Coordinated literature mailings and television advertisements produced by OMR combined with "get out the vote" messages by Voter Power resulted in a powerful and ultimately successful campaign.

Ballot Measure 67 had, as its two Chief Petitioners, physician Richard Bayer and patient Stormy Ray. Bayer and Ray formed a powerful and articulate voice in favor of the OMMA. Doctor Bayer publicly debated, discussed and wrote in favor of BM 67 continuously from November 1997, through out the election. He forcefully debated the merits of the initiative by emphasizing the specific limitations written in to the measure to prevent abuse. He also articulated a message that doctors, not police should be the ones deciding the value of medical Cannabis. Ms. Ray traveled throughout Oregon publicly speaking and interviewing with news organizations. She gave a dignified and gentle "face" to the issue as a patient who suffered with cramps, spasms and pain from Multiple Sclerosis. She eloquently gave a voice to the many suffering Oregonians who used Cannabis illegally. When asked if she smoked marijuana, Ms. Ray responded: "I do what anyone in my position would do."

Law-enforcement opposition: It's a "Trojan Horse!"

Opposition to BM 67 formed mainly around law-enforcement groups. Arguments against BM 67 centered around several areas. First, police spokesmen negated the validity of marijuana as a medical treatment. According to OADD, Ballot Measure 67 was a "Trojan horse" for drug legalization in the form of compassion for the sick. They argued that BM 67 was actually a cynical ploy by drug-legalizers to manipulate patients into believing that Cannabis was a useful medicine. Law-enforcement representatives reasoned that passage of BM 67:

> *…would create loopholes large enough to drive a triple-trailer through that would have the effect of effectively barring any criminal prosecution of anyone with the slightest amount of initiative...* (Oregon District Attorneys Association testimony before the Oregon Criminal Justice Commission, September 23, 1998.)

Opposition to BM 67 formed mainly around law-enforcement groups.

Beyond that, police organizations strenuously objected to the provision of the ballot measure, which required police to maintain and care for any confiscated Cannabis plants until the case had been resolved. They argued that this provision would force police departments all over Oregon to set up and maintain large grow rooms of marijuana.[5]

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Police spokesmen often complained about the overly broad definition of debilitating medical conditions, which included disease conditions as well as symptoms. This would force the Oregon Health Division:

> *…to issue a marijuana use permit to anyone who claims to suffer from any number of ailments, such as an eating disorder, tooth-ache, or chronic back pain.*
>
> (Multnomah County District Attorney, *Legal Analysis of the Impact of M-67 on the Prosecution of Marijuana Possession, Delivery and Cultivation Cases,* Written testimony before the Oregon Criminal Justice Commission, September 23, 1998.)

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Oregonians Against Dangerous Drugs tried valiantly to present the medical marijuana issue as confusing, a dangerous precedent, and a threat to youth. Seriously underfunded, OADD could barely afford a media campaign. A handful of police spokesmen doggedly traveled the state arguing the issue in front of mostly hostile crowds. Without significant funding from drug-war proponents, OADD limped along to defeat in November.

Medical leadership refuses to support BM 67

Contrary to the spirited vocal opposition promoted by Oregon's law-enforcement community, state medical organizations were subdued, non-committal and largely inconsequential in the statewide medical marijuana discussion. Neither the Oregon Medical Association (representing physicians) nor the Oregon Nurses Association (representing nurses) endorsed Ballot Measure 67.

Neither the OMA nor the ONA acknowledged the human rights violations implicit in "criminal" laws that harmed patients.

The Oregon Medical Association House of Delegates debated a resolution opposing the OMMA in April 1998 at their semi-annual meeting. An emotionally-charged debate ensued with physicians on both sides arguing the merits of the language and the possible effects upon physician practice. A compromise finally passed by inserting language that neither endorsed nor rejected BM 67. This neutralized the opposition. Thus, the largest physician organization in Oregon essentially begged out of the issue, leaving a few vocal doctors to debate.

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In similar fashion, in 1998 the Oregon Nurses Association (ONA) took the course of least resistance by reiterating the 1997 House of Delegates position that stated:

> *Oregon Nurses Association supports continued research and current documentation on the medicinal use of marijuana where other drugs have not been effective.*

One nurse, Ed Glick, joined at the convention by Sandee and Jennifer Burbank from Mothers Against Misuse and Abuse (MAMA), and Elvy Musikka presented information and advocated for passage of a supportive resolution. (Ms. Musikka attended as one of the handful of "legal" patients in America who receive monthly cans of low potency marijuana cigarettes from the U. S. Government.) Convention opposition formed around the Nurse Assistance Network (NAN), a shadowy ONA organization supporting a policy of forced drug-treatment of nurses in coordination with the Oregon Board of Nursing's "Nurse Monitoring Program." The NAN position parroted most of the common objections such as that there is:

> *…no conclusive evidence that smoked marijuana is the most effective treatment... (*and that) *...marijuana is also considered a gateway drug to other illegal drug use, particularly amongst adolescents.* (written comments, 1998 ONA Convention)

The floor debate included a motion to replace the ONA's 1997 position with the Oregon Medical Association language. This motion failed. Ultimately, the ONA House of Delegates voted 60% to 40% to reject language supporting medical Cannabis and continued their "research not access" position instead.

Ultimately, medical organizations in Oregon refused to support Cannabis-using patients. Neither the Oregon Medical Association nor the Oregon Nurses Association acknowledged the human rights violations implicit in "criminal" laws that harmed patients. These two organizations like legislatures, politicians and drug-war zealots were unable to squarely face an issue that was common sense to most Americans.

The OMMA becomes Law

So, in spite of, or perhaps because of opposition from nursing, physician, law-enforcement, drug-treatment, governmental, and fundamentalist Christian organizations, the OMMA was approved by Oregon voters 54% to 45%. Ballot Measure 57 (Recrim) was defeated 59% to 37%, or 22 percentage points. OMR's "just say no" campaign describing the costs of increased prosecution and jailing of pot smokers resonated with the voters. Voter Power's monumental effort to register 10,000 voters motivated young people to vote in large numbers.

The momentum begun by California's Proposition 215 in 1996 swept through Oregon, Washington, Alaska, Nevada, and Arizona in 1998. The Federal Government's worst fears were realized as a "states rights" rebellion in the west. Every state that voted on the issue

approved medical Cannabis. This legislative trend has continued.

The approval by Oregon voters of Ballot Measure 67 cemented the political process begun in California. After the 1996 approval of Proposition 215 the "Feds" began saber rattling. The 1998 initiative victory in Oregon was greeted by stunned silence and occasional grumbling by drug-czar McCaffery that "medical practice shouldn't be determined by initiative."

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Within a few weeks of the election, Oregon Attorney General Hardy Myers convened a "work group" made up mostly of law-enforcement representatives. This work group developed initial guidelines that were subsequently enlarged and expanded. The recommendations described the three legal defenses available to patients. Part two of the recommendations addressed the "presumptive indications" which officers could use to determine if the marijuana was for legitimate medical use. (These guidelines advise officers to conduct an investigation at the time of contact to determine if the situation is covered under the law before destroying plants, making an arrest, or obtaining a search warrant. It also suggests that officers investigate the claim of medical use by asking specific and detailed medical questions without placing that person under arrest or obtaining a release of medical information.) [6]

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In December of 1999 the Attorney General released revised and expanded guidelines for local law-enforcement. These revised guidelines addressed the changes passed by 1999 Oregon legislature in the form of House Bill 3052 (see Appendix C).

Administrative rule-making hearings

At around the same time, the Oregon Health Division conducted the Advisory Committee on Medical Marijuana Act Administrative Rules. Section 15 of the OMMA required the Division to write administrative rules (OAR's) to implement the Act. A Committee composed of many of the proponents and opponents of the Act met in January, March and April of 1999. The draft OAR's were circulated on the second meeting and a public hearing was conducted on the third.

Major issues discussed and resolved included organizing a streamlined and inexpensive registration system. Draft versions of the Medical Marijuana Program forms were discussed and created. There was much discussion of two main areas involving law-enforcement: the registry card system information database and investigative procedures. These discussions eventually concluded that police could call the OHD only for individual verification of the information included on the registry card. [7]

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Investigation processes were discussed which attempted to determine at what point the state police would be called to investigate. The OHD expressed a desire to *not* be involved in the investigation process and that the State Police was the more appropriate agency. They did say that they would make a referral to the Oregon State Police if there was "strong indication" of abuse of the law.

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The final rulemaking hearing occurred at the State Office Building in Portland…on April 15, 1999.

The topics included the $150 cost of the card—an astounding amount to many patients.

Another interesting issue revolved around the definition of mature plants.

The final rulemaking hearing occurred at the State Office Building in Portland in a public meeting room on April 15, 1999. The meeting was attended by upwards of 100 people, mostly speaking for humane implementation of the law. Media organizations didn't attend. Little word of the event was broadcast. The testimony by many patients was powerful and heart wrenching. Patient after patient relayed the pain they endured at the hands of the legal system. Many times the meeting facilitator had to divert the speakers from describing the details of their medical conditions and back to the subject of the rules.

The topics included the $150 cost of the card—an astounding amount to many patients. (During panel deliberations the OHD had suggested a $50 annual fee. This fee was increased to $150 because of an inability to secure general funding from the legislature.) Another interesting issue revolved around the definition of mature plants. This botanical description was important because the law allows for only "three mature plants" at any time. The characteristics of floral maturity were clearly expressed by several speakers. The Division decided upon an inadequate definition suggested by a botanist at Oregon State University:

> *Floral maturity will be said to have occurred when flowers are readily observable on the plant.*

As several speakers pointed out, floral maturity is a specific biochemical process that occurs long after flowers are observable. The importance of harvesting for maximum cannabinoid concentration was explained, to no avail.

Lastly, the definition of who could be a "designated primary caregiver" was discussed at length. The Health Division's position was that the legally defined role of caregiver should encompass more than just growing Cannabis for the patient. However, patients spoke out forcefully, describing caregivers that generally do perform a single function. The Health Division eventually decided to omit a requirement that the designated caregiver serve some additional function thus recognizing that supplying Cannabis to the patient was indeed a "significant responsibility."

The final public meeting was attended mostly by patients and proponents. There were few, if any, police officers present, and minimal OHD staff. The only medical organization in attendance was the ONA which voiced an opinion that past use and legal considerations should be factored in when issuing cards.

The powerful outpouring of emotional testimony at the meeting swayed the Health Division towards the patient's position in several important issues. By formalizing an administrative structure for the OMMA the OHD gave life to it.

House Bill 3052

One would have thought that the Republican legislature would have been chastened by two legislative defeats on the same subject, at

the same election. Not so. Within weeks of the start of the 1999 legislative session, law-enforcement groups met with their Republican sympathizers in Salem. Their goal was "to correct the flaws" of the OMMA. The OMMA hadn't even been implemented. The Multnomah County DA's office and Portland City Attorney spear-headed the effort.

The revisions included a raft of deletions and additions, which would have had the effect of shifting the burden of proof back towards the patient. Proposed changes included:

- Requiring that any grow location be written on the registry card;
- Deletion of OMMA Section 1, which states that possession of a registry card..."shall not alone constitute probable cause to search the person or property of the cardholder..."
- Replacing Section 1 to **require** inspection of the grow location by law-enforcement or the OHD up to **three times per year;**
- Eliminating the requirement that police agencies must care for plants;
- Adding wording which forbids medical Cannabis use by inmates or prisoners;
- "Clarifying" plant possession limits to 7 plants in any location.

The discussions between law-enforcement representatives and OMR were detailed and intense. OMR steadfastly refused to bargain away key protections and threatened to return to the initiative process to overturn unacceptable changes. HB 3052 was the culmination of these efforts. Changes that were subsequently agreed upon included:

- Changing terminology from "parent or legal guardian" to "custodial parent or legal guardian;"
- Disallowing Cannabis use in a correctional facility by prisoners;
- Eliminating law-enforcement responsibility to maintain live plants.

The two alterations, however, that had the greatest impact on the law dealt with language "clarifications" around where marijuana could be cultivated, and pre-trial notification of an intent to use the affirmative defense. The affirmative defense notification required that the defendant had to make written notice to the District Attorney of an intention to invoke the affirmative defense within five days of trial. It also required him or her "to state the reasons why the defendant is entitled to use the affirmative defense."

HB 3052's language "clarifications" regarding grow locations were intended to specify exactly where and how much Cannabis the person could cultivate. It stipulated that Cannabis could not be cultivated

> *"at a place other than one address for the property under control of the patient and one address for property under control of the primary caregiver,"* or, *"at more than one address."*

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HB 3052 was the culmination of these efforts…(its) language "clarifications" regarding grow locations were intended to specify exactly where and how much the person could cultivate Cannabis.

These two contradictory statements served only to confuse the intent of the original language but remained in the final bill.

HB 3052 was dutifully signed into law by Governor Kitzhaber on July 21, 1999 and became effective on that date because language was inserted stating that the act "being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist." It is ironic that an "emergency" existed because patients had legal protection from cruel laws. This same emergency invocation was inserted in HB 2267, the 1979 bill which failed in that year. HB 3052 made few changes in the OMMA that would benefit patients. It did create more obstacles for them. It could have been far worse.

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The registry card program

And so, nearly 20 years after the first attempts to legislatively protect Cannabis-using patients, the Oregon Health Division began issuing "registry identification cards." This registry program was begun from scratch with no example in the United States to guide it. It required a Herculean effort in order to be implemented as it swirled in a political, medical and legal world. Into this crucible walked Kelly Paige, an OHD employee.

HB 3052 was dutifully signed into law by Governor Kitzhaber on July 21st, 1999…

Ms. Paige, who had not previously been involved in the medical marijuana movement, suddenly found herself designing and managing the registration process for an exponentially growing number of patients. Within a 3-month time period, she coordinated the creation of a computerized data base; filing and tracking systems; forms and form letters; and operating procedures for researching patient applications, contacting doctors, issuing cards, responding to law enforcement inquiries and maintaining financial records.

HB 3052 made few changes in the OMMA that would benefit patients. It did create more obstacles for them. It could have been far worse.

Under her tireless effort, the Medical Marijuana Program has become a model for other states facing this task. Most importantly, this program finally does what legislators were unable to do, carve out a legal protection for Cannabis using patients. In the future, Cannabis will certainly be rescheduled out of Schedule One of the federal Controlled Substance Act. When it is, patients and health care providers will express amazement that patients suffered as much at the hands of police as of disease. Those days are fast approaching.

On May 1, 1999, the first registry card was issued. By June the number of patients grew to over 50. The growth of the program continued and increased. In 2000, the patient database contained over 1200 patients, 500 caregivers and 450 physicians. By 2001 there were over 1500 patients, 900 caregivers and 500 physicians registered in the program.

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A statement by Martin Wasserman, M.D., administrator of the Oregon Health Division, summed up the program's first year:

A number of states allow the medical use of marijuana, but Oregon was the first to implement a statewide registration system for patients. Our first-year review shows the system is

working as it was intended. A substantial number of qualified patients and their physicians are using it, and only a very few inquires from law enforcement officials regarding patients have occurred.

By 2001 there were over 1500 patients, 900 caregivers and 500 physicians registered in the program.

Footnotes

[1] Oregon HB 2970 required: "A statement from the person's attending physician recommending the therapeutic use of marijuana." The OMMA requires "...written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating condition."

[2] Any law passed by the Oregon Legislature may be referred back to voters for approval or rejection by collecting sufficient signatures to place it on the next election ballot. The law does not take effect until voters decide its fate.

[3] The first Debilitating Medical Conditions Advisory Panel met in May and June of 2000. It was convened to consider nine petitions for eight conditions, all of them psychiatric in nature. (See Chapter 8.)

[4] George Soros, Peter Lewis and John Sperling are three wealthy philanthropists who have contributed funding, through charitable and non-profit organizations, to drug-law reform and substance harm prevention programs that the U.S. Government refuses to fund. Most State initiatives have benefited through expertise and financial support provided by these organizations.

[5] This provision was subsequently removed by the 1999 Oregon legislature in HB 3052.

[6] Police in Oregon often use the "knock-and-talk" method to gain entry into homes or obtain confessions. This method does not require a search warrant if the person gives consent for the search or agrees to answer questions. Patients are advised to not volunteer information or give permission for a search without contacting an attorney or the OHD. (Chapter 2 describes knock-and-talk searches.)

[7] The information on the registry card includes name and address, and whether or not the person is registered with the Marijuana Registry Program.