

## Opening a New Medical Cannabis Collective – Don Duncan

Thank you for contacting me about your plans to open a new medical cannabis dispensing collective. My name is Don Duncan. Since 2000, I have opened medical cannabis collectives in Berkeley, West Hollywood, and Los Angeles. Together, these collectives have served thousands of legally qualified medical cannabis patients and their primary caregivers.

My goal is to help new operators organize and operate their collectives in ways that are as safe and legitimate as possible in the current legal climate. A well-run collective is good for patients and for the grassroots movement to defend medical cannabis rights. A poorly run collective, however, is dangerous for patients and brings the integrity of our movement into question. Patients, operators, and advocates will all benefit from making our collectives the best they can be.

This document contains answers to frequently asked questions. Of course, you will want to talk to an attorney and accountant before you open your collective. My advice is not a substitute for help from other professionals.

You should start your research by reading California Attorney General Gerry Brown's guidelines for medical cannabis patients and law enforcement at <http://www.AmericansForSafeAccess.org/AGGuidelines> Published in August 2008, these guidelines represent a major turning point for implementation of California's medical cannabis laws because they state for the first time that "a properly organized and operated medical cannabis collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law" provided that the association substantially complies with the guidelines.

You should also be familiar with a groundbreaking report from Americans for Safe Access (ASA) entitled "Medical Cannabis Dispensing Collectives and Local Regulation." You can download a copy at:

<http://www.AmericansForSafeAccess.org/downloads/collectives.pdf>

Based on interviews with elected officials, law enforcement, and civil servants; this report demonstrates the positive impact well-regulated collectives and cooperatives have on communities. This report will be a great tool for talking with landlords and local law enforcement about your plans.

Hopefully, this message and information at the links above will help you on your way. I also offer paid consulting services for new and existing operators. My consulting services concern (1) basic guidance on starting a collective, (2) setting up systems and staff training, and (3) public relations and direct advocacy. My goal is to help clients achieve the highest possible degree of legal integrity and self-sufficiency. I do not act as a surrogate to open or operate collectives. Instead, I try to teach new and existing operators how best to do this themselves.

Some specific examples on consulting work I have done recently are:

1. Explaining the legal situation at the local, state, and national level and exploring organizational and operational strategies for compliance
2. Developing systems and forms for new member screening, bookkeeping, inventory control, etc.
3. Preparing for and attending meetings with landlords to discuss renting to a collective
4. Training new staff (law enforcement, operations, customer service, etc.)
5. Advising on promotional materials and strategy
6. Networking and outreach with elected officials and law enforcement
7. Direct advocacy with elected officials
8. Strategic and crisis management planning

This is a dynamic field, and it is likely you will face unanticipated challenges. I hope to help clients overcome challenges, and be better prepared in the future. My hourly fee is \$250, and I can negotiate flat rate fees for some services. Please let me know if I can be helpful.

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### Frequently Asked Questions

#### **Is medical cannabis legal?**

Medical cannabis is legal under state and local law, but it is illegal under federal law. Voters in California legalized the use, cultivation, and possession of cannabis for those with a doctor's recommendation or approval when they adopted Proposition 215 in 1996. In 2003, the California State Assembly adopted Senate Bill 420 in order to implement and clarify Proposition 215 – effectively expanding its scope. Some of the content of that legislation and subsequent legal precedents inform the answers below. Unfortunately, medical cannabis remains illegal under federal law. We are working hard to resolve this conflict, but you should know that there can be serious legal consequences for breaking federal law.

#### **Did the Supreme Court overturn California's law?**

No. In 2005, The Supreme Court ruled that the federal government has jurisdiction to prosecute medical cannabis patients, cultivators, and providers despite the fact that their conduct is legal under state law. (Specifically, the *Gonzales v. Raich* case dealt with the jurisdiction of the federal government over local, non-commercial activity.) Visit <http://www.AmericansForSafeAccess.org/article.php?list=type&type=34> for more details about this case. *Absolutely nothing in the Court's decision preempted or overturned our state law.* Legal experts and the California Attorney General agree that our state law remains in force. Some people are under the mistaken impression that federal law trumps state law in any case. This is false. The interaction of state and federal law under our federalist system of government

is complex and controversial. Conflicts are not unheard of, and state law can stand in opposition to federal law in cases like this.

### **What is a medical cannabis dispensing collective?**

A medical cannabis dispensing collective is an organization operating in compliance with state law and comprised entirely of legally-qualified patients and their primary caregivers that receives medicine exclusively from its members and provides it exclusively to its members. Collectives are sometimes called dispensaries, compassion clubs, or cannabis centers. The exact terminology varies, and terms are sometimes used inter-changeably. I prefer the term *dispensing collective* to clearly associate these organizations with California law as discussed below.

### **Are collectives legal under state law?**

Yes. California Health and Safety Code §11362.775 authorizes patients and caregivers to “associate within the State of California in order *collectively or cooperatively* to cultivate marijuana for medical purposes” [italics added]. Unfortunately, the law gives no further clarification as to what constitutes a collective or cooperative association. The nature of these associations is evolving in step with California law and legal precedents.

In August 2008, the California Attorney General (AG) published guidelines for medical cannabis that state that “a properly organized and operated collective of cooperative that dispenses medical marijuana through a storefront may be lawful under California law,” provided the facility substantially complies with the AG’s guidelines. You should read “What the Attorney General’s Guidelines Mean for Medical Cannabis Dispensing Collectives in California” at <http://www.AmericansForSafeAccess.org/AGGuidelines> for a detailed discussion of collectives and cooperatives under California law.

### **Does a collective have to be a nonprofit organization?**

California Health and Safety Code Section 11362.765(a) says that nothing in the law authorizes the cultivation of medical cannabis for profit. This statute does not mandate the establishment of a statutory nonprofit corporation as described in California Corporations Code Section 5000, *et seq.* However, operators may *chose* to organize a medical cannabis collective as a California nonprofit corporation, as discussed in greater detail below.

Regardless of the organizational structure, a medical cannabis collective should operate in a “not-for-profit” manner. **Not-for-profit** operation describes the behavior of a business or association that is not operated for a commercial purpose, or to generate profits for its owners. Any business, regardless of its formal structure, can operate in a not-for-profit fashion by reinvesting excess revenue (after salaries and other overhead) in services for members, advocacy for patients’ rights, or other noncommercial activity.

The term not-for-profit is sometimes confused with the term nonprofit. A **nonprofit corporation** is a specific statutory entity organized under California Corporation Code Section 5000, *et seq.*, to carry on a non-commercial activity. Nonprofit corporations include churches, schools, some hospitals, social clubs, and service organizations. Some nonprofits are exempt from federal and state taxes because they do educational, religious, or charitable work. The Internal Revenue Service will not recognize providing medical cannabis as a tax-exempt activity, and state tax-exemption is contingent on federal approval. Therefore, a medical cannabis collective organized as a nonprofit corporation will report and pay tax like a traditional C-Corporation. It is important to remember, however, that a corporation is still a legitimate nonprofit organization under California law, even without tax-exempt status.

Many collective operators choose to incorporate their collectives as **California Nonprofit Mutual Benefit Corporations**, as described under California Corporations Code 7110, *et seq.* Doing so gives the collective a bona fide nonprofit identity, something that resonates with elected officials, law enforcement, media, and neighbors. This is a sensible choice for most operators, and increasingly the norm for new facilities.

### **Do I need permission from the Police Department?**

Unless your city or county requires it, you do not need approval from law enforcement. The Police Department is likely to oppose a new collective. In fact, law enforcement has always been the leading opponent of medical cannabis. Do not expect a lot of support from your local police department. However, you do need to talk to them just before or shortly after you open your doors. You do not want your first interaction with the Police Department to be by surprise. Do not ask for permission – simply inform and include.

### **Can I go to jail for this?**

Yes. Medical cannabis remains illegal under federal law, and you are committing an act of civil disobedience every time you serve patients. You may face very serious charges for operating a collective. You have to be prepared to face this if you intend to operate in this political climate. Take some time to consider what you have to lose and how far you are willing to go before you open your doors.

You may also face legal challenges on the state level. Recent court precedents are encouraging, but you have no iron clad guarantee of legal protection under state law right now. There is always the chance that a rouge police officer or over-zealous prosecutor may target you. While penalties in state court are generally less severe than federal courts, it is possible that a collective operator would spend time in county or state jail.

### **Where do you get your medicine?**

A dispensing collective must obtain its medication from its registered members. This is a significant challenge for new dispensing collectives. You have to build your membership base before you have enough members to provide excess medication to supply the others. This may be very frustrating for new operators, but is an important phase to get through. Your members will understand if you do not have a wide selection when you first open. Encourage those members who do grow cannabis to bring their excess medication back to the collective to help the other members. Some legally qualified medical cannabis patients are very good at growing medicine. In fact, some have relatively large stores of excess medication. These fortunate patients will often be looking for a dispensing collective or cooperative to join. Some people refer to these patients as “vendors.” A better term is *patient-cultivator*. It has been my experience that these patient-cultivators will find you when you open your collective. I am sorry to say that I cannot help you locate medication for your new dispensing collective.

### **Do I have to pay sales tax?**

Yes. The California BOE has decided that all collectives must obtain a seller’s permit and pay sales tax. I believe this is an unfortunate decision that places an undue burden on patients while ignoring the intent of voters and the State Assembly. Nevertheless, you should collect and pay sales tax on every transaction. You may face serious financial and legal consequences if you do not.

### **Will I make a lot of money?**

There are safer and easier ways to make money besides operating a medical cannabis collective or cooperative. If your primary goal is profit, I strongly recommend you look elsewhere. Most operators make a suitable living, but more than you might imagine struggle financially in this line of work. It is hard work and there is no guarantee of success. Please give this careful thought before you sign a lease or make other commitments.

### **Where can I get more help?**

If you have not done so already, I strongly recommend that you visit several medical cannabis dispensing collectives. It will be very useful to see how other people are operating their collectives, so that you can decide if these models are right for you. You should also make a point to join and participate in **Americans for Safe Access (ASA)**, the largest and most effective medical cannabis campaign in the country. ASA has invaluable educational resources for you and the patients you serve, and the organization is leading the fight to implement local regulations and change federal law. Visit <http://www.AmericansForSafeAccess.org> or call toll free (888) 929-4367 for more information. Additionally, you should hire a criminal defense attorney and accountant or tax attorney.

Some Additional Thoughts

Operating a medical cannabis dispensing collective is a very important and compassionate project. It is also a lot of hard work. You should think hard about your level of commitment and the risk you're willing to take before you begin this project. Some operators would do better for themselves, the patients, and the grassroots movement for medical cannabis if they decided not to operate dispensing collectives. There are easier and safer ways to earn a living. This is a line of work that is most appropriate for people who are committed to compassion – and to the cause of medical cannabis. If you are not committed to upholding the letter and the spirit of the law and to conducting your business affairs in an *ethical and reputable* manner, then you should not pursue this line of work. You will do more harm than good.

New operators also do well to reflect honestly upon their motives for opening a dispensing collective. Your motives will influence how you operate your collective and the decisions you make regarding your patients and community. The consequences for making bad decisions are serious for you, the patients, the community, and medical cannabis in general. If you say that your motive is compassion, then your actions should reflect this. Neighbors, elected officials, and police officers can tell when you're being insincere. Do not put yourself and others at risk by failing to examine your motives.

I need to include a disclaimer to be very clear about my participation in conversations with new collective operators: I am not an attorney or an accountant. The contents of this message do not constitute professional legal or financial advice, nor am I recommending that you take any specific actions. This information is for educational purposes only. The contents are my own opinions.

Good luck with your project. Please keep me posted on your progress and let me know how I can help.

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