



Americans for Safe Access

Activist Newsletter

Defending Patients' Access to Medical Marijuana

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ASA Suit Says Law Requires Federal Agencies To Use Sound Science Appeal Argues Statements on Medical Cannabis Must be Accurate

On April 14, the federal Ninth Circuit Court of Appeals heard arguments from ASA on why such federal agencies as Health and Human Services (HHS) and the Food and Drug Administration (FDA) must correct the inaccurate information they disseminate about medical marijuana.

In late 2007, a lower court accepted the government's contention that there is no right to judicial review under the Data Quality Act, effectively reducing the law a friendly request, without ruling on the merits of ASA's claims.

Arguing on behalf of ASA that the laws Congress passes have consequences that federal agencies cannot ignore was noted legal scholar Alan Morrison, who founded Public Citizen's Litigation Group and taught administrative law at Stanford.

"Citizens have a right to expect the government to be transparent and to use the best available information for policy decisions," said Morrison. "Unfortunately, so far, the gov-

ernment has been anything but transparent and has failed to produce any evidence for its policy statements on medical marijuana."

While the law says federal agencies must rely on sound science when disseminating information to the public, the



Alan Morrison

petition filed by ASA in October 2004 marked the first serious test of the Data Quality Act, which was passed by Congress in 1999. After more than two years of delay by the federal government that culminated in a refusal to act on the petition, ASA filed a lawsuit in February 2007 asking the courts to direct the agencies to comply with the law.

The respected magazine Science published an editorial on the case that year, claiming that HHS had "violated its own DQA guidelines."

At issue are such statements as "there have been no studies that have scientifically assessed the efficacy of marijuana for any condition," and "marijuana has no currently accepted medical use in treatment in the United States."

Thirteen states representing one quarter of the U.S. population have laws protecting their citizens who use medical marijuana on the advice of their doctors. To date, over 15,000 peer-reviewed medical and scientific articles

ASA Chief Counsel Debates U.S. Attorney on Policies

On April 9, ASA Chief Counsel Joe Elford faced off in a public debate with the top federal prosecutor in Northern California, U.S. Attorney Joseph Russoniello.

The hour-long debate, which was sponsored by the University of California's Hastings College of Law, was closely watched, as it marked the first extensive public commentary on medical marijuana by federal prosecutors since new Attorney General Eric Holder confirmed to the press that the Obama Administration would be implementing a new policy on medical marijuana.

During the often heated debate, Russoniello made some comments favorable to patients - such as the federal government was not interested in prosecuting medical marijuana patients, and there was "little likelihood" of the federal government prosecuting medical marijuana dispensaries and cultivators if they comply with the California Attorney General's guidelines.

But Russoniello also said plenty of things about which Elford confronted him forcefully - that all dispensaries in California are illegal under state law because they make large profits and that the medical marijuana movement is a sham.

Elford also noted that many local law enforcement agencies in California that don't like the state's medical cannabis law often turn qualified patients and providers over to federal authorities for prosecution or raids. Russoniello

More Sentencing Questions in Lynch Case U.S. District Judge Wants to Avoid Mandatory Term

A federal judge has again postponed sentencing of a California man convicted of operating a city-licensed medical cannabis dispensary. ASA Chief Counsel Joe Elford was among those who appeared on behalf of Charles Lynch at the hearing.

The plight of Charles Lynch has become a focal point for the national debate over medical marijuana, with local officials, patients, and advocates pleading for leniency, while federal prosecutors demand a five-year prison sentence. Defense attorneys have asked that Lynch be sentenced to time already served - the four days he was held before posting bond.

"If I could find a way out, I would," U.S. District Judge George H. Wu said. He gave attorneys until June 2 to file new sentencing briefs.

The sentencing was first delayed after defense attorneys asked Judge Wu to take into consideration the new federal policy on medical

marijuana. The judge asked for written clarification from the Department of Justice as to whether the changes would impact Lynch's sentencing, but prosecutors filed a brief saying that it would not.



Charles Lynch

That view was refuted by ASA Chief Counsel Joe Elford, who briefed the court on the state legislature's clarification of the law and the new state Attorney General guidelines, which both contain provisions specific to the legal operation of cannabis dispensing collectives of the sort Lynch operated.

"It's time for the Obama Administration to act
(continued page 2)

At the latest sentencing hearing, prosecutors said Lynch was not legally entitled to distribute marijuana under state law because he was not a "primary caregiver" and that he profited from his business.

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California Strategy Meeting a Success

Focus on Federal Fixes and Law Enforcement Education

Medical cannabis activists from across California participated in ASA's 2009 Strategy Session. Held in conjunction with the Students for Sensible Drug Policy's West Coast Regional Conference, it was the meeting was chance for activists to both receive valuable skills trainings and give input on how to move the issue forward in the state.

Many ASA leaders and activists met face-to-face for the first time to share their diverse experiences and compare strategies that ASA chapters use to fight for justice in patient civil rights, safe

access to medical cannabis, law enforcement policies, and federal law.

Participants focused on law enforcement education and changing federal law. Priorities include educating law enforcement about the law and medical cannabis and ensuring that California's Congressional Reps speak with one voice in support of medical cannabis.

Those in attendance committed to individually meeting with Senators Boxer and Feinstein, as well as their respective House members.

(LYNCH SENTENCING *continued from page 1)*

on its commitment to change federal medical marijuana policy," said Elford. "It's disingenuous to accuse people of state law violations and then prosecute them under federal law, thereby denying them an adequate defense."

Lynch, 47, ran a medical marijuana dispensary in Morro Bay, California from 2006 to 2007 and with the blessing of the Morro Bay City

Council, the local Chamber of Commerce, and other community leaders. Before his medical marijuana dispensary was raided by DEA agents in March of 2007, Lynch had operated for 11 months without incident.

After a federal trial that excluded evidence about state law and the patients he was helping, Lynch was convicted of violating federal drug laws last year.

ACTION ALERT: Put Science Over Politics!

President Obama has signed a Memorandum on Scientific Integrity that says policy decisions are to be made with facts, not political agendas. Demand the Obama Administration honor his pledge when considering medical cannabis policies!

Go to www.AmericansForSafeAccess.org/ScientificIntegrity today and choose one of the following three options to comment on Sections C and D of the President's memo:

1. The U.S. Department of Health and Human Services must correct statements disseminated on federal websites and in the Federal Register that falsely declare that cannabis "has no currently accepted medical use in treatment in the United States."
2. The U.S. Drug Enforcement Administration must accept the Administrative Law Judge Bittner's February 2007 Opinion and Recommended Ruling in the matter of Lyle E. Craker, Ph.D., Docket No. 05-16, to grant a competitive bulk-manufactures license to establish a privately-funded facility to cultivate cannabis exclusively for clinical research.
3. The U.S. Department of Justice must remove cannabis from the list of Schedule I controlled substances in light of a growing body of research, including four double-blind placebo controlled clinical trials, which supports the therapeutic use of cannabis and in accordance with DEA's own 1988 Administrative Law ruling in which Judge Francis Young opined that "the provisions of the CSA permit and require the transfer of cannabis from schedule I to schedule II."

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(DEBATE, continued from page 1)

acknowledged that some law enforcement officials share what he called his "cynical view" that there is no legitimate medical use.

Russoniello also criticized the procedures by which patients get access in California, but Elford pointed out that any local solutions are the direct result of federal refusals to allow cannabis to be prescribed as other drugs are.



Joe Elford

Russoniello and Elford also exchanged sharp words over the intent of Congress in putting cannabis in Schedule I in 1970 and the findings of the Shafer Commission in 1972, which concluded that marijuana is not very harmful and should not be criminalized at all for personal medical use.

Elford also took exception to Russoniello's contention that all patient collectives and dispensaries in California operate for a profit, and thus illegally under state law, drawing laughs from the student audience when he pointed out even the headline of the article he was citing contradicted that view.

But things really heated up when it was time for student questions, with Russoniello getting jeered for claiming that marijuana is more harmful than alcohol or tobacco.

You can see the debate video on youtube at:

DQA APPEAL, *continued from page 1)*

have been published on the current and potential therapeutic use of marijuana and its constituent components.

"We welcome the Obama Administration's recently stated commitment to making policy decisions based on science, not politics," said Joe Elford, Chief Counsel with ASA. "This case is designed to ensure that the federal government's policy on medical marijuana is not politically motivated."

On March 9, President Obama issued a memorandum to the heads of executive departments and agencies stating that, "The public must be able to trust the science and scientific process informing public policy decisions," and calling for "transparency in the preparation, identification, and use of scientific and technological information in policymaking."

During oral arguments, attorney for the government told the three-judge panel that there were simply too many facts in the world to require the government's statements about them all to be accurate.

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