



Americans for Safe Access

Activist Newsletter

Defending Patients' Access to Medical Marijuana

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Collective Cannabis Cultivation OK by California Supreme Court *California Appellate court protects patient collectives and affirms civil rights*

The right of California patients to collectively cultivate medical marijuana, and then sue if that right is violated, has been affirmed by the California Supreme Court in another landmark legal victory for ASA. The court last month refused to review an appellate court ruling that had found for the rights of a seven-patient collective in Paradise.

"The California Supreme Court has just told local law enforcement that they must uphold

the medical marijuana laws of the state and not hide behind competing federal laws," said ASA Chief Counsel Joe Elford, who litigated the case on behalf of the patients.

Butte County officials had challenged the lower court's ruling, arguing that all members of a patient collective must physically work the garden that produces the cannabis, and that state law only provides an affirmative defense to criminal charges.

Butte County Superior Court Judge Barbara Roberts ruled otherwise in September 2007, finding that the contribution of collective members may be solely financial, and patients "should not be required to risk criminal penalties and the stress and expense of a criminal trial in order to assert their rights."

The 3rd District Appellate Court said further that patients enjoy "the same constitutional guarantee of due process available to all individuals," and "[t]he fact that this case involves medical marijuana and a qualified medical marijuana patient does not change these fundamental constitutional rights or an individual's right to assert them."

ASA filed suit in May 2006 on behalf of David Williams, 56, and six other collective members

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ASA Argues Dispensary Ban Violates State Law

In a case with wide-reaching implications, Americans for Safe Access has told a California appellate court that city bans on medical cannabis dispensaries violate state law.

The case involves a small dispensing collective in Anaheim, Qualified Patients Association, that had been in operation for five months when the city council passed a ban in July 2007. ASA took up the appeal after a superior court ruled against the patients, arguing that the state medical cannabis law supersedes local bans.

"The City of Anaheim cannot hide behind federal law," said ASA Chief Counsel Joe Elford during oral arguments. "Local governments cannot simply ban an activity that has been deemed lawful by the state."

When California's legislature adopted the Medical Marijuana Program act of 2003, its stated intent was to ensure a uniform implementation of the state's medical cannabis initiative. The legislature also determined that

patients can collectively cultivate their cannabis and be reimbursed for it.

In August 2008, shortly after the appeal was filed, the California Attorney General issued guidelines recognizing the legality of storefront dispensaries.

Yet while more than 40 local governments have adopted regulations for collectives that dispense cannabis to qualified patients, at least 120 have forbidden such dispensaries.



Joe Elford

The Fourth Appellate District Court, which is expected to issue a decision within 90 days, previously ruled in another ASA case, *Garden Grove v. Superior*

Court, that the state's medical marijuana law was not preempted by federal law and that local officials must uphold state, not federal, law.

San Diego DA Raids 14 Dispensaries Illegal

The day after the San Diego City Council established a medical marijuana task force, District Attorney Bonnie Dumanis had 14 patient collectives raided and arrested 31 people. Two of those arrested have been charged under sealed federal indictments.

"Not only does the federal government have no place helping to enforce state and local medical marijuana laws," said ASA California Director Don Duncan. "Local officials must regulate medical marijuana and enforce those

laws with civil actions, not the barrel of a gun."

Dumanis told the press that none of the collectives was operating legally. Operators of the remaining dispensaries report that they were visited by local law enforcement in the days after the arrests and told to close or face the same fate.

The DA, a longstanding opponent of medical marijuana, said qualified patients are wel-

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Colorado Appeals Court Considers Medical Marijuana Distribution

A Colorado appellate court is considering a medical marijuana case that may help define how the state's patients are to obtain their medicine. At issue is whether the state law's definition of a "caregiver" allows for the retail distribution of cannabis to the state's authorized patients.

The appeal of the 2006 criminal conviction of Stacy Clendenin, a Longmont medical cannabis patient who had been growing cannabis for herself and a handful of other patients, comes on the heels of an Colorado Board of Health decision that rejected restrictions on how many qualified patients a medical marijuana caregiver can serve.

At trial, Clendenin was not allowed to call witnesses who her attorney says would have testified that she was providing medicine to them under state law. The trial judge ruled the witnesses inadmissible because Clendenin could not be considered the patients' caregiver.

Prosecutors argue that state law requires a caregiver to not only personally know the patients receiving the cannabis but also have

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Committee Balks on LA Dispensary Regulations

Four years after the Los Angeles City Council began the process of establishing regulations for the hundreds of medical cannabis dispensaries there, a key committee has said none may be allowed.

The three council members who sit on the LA Planning and Land Use Committee (PLUM) appeared to act out of frustration, after City Attorney Carmen Trutanich refused to provide them with an ordinance that would regulate when and where dispensaries can operate.

"We punted," Dennis Zine, a member of the committee, told the *LA Times*.

The position of the newly elected city attorney is that the law does not allow any type of sale of medicinal cannabis, including distributing through storefront patient collectives.

Trutanich's position—while contrary to the legal opinion of many experts, including the

state Attorney General—should not be a surprise. Trutanich has consistently opposed any regulations that create community oversight and facilitate access for patients.

In fact, both Trutanich and Los Angeles County District Attorney Steve Cooley are headlining an October 8 training by the California Narcotics Officers Association entitled "The Eradication of Medical Marijuana Dispensaries in the City of Los Angeles and Los Angeles County."

Nonetheless, the California Attorney General's 2008 guidelines on medical cannabis expressly say such dispensing collectives may be legal, and ASA Chief Counsel Joe Elford has just argued before the 4th District Appeals Court that state law should prevent local bans.

The proposed Los Angeles ordinance now goes to the city council's Public Safety Committee.

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in response to a warrantless search of his home by Butte County Sheriffs in 2005. Under threat of arrest and prosecution, Williams had been

forced by law enforcement to uproot 29 of the 42 plants the collective was cultivating.

The plaintiffs will be seeking damages and attorney's fees from the county.

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"significant responsibility for managing the well being of a patient," which they say means "a relationship beyond providing marijuana." This narrow definition is precisely what the state Board of Health rejected in August, but attorneys for the state say the decision is not retroactive.



Robert Corry

Clendenin's attorney, Robert Corry, told the appeals court that this definition is unreasonable, noting that it imposes an unreasonable standard far in excess of what is expected of pharmacists who routinely distribute far more dangerous drugs.

Clendenin is also challenging the probable cause for the original search warrant in the case and arguing that the language in the state's medical marijuana statute is unconstitutionally vague.

Convicted in 2006 of five counts related to growing marijuana at her home, Clendenin was sentenced to unsupervised probation, but she wants her felony record cleared.

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come to grow their own, but they may not purchase it. This opinion conflicts with both the California Attorney General's medical cannabis guidelines and state law which allow patients to provide reimbursement for the medicine they receive.

San Diego officials have long resisted the state's medical cannabis law. County officials sued in a futile attempt to avoid issuing state-mandated ID cards to patients. Local law enforcement has repeatedly called in federal agencies to conduct raids. In 2007 and 2008, continued federal and local raids forced the closure of more than 20 medical marijuana dispensing collectives then operating.

An estimated 60 medical cannabis dispensaries opened in San Diego since the state Attorney General issued guidelines in 2008 for their legal operation.

NATIONAL ACTION ALERT: Help Build ASA!

How many of your friends have heard of ASA? Probably quite a few.

But how many know about ASA's work on behalf of patients and caregivers? More importantly, how many are ASA members?

We depend on members like you in our shared fight for safe access to medical marijuana. Members provide us with the financial and political support we need to succeed.

This month, tell three friends about our legal victories, our lobbying for better laws, and our educational efforts to empower patients.

Then ask them to join you as a member of ASA to help fight for patient rights. Hand them this newsletter, point out the membership form below, and ask them to join.

Or, send them a link to ASA's membership page at AmericansForSafeAccess.org/join.

Become a Member

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