

THE AGC UPDATE

a summary of legal issues

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MEDICAL MARIJUANA IN CALIFORNIA: A PRESENTATION TO THE LEAGUE OF CALIFORNIA CITIES NORTH BAY DIVISION

General Membership Meeting, Yountville, CA

In 1996, California voters approved Prop 215, the Compassionate Use Act¹ (“CUA”), which gives patients and caregivers a legal defense against certain crimes of marijuana possession and cultivation.² In 2003, the Legislature approved the Medical Marijuana Program³ (“MMP”), which created a voluntary program for the issuance of medical marijuana identification cards to qualified patients and caregivers and expanded the scope of criminal immunities.⁴

However, neither the CUA nor the MMP address municipal authority to regulate medical marijuana dispensaries, nor do the CUA or MMP address federal regulation of marijuana. Under the federal Controlled Substances Act⁵ (“CSA”), marijuana possession remains illegal and is a crime. Thus, local governments’ authority over medical marijuana has, until recently, been subject to legal debate.

This uncertainty was addressed last fall in the case *City of Claremont v. Kruse*,⁶ wherein the California Court of Appeal held that local governments may enact moratoria which completely ban medical marijuana dispensaries within their jurisdictions. This ruling indicates that local governments have broad discretion to regulate or ban medical marijuana dispensaries from operating within their jurisdictions, despite the provisions of the CUA and MMP.

A case currently pending in the California Court of Appeal, *Qualified Patients Ass’n v. City of Anaheim*,⁷ is expected to echo the holding in *Kruse* and extend it to instances of general municipal ordinances (*i.e.*, not just moratoria). While a different result is possible, it is likely that this case will affirm local governments’ authority to regulate medical marijuana dispensaries.

With this background in mind, local officials should be aware of the following concerning their jurisdictions’ rights and responsibilities over medical marijuana:

- **Marijuana possession is legal under California law but remains illegal under federal law.**
- **Thus, local governments have broad discretion to *limit* or *prohibit* the operation of medical marijuana dispensaries within their jurisdictions.**
- **However, local governments might not have discretion to *encourage* or *promote* access to medical marijuana because it remains illegal under federal law.**



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INDEX OF STATUES AND CASE LAW ON CALIFORNIA MEDICAL MARIJUANA

1. FEDERAL LAW – **CONTROLLED SUBSTANCES ACT** (1970): Criminalizes marijuana.
2. STATE LAWS:
 - a. **COMPASSIONATE USE ACT** (1996): Permits doctors to prescribe marijuana to patients and establishes legal defenses for patients and primary caregivers.
 - b. **MEDICAL MARIJUANA PROGRAM** (2003): Establishes guidelines for implementing the CSA, including issuance of medical marijuana cards.
3. LOCAL AUTHORITY:
 - a. **CITY OF CLAREMONT V. KRUSE** (2009): Local moratorium prohibiting operation of medical marijuana dispensary is valid.
 - b. **QUALIFIED PATIENTS ASS'N V. CITY OF ANAHEIM** (FORTHCOMING): Will decide whether general prohibition on medical marijuana dispensaries is valid.
 - c. **GOVERNMENT CODE § 37100** (1949): Prohibits municipalities from adopting ordinances which conflict with the laws of the United States (may limit local policies which promote access to medical marijuana).
4. LAW ENFORCEMENT:
 - a. **PEOPLE V. KELLY** (2010): MMP's limitations on quantity of marijuana for medical use are preempted and unenforceable.
 - b. **PEOPLE V. DOWL** (2010): Officer need not be qualified as expert to testify that defendant's possession of marijuana was "for sale" (i.e., not for medical purpose).
5. PROBATION/PAROLE:
 - a. **PEOPLE V. BEATY** (2010): Probation for individual in court-ordered drug diversion program (Prop 36) may not be revoked solely because probationer was prescribed marijuana and issued medical marijuana card.
 - b. **PEOPLE V. MORET** (2010): Condition of probation that prohibits probationer from using medical marijuana is legal.

¹ Health & Safety Code § 11362.5.

² *People ex rel. Lundgren v. Urziceanu* (2005) 132 Cal.App.4th 747, 773.

³ Health & Safety Code § 11362.5, *et seq.*

⁴ Health & Safety Code §§ 11362.71, 11362.765; *People v. Mentch* (2008) 45 Cal.4th 274, 290.

⁵ 21 U.S.C. § 801, *et seq.*

⁶ *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153.

⁷ *Qualified Patients Ass'n v. City of Anaheim* (Cal. Ct. of Appeal Fourth Dist., Div. 3, Case No. G040077).

