

Attorney and Client Guide to

MEDICAL MARIJUANA

By Eric Alan Berg, Attorney at Law
Offices in Redding and Chico
24-Hour Crisis Hotline: (530) 223-5100



In 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA), allowing medical marijuana patients and their caregivers the right to cultivate and possess cannabis for medical use.

Unfortunately, interpreting Health & Safety Code provisions that set the CUA into law has proven to be both extremely complicated and constantly changing.

Issues such as identifying patients and their caregivers, cultivating medical marijuana, and returning property seized by law enforcement officials are continually being refined by case laws as they work their way through our legal system.

To further complicate matters, the federal government still doesn't recognize the difference between medical and recreational use of marijuana, and, even within the state, regulations can vary widely between cities, counties, and multi-jurisdictional agencies.

So, where does that leave law-abiding Californians who have need of medical marijuana?

Here are a few of the things we do know:

- Patients and their caregivers have the right to possess or grow an amount of cannabis consistent with the patient's medical needs, including treatment of cancer, anorexia, AIDS, chronic pain, glaucoma, or any other condition for which marijuana provides relief. **(H&S Code 11362.5)**
- However, some courts are still applying the limits of 12 immature plants, 6 mature plants, and 8 ounces of dried flowers. **(H&S Code 11362.77)** Should your medical needs require more than 8 ounces, you should ask your physician to document your higher possession limit.
- Once a patient has a doctor's approval or recommendation, it does not expire, even if there is an expiration date. **(PEOPLE V. WINDUS [2008] 165 Cal. App. 4th 634)**
- When a felony defendant proves he or she is a qualified medical marijuana patient, the case should be dismissed pre-trial. **(PEOPLE V. MOWER [2002] 28 Cal. 4th 457)**

- Persons who have had their medical marijuana seized by law enforcement officials can get their medical marijuana returned to them by providing a verified statement from their doctor. (**THE CITY OF GARDEN GROVE V. THE SUPERIOR CT., FELEX KHA [2007] 157 Cal. App. 4th 355**)
- Transportation in your vehicle of a reasonable amount of medical marijuana is permitted. (**PEOPLE V. WRIGHT [2006] 40 Cal. 4th 81**)

It's important to remember that despite the passage of the CUA, it's illegal to knowingly have marijuana in your possession unless legally authorized for medicinal purposes.

- Possession of less than an ounce is a misdemeanor, and, with proper identification, can be handled with a citation, similar to a traffic ticket. The maximum penalty is a fine of \$100, plus court assessments (which can easily triple the cost). No jail sentence or probation can be imposed. Persons under the age of 21, however, will lose their driver's license for a year, if convicted.
- Possession of more than an ounce of marijuana is still a misdemeanor, but can result in a fine of up to \$500 and a maximum sentence of up to six months in the county jail. (First-time offenders, however, almost never go to jail. Probation is usually granted on condition of a small fine or community service.)
- Possession of concentrated cannabis (hashish) can be treated as either a misdemeanor or a felony, with possible sentencing of up to three years in prison.
- Possession of any amount of marijuana with the intent to sell is a serious charge with prison sentences of up to three years and fines of up to \$10,000.

In short, it's to your advantage to avoid problems with the law and, when dealing with medical marijuana issues, make sure you document your efforts to follow the rules.

Finally, use common sense at all times: Never drive under the influence of marijuana; don't cultivate more than what you need; respect your neighbors; never physically interfere with a law officer, and always remember that even legal marijuana does not mix well with alcohol or firearms.

I recommend you send me a copy of your medical marijuana prescription, along with your name and address, for safekeeping.

Remember, if you do run into trouble with law enforcement officials, it's best not to talk with them, if your attorney's not present. Just say these words: "I'm going to remain silent. I want a lawyer."

-- Eric Alan Berg, Attorney at Law
5000 Bechelli Lane, Suite 201, Redding, CA 96002
1050 Esplanade, Chico, CA 95926

MEDICAL MARIJUANA VICTORIES BY BERG & ASSOCIATES:

- In People v. Levin, our client was arrested and charged with growing marijuana for sale. He had 40 seedlings in a tiny greenhouse. The defendant had fallen from a roof years before and broken his back, leaving him bedridden. After several surgeries, his doctor prescribed marijuana. This enabled him to discontinue other pain killers and got him on his feet, leading a fulfilling life as a father and husband. The prosecutor claimed Levin would eventually have more marijuana than he could use; however, Berg & Associates produced a medical marijuana expert who convinced the jury to acquit the defendant of all charges.
- In People v. Lane, our client was also accused of growing marijuana for sale. He was involved in an association with 35 other patients to grow marijuana at his home. Berg & Associates convinced the court to suppress evidence of several hundred pounds of marijuana that police had seized and destroyed in violation of Health and Safety Code Section 11479. It is extremely unusual that evidence of such a large amount of marijuana would not be presented to the jurors. Our client was eventually found not guilty.

WHY CHOOSE BERG & ASSOCIATES . . .

Our business is protecting you and your family with the best possible legal representation. Your crisis is our crisis. We fight hard for you.

Berg & Associates is a Northern California law firm based in Redding and Chico. We have experienced and highly qualified attorneys and support staff who specialize in criminal defense, divorce, family law, and personal injury cases. We also have a full investigative team.

Berg & Associates is small enough to provide personalized services, yet is large enough to guarantee a spirited in-depth defense fully protecting your rights.

Our offices are conveniently located in Shasta and Butte counties at:

REDDING

Law Offices of Eric Alan Berg & Associates
5000 Bechelli Lane, Suite 201
Redding, CA 96002
(530) 223-5100

CHICO

Law Offices of Eric Alan Berg & Associates
1050 Esplanade
Chico, CA 95926
(530) 223-5100