Americans For Safe Access

AN ORGANIZATION OF MEDICAL PROFESSIONALS, SCIENTISTS AND PATIENTS HELPING PATIENTS

COLORADO LEGAL MANUAL

AmericansFor SafeAccess

Advancing Legal Medical Marijuana Therapeutics and Research

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Americans For Safe Access

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INTRODUCTION

Mission of Americans for Safe Access

Americans for Safe Access (ASA) is the largest national member-based organization of patients, medical professionals, scientists and concerned citizens promoting safe and legal access to cannabis for therapeutic uses and research. ASA provides legal training and medical information to patients, attorneys, health and medical professionals and policymakers throughout the United States. We also organize media support for court cases, rapid response to law enforcement raids, and capacity-building for advocates. Our successful lobbying, media and legal campaigns have resulted in important court precedents, new sentencing standards, and more compassionate community guidelines. The mission of Americans for Safe Access is to ensure safe and legal access to cannabis (marijuana) for therapeutic uses and research.

Patients' Rights Project

ASA's Patients' Rights Project is a result of the outcry for accessible and current legal information on medical cannabis. Medical cannabis patients and their providers suffer pervasive discrimination in employment, child custody, housing, public accommodation, education and medical care because of misinformation about the medical efficacy of cannabis and a lack of statutory legal protections. Furthermore, patients and their care providers are vulnerable to federal and state raids, arrest, prosecution, and incarceration. ASA's Legal Affairs Department in conjunction with their allies creates, protects, and expands the rights of medical cannabis patients through direct support, extensive monitoring, proactive litigation, education, organizing attorneys, and the drafting of legislation.

The information found in this booklet and our legal support efforts are meant to educate patients, caregivers, attorneys, and medical professionals on state law, assist them in bringing their activities in line with existing state law, as well as providing the tools for protecting themselves from local and federal law enforcement.

This manual is specific to Colorado law. While some information, like the Law Enforcement Encounters section, may be applied to all states, the laws and regulations concerning medical cannabis are specific to each state. Please contact ASA for more information regarding medical cannabis law outside of Colorado.

As part of the Patients' Rights Project, ASA documents law enforcement encounters and helps guide patients through the legal system. If you have been harassed, detained, arrested, or had your property confiscated by city, county, or state law enforcement, please call 1-888-929-4367. Visit our website for more on the many aspects of ASA's Legal Affairs Department: www.AmericansForSafeAccess.org/Legal.

Our Allies

Here at ASA we work with like-minded organizations to help ensure, protect, and expand rights for medical cannabis patients and providers. This Legal Manual was produced in conjunction with Sensible Colorado, the leading voice for medical cannabis patients in Colorado. Sensible Colorado has protected and expanded patient rights in the courts, in the legislature and in the streets.

Sensible Colorado's Mission

Sensible Colorado seeks to promote an effective drug policy through the following activities: researching the public health, economic, social, criminal justice, and other effects of drug consumption and prohibition; formulating innovative, economically-sound, practical drug-related regulations and policies; working with the appropriate agencies of the Colorado state government and municipalities to implement such appropriate policies; and educating the public through speaking engagements, seminars, the mass media, and other means.

Sensible Colorado's Vision

Sensible Colorado envisions a system where drug use becomes a health issue, not a crime issue, through innovative drug policy reform that focuses on prevention and harm reduction education, provides accessible treatment opportunities, and reduces incarcerations, crime, drug use by minors, and strains on the judicial system and police departments while increasing the resources available for healthcare and treatment.

Sensible Colorado is a 501(c)(3) non-profit organization. All donations are tax deductible. To contact Sensible Colorado, please visit their website: www. SensibleColorado.org.

CHAPTER 1– MEDICAL CANNABIS LAW

Colorado has two medical cannabis laws. Colorado's first and oldest medical cannabis law is a constitutional amendment passed by the voters authorizing patients and their caregivers to possess and use medical cannabis. Colorado's second medical cannabis law enacted in the summer of 2010 establishes the Colorado Medical Marijuana Code which creates a dual licensing scheme that licenses and regulates medical marijuana business at both the state and local level.

Both of Colorado's medical cannabis laws permit local governments to adopt regulations regarding medical marijuana businesses and patient and caregiver conduct, which has led to unequal application of the law, selective enforcement, and different interpretations of the law. In addition, the Colorado Medical Marijuana Code permits various state agencies to continuously enact new regulations for the medical cannabis community. By familiarizing yourself with the following information, you will be better equipped to navigate Colorado's complex medical cannabis regulatory system and handle a law enforcement encounter, should one ever occur. However, Colorado's medical cannabis laws are constantly changing so please conduct your own research on new developments in the law.

Colorado's Medical Cannabis Law

Colorado's First Medical Marijuana Law: Amendment 20

In November of 2000, voters of the state of Colorado passed Amendment 20 to the state's constitution, codified in article XVIII, section 14. This article effectively legalized limited amounts of medical cannabis for patients and their primary caregivers.

Amendment 20 authorizes a patient who has been issued a Medical Marijuana Registry identification Card, or that patient's primary caregiver who has been identified on the patient's Medical Marijuana Registry Identification Card, to possess:

(a) No more than two (2) ounces of a usable form of marijuana[1]; and

(b) Not more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants that are producing a usable form of marijuana.

Patients and primary caregivers who posses more than two ounces or six plants have an affirmative defense in court after they have been arrested if the amount they have is "medically necessary to address the patient's debilitating medical condition." Patients who have a doctor's recommendation to use medical cannabis but who have not obtained a Registry Identification Card also have an affirmative defense in court.

ARTICLE XVIII — Miscellaneous Art. XVIII — Miscellaneous

Section 14. Medical use of marijuana for persons suffering from debilitating medical conditions.

(1) As used in this section, these terms are defined as follows:

(a) "Debilitating medical condition" means:

(I) Cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome, or treatment for such conditions;

(II) A chronic or debilitating disease or medical condition, or treatment for such conditions, which produces, for a specific patient, one or more of the following, and for which, in the professional opinion of the patient's physician, such condition or conditions reasonably may be alleviated by the medical use of marijuana: cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis; or

(III) Any other medical condition, or treatment for such condition, approved by the state health agency, pursuant to its rule making authority or its approval of any petition submitted by a patient or physician as provided in this section.

(b) "Medical use" means the acquisition, possession, production, use, or transportation of marijuana or paraphernalia related to the administration of such marijuana to address the symptoms or effects of a patient's debilitating medical condition, which may be authorized only after a diagnosis of the patient's debilitating medical condition by a physician or physi-

cians, as provided by this section.

(c) "Parent" means a custodial mother or father of a patient under the age of eighteen years, any person having custody of a patient under the age of eighteen years, or any person serving as a legal guardian for a patient under the age of eighteen years.

(d) "Patient" means a person who has a debilitating medical condition.

(e) "Physician" means a doctor of medicine who maintains, in good standing, a license to practice medicine issued by the state of Colorado.

(f) "Primary care-giver" means a person, other than the patient and the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.

(g) "Registry identification card" means that document, issued by the state health agency, which identifies a patient authorized to engage in the medical use of marijuana and such patient's primary care-giver, if any has been designated.

(h) "State health agency" means that public health related entity of state government designated by the governor to establish and maintain a confidential registry of patients authorized to engage in the medical use of marijuana and enact rules to administer this program.

(i) "Usable form of marijuana" means the seeds, leaves, buds, and flowers of the plant (genus) cannabis, and any mixture or preparation thereof, which are appropriate for medical use as provided in this section, but excludes the plant's stalks, stems, and roots.

(j) "Written documentation" means a statement signed by a patient's physician or copies of the patient's pertinent medical records.

(2) (a) Except as otherwise provided in subsections (5), (6), and (8) of this section, a patient or primary care-giver charged with a violation of the state's criminal laws related to the patient's medical use of marijuana will be deemed to have established an affirmative defense to such allegation where:

(I) The patient was previously diagnosed by a physician as having a debilitating medical condition;

(II) The patient was advised by his or her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical condition; and

(III) The patient and his or her primary care-giver were collectively in possession of amounts of marijuana only as permitted under this section.

This affirmative defense shall not exclude the assertion of any other defense where a patient or primary care-giver is charged with a violation of state law related to the patient's medical use of marijuana.

(b) Effective June 1, 2001, it shall be an exception from the state's criminal laws for any patient or primary care-giver in lawful possession of a registry identification card to engage or assist in the medical use of marijuana, except as otherwise provided in subsections (5) and (8) of this section.

(c) It shall be an exception from the state's criminal laws for any physician to:

(I) Advise a patient whom the physician has diagnosed as having a debilitating medical condition, about the risks and benefits of medical use of marijuana or that he or she might benefit from the medical use of marijuana, provided that such advice is based upon the physician's contemporaneous assessment of the patient's medical history and current medical condition and a bona fide physician-patient relationship; or

(II) Provide a patient with written documentation, based upon the physician's contemporaneous assessment of the patient's medical history and current medical condition and a bona fide physician-patient relationship, stating that the patient has a debilitating medical condition and might benefit from the medical use of marijuana.

No physician shall be denied any rights or privileges for the acts authorized by this subsection.

(d) Notwithstanding the foregoing provisions, no person, including a patient or primary care-giver, shall be entitled to the protec-

tion of this section for his or her acquisition, possession, manufacture, production, use, sale, distribution, dispensing, or transportation of marijuana for any use other than medical use.

(e) Any property interest that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to such use, shall not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials where such property has been seized in connection with the claimed medical use of marijuana. Any such property interest shall not be forfeited under any provision of state law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to such offense. Marijuana and paraphernalia seized by state or local law enforcement officials from a patient or primary care-giver in connection with the claimed medical use of marijuana shall be returned immediately upon the determination of the district attorney or his or her designee that the patient or primary care-giver is entitled to the protection contained in this section as may be evidenced, for example, by a decision not to prosecute, the dismissal of charges, or acquittal.

(3) The state health agency shall create and maintain a confidential registry of patients who have applied for and are entitled to receive a registry identification card according to the criteria set forth in this subsection, effective June 1, 2001.

(a) No person shall be permitted to gain access to any information about patients in the state health agency's confidential registry, or any information otherwise maintained by the state health agency about physicians and primary care-givers, except for authorized employees of the state health agency in the course of their official duties and authorized employees of state or local law enforcement agencies which have stopped or arrested a person who claims to be engaged in the medical use of marijuana and in possession of a registry identification card or its functional equivalent, pursuant to paragraph (e) of this subsection (3). Authorized employees of state or local law enforcement agencies shall be granted access to the information contained within the state health agency's confidential registry only for the purpose of verifying that an individual who has presented a registry identification card to a state or local law enforcement official is lawfully in possession of such card.

(b) In order to be placed on the state's confidential registry for the medical use of marijuana, a patient must reside in Colorado and submit the completed application form adopted by the state health agency, including the following information, to the state health agency:

(I) The original or a copy of written documentation stating that the patient has been diagnosed with a debilitating medical condition and the physician's conclusion that the patient might benefit from the medical use of marijuana;

(II) The name, address, date of birth, and social security number of the patient;

(III) The name, address, and telephone number of the patient's physician; and

(IV) The name and address of the patient's primary care-giver, if one is designated at the time of application.

(c) Within thirty days of receiving the information referred to in subparagraphs (3) (b) (I)-(IV), the state health agency shall verify medical information contained in the patient's written documentation. The agency shall notify the applicant that his or her application for a registry identification card has been denied if the agency's review of such documentation discloses that: the information required pursuant to paragraph (3) (b) of this section has not been provided or has been falsified; the documentation fails to state that the patient has a debilitating medical condition specified in this section or by state health agency rule; or the physician does not have a license to practice medicine issued by the state of Colorado. Otherwise, not more than five days after verifying such information, the state health agency shall issue one serially numbered registry identification card to the patient, stating:

(I) The patient's name, address, date of birth, and social security number;

(II) That the patient's name has been certified to the state health agency as a person who has a debilitating medical condition, whereby the patient may address such condition with the medical use of marijuana;

(III) The date of issuance of the registry identification card and the date of expiration of such card, which shall be one

year from the date of issuance; and

(IV) The name and address of the patient's primary care-giver, if any is designated at the time of application.

(d) Except for patients applying pursuant to subsection (6) of this section, where the state health agency, within thirty-five days of receipt of an application, fails to issue a registry identification card or fails to issue verbal or written notice of denial of such application, the patient's application for such card will be deemed to have been approved. Receipt shall be deemed to have occurred upon delivery to the state health agency, or deposit in the United States mails. Notwithstanding the foregoing, no application shall be deemed received prior to June 1, 1999. A patient who is questioned by any state or local law enforcement official about his or her medical use of marijuana shall provide a copy of the application submitted to the state health agency, including the written documentation and proof of the date of mailing or other transmission of the written documentation for delivery to the state health agency, which shall be accorded the same legal effect as a registry identification card, until such time as the patient receives notice that the application has been denied.

(e) A patient whose application has been denied by the state health agency may not reapply during the six months following the date of the denial and may not use an application for a registry identification card as provided in paragraph (3) (d) of this section. The denial of a registry identification card shall be considered a final agency action. Only the patient whose application has been denied shall have standing to contest the agency action.

(f) When there has been a change in the name, address, physician, or primary care- giver of a patient who has qualified for a registry identification card, that patient must notify the state health agency of any such change within ten days. A patient who has not designated a primary care-giver at the time of application to the state health agency may do so in writing at any time during the effective period of the registry identification card, and the primary care-giver may act in this capacity after such designation. To maintain an effective registry identification card, a patient must annually resubmit, at least thirty days prior to the expiration date stated on the registry identification card, updated written documentation to the state health agency, as well as the name and address of the patient's

primary care-giver, if any is designated at such time.

(g) Authorized employees of state or local law enforcement agencies shall immediately notify the state health agency when any person in possession of a registry identification card has been determined by a court of law to have willfully violated the provisions of this section or its implementing legislation, or has pled guilty to such offense.

(h) A patient who no longer has a debilitating medical condition shall return his or her registry identification card to the state health agency within twenty-four hours of receiving such diagnosis by his or her physician.

(i) The state health agency may determine and levy reasonable fees to pay for any direct or indirect administrative costs associated with its role in this program.

(4) (a) A patient may engage in the medical use of marijuana, with no more marijuana than is medically necessary to address a debilitating medical condition. A patient's medical use of marijuana, within the following limits, is lawful:

(I) No more than two ounces of a usable form of marijuana; and

(II) No more than six marijuana plants, with three or fewer being mature, flowering plants that are producing a usable form of marijuana.

(b) For quantities of marijuana in excess of these amounts, a patient or his or her primary care-giver may raise as an affirmative defense to charges of violation of state law that such greater amounts were medically necessary to address the patient's debilitating medical condition.

(5) (a) No patient shall:

(I) Engage in the medical use of marijuana in a way that endangers the health or well-being of any person; or

(II) Engage in the medical use of marijuana in plain view of, or in a place open to, the general public.

(b) In addition to any other penalties provided by law, the state health agency shall revoke for a period of one year the registry

identification card of any patient found to have willfully violated the provisions of this section or the implementing legislation adopted by the general assembly.

(6) Notwithstanding paragraphs (2) (a) and (3) (d) of this section, no patient under eighteen years of age shall engage in the medical use of marijuana unless:

(a) Two physicians have diagnosed the patient as having a debilitating medical condition;

(b) One of the physicians referred to in paragraph (6) (a) has explained the possible risks and benefits of medical use of marijuana to the patient and each of the patient's parents residing in Colorado;

(c) The physicians referred to in paragraph (6) (b) has provided the patient with the written documentation, specified in subparagraph (3) (b) (I);

(d) Each of the patient's parents residing in Colorado consent in writing to the state health agency to permit the patient to engage in the medical use of marijuana;

(e) A parent residing in Colorado consents in writing to serve as a patient's primary care-giver;

(f) A parent serving as a primary care-giver completes and submits an application for a registry identification card as provided in subparagraph (3) (b) of this section and the written consents referred to in paragraph (6) (d) to the state health agency;

(g) The state health agency approves the patient's application and transmits the patient's registry identification card to the parent designated as a primary care-giver;

(h) The patient and primary care-giver collectively possess amounts of marijuana no greater than those specified in subparagraph (4) (a) (I) and (II); and

(i) The primary care-giver controls the acquisition of such marijuana and the dosage and frequency of its use by the patient.

(7) Not later than March 1, 2001, the governor shall designate, by executive order, the state health agency as defined in paragraph (1) (g) of this section.

(8) Not later than April 30, 2001, the General Assembly shall define such terms and enact such legislation as may be necessary for implementation of this section, as well as determine and enact criminal penalties for:

(a) Fraudulent representation of a medical condition by a patient to a physician, state health agency, or state or local law enforcement official for the purpose of falsely obtaining a registry identification card or avoiding arrest and prosecution;

(b) Fraudulent use or theft of any person's registry identification card to acquire, possess, produce, use, sell, distribute, or transport marijuana, including but not limited to cards that are required to be returned where patients are no longer diagnosed as having a debilitating medical condition;

(c) Fraudulent production or counterfeiting of, or tampering with, one or more registry identification cards; or

(d) Breach of confidentiality of information provided to or by the state health agency.

(9) Not later than June 1, 2001, the state health agency shall develop and make available to residents of Colorado an application form for persons seeking to be listed on the confidential registry of patients. By such date, the state health agency shall also enact rules of administration, including but not limited to rules governing the establishment and confidentiality of the registry, the verification of medical information, the issuance and form of registry identification cards, communications with law enforcement officials about registry identification cards that have been suspended where a patient is no longer diagnosed as having a debilitating medical condition, and the manner in which the agency may consider adding debilitating medical conditions to the list provided in this section. Beginning June 1, 2001, the state health agency shall accept physician or patient initiated petitions to add debilitating medical conditions to the list provided in this section and, after such hearing as the state health agency deems appropriate, shall approve or deny such petitions within one hundred eighty days of submission. The decision to approve or deny a petition shall be considered a final agency action.

(10) (a) No governmental, private, or any other health insurance provider shall be required to be liable for any claim for reimbursement for the medical use of marijuana.

(b) Nothing in this section shall require any employer to accommodate the medical use of marijuana in any work place.

(11) Unless otherwise provided by this section, all provisions of this section shall become effective upon official declaration of the vote hereon by proclamation of the governor, pursuant to article V, section (1) (4), and shall apply to acts or offenses committed on or after that date.

Legislature Passes HB 10-1284 and SB 10-109

Although many caregivers were operating lawful retail outlets, Amendment 20 did not expressly authorize or regulate the commercial distribution of medical cannabis. In June of 2010, the Colorado Legislature enacted the Colorado Medical Marijuana Code—the most comprehensive system of medical cannabis distribution and regulation in the world—through the passage of SB 10-109 and HB 10-1284. Without weighing in on the merits or the constitutionality of these bills, it is important to note that these bills not only license commercial businesses for the distribution and production of medical cannabis, but also impose new restrictions on patients, caregivers, and doctors.

Senate Bill 109 regulates doctors who certify medical marijuana for their patients. House Bill 10-1284 regulates and licenses: (1) Medical Marijuana Centers (Dispensaries); (2) Medical Marijuana Optional Premise Cultivation Facilities; and (3) Infused Products Manufacturers (e.g. edibles, tinctures, lotions, oils). Pursuant to HB 10-1284, counties and cities may adopt their own rules and licensing procedures for medical marijuana centers or ban these businesses altogether. Given this new statutory option for local bans, access to Medical Marijuana Centers will depend in large part on local politics and grassroots organizing. Regardless of a local ban on a Medical Marijuana Center, no local government has the authority to ban caregivers or patients.[2]

SB 10-109 and HB 10-1284 require the Colorado Department of Public Health and Environment (CDPHE) and the Department of Revenue (DOR), respectively, to promulgate implementing regulations. Most of the regulations will be enacted by 2012. Below is a summary the new restrictions imposed on patients, caregivers, and doctors by the Colorado Medical Marijuana Code.

Patients

Patients cannot use medical cannabis:

- In a Medical Marijuana Center or other licensed facility;
- In a way that endangers the health and well-being of a person;
- In plain view or place open to the public;
- In a correctional or community corrections facility; or
- In a vehicle, aircraft, or boat.

Patients and caregivers cannot possess cannabis on the grounds of a school (pre-12) or on a school bus.

Patients and caregivers must have their paperwork with them while in possession of medical cannabis.

Patients can only have one caregiver at a time.

Patients may only receive recommendations from a doctor who has both an "unrestricted" Colorado license and a valid DEA registration.

Caregivers

Caregivers are limited to five (5) patients, except in exceptional circumstances.[3]

Caregivers will eventually have to register with the Colorado Department of Public Health and Environment.

The state health agency will maintain a list of available caregivers who do not yet have five (5) patients.

Caregivers must maintain a list of the registry identification number for each of their patients.[4]

Caregivers must do something more than simply provide cannabis for their patients.

Caregivers cannot "join together" to cultivate cannabis or "engage others to assist in providing medical marijuana to a patient."

A caregiver cannot also have a caregiver.

Caregivers cannot "cultivate or provide" cannabis to anyone who is not their patient.

Caregivers cannot charge patients more than the cost of purchasing or cultivating cannabis, but can charge for caregiver services.

Caregivers can only acquire cannabis at Medical Marijuana Centers if one of their patients is designated as homebound.

Law enforcement will be able to confirm caregiver status with an expanded 24 hour registry.

Doctors

Doctors that provide written certification for medical marijuana must:

- Have a valid and unrestricted license to practice medicine in Colorado and a valid and unrestricted DEA registration;
- Complete a full assessment of the patient's medical history, provide an appropriate physical exam, and offer to provide follow up care; and
- Maintain records of all patients for whom they recommend medical marijuana.

Doctors that provide written certification for medical marijuana cannot:

- Receive any form of financial assistance from medical marijuana providers;
- Provide discounts to patients who agree to use certain caregivers or centers;
- Examine patients for the purpose of diagnosing a debilitating condition at a place where medical marijuana is distributed; or
- Hold an economic interest in a business that distributes medical marijuana.

Return of Property in Colorado

If law enforcement officers improperly seize your property, charges for a marijuana-related crime are dropped before trial, or you are found not guilty at trial, then they are required to return all property to you, including your medical cannabis. You or your attorney may file a motion for the return of property. ASA has an ongoing return of property campaign and has information on its website to help you file a motion. See www.AmericansForSafeAccess.org/RoP Also, more sample motions for return of property in Colorado may be found at Sensible Colorado's online brief bank: SensibleColorado.org/mm/faqs/legal-info/#brief_bank

Probation

Medical marijuana patients can use cannabis on probation if their judge or probation officer permits them. However, upon a conviction of a criminal offense, the patient must obtain a new medical marijuana recommendation. C.R.S. 25-1.5-106 (10) states:

Renewal of patient identification card upon criminal conviction. Any patient who is convicted of a criminal offense under article 18 of title 18, C.R.S., sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to the division of youth corrections, shall be subject to immediate renewal of his or her patient registry identification card, and the patient shall apply for the renewal based upon a recommendation from a physician with whom the patient has a bona fide physician-patient relationship.

If you are on probation or you are convicted of a drug offense, it is recommended that you reapply for your Medical Marijuana Registry Identification Card and then file a motion asking your judge to permit you to use medical marijuana.

Sample motions can be found online at ASA's or Sensible Colorado's brief banks: AmericansForSafeAccess.org/BriefBank or sensiblecolorado.org/mm/faqs/legal-info/#brief_bank.

Case Law

For details on relevant case law, please refer to the Appendix.

NOTES

1. Usable marijuana includes hash and oils.
2. Some localities do impose zoning requirements on caregivers.
3. What constitutes exceptional circumstances will be defined by administrative rule.
4. The services that caregivers will have to provide for the patients will be defined by rulemaking.

Conflict between State and Federal Law

As of this printing, the federal government claims that cannabis is not medicine, and in *Gonzales v. Raich* (2005), the US Supreme Court held that the federal government has the constitutional authority to prohibit cannabis for all purposes. Thus, federal law enforcement officials may prosecute medical cannabis patients, even if they grow their own medicine and even if they reside in a state where medical cannabis use is protected under state law. The Court indicated that Congress and the Food and Drug Administration should work to resolve this issue.

The Raich decision does not say that the laws of Colorado (or any other medical cannabis state) are unconstitutional, nor does it invalidate them in any way. Also, it does not say that federal officials must prosecute patients. Decisions about prosecution are still left to the discretion of the federal government, which has suggested that it will not prosecute patients who are in compliance with state law.

States have recognized cannabis's medicinal value and have either passed laws through their legislatures or adopted them by initiative. In support of the states that have taken responsibility for the health and welfare of their people by implementing medical cannabis laws, ASA and Sensible Colorado are fighting for states' rights to pass and enforce their own laws, regardless of federal law.

Colorado State Agencies Must Enforce Colorado's Medical Marijuana Law

Under our federalist system of government, the states, rather than the federal government, are entrusted to exercise a general police power for the benefit of their citizens. Due to this constitutional division of authority between the federal government and the states, the State of Colorado may elect to decriminalize conduct, such as medical marijuana activity, which remains illegal under federal law. Even if law enforcement officers take a personal position on any conflict between state and federal law, they are bound by Colorado's Constitution to uphold state law. Under Colorado's medical marijuana laws, patients, caregivers, and other medical marijuana businesses are exempt from prosecution by the State of Colorado, notwithstanding contrary federal law.

Federal Law

The federal government regulates drugs through the Controlled Substances Act (CSA) (21 U.S.C. § 811), which does not recognize the difference between medical and recreational use of marijuana. These laws are generally applied only against persons who possess, cultivate, or distribute large quantities of cannabis.

Under federal law, marijuana is treated like every other controlled substance, such as cocaine and heroin. The federal government places every controlled substance in a schedule, in principle according to its relative potential for abuse and medicinal value. Under the CSA, marijuana is classified as a Schedule I drug, which means that the federal government views cannabis as highly addictive and having no medical value. Doctors may not "prescribe" marijuana for medical use under federal law, though they can "recommend" its use under the First Amendment.

The Drug Enforcement Administration (DEA), charged with enforcing federal drug laws, has taken a substantial interest not only in medical cannabis patients and caregivers, but large cultivation and distribution operations as well. Over the past few years, dozens of people have been targets of federal enforcement actions. Many of them have either been arrested or had property seized. More than a hundred providers are currently in prison or are facing charges or ongoing criminal or civil investigations for their cultivation or distribution of medical cannabis.

The DEA, like local enforcement agencies, can choose how to make the best use of its time. Ideally, the DEA would leave medical cannabis patients and their caregivers alone. But federal law does not yet recognize medical cannabis, and the DEA is currently allowed to use the Controlled Substances Act to arrest people for its use. In many pending and past cases, the DEA and U.S. Attorney's office have used exaggerated plant numbers and inflammatory rhetoric, as well as informants who trade jail time for testimony, to justify enforcing federal laws against medical cannabis patients, caregivers and providers in states permitting medical cannabis.

Federal marijuana laws are very serious, and punishment for people found guilty is frequently very steep. Federal law still considers cannabis a dangerous illegal drug with no acceptable medicinal value. In several federal cases, judges have ruled that medical cannabis cannot be used as a defense, though defense attorneys should attempt to raise the issue whenever possible during trial.

Federal law applies throughout Colorado and the United States, not just on federal property. The key to federal property is that it is more likely than non-federal property to have federal officials monitoring it. Many Colorado patients have been charged with a federal administrative citation for possessing their medicine in federal parks such as Rocky Mountain National Park. So far, no medical defense has been successful in defending a charge in a federal park.

In 2009 the Department of Justice issued a memo urging U.S. Attorneys not to prosecute medical cannabis patients who are clearly and unambiguously complying with their states' laws. Although the number of raids has decreased since the policies of the Bush administration, this memo does not change the federal law and there are still medical cannabis patients facing federal penalties for using their medicine.

In Colorado, as of January 2011, no state licensed medical marijuana business, owner, or employee has been raided by the DEA or criminally prosecuted in federal court.

There are two types of federal sentencing laws: sentencing guidelines, enacted by the United States Sentencing Commission, and mandatory sentencing laws, enacted by Congress. The Sentencing Commission was created in 1987 to combat sentencing disparities across jurisdictions. The current mandatory minimum sentences were enacted in a 1986 drug bill.

Federal sentencing guidelines take into account not only the amount of cannabis but also past convictions. Not all marijuana convictions require jail time under federal sentencing guidelines, but all are eligible for imprisonment. If convicted and sentenced to jail, a minimum of 85% of that sentence must be served. The larger the amount of cannabis , the more likely one is to be sentenced to jail time, as opposed to probation or alternative sentencing. Low-level offenses, even with multiple prior convictions, may end up with probation for the entire sentence of one to twelve months, and no jail time required. Possession of over 1 kg of marijuana with no prior convictions carries a sentence of six to twelve months with a possibility of probation and alternative sentencing. Over 2.5 kg with no criminal record carries a sentence of at least six months in jail; with multiple prior convictions, a sentence might be up to two to three years in jail with no chance for probation.

In *United States v. Booker* (2005), a Supreme Court decision from January 2005, the court ruled that the federal sentencing guidelines

(as outlined above) are advisory and no longer mandatory. However, many federal judges continue to give great deference to the guidelines.

In addition to the sentencing guidelines, there are statutory mandatory minimum sentences, which remain in effect after *United States v. Booker* and primarily target offenses involving large amounts of cannabis. There is a five-year mandatory minimum for cultivation of 100 plants or possession of 100kgs, and there is a ten-year mandatory minimum for these offenses if the defendant has a prior felony drug conviction. Cultivation or possession of 1000kg or 1000 plants triggers a ten-year mandatory minimum, with a 20 year mandatory sentence if the defendant has one prior felony drug conviction, and a life sentence with two prior felony drug convictions. To avoid a five-year mandatory minimum, it is advisable to stay well below 100 plants, including any rooted cuttings or clones.

Keep in mind that even though medical cannabis protections may exist in your state, the federal government provides no medical defense to possession, cultivation, or distribution charges, and if you are charged, no mention of your state's medical cannabis laws are admissible at trial. Federal defendants are prohibited from discussing their illness or the fact that they were following their state's law. Even though the Obama administration and the Department of Justice have made statements that prosecuting patients is a low priority, patients and providers are still being harassed, raided, arrested, and convicted throughout the U.S. Until federal law changes, participating in Colorado's medical marijuana program still carries some risk.

Other Applicable Laws

Veterans

On July 22nd, 2010, the Department of Veterans Affairs issued VHA Directive 2010-035: Medical Marijuana. This directive outlines two significant VA policies regarding veterans who use or need medical cannabis. First, the policy acknowledges that medical cannabis patients are not prohibited from VA clinical programs where "the use of marijuana may be considered inconsistent with treatment goals." This allows veterans to use medical cannabis while being treated for another illness with a VA treatment provider. However, the second policy outlined prohibits "VA providers from completing forms seeking recommendations or opinions regarding a Veteran's

participation in a state medical marijuana program." Thus, veterans must find a doctor outside the VA network in order to obtain a medical marijuana registry card in Colorado.

School Zones

Patients should avoid possession of cannabis in school zones, as there are typically additional penalties for the possession, use, and cultivation of cannabis near schools, whether it is for medical or recreational use. Patients and caregivers have been the targets of extreme charges and harsh penalties for medical cannabis in these "Drug Free School Zones." These Drug Free School Zone laws can double the maximum sentences in federal court, where the mention of "medical cannabis" is prohibited (see Federal Law above). In addition, the Colorado Medical Marijuana Code prohibits the possession of medical cannabis on the grounds of a school (K thru 12).

Firearms

Firearms can result in harsher sentencing. Even if your state protects patients' right to safe access to medical cannabis, the presence of firearms might increase the chances of a state or federal law enforcement encounter. Again, the best law enforcement encounter is the one that never happens.

Under federal law, "[a]ny person who, during any drug trafficking crime for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall:

(i) Be sentenced to a term of imprisonment of not less than 5 years;

(ii) If the firearm is brandished, not less than 7 years; and

(iii) If the firearm is discharged, not less than 10 years."

Although the U.S. Constitution confers a right to carry firearms, we have seen many patients face extreme legal consequences for having firearms in addition to plants.

The U.S. Department of Justice Deputy Attorney General memo, which clarifies how U.S. Attorneys should handle medical cannabis, specifically mentions the possession and use of firearms as conduct

tending to indicate drug trafficking. In other words, beyond the sentencing enhancements, the presence of firearms makes patients and providers a more likely target for federal attention. ASA strongly advises that if you are a medical cannabis patient, do not carry or keep firearms on your property.

Civil Asset Forfeiture

Federal law provides for the forfeiture of property and profits obtained through or used in the commission of felony drug offenses. Prosecutors are encouraged to include forfeiture offenses in all drug indictments. This can apply to landlords who knowingly rent to people considered in violation of federal law, and therefore can be used against the landlords of patients who cultivate or use their medicine on the premises. It should be noted, however, that landlords do have defenses available to them in these types of civil actions and that they are rarely targets of forfeiture if they themselves were not participating in the use, possession, or cultivation of medical cannabis.

Employment Law

Some employers retaliate against medical cannabis patients for failing a drug test, due to cannabis usage outside the workplace. The consequences may include a decision not to hire or to terminate the employment of the patient. In Colorado, it is unclear whether a business can lawfully fire a patient solely because of his or her status as medical cannabis patient or failing a drug test if the patient neither comes to work under the influence nor ingests cannabis at the work place. Federal law does not require private businesses to drug test persons who do not occupy safety-sensitive positions. If you are fired because of your use of medical cannabis you should seek an attorney. Some companies have settled out of court with Colorado medical marijuana patients who have filed suit.

Currently, the awarding of unemployment benefits to a medical marijuana patient who was fired due to his or her status as a patient is an unanswered question in the Colorado courts—one case is currently before the Court of Appeals. Regardless, numerous fired patients have received unemployment benefits.

Landlord/Tenant Law

Signing a lease means you have read and understand the requirements of the legal contract. Most leases contain specific clauses lim-

iting your landlord's access to the rental property. However, with proper notice, landlords can inspect the property for maintenance needs and to assure you are in compliance with the lease. Closely inspect this clause of your lease and be ready to comply.

Landlords may only enter your premises without permission in the case of an emergency, unless you run a business that is open to the public. Any attempt by your landlord or maintenance personnel to enter your residence without meeting the terms stated in the lease should be firmly but politely refused. Attempts to exclude any person listed on the lease should be immediately reported to your attorney, as your landlord has no right to exclude you from the premises without going through proper eviction proceedings.

Some leases may include prohibitions on use, cultivation and distribution of controlled substances, which likely includes medical cannabis. To avoid confrontation and hassle, be a good neighbor, and quietly go about meeting your medical cannabis needs.

Child Custody Issues

Sadly, being a parent who is a medical cannabis patient can be a scary thing. The issue of one's status as a qualified patient is used by some spouses against the other in child custody disputes. ASA takes these issues very seriously, and is working on strategies to better protect medical cannabis patient-parents. In the meantime, here are some precautions that patients can take to demonstrate to Child Protection Services that their use of medical cannabis has not affected their ability to be good parents and does not endanger the child.

- Keep all cannabis out of plain sight, ideally in clearly labeled medicinal jars and with other prescription medications, in a place that children cannot access. If you choose to cultivate, secure the garden in a locked room or devise another way to deny access to children.
- If you cook with cannabis, clearly label any resultant food products as medicinal, and keep them far away from any children's food and in a place that children cannot access.
- Use discretion when medicating, and do not do so when children are present or in the view of persons who might be looking for a reason to report you to Child Protection Services.
- If your children can understand, explain to them that the cannabis is your medicine and that is not for them (like any other prescription medication). Furthermore, let them know that it is a private matter, like any other medical information.

- In a dual-parent-patient household, work out a routine with your partner where one parent is always unmedicated in case any unexpected issues arise.
- Never drive with your children in the car after medicating.

You have no reason to inform Child Protection Services that you are a medical cannabis patient, unless directly asked. Do not volunteer such information without cause.

Refusal of Service

Another problem facing medical cannabis patients is being refused admission or service because of their status as medical cannabis patients or because of their use of medicine on private property. For instance, medical cannabis patients have been kicked out of amusement parks and convention centers. It is against the law to ingest medical cannabis in a place that is open to the public. Private businesses should have no way to learn of your status as a medical cannabis patient unless you tell them. If you are denied service, always remain calm; explain that you are a legal medical marijuana patient under Colorado law and that it is illegal to discriminate against you because of your status as a patient. Contact ASA if you need assistance responding to a refusal of service.

Driving Under the Influence

Notwithstanding Colorado's medical marijuana laws, it remains illegal to drive under the influence of cannabis, just as it is illegal to drive under the influence of intoxicating prescription medications. A trend in law enforcement has been for police to stop drivers, find cannabis and, after realizing that possession charges will be futile, the officer will often charge patients with DUI as a last resort, even when the patient has not medicated for a long time. These are much more complicated cases, and require more individual attention. If you have been involved in one of these situations, contact a good defense attorney and see: AmericansForSafeAccess.org/DUI.

Travel—Between States (Interstate)

Under Colorado law, a qualified patient with a Colorado patient ID may only possess, cultivate and transport medicine within the state of Colorado. A Colorado recommendation does provide an affirmative defense to criminal prosecution in five other medical cannabis states: Arizona, Maine, Michigan, Montana, and Rhode Island. In other states with medical cannabis laws, do not bring

your medicine across state lines with an expectation of legal protection. Also, it is not recommended that you bring your medicine to the airport (even if you are flying within Colorado). Federal Transportation Security Administration (TSA) employees will screen you and, upon finding your medicine, they may turn you over to local authorities for state or federal charges. Usually, TSA will turn a medical cannabis patient to over to local authorities.

Although some airports (Denver, Los Angeles, San Francisco, and Oakland) have allowed patients to fly with medical cannabis, their current informal policy could change without notice.

In addition, it is unclear whether Colorado's medical marijuana protections extend to people who intend to leave the state with their medicine, so even if you are arrested in Colorado, you may face criminal conviction and sentencing.

Travel—Within a State (Intrastate)

Travel safely! Many arrests for cannabis possession arise from traffic stops. Do not medicate and drive. If you travel with cannabis, make sure your vehicle is up to code and your cannabis is concealed—preferably in your trunk.

CHAPTER 2—BECOMING A LEGAL PATIENT OR PROVIDER

Colorado law allows seriously ill people to legally grow and use cannabis as medicine. There are two levels of protection under Colorado law: (1) affirmative defense; and (2) exception to prosecution. The affirmative defense is only a defense in court, thus law enforcement might arrest you and seize your belonging. Then at trial, you can argue that your use of cannabis is medicinal. If the jury or judge believes you, you will not be convicted. The better level of protection is the exception to prosecution. If you qualify for this level of protection, Colorado law enforcement can neither arrest you nor charge you with a crime.

In order to qualify for the affirmative defense under Colorado law, a patient only needs a doctor's recommendation or approval. In order to qualify for the exception to state prosecution, a patient must possess a medical marijuana registry card and be in possession of no more than two (2) ounces of usable cannabis and six (6) plants.

A doctor may only recommend or approve the medical use of cannabis for specific conditions approved by the state. So far Colorado permits the use of medical cannabis for the following conditions: AIDS, HIV, cancer, glaucoma, cachexia (severe weight loss caused by a medical condition or its treatment), severe pain, severe nausea, seizures, or persistent muscle spasms. Your doctor must state that s/he believes marijuana will relieve these symptoms. The Colorado Board of Health may add other conditions to this list as it sees fit. To date the Board of Health has denied every petition to add a new condition.

Finding a Doctor for a Recommendation

First and foremost, be forthright with your current doctor. There is nothing wrong with using medical cannabis or discussing it with your doctor. A federal court has ruled that, under the First Amendment, doctors may not be punished by the DEA for recommending medical cannabis.

Specifically ask your doctor to help you obtain a medical marijuana recommendation. Print off the state medical marijuana application and bring it with you when you visit your Doctor. This application is necessary for getting a medical marijuana patient registry card.

- If you are already medicating with cannabis on your own, tell your doctor specifically what condition or symptoms you treat with cannabis. Honestly describe the amount of cannabis you use, how often, and by what delivery method.
- If your doctor does not issue medical marijuana recommendations, you may need to visit a medical cannabis specialist.

Medical Cannabis Specialists

There are a number of Colorado physicians and clinics available for medical cannabis consultations. Before consulting a medical cannabis specialist, patients should already have medical records of diagnosis and treatment or a physician referral. Be aware that:

- Not all doctors are qualified to make recommendations.
- Most doctors will want to see your medical records.
- It can cost more than $100 to see a medical cannabis specialist.
- Paying the money does not guarantee that you will get a recommendation.

If you have more questions on how to become a legal patient, contact ASA or Sensible Colorado: www.AmericansForSafeAccess.org or www. SensibleColorado.org.

Obtaining a Registry Identification Card

The law provides that medical cannabis patients can apply for and obtain a registry identification card. To apply, you and your qualified doctor must submit the following:

(1) The application and Doctor Certification form provided by the Colorado Department of Public Health: Medical Marijuana Registry, filled out in blue ink and notarized. [The form changes continually, so check the state website for the latest form: cdphe.state.co.us/hs/medicalmarijuana]

(2) A copy of your photo ID and proof of residency if you have a non-Colorado Id or driver's license.

(3) The $90 application fee or proof that you are a current recipient of SSI or Food Stamps.

A minor's patient application must also include a parental consent form and a second doctor's form; both forms are provided by the Colorado Department of Public Health and Environment.

It is important to note that the Medical Marijuana Registry requires strict compliance with their rules while filling out an application. Their rules are listed on the application form. If you do not follow even one of their most minor rules, such as using blue ink, they could send your application back to you.

Mailing Your Application

All required application documents should be copied and the original should be mailed to the address on the application via certified mail. Please note, the Medical Marijuana Registry only accepts applications where the doctor's signature is less than 60 days old and only permits one application to be sent in per envelope.

Although the registry is currently processing applications within 14 days, the registry has been known to incur up to nine month delays. A copy of your entire state application with all supporting documents and a certified mail receipt showing that the application was submitted 35 days earlier is the legal equivalent to a Colorado Medical Marijuana Registry Identification Card and should protect you from state criminal prosecution relating to your medical use of cannabis.

Qualified Doctor

Not all Colorado Doctors are allowed to fill out the Doctor Certification Form. First, you should ask your Doctor if s/he has helped any patient in the past successfully receive a medical marijuana registry identification card. If s/he has not helped a patient in the past or if s/he is unsure if s/he is currently qualified, you can contact the Medical Marijuana Registry or check the Doctor's licensing status here: http://www.dora.state.co.us/medical/. The registry is currently not approving applications certified by doctors with conditions or restrictions on their license.

In order to qualify, you must see a doctor, in person, with whom you have a bona-fide relationship and who is in good standing with an unrestricted license to practice medicine from both the State of Colorado and the Drug Enforcement Agency.

The definition of "in good standing" is currently being defined

through administrative rulemaking. Currently, all applications by doctors who have "restricted licenses" are being denied, and applications by doctors with "conditions" on their licenses are being placed on hold. The definition of bona-fide relationship requires the doctor to conduct a physical exam and offer follow up care. **Currently, the doctor must have his DEA license on file with the Colorado Medical Marijuana Registry or your application will be sent back to you.**

Further requirements on the doctor-patient relationship are being promulgated through administrative rule making throughout 2011 and 2012. Contact ASA or Sensible Colorado for more information.

Renewals

You need to update your registration and pay another $90 every year (unless you qualify for the fee waiver) with updated copies of all documentation, including a new signed Doctor's Certification Form, even if your condition has not changed. You should update your registration at least 30 days before your card expires in order to ensure that you will have uninterrupted protection from state criminal law and a constant supply of medicine. If there has been a change in your address, caregiver, or primary medical marijuana center you must notify the department of the change within 10 days using a change of address or change of caregiver form. Any documents mailed to the state should be copied first and with the original mailed via certified mail. Keep all copies.

Registry Card

Your medical marijuana registry identification card will show your name, address, date of birth, random registry ID number, and the name and address of your caregiver or primary center if one is designated. It does not list your medical condition. The registry is confidential. Police or government officials can only access the registry to check if you are a lawful patient. The Colorado medical marijuana registry will release your file to you if you fill out their request form and pay $.25 per page. You must carry your registry card with you whenever you possess medical cannabis.

Indigent and Homebound Patients

Patients that receive Social Security Supplemental Income or Food Stamps during the month they apply for the registry may seek a waiver of the $90 registration fee and designation of indigence.

Indigent patients do not have to pay sales tax on medicine they purchase from Medical Marijuana Centers.

Medical Marijuana Centers cannot sell medicine to a caregiver unless one of the caregiver's patients is designated as homebound. In order to receive a designation of homebound the appropriate box must be checked by the recommending doctor on the Doctor Certification Form or by the patient on the change of caregiver/center form.

Becoming a Legal Caregiver

Colorado's medical marijuana laws protect patients and their primary caregivers from prosecution for marijuana law violations. By state law, a designated caregiver is allowed to possess, manufacture, and provide marijuana, in all its varieties and forms, for the patient in his/her care. The caregiver is not allowed to use this marijuana for his/her personal use, nor can s/he provide this medicine to un-qualified patients.

Caregivers are designated as such on the patient's initial application for the medical marijuana license. To select a caregiver after a patient has his or her license, the patient must submit a change of caregiver form to the Colorado Medical Marijuana Registry.

At some point, the Colorado Medical Marijuana Registry will require all caregivers to register and submit an affidavit stating what services besides supplying medical marijuana the caregiver is providing to his patients. Also, caregivers can neither supply medical marijuana to Medical Marijuana Centers nor obtain medical marijuana from a center (unless one of their patients is homebound). Please review Chapter 1 to understand the laws regulating medical marijuana caregivers.

Starting a Medical Marijuana Business

Colorado's medical marijuana laws also authorize certain individuals to cultivate and sell medical marijuana to any patient or produce medical marijuana infused product that can be sold at any licensed retail outlet. Lawfully operating such a business requires compliance with over 150 pages of state laws and regulations in addition to any local laws and regulations. It is highly recommended that anyone interested in opening such a business consult with an attorney experienced in Colorado's Medical Marijuana Code.

Notably, at this time, only those who have been residents of Colorado for the two years prior to their applications can own a medical marijuana business or work at a medical marijuana center. In addition, anyone with a drug felony, any felony conviction in the last five years, or bad moral character cannot work at or own a medical marijuana business.

Obtaining Medical Marijuana for Qualified Patients

Medical marijuana patients have many options to obtain their medicine. They can grow their own medicine, appoint a caregiver to grow medicine on their behalf, or appoint a center to grow on their behalf. In addition, a patient can grow their own and have a Medical Marijuana Center grow for them as well. Patients can always acquire medicine from a Medical Marijuana Center regardless whether they have designated to grow for them.

Colorado law was originally silent on the issue of Medical Marijuana Centers. However, HB 10-1284 allows local communities to adopt procedures for licensing Centers. Pursuant to HB 10-1284, local cities and counties regulate Medical Marijuana Centers, ideally in ways specifically tailored to suit the needs of the particular community. Since ordinances regulating medical marijuana will vary from community to community, it may be easier to acquire medically suitable cannabis in some areas than in others. Regardless whether a city permits Medical Marijuana Centers—no city or county can ban caregivers.

Notably, only medical marijuana patients with a registry identification card or a caregiver with a homebound patient can purchase medical marijuana from a Medical Marijuana Center.

Disclaimer: Medical marijuana law in Colorado is continually evolving and medical marijuana remains illegal under federal law. If something in this March 2011 manual appears out of date or inaccurate, please consult with an attorney or contact ASA & Sensible Colorado at 1-888-929-4367 or 720-890-4247.

CHAPTER 3—BEING PREPARED

Fortunately, many patients, caregivers, and medical marijuana business employees and owners never encounter law enforcement problems. Those that do, fairly regularly report successful interactions with local and county police. Many municipalities offer strong protection to medical cannabis patients. However, even in friendly jurisdictions, patients are still being harassed and arrested for medical cannabis, even if they present a valid medical cannabis ID card.

The Best Law Enforcement Encounter: The One that Never Happens

Carry your medical cannabis ID card at all times, but do not present it to law enforcement unless accused of a cannabis-related crime. Dealing with criminal charges and/or getting your medicine back can be stressful and costly, and may cause you to be "outed" as a medical cannabis patient. That's why we say that the best law enforcement encounter is the one that never occurs. If you follow these tips, you will be less likely to be harassed by law enforcement.

Sensible Medical Cannabis Use

Patients and caregivers should educate themselves about medical cannabis and understand the benefits and potential side effects of their medicine. If you are new to using medical cannabis, or are trying a new strain, strength, or route of administration, it might be best to do so when you have no other responsibilities or plans. New routes of administration in particular may cause somnolence, or tiredness. By being a sensible medical cannabis user and making informed decisions, you can be as healthy as possible and help change the way people think about medical cannabis use, and also limit your chances of a law enforcement encounter.

Guidelines for Sensible Medical Cannabis Use:

1. Always listen to the advice of your doctor and use good judgment when using medical cannabis.

2. Carefully determine the amount of cannabis that is right for you. Start with a small amount and slowly increase your dosage to find the proper level for symptomatic relief.

3. Be informed about the side effects of cannabis. It is also important to be aware of the possible risks of using medical cannabis.

4. Think about the benefits of cannabis and relief that its use provides you. Being able to explain your use of medical cannabis can help you be an effective advocate, and you can be an example that helps your friends, family, and community form their own opinions of medical cannabis.

5. Avoid medical cannabis use that puts you or others at risk, such as using it while driving, at work, or in public places. Remember, you can still be arrested for cannabis use and penalties can be stiff. As with any other medication, it remains illegal to drive while under the influence.

6. Always carry a copy of your physician's recommendation, caregiver's agreement, and/or ID card when in possession of medical cannabis.

7. Always carry a copy of proof of your patient or caregiver status with your medical cannabis.

Being a Good Neighbor

A common cause of trouble for both patients and caregivers is complaints from neighbors. This problem might manifest itself in the form of an unpleasant personal confrontation or the neighbors may report concerns about nuisance and safety to landlords or police. Subsequent investigations can lead to the arrest of patients and caregivers and to the closure of medical cannabis dispensing centers.

Neighbors and nearby businesses may or may not share your opinion about medical cannabis, but they will be much more likely to respect your right to safe access if you are not causing them problems. By being conscious of neighbors' rights, privacy, and property, patients and dispensing centers can establish and maintain harmonious relationships.

Other issues with your neighbors can lead to law enforcement encounters. Domestic disputes, loud music, illegal parking, bark-

ing dogs, and other nuisances should be kept to a minimum. Police are required to investigate these reports and they will come to your location. When neighbors complain to law enforcement, citations or criminal charges for nuisance violations can be difficult to deal with, and investigation into these types of charges may lead to charges related to your medical cannabis use. Being a good neighbor can help you avoid these types of encounters.

Being Prepared in Advance for Successful Law Enforcement Encounters

Any patient or caregiver can become the target of a law enforcement action. Each person who decides to use medical cannabis, or helps a patient to do so, should be prepared to successfully maneuver through these encounters. You might not be able to avoid arrest in each instance, but chances of successfully fighting charges are greatly improved by education and careful planning.

There are many measures you can take before legal problems occur. You should carefully study the Law Enforcement Encounters section of this manual and, if possible, attend an ASA Know Your Rights training, or other similar training in your area, to most effectively learn this detailed information. You should also stay on top of the basics, maintain a current medical marijuana registry ID card, and have a clearly defined patient/caregiver relationship if applicable. Keep your medical marijuana registry ID card in your wallet or purse at all times. You may want to memorize your physician's and lawyer's phone numbers, or write them down to keep with your identification.

It is very important to inform the people in your life, such as family, friends, and roommates, about your medical use of cannabis. They should be prepared to assist if you are harassed or arrested. They should also be educated about their legal rights (see the "know your rights" information), as they may be questioned in an investigation about your cannabis use. Also, be aware of how to get out of jail if you are arrested. You may want to make a plan for bail, bond, or being released from jail on your own recognizance. You may want to protect and organize your personal belongings and financial data and make a plan for emergency child, pet, and plant care. Lastly, always stay alert for signs of surveillance and be aware of potential conflicts with the neighbors to avert problems early.

Use Common Sense

Consider safety when you choose to medicate; cannabis smoke and vapor have very distinctive smells. You will attract less attention if you do not consume cannabis in plain view or near open windows.

Do not drive your car while smoking. If law enforcement officers smell cannabis smoke, they can search your vehicle. If you are going somewhere, medicate after you arrive, or bring your medicine in edible form. Please note that Colorado's medical marijuana laws won't protect you from charges of driving under the influence of cannabis or smoking in public.

Although it may help with dosages and rationing, packaging your medicine in eighth- or quarter-ounce baggies looks suspicious. Cannabis actually stores better in glass jars or airtight plastic containers in cool dark places.

Fewer plants attract less attention from thieves and others who may wish you harm, so be realistic about the amount of cannabis you will need.

Try to limit the amount of cannabis you have with you at any given time. While you may seal your medication in airtight containers, there is still a distinctive odor that is hard to prevent and can lead to law enforcement encounters. The less medicine you have with you, the less smell there is.

Safe Gardening

Have Your Paperwork Together

Post a copy of patient medical cannabis recommendation(s) and/or caregiver paperwork and/or other required paperwork prominently at any place where cannabis is cultivated. Keep a copy of all of your paperwork at an off-site location; if a raid occurs, your paperwork may be destroyed or seized.

In the Garden

Don't be sloppy. Compost or eliminate trash off site. The larger the garden appears, the more likely you are to attract the attention of thieves or others who wish to cause you harm. Cultivating indoors is generally considered safer because it helps avoid nosy neighbors and reduces the risk of theft. Use extra odor control methods during harvest to avoid offending neighbors. The plants

smell especially pungent at this time, as they are particularly resinous, and you may find the smell lingering in the air, on your clothes, and in your hair.

Be Smart: Be discreet

Be mindful about hauling grow equipment, tools, and plants into your home or grow site in view of neighbors. In the same vein, as tempting as it may be, tell as few people as possible about the location of the site.

If You Are under Investigation

In the event of a law enforcement encounter, don't talk to law enforcement officers beyond showing them your identification and medical marijuana registry identification card. Keep relevant records near your garden and have an attorney to call right away. If you are determined to talk to law enforcement officers without an attorney, get your affairs in order first and prepare to do some prison time.

Talking to Your Attorney about the Garden

You may talk to your lawyer about your garden, as Colorado law protects patients, caregivers, and licensed business owners who cultivate cannabis. Be careful discussing your financial situation with regard to your garden and never make reference to selling cannabis unless permitted to do so by law. If your attorney is unfamiliar with medical marijuana law, be prepared to educate him or her or ask him or her to contact ASA or Sensible Colorado for more information.

Security Culture

"Security Culture" refers to the importance of developing unbreakable unity within the medical cannabis community. If everyone involved maintains this unity, the entire community will be safer. Law enforcement agents frequently aim to turn people against each other and disorganize or disband the community.

Implement a Security Culture

Take care of yourself and your community. Don't gossip, brag or ask for compromising or unnecessary information about medical cannabis operations and activities. Although such behavior may be entertaining, it puts you at greater risk of arrest and law enforcement officers may use personal splits to divide the com-

munity. When you are about to discuss your personal involvement in medical cannabis operations, consider the following:

(1) Would this person repeat what you are about to tell them to anyone else? When you share information about your involvement in medical cannabis, you are sharing information that may be used against you in court if this person is ever interrogated as a witness. You should also be cautious of theft—patients and providers have been robbed so it's best to limit the dissemination of sensitive information.

(2) Would you want this person to have to perjure (lie under oath) him or herself? Think carefully: you may be giving people information that may cause harm to you or to them.

If someone you know is giving out sensitive information, talk to him or her in private about why such talk can be hazardous. Someone who repeatedly engages in gossip, bragging or seeking unnecessary information about inappropriate topics after repeated educational talks is a grave risk at best, and a police agent looking to provoke or entrap others at worst.

Keeping an Eye Out for Surveillance

Take precautions. Assume you are under surveillance if you are in any way involved in providing medical cannabis to patients. All licensed medical marijuana business can be surveyed by the state at any time. Be cautious with whom you discuss sensitive information. Keep written materials and lists of individuals in a secure place. If you are arrested, law enforcement officers may investigate all your contacts. Law enforcement officers not only have the right to go through your phone book, they can answer any calls made to your phone. Keep in mind that electronic data such as emails and text messages still exist even after they've been deleted, and your phone company or ISP may be willing to turn them over to law enforcement without even being subpoenaed.

Excerpted from "Security Culture," Slingshot Issue #72, slingshot.tao.ca/ with modifications by ASA.

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CHAPTER 4—LAW ENFORCEMENT ENCOUNTERS

Know Your Rights

Medical cannabis patients and their providers are vulnerable to federal and state raids, arrest, prosecution, and incarceration and suffer pervasive discrimination in employment, child custody, housing, public accommodation, education and medical care. Laws protecting patients and their providers vary from state to state and in some cases may vary from county to county. Many individuals choose to break outdated state laws that do not account for medical use or access. And no matter what state you are living in, medical cannabis patients and their providers are always violating federal law.

Making the choice to participate in a medical cannabis program or to resist current laws should be done with thoughtful consideration. Following the law in your local area may not always protect you from law enforcement encounters, and the more you know about your rights, the more likely you will be to have a successful encounter with law enforcement. It's important to remember that the best law enforcement encounter is the one that never happens.

The information found in this section is meant to educate patients and their providers about the existing federal laws, how to avoid law enforcement encounters, how to be prepared for encounters, how to understand your rights during encounters, and how to navigate the legal system after an encounter. After you understand this material, be sure to share this information with your family, friends, or anyone who may be at risk.

Law Enforcement Encounters

When dealing with law enforcement officers, keep your hands in view and don't make sudden movements. Avoid passing behind them. Nervous officers are dangerous officers. Also, never touch law enforcement officers or their equipment—you can get beat up, charged with assault, or both.

Law enforcement officers do not decide your charges; they can only

make recommendations. The prosecutor is the only person who can actually charge you. Remember that officers have no power to negotiate or charge; promises of leniency or threats of harsher penalties are all lies and are designed to get you to start talking.

Conversation

When the law enforcement officers are trying to get information, but don't have enough evidence to detain or arrest you, they'll try to coerce information from you. They may call this a "casual encounter" or a "friendly conversation." If you talk to them, you may give them the information they need to arrest you or your friends. In most situations, it is not advisable to volunteer information to law enforcement officers. Ask if you are free to leave, and if you are, walk away. If you are being detained or arrested, let the officer know that you do not consent to a search and that you wish to remain silent and want a lawyer.

Detention

Police can detain you only if they have reasonable suspicion (see below) that you are involved in a crime. Detention means that, though you aren't arrested, you can't leave. Detention is supposed to last a short time and they are not supposed to move you. During detention, law enforcement officers can pat you down and go into your bag to make sure you don't have any weapons. They aren't supposed to go into your pockets unless they feel a weapon.

If law enforcement officers are asking you questions, ask if you are being detained. If not, leave and say nothing else to them. If you are being detained, you should ask why, and remember their answer. Then you should say the Magic Words: "I am going to remain silent. I want a lawyer" and nothing else. Remain silent. Anything you say to law enforcement may be used against you, and sometimes it's hard to recognize that the information you are volunteering might harm you. It is always better to say nothing at all. If they ask to search your person or belongings, say, "I do not consent to a search." They may say, "Empty your pockets." You are within your rights to refuse. If you do empty your pockets, it is considered consent and anything they find in your pockets may be used against you.

A detention can easily turn into arrest. If law enforcement officers are detaining you and they get information that you are involved in a crime, they will arrest you, even if it has nothing to do with why

they stopped you.

For example, if someone is pulled over for speeding (detained) and the officer sees drugs in the car, the officer may arrest her for possession of the drugs, even though it has nothing to do with her being pulled over. Law enforcement officers have two reasons to detain you: 1) they are writing you a citation (a traffic ticket, for example), or 2) they want to arrest you but they don't yet have enough information to do so.

Arrest

Police can arrest you only if they have probable cause (see below) that you are involved in a crime. When you are arrested, the officers can search you to the skin and go through your car and any belongings. If arrested, you should still say, "I do not consent to a search" to preserve your rights. After that, say, "I choose to remain silent and I want a lawyer." After that, remain silent. Law enforcement will try to get you to give them information about the crime(s) they are holding you for. Keep in mind that denying things that they say is NOT remaining silent.

Reasonable Suspicion vs. Probable Cause

Reasonable suspicion must be based on more than a hunch—law enforcement officers must be able to put their suspicion into words. For example, law enforcement officers can't just stop someone and say, "She looked like she was up to something." They need to be more specific, such as, "She was standing under the overpass staring up at graffiti that wasn't there two hours earlier. She had the same graffiti pattern written on her backpack. I suspected that she had put up the graffiti."

Law enforcement officers need more proof to say they have probable cause than to say they have a reasonable suspicion. For example, "A store owner called to report someone matching her description tagging a wall across the street. As I drove up to the store, I saw her running away spattered with paint and carrying a spray can in her hand."

Searches

Never consent to a search. If police try to search your house, car, backpack, pockets, etc. say the Magic Words: "I do not consent to this search." This may not stop them from forcing their way in and

EXERCISE YOUR RIGHTS!

There are three levels of police interactions and safe ways to handle each encounter. There are three sets of magic words to use during a law enforcement encounter.

1) **Casual Conversation**—During a law enforcement encounter, ask if you are being detained or arrested. If you are not being detained or arrested, walk away.

2) **Detention**—If you are being detained, ASK WHY! Make them cite the law—and REMEMBER WHAT THEY SAY.

3) **Arrest**—Say the first two sets of magic words: "I choose to remain silent!" and "I want to see a lawyer!" Remember to REMAIN SILENT. Law enforcement may try to trick you into talking. Keep in mind they are highly trained in gathering information and are allowed to lie in order to trick you into talking.

The third set of magic words: I do not consent to a search!

If the officer says: "Do you mind if I look in your purse, bag, home or car?"

You say: "I do not consent to a search."

If the officer says: "Why not? Are you hiding something?"

You say: "I believe in my Constitutional right to privacy, and I do not consent to a search."

Note: This probably will not stop an officer from searching you, but it can help get evidence thrown out of court.

Search Warrants

Do not let an officer into your home without a search warrant. If an officer does have a warrant, check the address, the date (relatively recent), and look for a judge's signature.

If law enforcement knocks on your door, step outside and close the door behind you while you find out why they are there. Do NOT leave the door open.

If they do enter your home, with or without a search warrant, say, "I do not consent to a search." If they enter your home with a warrant and you do not consent to a search and the warrant is later deemed illegal by a judge, anything that is seized during the search will not be evidence used against you. It is very important to always say, "I do not consent to a search." Say it loudly, multiple times. It might be the officer's word against yours, but if your neighbors heard you yell it 15 times, then the judge may take your word over the officer's.

searching anyway, but if they search you illegally, they probably won't be able to use the evidence against you in court. You have nothing to lose from refusing to consent to a search and lots to gain. Do not physically resist law enforcement officers when they are trying to search, because you could get hurt and/or charged with resisting arrest or assault and battery. Just keep repeating the Magic Words so that the officers and all witnesses know that this is your stance.

Be careful about casual consent. That is, if law enforcement officers stop you and you get out of the car but don't close the door, they might search the car and claim that they thought you were indicating consent by leaving the door ajar. Also, if you say, "I'd rather you didn't search," they can claim that you were reluctantly giving them permission to search. Always just say the Magic Words: "I do not consent to this search."

Questioning

Interrogation isn't always bright lights and rubber hoses -- usually it's just a conversation. Whenever law enforcement officers s ask you anything besides your name and address, it's legally safest to say these Magic Words:

"I am going to remain silent. I want to see a lawyer."

This invokes legal rights, which protect you from interrogation. When you say this, the officers (and all other law enforcement officials) are legally required to stop asking you questions. They probably won't stop, so just repeat the Magic Words or remain silent until they catch on. If you forget your decision to remain silent and start talking to law enforcement officers, you can and should re-invoke the Magic Words, then remain silent. Do not raise your status as a medical cannabis patient, unless you are specifically asked about this or the medicine has already been found.

Remember, anything you say to the authorities can and will be used against you and your friends in court. There's no way to predict what information law enforcement officers might try to use or how they will use it. Plus, law enforcement officers often misquote or lie altogether about what was said. So say only the Magic Words and let all the law enforcement officers and witnesses know that this is your policy. Make sure that when you're arrested with other people, the rest of the group knows the Magic Words and promises to use them.

One of the jobs of law enforcement officers is to get information out of people. Law enforcement officers are legally allowed to lie when they're investigating, and they are trained to be manipulative. The only thing you should say to law enforcement officers, other than identifying yourself, are the Magic Words: "I am going to remain silent. I want to see a lawyer."

Here are some lies they may tell you:

- "You're not a suspect -- just help us understand what happened here and then you can go."
- "If you don't answer my questions, I'll have no choice but to arrest you. Do you want to go to jail?"
- "If you don't answer my questions, I'm going to charge you with resisting arrest."
- "All of your friends have cooperated and we let them go home. You're the only one left."

Law enforcement officers are sneaky and there are lots of ways they can trick you into talking. Here are some scams they may pull:

- Good Cop/ Bad Cop: Bad cop is aggressive and menacing while good cop is nice, friendly, and familiar (usually good cop is the same race and gender as you). The idea is bad cop scares you so badly you are desperately looking for a friend. Good cop is that friend. The Bad Cop usually questions you first, pretends to give up or take a break with you and then the Good Cop enters to sympathize with you about how much of a jerk the other guy was. It's in this "friendly" conversation that the Good Cop will be looking for any information or a confession.
- Prisoners' Dilemma: The officers will tell you that your friends ratted on you so that you will snitch on them. Meanwhile, they tell your friends the same thing. If anyone breaks down and talks, you all go down.

Law enforcement officers will tell you that they have all the evidence they need to convict you, but that if you "take responsibility" and confess, the judge will be impressed by your honesty and go easy on you. What they really mean is: "We don't have enough evidence yet, please confess."

Jail is a very isolating and intimidating place. It is really easy to believe what law enforcement officers tell you. Insist on speaking with a lawyer before you answer any questions or sign anything.

Miranda Rights

Law enforcement officers do not have to read you your rights (also known as the Miranda warnings). Miranda applies when there is (a) an interrogation (b) by a police officer or other agent of law enforcement (c) while the suspect is in police custody (you do not have to be formally arrested to be "in custody"). Even when all these conditions are met, officers may intentionally violate the Miranda requirement. And though your rights have been violated, what you say can still be used against you. For this reason, it is better not to wait for the law enforcement officers to inform you of your rights. You know what your rights are, so you can invoke them by saying the Magic Words, "I am going to remain silent. I want to see a lawyer."

If you've been arrested and realize that you have started answering questions, don't panic. Just re-invoke your rights by saying the Magic Words again. Don't let them trick you into thinking that because you answered some of their questions, you have to answer all of them.

Arrest and Search Warrants

If law enforcement officers come to your door with an arrest warrant, step outside and lock the door behind you. Law enforcement officers are allowed to search any room you go into, so don't go back into the house for any reason. If they have an arrest warrant, hiding won't help, because they are allowed to force their way in if they know you are there. It's usually better to just go with them without giving them an opportunity to search.

If law enforcement officers have a search warrant, nothing changes—it's legally safest to say the Magic Words. Again, you have nothing to lose from refusing to consent to a search and lots to gain if the search warrant is incorrect or invalid. If they do have a search warrant, ask to read it. A valid warrant must have a recent date, the correct address, and a judge's or magistrate's signature; some warrants also indicate the time of day the law enforcement officers can search. You should say the Magic Words whether or not the search warrant appears correct. The same goes for encounters with any other government official who tries to search you, your belongings, or your house.

There is an exception for state licensed medical marijuana businesses. As a regulated business, the DOR may search your licensed

facility at anytime. However, in most cases local law enforcement will not have that authority.

Infiltrators and Informants

Undercover officers sometimes infiltrate political organizations. They can lie about being law enforcement officers even if asked directly. Undercover officers may even break the law (undercover officers get hazard pay for doing drugs as part of their cover) and encourage others to do so as well. This is not legally entrapment.

FBI, DEA, and Other Government Agents

The essence of the Magic Words "I'm keeping my mouth shut until I talk to a lawyer" not only applies to police but also to the FBI, DEA, INS, CIA, even the IRS. If you want to be nice and polite, say that you don't wish to speak with them until you've spoken with your lawyer or that you won't answer questions without a lawyer present.. If you own or belong to a state licensed medical marijuana business, do not let federal agent search your licensed facility, and ask to speak to your lawyer.

Phone Calls in Jail

You're entitled to make a phone call from jail, but that doesn't mean you're going to get one right away. Jail telephones are often rigged to only make collect calls, although some take coins as well. All telephone calls from people in custody can be monitored. You should not discuss anything that is secret or sensitive—circumstances of your arrest, people you are close to, any contact information for those people, etc.

Taking Notes

Whenever you interact with or observe law enforcement officers, always write down what is said and who said it. Write down the law enforcement officers' names and badge numbers and the names and contact information of any witnesses. Record everything that happens. If you are expecting a lot of police contact, get in the habit of carrying a small tape recorder and a camera with you. Be careful—law enforcement officers don't like people taking notes, especially if they are planning to do something illegal. Observing them and documenting their actions may have very different results; for example, it may cause them to respond aggressively, or it may prevent them from abusing you or your friends.

Conclusion

People deal with police in all kinds of circumstances. You must make an individual decision about how you will interact with law enforcement. It is important to know your legal rights, but it is also important for you to decide when and how to use them in order to best protect yourself.

Disclaimer: Medical marijuana law in Colorado is continually evolving and medical marijuana remains illegal under federal law. If something in this January 2011 manual appears out of date or inaccurate, please consult with an attorney or contact ASA & Sensible Colorado at 1-888-929-4367 or 720-890-4247.

CHAPTER 5—DEMYSTIFYING THE LEGAL SYSTEM

Getting Out of Jail

There are several procedures for getting out of jail while a case is in process. If you are in possession of cannabis, law enforcement officers may arrest you and let the judge decide the validity of your medical marijuana claim. Once arrested, the judge will decide whether to offer you bail, bond, or release you on your own recognizance (OR).

Citation: Citing out is a type of release from custody in which you sign a citation, which is a promise to appear in court. It is usually a form that looks like a traffic ticket. Never sign a piece of paper that is an admission of guilt. Read the form closely and make sure you know what you are signing. Possession of less than two ounces of marijuana is a petty offense and usually leads to a citation.

Bail: Bail is money you pay to the court, to be forfeited if you don't appear at scheduled hearings. A bail bondsman can put up the money for you, but you have to give the bondsman a percentage of the total bail, which the bondsman keeps as payment. Often, there is a pre-set bail for misdemeanors and lesser felonies that you can pay at the jail without waiting to go before a judge.

Bond: A bond is like bail except that you put up collateral instead of paying money. Collateral is something of value, like a car, a house, or property.

OR: Release on your own recognizance (OR, ROR or PR) is simply your promise to come to court for scheduled hearings without having to put up bond or pay bail. Usually you will only be released on your own recognizance if you can prove that: (1) you are not a danger to the community; and (2) you are not a flight risk or unlikely to return for court appearances.

You are likely to be kept in jail if you:

- Have an outstanding warrant for another charge
- Are already out on OR, bond or bail for another charge

- Are currently on probation or parole
- Have failed to appear for court dates in the past
- Have immigration problems

You can prove you're not a flight risk by organizing documents for your first court appearance that show the judge you have long-term ties to the community and are therefore unlikely to skip town. Assemble as many of the following documents as possible. You need the originals, plus a copy to give the court:

- Lease, rent receipts, utility bills, phone bills (both current bills and old ones to show the time you've been at this residence)
- Employment contract, pay stubs, records of volunteer work
- School ID, school records
- Proof of membership in community organizations or churches
- General character reference letters from landlords, roommates, employers, teachers, clergy
- List of character references with phone numbers
- Letters on doctor's stationery about any medical conditions or appointments that necessitate your release

It would be very difficult for your friends to assemble such materials while you are sitting in jail. It makes more sense for you to put together this packet in advance and keep it in a safe and accessible place. If you are arrested, your friends can bring these papers to your lawyer so that you will have this material in court.

Going To Court

When do I go to court for the first time?

If you are in custody, the authorities are legally supposed to bring you to court within two business days or "as soon as reasonably possible." If you are not being held in jail, your first court date may be anywhere from one week to a month after arrest. Court dates should be written on the citation or release forms.

What happens at the first court appearance?

The first hearing generally involves the appointment of counsel. You indicate who's going to represent you: yourself, a private attorney, or a court-appointed lawyer. Also at the first hearing, you find out the charges against you, and respond by making a demurrer, or entering a plea. This part is called the arraignment. If you've been

in jail up until court, the first hearing usually focuses on release issues: bail, bond or release on your own recognizance (OR). This part is called a bail hearing. Even if you're not released the first time, the subject can be brought up at later hearings. The appointment of counsel, arraignment, and bail hearing can sometimes be separate appearances. Many people choose to waive the right to a speedy trial at this time, called "waiving time." This is mainly done to have the most amount of time to plan your defense and build public support.

What are the choices when it's time to enter a plea?

Pleas generally fall into two categories: guilty and not guilty. Normally, people only plead guilty if they've negotiated a plea bargain. If you do not reach or want a plea bargain plead "not guilty" and go to trial.

What happens if I don't show up for a court hearing?

If you miss a scheduled hearing, the judge will usually issue a bench warrant. If an individual with an outstanding bench warrant gets into any kind of trouble, like a traffic violation, s/he is subject to arrest. Judges usually accept extreme excuses for missing a hearing, like funerals or medical emergencies. Conflicts with school or work schedules are not acceptable excuses.

When does the trial happen?

When you do not waive time, trial usually occurs within three to six months after arraignment. When time is waived, trial might not begin for many more months. In both cases, trials are often preceded by hearings at which written and/or oral "motions" are made and heard.

What goes on at trial?

At trial, you can testify if you want to. You can also put on eye- (and ear-) witnesses, and possibly witnesses to testify about your good character. In addition, you have the right to cross-examine the witnesses against you, who will probably be law enforcement officers. You also get to make opening and closing arguments.

The judge may try to forbid you from talking about anything political, and even disallow mention of medical marijuana, on the grounds that it would be irrelevant. Lawyers may be able to get

around the judge's prohibitions, but there's considerable precedent (published results of earlier trials) supporting the notion that judges can forbid discussion of political matters at trial.

Your lawyer will handle witnesses, make opening and closing arguments, and file motions. All you do is testify. Sometimes, people represent themselves (called pro per or pro se). In these situations, it's useful to have an attorney as advisory counsel or co-counsel, to help with technical legal matters.

You don't necessarily get a jury trial. The alternative is a bench trial, or trial by judge in which the judge hears the evidence and reaches a verdict. The judge will also decide what will be allowed as testimony and evidence. In state court, you must be charged with at least a misdemeanor to automatically get a jury trial. For petty offenses, you must request a jury trial within 20 days. In federal court, you must be charged with an offense that carries a maximum sentence of greater than six months to get a jury trial. This requirement rules out all infractions and most misdemeanors.

The trial ends with the verdict: guilty, not guilty, or a hung jury. If found not guilty, celebrate. If there is a hung jury (the jury couldn't agree on the verdict), then the prosecutor gets to decide whether to retry you or dismiss the case. Prosecutors often give up or offer a really good deal at this point. If you're found guilty, then the judge sentences you. The judge can either sentence you immediately after the verdict or set a separate hearing for sentencing. You may be qualified to appeal this sentence or the original case ruling, so consult with an attorney.

What happens at sentencing?

You can pack the courthouse. You get to make a speech, because you have the right to allocution. This sentencing statement is normally a chance to ask for mercy and explain mitigating factors, but activists often use it as a chance to discuss political matters, especially if they didn't get to speak their minds at trial.

Return of Property

In nearly every case where a patient or caregiver is cited or arrested for medical cannabis, law enforcement will seize the medicine and often other property they feel is connected with the alleged offense. If this happens in state court, and you are found not guilty or have your charges dismissed or dropped, you can petition the

court for the return of your property. Law enforcement officers typically do not return property without a court order. This requires a patient to file a motion for return of property. ASA has an ongoing return of property campaign and has information on its website to help you file a motion. See www.AmericansForSafeAccess.org/RoP You can also obtain information on how to pursue return of seized property in Colorado at Sensible Colorado's online brief bank: sensiblecolorado.org/mm/faqs/attorneys-and-pro-se-defendants/

If you are certain that the property has been destroyed or is damaged beyond use, you may want to sue the city or county responsible for the property's damage or destruction. In this instance, you would be filing a civil suit. This process can often take years to complete. In order to qualify for filing a civil suit, you must first file a claim form with the appropriate government entity no later than 6 months after the seizure. Once the claim is denied, you then have six months from that date to file the actual civil suit. It may be helpful to have the claim form and, later, the civil suit complaint drafted by an attorney, but that is not necessary.

Court Support and Organizing During Trials

Medical cannabis patients are being arrested, facing trial, and going to jail nationwide. As advocates, it is our job to highlight these injustices in the courts.

What is court support?

Court support is a group of tactics used to support a patient or provider while s/he is going through the legal system. Listed below are some examples of tools that can be used for court support. You may want to use some or all of them depending on the situation. Remember the health and safety of the defendant must ALWAYS be your first priority.

Media:

1. **Get the facts straight**: Before you contact the press, make sure you have a clear account of what has happened. Get contact numbers for the defendant and anyone s/he would like to speak on his/her behalf: his/her attorney, family members, local officials, doctors etc.

2. **Contact local media about case**: Either immediately following the raid or a week before a hearing, send a press

advisory to local press outlets.

3. **Press Release**: Before a court date, send a press release at least 24 hours in advance. Press releases have very specific formats, so if it is your first release, see ASA's media manual: AmericansForSafeAccess.org/MediaManual

4. **Background**: Medical cannabis trials can be very confusing. It is a good idea to have a one-page handout to give to the press that explains the specifics of the case and information about state law and about the state-federal conflict.

5. **Press Conference**: Press conferences should only be between 10-30 minutes long. Having an MC can help keep things moving. Make sure everyone knows the speakers' order, only have a press conference when there is something NEW to say, make sure someone helps the press set up and get all the interviews they need, and don't forget signs and visuals!

In the courtroom

Fill the courtroom with supporters…

- **Be respectful.** It is often hard to sit and watch injustices unfold in front of you, but interruptions in the courtroom can cause a judge to take his anger out on the defendant.
- **Dress for court.** Dress like it is YOU that is on the stand, since your appearance reflects on the defendant.

TIP: No need to draw attention to yourself, just all stand up and leave with the defendant.

Outside the courtroom

- **Protests and rallies**: Get creative! Street theater, easy-to-read signs, marches, pickets, and large puppets can deliver a complex message to the public and to the press.

CAUTION: Be aware of laws concerning Jury tampering. Do not hand out information about the defendant once jury selection begins or during the trial.

Emotional Support

Going through the legal system can be financially and emotionally draining. To build a strong, vibrant movement, we must make sure

we do not let anyone slip through the cracks. Sometimes people need an ear, sometimes a ride to court, or childcare for their children. Don't be afraid to reach out and ask what they need. It is important to only commit to what is viable for you.

When should you use court support?

Court support should be used anytime a medical cannabis patient, caregiver or business owner/employee is arrested. A defendant or even your community may decide that a specific case may be too cloudy for the local political landscape, and media may do more harm than good. If this is the case, you can still do everything else but contact the media (protests, presence in the court, emotional support etc.).

Why do court support?

- **Organizing opportunity**: Court cases create a crisis in a community and court support can give quiet supporters an opportunity to become active supporters.
- **Community Awareness**: Court cases create an opportunity to educate your community, local media, and legislators about the injustices surrounding medical cannabis.
- **Bring the issue home**: Court cases are an opportunity to localize and put human faces on the medical cannabis issue.
- **The fate of the defendant**: Simply, judges and prosecutors are less likely to screw people in public.

How do you find cases to support?

- Keep an eye in the paper for local medical cannabis busts
- Stay in touch with people in the medical cannabis community
- Check ASA's listing of upcoming federal court dates: www.AmericansForSafeAccess.org/UpcomingCourtDates

CHAPTER 6—TAKE ACTION

Get involved in the movement for safe and legal access to medical cannabis today. Our power comes from our collective action. Whether it's calling Congress, attending rallies, organizing a local ASA chapter, signing an online petition, or supporting federal defendants, take action today!

What You Can Do

- **Sign up for ASA's Updates, Alerts and Publications**. Visit www.AmericansforSafeAccess.org/EmailLists
- **Sign up for Sensible Colorado's Updates, Alerts and Publications**. Visit: www.sensiblecolorado.org.
- **Sign-up for ASA's Condition-based Unions**. To find out more about a specific patients' union or to join one, please email PatientsUnion@AmericansforSafeaccess.org.
- **Join an ASA chapter or affiliate!** ASA chapters and affiliates represent the core of ASA's grassroots activism. If there is no chapter or affiliate in your region, please consider starting one today. Call 510-251-1856 x 321 or visit www.AmericansForSafeAccess.org/LocalResources.

ASA Online Resources

Online Action Center
www.AmericansForSafeAccess.org/OnlineAction

ASA Organizer's Handbook
www.AmericansForSafeAccess.org/OrganizingHandbook

Resources for Organizers
www.AmericansForSafeAccess.org/Resources

Media Resources for Grassroots Organizers
www.AmericansForSafeAccess.org/GrassrootsMedia

Upcoming Court Dates
www.AmericansForSafeAccess.org/UpcomingCourtDates

Write to Medical Cannabis Prisoners
www.AmericansForSafeAccess.org/WriteToPrisoners

Colorado Resources

ASA's Colorado Resources
AmericansForSafeAccess.org/Colorado

Colorado Medical Marijuana Registry
http://www.cdphe.state.co.us/hs/medicalmarijuana/index.html

Colorado Department of Revenue: Medical Marijuana Enforcement Division
http://www.colorado.gov/cs/Satellite/Rev-Enforcement/RE/1251575119584

Medical Marijuana Assistance Program of The Rockies
www.mmapr.org

Sensible Colorado
www.SensibleColorado.org

APPENDIX—LANDMARK RULINGS

State of Colorado Medical Marijuana Rulings

In re *Marriage of Parr*, 240 P.3d 509 (Colo. Ct. App. 2010) The parents agreed to a parenting plan that was subject to the father's continuing submission to urinalysis testing to ensure that he had not returned to marijuana use. One week after signing the parenting plan, the father was approved for listing on the Colorado Medical Marijuana Registry due to back and knee injuries. He petitioned for waiver of the urinalysis testing requirement, and the mother filed a counter-petition to restrict the father's parenting time. The district court ordered that all parenting time was to be supervised until the father submitted a clean hair follicle test. On review, the court held that the district court erred in requiring that the father's parenting time be supervised because it made no finding under Colo. Rev. Stat. § 14-10-129(1)(b)(I) that the father's conduct endangered the child physically or impaired her emotional development. Therefore, the provision restricting the father's parenting time could not be sustained. Further, the court vacated the hair follicle testing requirement because the parenting plan, which remained in effect, still required the father to undergo urinalysis testing.

***People v. Clendenin*, 232 P.3d 210 (Colo. Ct. App. 2009)** Police received a tip that defendant's residence had "come and go" traffic. When a detective executed a search warrant, he noticed a strong scent of marijuana. The detective found 44 marijuana plants, cash in defendant's bedroom, and 67 medium-sized zip lock jeweler's bags. Defendant told the detective that she grew four different kinds of marijuana plants because she suffered from headaches. At issue on appeal was whether defendant qualified as a primary caregiver under Colo. Const. art. XVIII, § 14. The appellate court concluded that the defendant was required to do more to qualify as a caregiver than merely supply marijuana.

***Frasher v. Centennial*, CASE NO. 09CV1456 (2009)** The Arapahoe District Court granted an injunction against the city of Centennial to prohibit it from enforcing an ordinance that bans medical marijuana caregivers. The court ruled that the city cannot cite federal law as a reason to ban medical marijuana caregivers.

***LaGoy v. Colorado Department of Public Health Environment* (2007)** Sensible Colorado filed a lawsuit on behalf of Damien Lagoy, a medical marijuana patient who was denied the opportunity to change his caregiver because his proposed caregiver already had five (5) patients. The Denver District Court overturned a CDPHE policy that limited caregivers to only five (5) patients. The court found the policy was made without proper notice and comment pursuant to the Colorado Administrative Procedure Act. Two years later, the Board of Health held a notice and comment hearing to reinstate the five (5) patient policy. After extensive organizing by Sensible Colorado which brought out over 1000 people to testify against the five (5) patient policy, the Colorado Board of Health rejected the policy; thus implicitly authorizing storefront medical marijuana caregivers.

Federal Medical Marijuana Rulings

Conant v. Walters (2002): The Ninth Circuit Court of Appeals held that the federal government could not punish, or threaten to punish, a doctor merely for telling a patient that his or her use of marijuana for medical use is proper. However, because it remains illegal for a doctor to "aid and abet" a patient to obtain marijuana or conspire with him or her to do so, the court drew the line between protected First Amendment speech and prohibited conduct as follows -- A physician may discuss the pros and cons of medical marijuana with his or her patient, and issue a written or oral recommendation to use marijuana within a bona fide doctor-patient relationship without fear of legal reprisal. And this is so, regardless of whether s/he anticipates that the patient will, in turn, use this recommendation to obtain marijuana in violation of federal law. On the other hand, the physician may not actually prescribe or dispense marijuana to a patient, or recommend it with the specific intent that the patient will use the recommendation like a prescription to obtain marijuana. There have been no such criminal or administrative proceedings against doctors to date.

US v. Oakland Marijuana Buyers Cooperative (2002): A federal district court issued a permanent injunction against the OCBC, prohibiting it from distributing medical marijuana. The District Court was executing the opinion of the U.S. Supreme Court that heard this case one year earlier. In that opinion, the Court declared that a person in federal court may not argue that distribution of marijuana to patients was a medical necessity. It specifically left open several questions, such as constitutional limitations on federal authority, which was then litigated in the Raich case, described below. This ruling applied to five other medical marijuana clubs, all of which were sued civilly along with the OCBC.

US v. Ed Rosenthal (2003 & 2007): A jury in San Francisco federal court found Oakland resident Ed Rosenthal guilty of cultivating marijuana, conspiracy to cultivate, and maintaining a place where drugs are manufactured. Jurors were never allowed to hear evidence regarding medical marijuana. Jurors publicly recanted their "not guilty" verdict after finding out the facts that were left out of the trial. On appeal, the Ninth Circuit reversed Rosenthal's convictions because of juror misconduct. The government later re-indicted Rosenthal, this time adding counts for filing false tax returns and money laundering. ASA filed a motion to dismiss the financial charges because they were vindictive. The court granted the vindictive prosecution motion and, after Rosenthal was convicted again on marijuana charges, the court again imposed a sentence of one-day with credit for time served.

McClary-Raich v. Gonzales (2007): The Ninth Circuit Court of Appeals put what appears to be the final touches on the Raich case on March 14, 2007. In McClary-Raich v. Gonzales, the court addressed the outstanding issues remaining after the Supreme Court's pronouncement that the federal government has the authority under the Commerce Clause to regulate medical marijuana. In particular, the Ninth Circuit held that McClary-Raich: (1) could not obtain a preliminary injunction to bar enforcement of the Controlled Substances Act (CSA) based on common law medical necessity, although she appeared to satisfy the factual predicate for such claim; (2) application of the CSA to medical marijuana cultivators and users did not violate substantive due process guarantees; and (3) the Tenth Amendment does not bar enforcement of the CSA. Although the outcome was not positive, there was plenty of language in the decision that bodes well for the future of medical marijuana. In particular, with respect to the claim that there is a fundamental liberty interest to use marijuana medicinally, deserving of constitutional protection, the court stated: "We agree with Raich that medical and conventional wisdom that recognizes the use of marijuana for medical purposes is gaining traction in the law as well. But that legal recognition has not yet reached the point where a conclusion can be drawn that the right to use medical marijuana is 'fundamental' and 'implicit in the concept of ordered liberty.'" The court continued: "For now, federal law is blind to the wisdom of a future day when the right to use medical marijuana to alleviate excruciating pain may be deemed fundamental. Although that day has not yet dawned, considering that during the last ten years eleven states have legalized the use of medical marijuana, that day may be upon us sooner than expected." Also, although the court found that McClary-Raich could not affirmatively use a common law medical necessity defense to obtain an injunction in a civil suit, it did not foreclose the possibility that a criminal defendant might do so.

In re Grand Jury Subpoena for THCF Medical Clinic Records (2007): The United States District Court for the Eastern District of Washington quashed a subpoena directed to the State of Oregon to reveal information about 17 patients receiving medical marijuana. The court found that the subpoena issued by the federal government to prove criminal violations against a medical marijuana clinic was unreasonable, since the government did not have strong need for the information and the state would be violating its own laws regarding confidentiality to reveal the information sought, which, in addition, would deter medical marijuana patients from participating the state's medical marijuana program. Balancing these interests, the court concluded that the subpoena should be quashed.

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Disclaimer: Medical marijuana law in Colorado is continually evolving and medical marijuana remains illegal under federal law. If something in this April 2011 manual appears out of date or inaccurate, please consult with an attorney or contact ASA at 510-251-1856 or 888-929-4367.

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