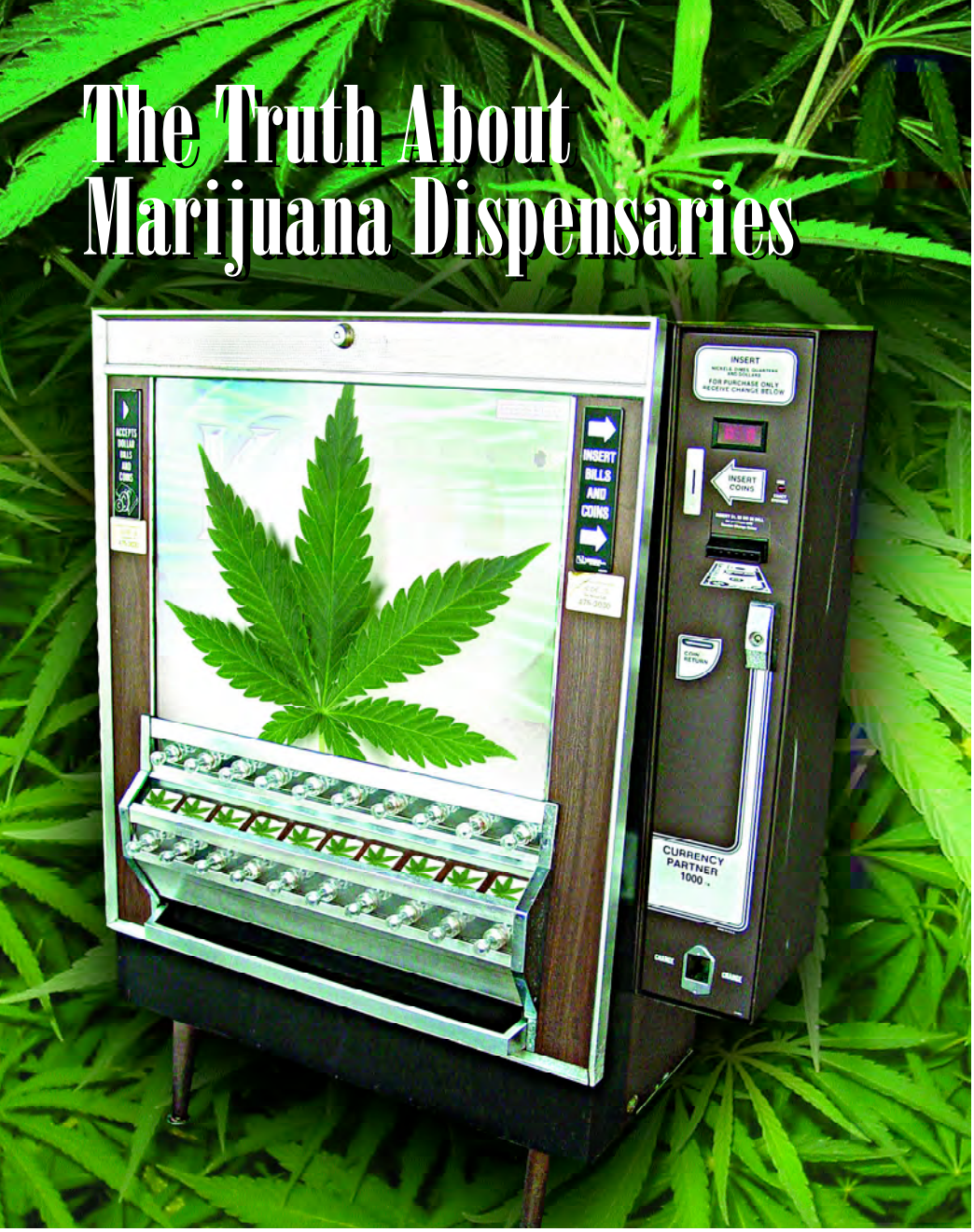
The Truth About Marijuana Dispensaries



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by A. Patrick Muñoz

Considering California's voters decriminalized the possession of medical marijuana by the passage of Proposition 215 in 1996, many people wonder why litigation is rampant between governmental agencies and so called "medical marijuana dispensaries." It was recently reported that there are more medical marijuana dispensaries in the City of Los Angeles than there are Starbucks Coffee houses. This revelation begs the question: have California's voters created a new small business opportunity—the retail sale of marijuana? The answer is clear, and it is a resounding "No!" The fact the illegal retail sale of marijuana is what occurs at most dispensaries is the reason litigation to shut them down exists.

When California's voters approved Proposition 215, the so called "Compassionate Use Act," they simply decriminalized the possession and distribution of marijuana, in limited circumstances, to severely ill, qualified patients. Proposition 215 by no means resulted in the general legalization of marijuana (and thus, the reason for the recently defeated Proposition 19, which sought broad legalization.) The proponents of Proposition 215 swayed the electorate with arguments that severely ill persons, suffering from cancer, glaucoma, and other serious illnesses, were being denied access to a drug, marijuana, which would be of significant benefit to them. The pro-Prop. 215 advocates specifically assured voters that there would be no wholesale legalization of marijuana as a result of the initiative. Fifteen years later, it is clear that this was simply a way for the camel to get its nose under the tent. The reality of medical marijuana in today's world is that there is hardly anything "medical" related to its distribution in so-called "dispensaries." Rather, marijuana dispensaries have become a big business, netting millions of dollars for those entrepreneurs willing to take the risks associated with claiming they are providing a service to seriously ill patients when they are, in reality, simply (and illegally) selling a recreational drug which remains a controlled substance.

Marijuana dispensaries typically take the form of a "collective." While no definitive legal opinion exists to define a "collective," courts currently seem to be willing to generally recognize it may be legal for a group of qualified patients to form a membership organization by which they grow marijuana for their group's personal use, sharing labor and expenses in the process. In short, however, retail outlets for marijuana remain illegal!

Despite clear legal standards precluding the for-profit retail distribution of marijuana, so-called dispensaries have flourished. The reasons for this phenomenon would appear to be varied, but likely primarily stem from the ease by which a person may become a member of a collective and the significant profits available from their business model—operating a virtually all cash business in an industry devoid of any meaningful regulation. Without wishing to minimize the serious medical conditions that indisputably plague a small percentage of persons who obtain marijuana from dispensaries, the reality is that the vast majority of persons who are "members" of virtually all collectives became so with little more than a heartbeat and a desire to obtain marijuana for recreational use. Obtaining medical marijuana does not require a prescription from a reputable doctor. Rather, a patient need only obtain a written or oral "recommendation" that he or she "might benefit" from the use of marijuana. This vague standard has resulted in a rash of 18–28 year old males who suddenly find themselves to be "seriously ill." It has also resulted in a rash of doctors willing to sell $150.00 "recommenda-

tions" that such individuals might benefit from marijuana.

Armed with a doctor's recommendation, virtually anyone can walk into a dispensary and purchase marijuana. Rather than purchasing a metered dose of medication from a licensed pharmacist, the collective's member purchases as much as a pound a day of high-grade marijuana that is not subject to any sort of quality control. One simply never knows how strong the product is, let alone who grew it and what went into the cultivation process. And this stuff is strong! It's nothing like what baby boomers may recall experimenting with in the 70s! Ice cream, cookies, lollypops, brownies and any other snack food you can think of are also available—all highly potent! Interestingly, none of these snacks go through any sort of quality control or comply with any of food and drug regulations. So, buyer beware—there is no telling how strong the product may be, or if it was prepared by a guy so stoned he forgot big things (like how much active ingredient to add to the recipe) or little things (like to wash his hands today—or this week!).

The reality is that dispensaries sell marijuana and related products for huge profits. There is no sharing of costs and expenses by members as envisioned by the law. The only right and privilege of membership is the ability to purchase an otherwise illegal, controlled substance. Recent law enforcement efforts to push back on these illegal organizations has demonstrated they make millions of dollars per year, with gross profits averaging as much as $6,000 to $10,000 per day, or more. The proliferation of dispensaries is not just a subject for tongue in cheek commentary. A dramatic increase in the use of marijuana has been seen in South Orange County high schools. This is accompanied by a proportionate increase in cases of formerly star athletes and students suddenly losing interest in sports and/or school.

The City of Dana Point recently learned firsthand what dispensaries are really all about. Its journey began with six dispensaries opening virtually overnight, despite the fact they were not permitted by the City's zoning. Next came a request from a would be dispensary operator asking that the City change its zoning to allow dispensaries to exist. Rather than taking action to shut down the existing dispensaries, the City Council decided to investigate their operations to determine what unique zoning challenges they present, and to see if they were complying with the State's medical marijuana laws. With respect to the latter issue, the general feeling was that if the operators were nothing more than illegal drug sales businesses, the City was not particularly inclined to facilitate their operations. Rather than complying with subpoenas asking that the dispensaries provide records demonstrating they were complying with the law, the dispensaries fought the City tooth and nail, literally all the way to the California Supreme Court. Indeed, one dispensary owner openly states on his website that he will never turn over any records to anyone. What became clear is that the dispensaries believed they can do whatever they want, with no regulatory oversight, by simply claiming (but never proving) that they are a lawfully operating collective.

Faced with a total lack of cooperation from the dispensaries in response to its efforts to work with them, the City Council concluded it was obligated to enforce the law and take action to shut them down. The City hence sued on the theory the dispensaries were violating the City's zoning as well as on the theory that they were violating the State's marijuana laws, including those related to the distribution of medical marijuana. Notably, the State's medical marijuana laws only provide an affirmative defense to conduct that is otherwise illegal—possession and distribution of marijuana. Hence, during the litigation the City conducted discovery to determine whether the dispensaries were complying with State law, and the affirmative defense applied. In response, the dispensaries simply refused to participate in discovery and brought numerous law and motion matters, in a "tooth and nail" effort to avoid providing any information about their operations. Ultimately their refusal to provide any evidence of their compliance with the law (combined with evidence that they were in fact violating it), compelled the Courts to conclude that they are nothing more than illegal drug sales outlets, which resulted in summary judgment being entered against them and in favor of the City. As one Judge stated: "the evidence shows no actual compliance with [the law], or for that matter, does not even show any attempt to really comply. In effect, this was an illegal drug sales and distribution enterprise, nothing more, nothing less." Indeed, as a result of the illegal nature of their business, the City was ultimately awarded civil penalties against three of the dispensaries totaling approximately $6,000,000.

As the civil litigation was progressing, criminal investigations were ongoing with respect to several of the dispensaries. Through that process, light was shed on the true reason the dispensaries were fighting to conceal business records. Simply put, they were not complying or even attempting to comply with State law. The criminal process resulted in several search warrants being executed. The evidence gathered demonstrates unequivocally the criminal nature of their enterprises. It included hundreds of thousands of dollars hidden in paint buckets, numerous weapons, and transaction receipts showing a consistent pattern of retail style sales. Indeed, it became clear that the average dispensary was engaged in approximately 150 transactions a day, with an average sale per transaction of $80-$100. These numbers translate to staggering annual sales of $4,000,000 to $5,000,000,000 (or more!)

In summary, the reason highly publicized litigation over medical marijuana dispensaries exists is the "truth" that rather than providing seriously ill persons access to marijuana, most dispensaries are nothing more than retail businesses making millions of dollars illegally selling a recreational drug to anyone who desires to obtain it. In short, they are not complying with California's medical marijuana laws and as a result litigation exists by which responsible governmental agencies are actively taking steps to shut them down.

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