Licensing

AB 266 creates or authorizes numerous medical cannabis licenses for cultivation, manufacturing, dispensing, transporting, and testing medical cannabis and medical cannabis products. The licenses for cultivation, manufacturing, and dispensing are tiered to accommodate different sizes of applicants. There are also numerous restrictions on what types of licenses an individual, business, or organization can hold at one time.

It is crucial that the legislature adopt a licensing policy that provides legal patients and communities with the proven benefits of medical cannabis regulation.[i] However, we must not adopt regulations that serve to cut off the supply of legal medical cannabis for patients in California. This is particularly significant in licensing related to cultivation, an area in which cities and counties have been slow to take initiative.

Research shows that more than 1.4 million Californians have used medical cannabis, and the vast majority report relief from a serious medical condition.[ii] Chronic pain, arthritis, migraines, and cancer are the top diagnoses for which medical cannabis is recommended in California. These are serious conditions for which conventional treatments are limited or not available. This research debunks the cynical perception that most medical cannabis users are not legitimate patients. Licensing for medical cannabis must balance the need for public safety with the needs of legitimate medical cannabis patients in California.

1. Square Footage for Cultivation

Section 19332(c) limits the amount of space in which a licensee can cultivate legal medical cannabis. The largest cultivation licenses allowed are 44,000 square feet for outdoor cultivation, and 10,000 square feet for indoor cultivation. This reduces the square footage from the previous version of the bill from unlimited square footage and 30,000 square feet, respectively. These limits are not based on any published scientific estimate of yield or patients' needs. Instead, they are arbitrary limits designed to keep the cultivation of medical cannabis limited. This may result in a shortage of medicine for legal patients, especially given that few local jurisdictions currently provide the required local permits for commercial medical cannabis cultivation. Patients without a sufficient supply of legal medical cannabis from licensed providers may be forced to do without their doctor-recommended medicine or turn to the unregulated illicit market.

ASA strongly recommends that the bill avoid specific limits on square footage for cultivation until solid data is available about the legitimate need for medical cannabis and the verifiable yield from licensed cultivators. AB 266 already establishes strict controls on commercial medical cannabis activity, and other pending legislation, if adopted, will further limit medical cannabis cultivation. We do not need to set arbitrary limits on the size of medical cannabis gardens. The controls specified in this bill and others are sufficient to ensure that legal medical cannabis and medical cannabis products stay within the licensed program. Existing laws make diversion of medical cannabis for non-medical use a crime, and AB 266 expressly prohibits a licensed cultivator from providing medicine to anyone who is not also licensed.

2. Restrictions on Types of Licenses

The restrictions on the types of licenses that an individual, business, or organization can hold are not practical. The licensing structure under AB 266 seeks to break up the cultivation, manufacturing, and distribution of cannabis and cannabis products. This model is typical of alcohol licensing in California, but may not be ideal for medical cannabis. **ASA recommends changing the restrictions to accommodate applicants holding multiple licenses – especially those licenses related to cultivation.**

When the state legislature approved the Medical Marijuana Program Act (HSC 11362.7 *et seq*.) in 2003, they envisioned a closed loop model for providing medical cannabis. HSC Section 11362.775 granted immunity to patients and caregivers who associate cooperatively of collectively to *cultivate* medical cannabis. The California Attorney General subsequently recognized that these cultivation associations could maintain storefronts (dispensaries) to provide medicine to members.[iii]

AB 266 replaces this vertically integrated model (closed loop) with a comprehensive licensing scheme. However, the bill goes too far in breaking up every aspect of the medical cannabis industry and blocks virtually all meaningful integration. This is unnecessary and disruptive to the existing industry in California. This is significant for patients, because more than 1.4 million Californians have used medical cannabis.[iv] Many of those patients who already rely on medical cannabis cooperative or collective associations to obtain their medicine will be affected.

There are two alternatives for addressing this issue:

- Remove the restrictions on holding cultivation licenses. Allow all qualified applicants to obtain a separate cultivation license regardless of what other

license they hold. This approach allows, but does not require, some degree of vertical integration.

- Allow applicants to hold a *maximum* of one license in each broad category (cultivation, manufacturing, dispensary), regardless of what other license they hold. This will allow for an individual applicant to maintain or establish a closed loop system, but will prevent chains of dispensaries or other medical cannabis businesses.

Two additional suggestions for licensing:

- The bill should include large-scale indoor cultivation. Most of the medicine grown in urban areas and in Southern California is grown indoors. Furthermore, half of all California counties ban outdoor or greenhouse cultivation altogether. There is no reason why there cannot be licensed and regulated indoor cultivation on the same scale as outdoor cultivation.
- The bill should allow individual patients, primary caregivers, or primary caregivers serving five or fewer patients to submit medical cannabis or medical cannabis products directly to a licensed testing facility. Section 19344(a) is probably intended to prevent unlicensed cultivators or manufacturers from using licensed testing facilities, but there is no reason to exclude patients and caregivers who are not in violation of the licensing provisions. This could be very useful in protecting public safety.

3. Statewide Limits on the Number of Licenses

AB 266 authorizes the Division of Medical Cannabis Cultivation to limit the number of Medium Outdoor, Medium Indoor, and Large Outdoor licenses allowed statewide. Likewise, the bill authorizes the Division of Medical Cannabis Manufacturing and Testing to limit the number Large Manufacturing licenses (Level 1 and 2) statewide. ASA suggests removing this language and leaving limits to the discretion of local government. We are concerned that limits based on perceptions of public safety needs may not address the legitimate needs of patients. The Governor's Office of Marijuana Regulation, in consultation with the other cannabis regulation agencies, can reevaluate the need for statewide limits after the program has been running for a year or more.

Local Control

AB 266 creates a dual licensing model. License holders are required to obtain a license or permit from the city or county in which they operate or propose to operate. This provision will be a primary hurdle for most applicants. **ASA strongly**

recommends that the bill be amended to allow for state licenses to be issued to applicants without explicit local approval under limited circumstances.

1. Bans and Unregulated Jurisdictions

Requiring a local permit or license in every case may serve to choke off access to medicine by severely limiting legal cultivation and distribution. Consider these facts:[v]

- More than 200 California jurisdictions have already banned medical cannabis cultivation or distribution.
- 50% of California counties ban outdoor and greenhouse cultivation.
- Within that 50% of counties in which cultivation is not banned, half have onerous restrictions on cultivation that make it impractical.

While dozens of California cities have regulations and licensing for dispensaries, few local jurisdictions have addressed lawful cultivation. There is a persistent reluctance to authorize cultivation at the local level. Lack of clear state guidelines, concerns about federal interference, opposition by local law enforcement, and general ambivalence about cultivation are all likely factors. The result is an unusual situation where cannabis cultivation remains largely in the shadows, while distribution is increasingly regulated. State licensing for cultivation may encourage some jurisdictions to move forward with local ordinances, but it is unclear how many will be so motivated or how soon.

We still have a long way to go in establishing sufficient local licensing for cultivation. The cities of West Hollywood and Palm Springs have ordinances that allow for cultivation at the dispensing site. However, both ordinances limit the footprint of cultivation to 25% of the square footage of the facility. In practice, these provisions are a nod towards closed loop operation, but neither allows for sufficient cultivation to provide for the needs of cooperative or collective members. The cities of Oakland and Berkeley are moving towards licensed and regulated cultivation, but no permitted facilities are currently operating in those jurisdictions.

If adopted without some consideration of cultivation that is not explicitly sanctioned by local jurisdictions, AB 266 may result in a severe shortage of medicine for legal patients. This will result in higher costs to patients and increased demand for cannabis from the illicit market. Both of the outcomes run contrary to the goal of sensible regulations.

ASA suggests the following alternatives to make sure AB 266 works for legal patients:

- Allow a licensee to obtain a state permit to operate in a jurisdiction that *neither bans nor licenses* medical cannabis activity. This would not preempt existing local bans or prevent cities and counties from adopting them at a later date. Some cities and counties may prefer to remain neutral or silent on licensing cultivation, but have no objection to state licensing.
- Allow cities and counties to object to a license application within their jurisdiction for cause, after being notified by the appropriate regulatory body that an application for a state license has been received. The licensing agency would then make a determination as to whether or not the license should be issued. As before, this would not preempt existing local bans or prevent cities and counties from adopting them at a later date.
- Allow cities and counties to veto an application for a state license to operate in a jurisdiction that *neither bans nor licenses* medical cannabis activity.
- Allow some leeway regarding local licensing, as described above, for an initial period of one to three years. After this period, require a review by the Governor's Office of Marijuana Regulation or other appropriate agency to evaluate the continued need for state licensing without local approval. If a sufficient number of local jurisdictions permit cultivation during the review period, the absolute requirement for local approval can be reinstated.

ASA appreciates that local control is important to the bill's sponsors. While we prefer a state law that preempts local bans to provide uniform access statewide, we understand that this is not politically viable at this time. Relaxing the requirements for explicit local licensing, especially as it relates to cultivation, is not an attempt to usurp cities and counties. The goal is to allow sufficient cultivation to provide for patients' needs. This is an area in which we believe advocates and local government must compromise and cooperate.

2. Los Angeles and Limited Immunity Ordinances

The voters in Los Angeles approve Measure D in 2013. That initiative establishes criteria for limited immunity from arrest or prosecution or medical cannabis businesses and organizations. However, Measure D does not authorize the city to issue licenses or permits for dispensaries. No Measure D-qualified facility could establish local approval under AB 266. The bill "does not supersede the provisions of Measure D." However, this leaves many questions unanswered. It is unclear how applicants in Los Angeles will obtain a state license, especially new applications for cultivation, manufacturing, or testing.

ASA proposes establishing some objective standards by which the appropriate licensing body can determine that an applicant is qualified under Measure D. This will give greater clarity to applicants and state regulators. Measure D has a long list of criteria, but three can be objectively demonstrated using documents generated by the city. ASA recommends that AB 266 require applicants in the City of Los Angels to produce these three authentic documents in lieu of a local license:

- A copy of the applicants Business Tax Registration Certificate (BTRC) relating to the operation of a medical marijuana business issued by the City on or before November 13, 2007 or other proof that such a document had been obtained (i.e. proof of payment of city taxes) if a copy of such an antiquated document is not available.
- Documentation showing that the applicant registered with the City Clerk by November 13, 2007 in accordance with all requirements of the City's Interim Control Ordinance 179027 (proving existence on the Medical Marijuana Dispensaries Registration List Issued Pursuant to Interim Control Ordinance 179027 is acceptable).
- A copy of the applicant's Notice of Intent to Register (NOIR Filing) submitted on or before February 18, 2011.

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[i] Medical Cannabis Dispensing Collectives and Local Regulation, 2010, Americans for Safe Access.

[ii] "Prevalence of medical marijuana use in California, 2012," *Drug and Alcohol Review*, 2014, DOI: 10.111/dar. 12207

[iii] *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, California Attorney General Jerry Brown, 2008.

[iv] "Prevalence of medical marijuana use in California, 2012," *Drug and Alcohol Review*, 2014, DOI: 10.111/dar. 12207

[v] *Responsible Cultivation Policy: Preserving Personal Cultivation Rights While Regulating Commercial Cultivation as Agriculture*, Kristin Nevedal, Americans for Safe Access, California Citizen Lobby Day, June 14, 2015.