

April 23, 2014

Chairman Ed Hernandez
Senate Health Committee
State Capitol Building, Room 2191
Sacramento, CA 95814

RE: SB 1262 (Correa) – SUPPORT/SUGGESTED AMENDMENTS

Dear Chairman Hernandez,

Americans for Safe Access (ASA), the nation's leading medical cannabis patients' advocacy organization, supports Senator Lou Correa's SB 1262. The bill will better regulate doctors who recommend medical cannabis and commercial activity in the field. We are pleased to see that the League of California Cities and the California Police Chiefs Association are sponsoring SB 1262. Having local government and law enforcement at the table is an important milestone for medical cannabis regulation in California.

No single legislative proposal can address the needs of all the stakeholders in a complicated field like medical cannabis. However, ASA believes there is still room for important changes to SB 1262 to best protect the interests of legal patients in California. These changes include: (1) the regulations for doctors recommending medical cannabis to minors, (2) incentives for local regulation, (3) sliding scale licensing fees, and (4) express protection for "limited immunity" ordinances in cities and counties.

Regulations for Doctors - Minors

The amended version of SB 1262 removes most of the problematic language that might have discouraged or intimidated doctors from making legitimate medical cannabis recommendations. However, ASA still supports the removal of Section 2525(c) or these additional changes:

1. Remove the requirement that a recommendation for a patient under the age of twenty one be made by a pediatrician. Children often stop seeing a pediatrician long before age twenty one, and many see specialists who are not pediatricians. The requirement for doctors making recommendations for minors should be consistent with the rest of the bill.

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2. The definition of a minor should be changed to a person under the age of eighteen. Eighteen year old patients are considered adults for the purpose of making other health care and treatment decisions. This bill should be consistent with that established standard.
3. The requirement that doctors only recommend cannabis high in Cannabidiol (CBD) is premature. There is insufficient research and experience with the therapeutic use of CBD at this time, and there is no scientific consensus regarding the alleged dangers of Tetrahydrocannabinol (THC) for minors.

Local Authority to Ban Licensed Dispensing Facilities

SB 1262 authorizes local jurisdictions to regulate and ban Licensed Dispensing Facilities (LDF). This preserves the status quo established by the California Supreme Court decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013, 56 Cal. 4th 729). ASA acknowledges the state of the law in light of the *Riverside* decision. However, while bans are permitted under SB 1262, ASA holds that policies banning local access to medical cannabis are harmful and burdensome to both patients and neighboring communities that must bear the burden of supplying a greater patient population than they would otherwise have to (traffic, parking, utilities, public transportation, etc.).

Unfortunately, the landscape of access to medical cannabis in California is bleak. Although more than fifty local governments have adopted and successfully implemented local distribution regulations, more than 200 localities have banned it outright. This patchwork landscape of unequal access has led to significant hardship for hundreds of thousands of patients, who are being punished based simply on where they live. Therefore, the state should provide incentives to encourage cities and counties to adopt sensible regulations for LDF and Licensed Cultivation Facilities (LCF).

Research conducted by ASA and the experience from nearly ten years of local ordinances show that regulations reduce crime and complaints around medical cannabis facilities. Greater detail about the outcomes of local regulation of medical cannabis can be found in our report, updated in 2011, entitled *Medical Cannabis Dispensing Collectives and Local Regulation*. Elected officials and law enforcement officers interviewed for this report acknowledged that regulating medical cannabis activity is beneficial for the community as a whole, so encouraging regulation is sound public policy. Download the report at http://www.safeaccessnow.org/asa_reports or call (916) 449-3975 for a hardcopy. Another report recently issued by the University of Colorado Denver School of Public Affairs about the impact of medical cannabis dispensaries in Colorado similarly found that medical cannabis dispensing operations do not harm local communities. You can read the abstract for “Do medical marijuana centers behave like locally undesirable land uses? Implications for the geography of health and environmental justice,” Lyndsay N. Boggess, *et al.*, 2014, at <http://tinyurl.com/Univ-CO-Study>

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Because sensible regulation preserves access for legal patients and reduces crime and complaints in communities, ASA urges the Author to include incentives for local governments to opt-in by effectively regulating LDF and LFC activity pursuant to SB 1262. ASA is committed to working with the Author and other stakeholders to create incentives for cities and counties to adopt regulations with the aim of creating a more equitable statewide system of access:

1. Special allocations – The legislature can create special allocations of funds for cities and counties that choose the better policy of regulating LFC and LDF. These allocations might include a larger share of local sales tax revenue, a portion of annual licensing fees designated for local mitigation (traffic, parking, utilities, public transportation, etc.), regional transportation funds, and funds for the District Attorney’s Office.
2. Development agreements – A development (or mitigation) agreement is a contract between a local jurisdiction and a person who has ownership or control of property within the jurisdiction. The purpose of the agreement is to specify the standards and conditions that will govern development or use of the property. These agreements are already used for development projects in California and could be adapted to give jurisdictions leeway in using funds generated by a permitting or licensing LDF and LDC pursuant to SB 1262 for system-wide community improvements or projects, including roads, schools, and public safety.

Sliding Scale Licensing Fees

Some lawmakers and other stakeholders interpret Health and Safety Code 11362.765(a), which states that “nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit” to require the nonprofit operation of LCF and LDC. Indeed, many of California’s existing medical cannabis patients’ cooperatives and collectives operate on a non-for-profit or nonprofit basis. These patient-operated associations may struggle to compete with better-financed commercial medical cannabis organizations. Protecting small, not-for-profit patient cultivation is an important part of preserving self-reliance in the state’s medical cannabis community and protecting economically disadvantaged patients. The legislature should empower the Department of Health to create a sliding scale to accommodate smaller scale quasi-commercial patient cultivation and a set of criteria to determine which patients’ associations qualify for reduced fees.

Limited Immunity Ordinances

In *Pack v. City of Long Beach* (199 Cal.App.4th 1070, 2011), the Appellate Court held that the city’s authorization of medical cannabis cooperatives and collectives by issuing business licenses was preempted. The California Supreme Court later dismissed the case on procedural grounds, and while the issue of federal preemption has generally been resolved, concerns among local officials remain. In response to an ordinance banning medical cannabis facilities outright, voters

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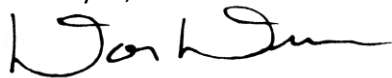
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in Los Angeles approved Measure D in 2013 to allow for a limited number of facilities in the city. Measure D was crafted to avoid a legal challenge asserting federal preemption based on an argument like that in the *Pack* decision.

Measure D bans all medical cannabis activity in Los Angeles, but creates limited immunity for cooperatives and collectives that meet certain criteria, including restrictions on location, date of opening, hours of operation, etc. Because the city does not authorize medical cannabis activity, there is no business license, permit, or other document issued by the city to demonstrate compliance with Measure D. This would be problematic for more than 100 facilities qualified to operate under the measure, since they would be unable to produce a certified copy of the city's approval to operate required under Section 111657.1(c)(4) of the bill. ASA recommends including language in Section 11657.10 of SB 1262 to allow patients' associations immunized under Measure D and similar ordinances to qualify for a state license.

ASA supports SB 1262 because it is an important first step towards the better regulation of the field of medical cannabis and towards more consistent protections for legal patients. We look forward to working with the Author and his colleagues to improve the bill to that end.

Thank you,



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cc. Senator Lou Correa

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