

To : California Assembly Member Tom Ammiano
From : Don Duncan, California Director
Americans for Safe Access
Date: May 7, 2014
Re: AB 1894 – Suggested Improvements

Summary

Americans for Safe Access (ASA), the nation's leading medical cannabis patients' advocacy organization, strongly supports regulation for commercial medical cannabis activity in California. Research conducted by ASA and the experience from nearly ten years of local ordinances show that sensible regulations reduce crime and complaints around medical cannabis facilities, while preserving safe and dignified access for legal patients. We commend you on your leadership on this issue, which is a high priority for our 30,000 members in California.

ASA is encouraged to see thoughtful and comprehensive regulations such as those in AB 1894. We support your goal of adopting effective statewide regulations. To that end, we would like to suggest some important changes to avoid unintended adverse consequences for patients. These include:

1. Remove regulatory control from the Department of Alcoholic Beverage Control and place it in an agency, department, or division with a public health or consumer protection mission.
2. Specify that non-commercial cooperative and collective cultivation projects that do not sell medical cannabis are not considered mandatory commercial registrants.
3. Clarify the authority of local government and state regulators related to the number of mandatory commercial registrants in each jurisdiction.
4. Require a sliding scale for fees related to mandatory commercial registration.

I look forward to talking with you soon about these suggestions and how we can help. I will contact your office soon to schedule an appointment.

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Remove Regulatory Control from ABC

AB 1894 would make cannabis the only medicine with regulations written and enforced by the California Department of Alcoholic Beverage Control (ABC), the same agency that enforces the state's alcohol laws. ASA believes ABC is the wrong agency to entrust with decisions related to medical care and access. This is a serious concern for ASA and our members.

There are good reasons why ABC does not control the operation of pharmacies or the distribution of antibiotics. The enforcement-minded culture at ABC may lead to regulations that limit access to medical cannabis and do little or nothing to promote patient safety, quality control, clinical research, and patients' rights. These health care issues are more typically addressed in other parts of the Department of Consumer Affairs (DCA) or the Department of Public Health (DPH). Furthermore, the deputized peace officers who enforce ABC's regulations are in no way trained to address medical cannabis in the context of healthcare or inclined to respect patients' needs; on the contrary, many may view it as controlling a vice.

We can look to Washington State to see the pitfalls of having alcohol regulators in charge of medical cannabis. Voters in that state legalized medical cannabis in 1998 and approved I-502 legalizing non-medical cannabis in 2012. I-502 placed control of medical cannabis under the state's Liquor Control Board (LCB). Unfortunately, the agency has altogether ignored the needs of patients. The LCB has moved to prevent personal cultivation, forbid providers from discussing medical benefits of cannabis, dramatically increased taxation, and taken other actions that create barriers to patient wellbeing. These measures may or may not be useful in the regulation of non-medical cannabis, but they are counter-productive to regulating medicine. California must do better.

ASA urges you to find a more appropriate place for regulatory control. The appropriate agency, division, or department will be one committed to preserving the existing rights of medical cannabis patients and their caregivers, promoting safety, encouraging research, and ensuring quality medicine. Options include DPH or another part of the DCA, which already has experience in consumer protection and licensing. Enforcement of the new regulations could be shared with local code compliance officers in cities and counties statewide.

ASA appreciates that there is some ambivalence in state agencies regarding medical cannabis regulation. The American Herbal Products Association (AHPA) recently published resources for medical cannabis regulators that may be useful in addressing that reluctance. The guidelines cover cultivation, testing, and distribution of medical cannabis. The guidelines provide a system of processes, procedures, and documentation to ensure medical cannabis products have the quality, strength, composition, and identity they represent to possess.

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The American Herbal Pharmacopeia (AHP), an organization that has been developing qualitative and therapeutic monographs on medicinal herbs most frequently used in the United States since 1994, published a Cannabis monograph this year. The monograph provides a scientific description and testing standards for the cannabis plant and could be instrumental in addressing the technical and scientific issues related to medical cannabis safety and testing.

ASA can provide copies of the AHPA standards and the AHP Cannabis Monograph for you and your staff upon request.

Maintain Protection for Non-Commercial Cooperative and Collective Cultivation

Section 6 of AB 1894 deletes existing protections for cooperative and collective cultivation in Section 11362.775 ninety days after ABC posts a notice on their website that they are accepting applications for mandatory commercial registration for cultivation. The need to make a change in this Section is understandable, but we are deeply concerned that the absence of Section 11362.775 may leave non-commercial cultivators without legal protection.

ASA defines non-commercial cultivation as cultivation where no sales of cannabis are involved. Sales of cannabis do not include sharing of costs or reimbursement for expenses as per Section 11362.765. The bill should be amended to protect non-commercial collective and cooperative cultivation. ASA suggests adding this language to Section 26052(b):

26052(b)(3). Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, are not considered commercial registrants and are exempt from mandatory commercial registration; provided that they do not sell or distribute cannabis except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code .

Clarify the Role of Local and State Regulators

AB 1894 requires the Division to make a determination regarding the appropriate number of mandatory commercial registrations in each jurisdiction. ASA suggests that:

1. The language of the bill clearly protects the existing medical cannabis cooperatives and collectives that are already approved or qualified under local ordinances, regardless of what determination the Division makes pursuant to Section 26040(b)(7) regarding the “sufficient number of mandatory commercial registrants” in the jurisdiction.

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2. Because the number of mandatory commercial registrants that is sufficient to meet the needs of patients is subjective, ASA recommends creating a statutory standard for dispensaries that can be used to more objectively gauge the total number of other mandatory commercial registrants per jurisdiction or statewide. This should be added to the criteria for making a determination regarding a sufficient number of registrants in Section 26044(c). Previous legislation, AB 2313, used the standard of one medical cannabis cooperative or collective per 50,000 residents in a given jurisdiction, and exempted cities or counties with fewer than 50,000 from the requirement to provide storefront access. That number was derived after extensive dialog among lawmakers, staff, and stakeholder groups.

Sliding Scale Registration

Many of California's existing medical cannabis patients' cooperatives and collectives operate on a not-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.

Additionally, some smaller cultivation projects might specialize in producing medicine for a small population of patients (e.g. medicine rich in Cannabidiol for children with epilepsy). These quasi-commercial projects provide a necessary service for a small niche of patients, but may not be competitive in a regulated market if they are forced to pay the same fees as competitors with a broader customer base. The legislature should empower the Division to create a sliding scale to accommodate smaller-scale commercial patient cultivation and a set of criteria to determine which patients' associations qualify for reduced fees.

Contact

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