

COUNTY OF LOS ANGELES
PROBATION DEPARTMENT
DIRECTIVE

No. 1032

Issued: 06/09/05

Post Until: 07/11/05

SUBJECT: MEDICAL MARIJUANA PROGRAM

The June 6, 2005 decision of the United States Supreme Court in the *Gonzales v. Raich* was a statement of Federal Law in regard to enforcing Federal statutes regarding controlled substance. Bill Lockyer, the California Attorney General, has given his position that the Raich, “. . . ruling does not overturn California law permitting the medical use of marijuana . . .” He went on to confirm that Federal agencies can still enforce the Federal Comprehensive Drug Abuse Prevention and Control Act. People are still subject to criminal prosecution by Federal authorities.

This Directive gives the steps to be in compliance with California law.

Heath & Safety Code sections 11362.5 through 11362.82 cover the medical use of marijuana. California law allows for the “*compassionate use*” of marijuana for medical treatment upon the recommendation of a physician licensed by the State of California [§11362.7 (a)]. The law also gives some detail as to the diagnosis by the doctor. The law exempts the doctor and patient from any criminal penalty for the possession and use of marijuana for medical reasons. The probationer, or primary caregiver, may possess 8 ounces of dried marijuana, 6 adult plants or 12 immature plants for personal medical use.

The law also mandates that the State and counties provide a special identification card system for the patients to have verifying that a doctor has recommended the use of Marijuana. **That process has not been completed because of pending litigation.**

The issue of probationers using marijuana for medical reasons is addressed in §11362.795 “*Confirmation by the court that criminal defendant is allowed to use marijuana for medical purposes while on probation, . . .*”. This section states that the court must state on the record that the defendant is allowed to use medical marijuana while on probation. This will be accomplished by placing the matter before the court in an appearance hearing.

The deputy of record will take the following steps:

1. Have the probationer provide, “*Written documentation by the attending physician in the person’s medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.*” [§ 11362.7(i) and 1136.715 (a)(2)]
2. Prepare a supplemental court report stating that the court is being requested to make a statement confirming whether or not the probationer may use marijuana for medical purposes and, if yes, requesting a modification of probation.

- a. Reason for Hearing: "This matter is before the court for consideration of the defendant's use of marijuana for medical purposes and modification of probation per Section 11362.795 (a)(3) of the Health and Safety Code."
- b. Report: Includes the information from the doctor and any other information important to the issue at hand.
- c. Defendant's Statement: must include the defendant's request for modification and the reason for the request.
- d. Recommendation: "It is recommend that if the court orders that the defendant be allowed to posses marijuana for medical purposes that the court modify probation to add the condition: The defendant is allowed by the court to possess and use marijuana for medical purposes per section 11362.795 (a)(3) of the Health and Safety Code."

There are circumstances and facts under which the sentencing court may impose a condition of probation that a probationer not use or possess marijuana even if there is a doctor's recommendation for medical use.

If you have any questions please contact Anthony Jimenez, Narcotic Consultant (562) 908-3175 or Mike Larquier, Adult Consultant (562) 940-2525



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