

Mendocino Medical Marijuana Advisory Board

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OPEN LETTER TO MENDOCINO COUNTY SHERIFF TOM ALLMAN

Cannabis patients and collective associations of patients are protected by a series of rights under California law -- i.e., to grow/possess/transport/use marijuana for medical purposes. It is no longer deemed a crime, but rather a right.

We ask that you and the Sheriff's Office affirm these rights & take steps to enforce the basic legal conclusions of the *P v Kelly* ruling.

- * CREATE A GENERAL ORDER WITH WRITTEN INSTRUCTIONS TO DEPUTIES ON MEDICAL MARIJUANA GARDENSITE GUIDELINES CONSISTENT WITH *KELLY* AND STATE LAW.
- * ESTABLISH A TRAINING PROGRAM REFLECTING *KELLY* & A.G. GUIDELINES RELATIVE TO A CLOSED-LOOP PATIENT ASSOCIATION.
- * POST EVOLVING GUIDELINES and WRITTEN INSTRUCTIONS TO DEPUTIES ON THE SHERIFF'S WEBSITE FOR PUBLIC AWARENESS.

We ask acknowledgment of the following fundamentals of state medical marijuana law --

- 1) A doctor's approval is the only requirement for a patient to qualify to use "marijuana for medical purposes",
assuring doctor-patient confidentiality (*Conant*).
By itself, it is reason *not* to arrest or confiscate a patient's medicine, despite a lapsed doctor's approval or other fixable defect.

In "borderline" cases (where deputies may claim there are "too many" plants for personal use but not necessarily for collective use, or the doctor's signature is illegible or outdated), the person with a medical claim has statutory protections and deserves the benefit of the doubt.

In cases of doubt, the reasonable standard employed by former Sheriff Tony Craver was "to take photographs & samples, not whole plants & not whole gardens" as evidence. (General Order 202 Instructions to Deputies -- Medical Marijuana Guidelines 2004-05), detailing various potential gardensite scenarios, including the concept of "borderline" compliance gardens.

Investigate first with a goal of lowering arrests and "preventing inconvenience" of people who've done nothing wrong.

We call on the Sheriff to restore Medical Marijuana Guidelines through publicly accessible written Instructions to Deputies and to initiate training to enforce them, including the "borderline" guideline and the spirit of "substantial compliance".

- 2) A "primary caregiver" is authorized to grow medical marijuana for a patient but not use it, unless that person is also a patient.

The caregiver's role is to relate to the medical needs of the patient(s), in a close on-

going relationship (*Mentsch*).

3) A qualified patient or caregiver for a patient may also voluntarily obtain a state ID card, if desired, but it is not required.

A state card verifies a doctor's approval/confers statewide "immunity from arrest" under the Medical Marijuana Program Act.

4) Collectives and cooperatives provide enhanced patient protection as a result of SB420's purpose, affirmed by *Kelly*:

"to enhance access to medical marijuana through collective cooperative cultivation projects."

5) The Supreme Court *Kelly* decision (2010) set definitive standards, encompassing 14 years of Prop 215 & SB420 protections:

a) *Kelly* voided numerical quantity limits (6 plants/8 oz) as arbitrary & unconstitutional, as applied to qualified patients.

b) *Kelly* affirmed the Trippet quantity standard as the principle by which compliance with the law (innocence) is determined,

i.e., that the quantity of medicine grown/possessed/transported must be "reasonably related to the patient's medical condition"

(an annual supply for an outdoor grow).

c) *Kelly* threw out the SB420 plant and possession limits (6 plant/8 oz), as restricting not enhancing access,

and affirmed SB420's primary purpose as being "to enhance access" to medicine via collectives and cooperatives.

d) The same rights that protect individual patients objectively apply to associations of patients (collectives & co-ops).

Deputies need to respect claims of patients collectively associating & take them into account when determining compliance.

6) When deputies do things directly contrary to instructions and/or state law, the Sheriff's Office will hold them accountable.

7) When deputies determine compliance, a "plant" must conform to the Senate Bill 420 definition--"mature flowering female" --

in order to qualify as a medical-grade plant. Clones, starts, immature plants, leaf, shake, trim, stems & last year's rootballs

do not count for purposes of prosecution or nuisance abatement. State law definition takes precedence over local ordinance.

8) A neutral 3d party verifier, functioning as a witness in a patient's garden, needs agreement from all parties to be viable.

pebbles
for MMMAB