

WHERE CAN I GROW MEDICINE?

Although Prop. 215 allows patients to grow their own medicine, landlords are not legally obliged to allow it. Many cities and counties have passed zoning ordinances that restrict where and how patients can grow, in some cases outlawing outdoor cultivation altogether. See local policies at <http://www.canorml.org/medical-marijuana/local-growing-limits-in-California>.

CAN I SELL MY EXCESS MEDICINE?

In general, sales of marijuana are NOT permitted under Prop 215. However, SB 420 authorizes legal caregivers and collective/cooperative members to charge for their expenses in growing for others on a “non-profit” basis. Hostile police sometimes misinterpret this to take any monetary proceeds as evidence of felony sales, regardless of whether the grower actually made a profit. Growers who provide for others must either be members of a collective or be bona fide “primary caregivers.”

HOW CAN I START A COLLECTIVE?

The California Attorney General has issued guidelines for operation of cannabis collectives and coops. For details, see CaNORML’s collective tips page at <http://canorml.org/prop/collectivetips.html>

CAN PRISONERS AND PROBATIONERS USE MEDICAL MARIJUANA?

SB420 allows probationers, parolees, and prisoners to use medical marijuana and to ask a judge to verify their rights. However, medical marijuana is regularly disallowed in jails and prisons.

CAN PATIENTS BE DRUG TESTED AT WORK?

The California Supreme Court has ruled that employers have a right to drug test and fire patients who test positive for marijuana, regardless of their medical use (*Ross v RagingWire*, 2008). Some employers will excuse patients if they present a valid 215 recommendation. Others won’t. Marijuana use is never permitted in jobs with federal drug testing regulations, such as the transportation industry. Read more on drug testing at <http://www.canorml.org/drugtesting>

CAN I TAKE MY MEDICAL MARIJUANA ON A PLANE?

Some airports, like Los Angeles and Oakland, are respectful of patients’ rights, but others like Burbank aren’t. If TSA security screeners find marijuana in your luggage, the standard procedure is to turn you over to local law enforcement, who follow state, not federal, law. To avoid hassles, patients are strongly advised NOT to declare their medicine to TSA, but to carry a small amount (under one ounce) discreetly like other medicines along with proof of their 215 eligibility.

HOW LONG ARE RECOMMENDATIONS VALID?

Under Prop. 215, a recommendation is valid so long as the doctor says it is. However, SB420 requires ID cards to be renewed annually, and many police refuse to recognize recommendations that are older than a year or so. Courts have ruled that patients must have a valid approval at the time of their arrest, though this can have been oral.

WHAT ABOUT OUT-OF-STATERS?

Prop. 215 arguably applies to anyone with a recommendation from a California physician, regardless of whether they’re a resident, although this has never been tested in court. However, most California physicians and dispensaries refuse to serve out-of-staters. Some other states, such as Arizona, recognize out-of-state patients. Oregon allows out-of-state patients provided they have an Oregon physician’s recommendation.

WHAT ABOUT MINORS?

Patients under 18 should have parental consent.

CAN I GROW OR USE MEDICAL MARIJUANA WITH CHILDREN IN THE HOUSE?

There is nothing in state law against this. However it’s advised to keep your medical marijuana away from children. Make sure that you don’t leave edibles around where kids can get them, and keep gardens away from where they play. In rare cases Child Protective Services has become involved, mostly in cases with large plant numbers, evidence of sales, neglect, or messy divorce proceedings. In such cases, CPS tends not to be understanding about medical marijuana and can always allege child endangerment.

CAN I OWN OR BUY A GUN AND USE MEDICAL MARIJUANA ?

The federal Bureau of Alcohol Tobacco and Firearms sent warning letters to gun dealers in 2011 warning them they could not sell to known medical marijuana users. When buying a gun, you may be asked whether you are a user of illegal drugs and/or medical marijuana.

Answering yes makes you ineligible to purchase; falsely answering no is in principle punishable as perjury. This should not affect current gun owners. Although California law does not prohibit medical marijuana users from having guns, using a gun in connection with an offense such as cultivation or possession for sale can result in additional criminal charges. Users are advised to keep their guns in a location that is separate from their marijuana.

HOW CAN I GET LEGAL HELP?

Contact a CaNORML Legal Committee Attorney, see <http://www.canorml.org/laws/find-a-marijuana-lawyer-in-California>

Updates to this guide are posted at: <http://www.canorml.org/medical-marijuana/patients-guide-to-California-law>

California NORML

Patients Guide to Medical Marijuana



California NORML
2261 Market St. #278A
San Francisco CA 94114
www.CaNORML.org

November 2013

PROPOSITION 215, the California Compassionate Use Act, was enacted by the voters and took effect on Nov. 6, 1996 as California Health & Safety Code 11362.5. The law makes it legal for patients and their designated primary caregivers to possess and cultivate marijuana for their personal medical use given the recommendation or approval of a California-licensed physician.

SB420, a legislative statute, went into effect on January 1, 2004 as California H&SC 11362.7-.83. This law broadens Prop. 215 to transportation and other offenses in certain circumstances; allows patients to form medical cultivation “collectives” or “cooperatives”; and establishes a voluntary state ID card system run through county health departments. SB 420 also establishes guidelines or limits as to how much patients can possess and cultivate. Legal patients who stay within the guidelines are supposed to be protected from arrest.

WHAT OFFENSES ARE COVERED?

Prop. 215 explicitly covers marijuana possession and cultivation (H&SC 11357 and 11358) for personal medical use. **Hashish and concentrated cannabis, including edibles, (HSC 11357a) are also included.** Transportation (HSC 11360) has also been allowed by the courts. Within the context of a bona fide collective or caregiver relationship, SB 420 provides protection against charges for possession for sale (11359); transportation, sale, giving away, furnishing, etc. (11360); providing or leasing a place for distribution of a controlled substance (11366.5, 11570).

WHAT ILLNESSES ARE COVERED?

Prop. 215 lists “cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, *or any other illness for which marijuana provides relief.*” Physicians have recommended marijuana for hundreds of indications, including such common complaints as insomnia, PMS, post-traumatic stress, depression, and substance abuse.

WHO QUALIFIES AS A PHYSICIAN?

Prop. 215 applies to physicians, osteopaths and surgeons who are licensed to practice in California. It does not apply to chiropractors, herbal therapists, etc. See a list of medical cannabis specialists at <http://listings.canorml.org/medical-marijuana-doctors-in-California/list.lasso>. Prop. 215 requires physicians to state that they “approve” or “recommend” marijuana. Physicians are protected from federal prosecution for recommending marijuana by the *Conant* U.S. court decision.

WHO MAY CULTIVATE UNDER PROP. 215?

Patients with a physician’s recommendation and their primary caregivers, defined as, “The individual designated by the person exempted under this

act who has consistently assumed responsibility for the housing, health, or safety of that person.” According to a state supreme court decision, *People v Mentch* (2008), caregivers must supply some other service to patients than just providing marijuana.

As an alternative, SB 420 allows patients to grow together in non-profit “collectives” or cooperatives. Collectives may scale the SB 420 limits to the number of members, but large gardens are always suspect to law enforcement and risk being turned over for federal prosecution. Many local governments have moved to ban or sharply restrict the right of patients to grow collectively. Policy varies greatly around the state (see local limits below).

HOW MUCH CAN I POSSESS OR GROW?

Under Prop. 215, patients are entitled to whatever amount of marijuana is necessary for their personal medical use. However, patients are likely to be arrested if they exceed the SB 420 guidelines. SB420 sets a baseline statewide guideline of 6 mature or 12 immature plants, and 1/2 pound (8 oz.) processed cannabis per patient. Individual cities and counties are allowed to enact higher, but not lower, limits than the state standard. See **local limits** at <http://www.canorml.org/medical-marijuana/local-growing-limits-in-California>. In a state Supreme Court ruling, *People v. Kelly*, the court held that patients can NOT be prosecuted simply for exceeding the SB 420 limits; however, they can be arrested and forced to defend themselves as having an amount consistent with their personal needs. Patients can be exempted from the limits if their physician specifically states that they need more; but beware of physicians who charge extra for “cultivation” licenses for large amounts. The validity of recommendations for specific plant numbers is doubtful.

CAN I STILL BE ARRESTED OR RAIDED?

Yes, unfortunately. Many legal patients have been raided or arrested for having dubious recommendations, for growing amounts that police deem excessive, on account of neighbors’ complaints, etc. Once patients have been charged, the courts must pass judgment on their medical claim.

A landmark State Supreme Court decision, *People vs. Mower*, holds that patients have the same right to marijuana as to any legally prescribed drug. Under *Mower*, patients who have been arrested can request dismissal of charges at a pre-trial hearing. If the defendant convinces the court that the prosecution hasn’t established probable cause that it wasn’t for medical purposes, criminal charges are dismissed. If not, the patient goes on to trial, where the prosecution must prove “beyond a reasonable doubt” that the defendant is guilty. Those who have had their charges dropped may file to have their property returned and claim damages.

In some cases, police raid patients and take their medicine without filing criminal charges. In order to reclaim their medicine, patients must then file a court suit on their own. For legal assistance in filing suit for lost medicine,

contact Americans for Safe Access (www.safeaccessnow.org).

CAN I BE CHARGED OR PENALIZED FEDERALLY?

Under the U.S. Controlled Substances Act, possession of any marijuana is a misdemeanor and cultivation is a felony. A Supreme Court ruling, *Gonzalez v Raich* (June 2005), rejected a constitutional challenge by two patients who argued that their personal medical use cultivation should be exempt from federal law because it did not affect interstate commerce. Despite this, federal officials have stated that they will not go after individual patients.

Medical marijuana patients are not protected while on federal park land or forest land in California. CalNORML has received reports of campers and those driving through federal land who are searched, charged with federal possession statutes, and had their medicine confiscated. A California medical recommendation is not a defense in federal court to these charges.

The US Dept of Housing and Urban Development allows local housing authorities to determine their own policies regarding medical marijuana use in HUD housing. Many don’t allow it. In rare cases, users may lose food stamps or other federal benefits if they’re discovered.

SHOULD I GET A STATE I.D. CARD?

Patients are not required to get an ID card to be protected by Prop. 215, but a state card can provide an extra measure of protection against arrest. Patients and caregivers can obtain state ID cards through the health departments of the county where they live (except in Sutter and Colusa). The state ID card system has safeguards to protect patient privacy. Police and employers cannot track down patients through the registry.

The Patients’ ID Center in Oakland (www.patientidcenter.org) offers ID cards that are honored by many collectives and police. In addition, many doctors now offer ID cards that can be verified.

WHERE CAN I GET MEDICAL MARIJUANA?

Even though Prop. 215 doesn’t explicitly legalize sales, hundreds of collectives are presently providing marijuana to patients in accordance with SB 420 and the A.G.’s guidelines. Search for dispensaries and delivery services by zip code or city at <http://www.canorml.org/medical-marijuana/California-collectives-and-dispensaries-guide>.

WHERE CAN MARIJUANA BE SMOKED?

SB420 bars marijuana smoking in no smoking zones, within 1000 feet of a school or youth center except in private residences; on school buses, in a motor vehicle that is being operated, or while operating a boat. Patients are advised to be discreet or consume oral preparations in public.