* THE MERCY NEWS REPORT ON SB1085 * www.MercyCenters.org *

THE MERCY NEWS REPORT

* SPECIAL EDITION * Winter 2005 *

On Senate Bill 1085

Legislature Amends Oregon Medical Cannabis Law

Salem, OR: State lawmakers passed legislation amending Oregon's six-year-old medical cannabis law. The law, originally passed by 55 percent of state voters in 1998, allows state-authorized patients to possess and grow marijuana medicinally for qualified illnesses.

SB 1085, which previously passed in the Oregon Senate unanimously July 20, and 39-14 in the House after amendments Aug. 2, clarifies some sections and makes changes to others in the voter-approved Oregon Medical Marijuana Act, which went into effect Dec. 3, 1998.

Changes to the law offer a mixed bag to state-qualified patients. Most substantially, the amendments raise the quantity of cannabis that authorized patients may possess from seven plants (with no more than three mature) and three ounces of cannabis to six mature cannabis plants, 18 immature seedlings, and 24 ounces of usable cannabis. However, those state-qualified patients who possess cannabis in amounts exceeding the new state guidelines will no longer retain the ability to argue an "affirmative defense" of medical necessity at trial. Patients who fail to register with the state, but who possess medical cannabis in amounts compliant with state law, still retain the ability to raise an "affirmative defense" at trial.

Other amendments to Oregon's medical marijuana law redefine "mature plants" to include only those cannabis plants that are more than 12 inches in height and diameter, and establish a state-registry for those authorized to produce medical cannabis to qualified patients.

The purpose of the bill was to clarify some ambiguities in Oregon’s medical marijuana law. It called for a 24-hour accessible database and clarified size restrictions on marijuana plants and grow-site definitions, amongother provisions.

ABOUT

Oregon's 2005 long legislative session finally ended in July, but not before the legislature passed S.B. 1085, a bill that could substantially change the Oregon Medical Marijuana Program (OMMP). S.B. 1085 will greatly increase the amount of medicine a patient or caregiver may grow and possess, but it will remove the cardholder affirmative defense for possessing more than those amounts.

The legislation, Senate Bill 1085, makes a series of changes intended to clarify ambiguous sections of Oregon's voter-approved medical marijuana law that took effect in 1998.

The bill "provides the clear, bright lines that law enforcement needs to enforce the law fairly, without infringement on the rights of those who legitimately use the product," said Sen. Bill Morrisette, D-Springfield, the bill's chief sponsor.

Lack of clarity in the existing law means law officers sometimes "can get into situations where they're not sure how to proceed," said Kevin Campbell, executive director of the Oregon Association Chiefs of Police. "The reason we like the bill is we think it clears up some of the ambiguity. It gives officers more solid ground to stand on."

The bill's other main backer, Sen. Jeff Kruse, R-Roseburg, said the bill could not have moved forward without the work and support of both law enforcement officials and advocates for users of marijuana.

Four major law enforcement organizations representing police chiefs, sheriffs, district attorneys and the Oregon State Police supported the bill because it provides better guidance for officers confronted with sometimes ambiguous issues surrounding the law.

To lawmakers who oppose medical marijuana in principle, Kruse said the question isn't whether to keep the law, given its popular support, but "how to make it work better for all involved. This bill does that."

CONTROVERSY

Many patient advocates support the bill, but there is some division. One view of the basics of the change is one of increasing the amounts of medicine allowed while eliminating a majority of the affirmative defense, or AD. Current law permits cardholders and caregivers - people who grow marijuana for cardholders who can't or don't want to grow their own - to grow three mature and four immature plants and to possess up to three ounces of dried marijuana.

The legislation lets cardholders grow up to six mature plants and 18 seedlings and possess 24 ounces of dried marijuana. Some say this is a substantial, significant improvement and worth the cost.

But in exchange for that provision, law enforcement got something important to them: elimination of the "affirmative defense" for cardholders who are found to be growing or possessing more marijuana than permitted under the law. Currently, in that situation, a patient can argue in court that having more marijuana than permitted is a medical necessity and therefore permissible. Some patients and caregivers found to be growing illegal amounts of marijuana have successfully used this in court.

An example of an “affirmative defense” would be a patient saying they’re growing more marijuana than allowed by law because that’s the only way they’ll have enough medicine. Weather conditions only allow for one annual outdoor harvest of marijuana, therefore the patient needs to produce enough cannabis in one harvest to serve as medicine throughout the year.

After January 1st, “affirmative defense” will be ineffectual, and patients caught growing more than the permitted amount of cannabis could be convicted and possibly receive jail time.

That change is one of the reasons that Leland Berger, a Portland attorney who helped draft the original law and defends medical marijuana patients, opposed the Senate legislation.

"It was a really close call whether to support or oppose this legislation," he said. "I take the position that it's important not to leave anyone behind. This compromise legislation leaves people and situations behind, and that's why I was opposed to it,'' Berger said.

Berger further contends that the increased limits are inadequate, particularly for outdoor growers who have only one crop a year. And he doesn't like a provision that restricts caregivers to grow for no more than four patients.

Also, he agrees with others that the limitation on what patients can lawfully reimburse caregivers will limit patient access to medicine. The restrictions will result in the diminution of supply for patients, he said, in part because the legislation creates concerns about adequate supplies. At the same time, by legalizing sharing, and increasing possessory limits, it creates a possibility for charitable outreach to fill the need.

"I don't think it will be adequate, but, if not, that gives us something to work on in the next session, or on the next initiative."

And the failure to clarify that being able to present medical necessity evidence means there is a right to a medical necessity defense and the failure to fix the availability of the choice of evils defense means that some people who do not have qualifying medical conditions will be unable to defend themselves in court if arrested and prosecuted.

"However, the bill does help hospice care patients (and others in adult foster care facilities) by protecting (albeit not as far as we wanted, but more than now) nurses and others in those facilities who dispense to them." Berger added.

More than one activist believes patient's rights are being unduly sacrificed. Some hold that though parts of the legislation are positive, such as the database, other provisions are hurting sick people.

"They're trying to take our rights with Senate Bill 1085," said Erin Hildebrandt, a medical marijuana patient afflicted with Crohn's Disease, and a member of Parents Ending Prohibition. "Intended to solve part of the problem, (it) is an obscene attempt to further degrade our ability to remain law-abiding citizens," Hildebrandt said.

"In the past law there was no limit to the number of growers. Now it's limited," said Jim Greig of Americans for Safe Access, a medical marijuana advocacy group. "(The politicians) believe if patients grow more, they'll be facilitating the black market. But that's not the case. As it stands now, patients have to buy (marijuana) from the streets. Why can't patients help other patients?"

"Protection from police raids is the only redeeming quality of state registration that I can see," Greig said.

Jacqui Lomont of the Compassion Center agreed with the Senate's decision to pass the bill.

"I think that overall it is a good thing. It provides clearer definitions of issues that were a little muddy before. No one ever agrees completely on the total package, but it passed 30-0 (in the Senate), so that says something," Lomont said before the House amendments.

In another example, Oregon NORML (National Organization for the Reform of Marijuana Laws) backed the bill, with Madeline Martinez, the group's executive director, calling it a ``great enhancement'' for patients. Martinez said she likes that the bill defines a marijuana plant - anything over 12 inches high or 12 inches wide - so there's no confusing seedlings or cuttings with mature plants.

And the increase in the number of mature plants and amount of dried marijuana that cardholders are permitted to possess would be a major improvement to the law. To be allowed to possess and grow that much would relieve a lot of stress for cardholders, she said.

Some Conclusions

1. **More Medicine.** Under 1085, many, many more patients who are currently illegal at harvest, will be legal. Some who are proficient at cultivation (or who have found someone proficient to cultivate for them for free) will produce as much medicine legally as the IND patients receive from the federal government (4 harvests/yr x 1.5 pounds/harvest = 6 pounds/yr.)

2. **Issue; Financial Support and ReImbursement**. The problems surrounding the sales of medical cannabis which and others have described, derive both from prohibition (which artificially inflates the value) and from the lack of regulation. Whether SB1085 helps or hinders remains to be seen.

3. **Distribution** for the needy; especially poor, old (etc.) and those that need meds now (terminal). Unless and until there are licensed and regulated dispensaries, some patients (and especially those recently diagnosed, who are unconnected to other patients and advocacy organizations, i.e. those most in need) will be without medicine. County regulated patient resources could conceivably help with some of this (by creating places where patients can freely share) but inevitably some patients will be without.

See >> ACTION

THE PROCESS

This is a compromise bill, fashioned principly by the state senator who stopped a bad bill last session and the republican vice chair of his committee. Those who are familiar with the history of medical cannabis reform in Oregon view supporting or opposing this bill as a very, very close call. Understandably, there is a split of opinion with long time local activists taking up opposing sides. We continue to participate in the process, however, helping to make sure of things like patients whose cards would be revoked because of delivery or manufacture convictions would be able to continue to be patients and participating in other discussions regarding compromise.

On the one hand it will make a great many more patients legal than currently are legal. On the other hand, it will limit patient access.

This is a remarkable step forward which includes the greatest possession limits ever approved by any state legislature. It will make many, many Oregon patients who are instantly illegal upon cultivation, now legal, and, overall, it codifies many significant reforms.

It also removes an affirmative defense for cultivating or possessing too much. The affirmative defense for non registrants who could have registered but didn't remains, and the ability to put on a medical necessity defense for those who do not qualify also remains. All that is restricted (which was and is law enforcement's biggest bugaboo) is the quantity. While not as much as it should be, it clearly is significantly more than our current limits.

The momentum of the bill derived from the hard work that Senators Bill Morissette and Jeff Kruse did in forging a compromise. In a building filled with partisan acrimony, getting two sentators who don't otherwise agree on much to reach a deal is the kind of thing which results in 30-0 senate votes and, apparently, last minute deals to keep the bill alive.

For those who supported the bill, the unanimous support of our state senate marks a huge victory. People should know that no one in Oregon is funded for this or any other lobbying activities.

Irrespective of what action local activists take, long time observers and participants in legistlative struggles here in Oregon find it hard to imagine the House agreeing to increase the limits from one ounce per mature plant at the garden and one ounce away from the garden to a pound and a half anywhere – but that's just what happened.

The important thing was that this bill evolved from a process that involved a majority of the opposition. Long-time opponents of issues were considering things they refuse to before. Much progress was made in educating those who think they are against us.

There has been a lot of great work done here. There is a differentiation between plants and cuttings. The addition of the third grower was a bit of a surprise, but obviously sets the way for dispensaries.

The medical cannabis law reform community has made significant headway with state Senate leadership, and although we agree with others that the increase in plant limits and quantities of medicine is insufficient to justify repealing the affirmative medical necessity defense for cardholders, we choose not to disrespect those legislators and activists who have been working with on this bill simply because we disagrre with them.

Because we do not support the bill in it's entirety, is not a slap in the face of those legislators and advocates, who worked so hard on it. we are grateful for all their hard work trying to reach a compromise between law enforcement, the program administrators and the patient advocates. Of course however this turns out, our work won't be over. we have and will continue to testify and act upon those sections of the bill which we think still need reform.

there will also be other projects that activists will undertake. we think it especially important that we all do what we can to network within our movement. It's regretable that we don't all see eye to eye, but that doesn't mean we shouldn't respect each others opinions. we think that taking strident opposition to people who supported and/or otherwise worked on this bill is contrary to that effort.

In short, thanks to everyone who has worked so hard on this bill, those who held meetings, meetings, meetings and those who wrote email after email and made multiple phone calls. It is a struggle to keep up with it all and together we have done a good job. What is most remarkable about this reform is that we are all of us volunteers. No funding from any individual or organization caused this reform to occur during this legislative session.

See >> CONTACTs, below.

WHAT IT DOES

S.B. 1085 will effect several key changes to the OMMP, though two of these deserve particular note: increase allowable plants and medicine, for some, and eliminate affirmative defense in some cases.

While the most significant, these are by no means all of the changes S.B. 1085 makes to the OMMP. Other changes include limiting the numbers of patients for whom a caregiver may grow, imposing a new registration system on grow sites, allowing greater sharing of medicine among patients, and permitting medical professionals to administer medical marijuana to patients under certain circumstances.

These are the points as highlighted by the OMMP. See: OMMP/libry/SB1085_points.htm

1. changes the current legal number of plants allowed per patient from four (4) mature and three (3) immature to six (6) mature plants.

2. plants that have no flowers and re less than 12" in height and 12" in diameter are considered seedlings or starts (also "clones", etc.) and NOT "mature" plants.

3. changes the current legal amount of marijuana a registrant may possess from four (4) ounces to twenty-four (24) ounces.

4. requires the OMMP to establish a "grow site registration system" to authorize the production of marijuana by the regeistry cardholder, the designated primary caregiver or a person responsible for a grow site. Creates new classifivcation of "grow site registrant" that will add marginal cost to the registration database.

5. limits the number of patients, for whom a grower can grow marijuana, at a "multiple patient" grow site, to four (4) patients. Currently there is no limit.

6. prohibits a grower from producing marijuana for five (5) years, if convicted of a drug related offense.

7. prohibits a patient from producing marijuana for five (5) years, if convicted of a drug related offense AND limits the amount of marijuana a patient may posses to one (1) ounce.

8. mandates that a person, when transporting marijuana, must be in possession of a registration card.

9. mandates the OMMP to provide law enforcement with a verification system that permits access to information twenty-four (24) hours per day, seven (7) days per week – referred to as "24/7" and "24x7".

10. removes "affirmative defense" for possession of marijuana in excess of allowable amounts (this was the key issue for law enforcement and would have allowed for patients to be in possession of amounts greater than statute permits).

11. permits but does not mandate appropriate health care providers to assist registered patients in the administration of medical marijuana.

12. requires the deprtment of human services (DHS) to create an Advisory Committee on Medical Marijuana to replace the existing Administrative Work Group.

Increases plant numbers. The bill changes the current legal number of plants allowed per patient from four (4) mature and three (3) immature to six (6) mature plants. S.B. 1085 will allow patients and caregivers to possess up to 24 ounces of marijuana, six mature plants, and 18 seedlings or starters, which are defined as a plant less than 12 inches tall and 12 inches in diameter.

Clarifies "plant" (life cycle). SB1085 defines plants that have no flowers and re less than 12" in height and 12" in diameter as considered seedlings or starts (also "clones", etc.) and are NOT to be counted as "mature" plants, which may now number six (6).

Increases amount of allowable harvested, useable medicine. changes the current legal amount of marijuana a registrant may possess from four (4) ounces to twenty-four (24) ounces. Increases available medicine. Currently, patients and caregivers can possess three ounces of

marijuana and seven plants, only three of which can be mature. Under this bill medical marijuana cardholders would be allowed to possess up to 1 1/2 pounds of dried marijuana and six mature plants.

Clarifies Grow Site person/system. The bill requires the OMMP to establish a "grow site registration system" to authorize the production of marijuana by the regeistry cardholder, the designated primary caregiver or a person responsible for a grow site. Creates new classifivcation of "grow site registrant" that will add marginal cost to the registration database.

Defines number of Patients (4) one can grow for. 1085 limits the number of patients, for whom a grower can grow marijuana, at a "multiple patient" grow site, to four (4) patients. Currently there is no limit.

Penalties. Calls for growers who are convicted of drug offenses to have their cards revoked for five years after a first offense and for good after a second offense. The bill (1.) prohibits a grower from producing marijuana for five (5) years, if convicted of a drug related offense - and (2.) prohibits a patient from producing marijuana for five (5) years, if convicted of a drug related offense AND limits the amount of marijuana a patient may posses to one (1) ounce. (point to Text)

Card required for Transporting. 1085 mandates that a person, when transporting marijuana, must be in possession of a registration card.

Eliminates AD for some cases. 1085 Removes "affirmative defense" for possession of marijuana in excess of allowable amounts (this was the key issue for law enforcement and would have allowed for patients to be in possession of amounts greater than statute permits).

Currently, an affirmative defense is available to cardholders who exceed the statutory limits in some circumstances, in addition to a non-cardholder affirmative defense that is not bound by the OMMP limits on use or possession. S.B. 1085 will provide an affirmative defense for non-cardholders, as long as their reason for use and the amount of marijuana they have in their possession would have been in compliance under the OMMP.

Hospice facilities and workers, the "Ken Brown" clause. The bill permits but does not mandate appropriate health care providers to assist registered patients in the administration of medical marijuana.

The bill also:

• Permits patients to reimburse caregivers for their expenses, such as supplies and utilities, associated with growing.

• Requires growers to return all marijuana and a grow-site card when they stop growing for a patient.

• Requires state officials to issue grow-site cards to qualified persons, and for those cards to be displayed at all times at grow sites.

24x7

Medical marijuana patients will no longer have to rely on ID cards and their own verbal assurances when law enforcement comes calling. A comprehensive online database of patients is planned to be operational by summer's end, if SB 1085 becomes law.

The bill Mandates the OMMP to provide law enforcement with a verification system that permits access to information twenty-four (24) hours per day, seven (7) days per week – referred to as "24/7" and "24x7". This requires state health officials to establish the 24-hour accessible database system of registered marijuana grow sites and patients that will allow police to verify a person is a cardholder at any hour of the day.

Police will be able to access the database at any time, day or night. But officers cannot arbitrarily search the system — it can only be accessed when a person tells police he or she is a registered medical marijuana patient or that a property is a registered grow site.

The database has been in Health Services' plans for more than a year, and passage of SB 1085 allows these plans to become a reality. The Oregon Medical Marijuana Program is a division of the Department of Human Services.

"It will benefit both sides," said Pam Salsbury of the state-run Oregon Medical Marijuana Program. "It's here to make things easier for the patient, but it also helps law enforcement."

The database will be a component of the Law Enforcement Data System, which is used by police departments throughout the state. Health Services is working in conjunction with Oregon State Police in the preliminary stages of testing, but the database could be used by local departments as well.

"It would be a great tool for us," said Sgt. Mike McCarthy of the Springfield Police Department. "We could pull up a name right away and see whether or not they have a card."

The system was slated to be up-and-running by Aug. 1, but unforeseen complications at both Health Services and the Oregon State Police pushed the date of operation back to the end of August. A committee met to iron out differences between law enforcement, Human Services and advocacy groups.

"It took a little longer on both ends," said Salsbury. "Our main concern is protecting the confidentiality of patients, caregivers and sites."

Presently, the database is in the final stages of in-house testing that Human Services hopes will remove glitches from the server-based system. Testing will soon be conducted through state police systems as well.

Once testing of the database is complete, law enforcement officers will be able to verify whether someone claiming his or her marijuana use is for medical reasons has current registration with the state. Just a few strikes on the keyboard and an immediate yes-or-no response will tell officers whether an individual's marijuana use is protected by Oregon state law.

The database will be established in two phases. First, police will be able to check an individual's patient status through the system. The second phase will allow police to check addresses of probable grow sites.

Eugene police like the idea of 24/7 access, but said this technology won't revolutionize how marijuana users are treated in the city.

"There's just not going to be much impact on EPD," said Kerry Delf, of the Eugene Police Department. "It could be useful, but will probably be more of a small procedural change."

The required establishment of a 24-hour medical marijuana patient identification system was only one provision in SB 1085, the over-arching purpose of which is to clear up ambiguous sections of

Oregon's medical marijuana law. Although the bill has sparked controversy in advocacy groups, the registry is not the source of most debate.

Not all patients are thrilled about having their names in a database that can be accessed by police, but the database should limit uncertainty regarding who is and isn't a legal marijuana user or grower.

The Committee(s)

Committee. 1085 requires the deprtment of human services (DHS) to create an Advisory Committee on Medical Marijuana to replace the existing Administrative Work Group. to appoint an 11 member advisory committee (to advise the Director of DHS) 'from persons who possess registry identification cards, designated primary caregivers of persons who possess regiatry identification cards and advocates of the Oregon Medical Marijuana Act.'

SECTION 7.

(1) There is created the Advisory Committee on Medical Marijuana in the Department of Human Services, consisting of 11 members appointed by the Director of Human Services.

(2) The director shall appoint members of the committee from persons who possess registry identification cards, designated primary caregivers of persons who possess registry identification cards and advocates of the Oregon Medical Marijuana Act.

(3) The committee shall advise the director on the administrative aspects of the Oregon Medical Marijuana Program, review current and proposed administrative rules of the program and provide annual input on the fee structure of the program.

(4) The committee shall meet at least four times per year, at times and places specified by the director.

(5) The department shall provide staff support to the committee.

(6) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the committee consider necessary to perform their duties.

***
Unfortunately this:

"DHS has the power to allow participative elections."

is false. The agency's power is limited by legislative authority. I support the underlying premise behind this effort,

The most salient feature of this section is that no one who opposes the OMMA is on the committee. This is significant because, since its inception, the advisory committee has included law enforcement, and, because the Legislative Advisory Committee also included law enforcement.

the director of DHS, Grant Higginson, has formed a committee to make recommendations to the director about who to appoint and how to do it. the director is, of course, free to reject this

recommendation and appoint whoever he wants, so long as the appointments are 'from persons who possess registry identification cards, designated primary caregivers of persons who possess regiatry identification cards and advocates of the Oregon Medical Marijuana Act.'

irrespective of whomever is appointed to the Advisory Committee, Dr. Higginson (our state health officer) will allow all to participate. the director could make some patient and caregiver positions elected (but doesn't have to, but cannot appoint law enforcement. In addition to patient and caregivers, he has to appoint other advocates.

this committee will be merely advisory, and the director, who can reject recommendations from the committee formed about how he should select advisory committee members can similarly reject advice from the advisory committee once it is formed. additionally, advisory committee meetings are likely subject to Oregon's open meeting laws, so that any interested person can get notice of the meetings and attend.

To see all of the changes, you can visit http://www.mpp.org/OR/bill/9730.mpp and read the final version of S.B. 1085.

The Oregon Criminal Defense Lawyers Association has posted an article entitled "Oregon Medical Marijuana Act Amended; Limits Increased, Some Affirmative Defenses Repealed, Other Changes Enacted" to its web site (www.ocdla.org - on the home page under 'News and Issues'). This in depth examination of Oregon's Senate Bill 1085 includes background and legislative history, a section by section analysis and some concluding thoughts.

OREGON MEDICAL MARIJUANA ACT AMENDED

Limits increased, some affirmative defenses repealed, other changes enacted

by Leland R. Berger, esq. *

Background and Legislative History[1]

Win or lose a statewide initiative, some legislative response seems inevitable. Following passage of the Oregon Medical Marijuana Act (hereinafter 'the Act' or 'OMMA') at the November, 1998 General Election, for example, the 1999 legislature amended the Act at the insistence of law enforcement, restrained only by legislators who believe that the initiative power reflects the voice of the people, and by supporters of the Act. The narrow defeat of Measure 33 at the 2004 general election, combined with the passage of a bill in the House during the 2003 session that died in the Senate made some legislation amending the OMMA this session inevitable.

Following the 2003 session, Senator Bill Morissette (D-Springfield), (the chair of the Senate Health and Human Services Committee who refused to give the 2003 bill that passed the House a hearing in the Senate), wrote to Dr. Grant Higginson, the State Health Officer, requesting he convene an interim legislative advisory committee. This committee, composed of patients and their advocates, program administrators and law enforcement representatives met 5 times. Although law enforcement representatives refused to attend the final meeting to discuss the

compromise Dr. Higginson had drafted, some advocates (including our own Brian Michaels) presented this draft to Senator Morissette who in turn introduced it as SB772.

Hearings were held before the Senate Health and Human Services Committee, however, the Committee closed before the bill was finalized. The bill was re-introduced as SB1085 in the Rules Committee at the request of Senator Morissette and Senator Jeff Kruse (R-Roseburg, Vice-chair of the Senate Health and Human Services Committee). Subject to an agreement on amending it in the House, the Bill passed out of the Senate Rules Committee and, by a unanimous vote, out of the Senate.

By the time it got to the House, the only Committee still open was the House State and Federal Law Committee. The previously agreed upon amendment was added, but also stuffed into the bill was a provision amending ORS §475.340 in a way which would have allowed employers to discriminate against patients based solely on their use, and, in doing so, would have legislatively 'fixed' the Court of Appeals' decision in *Washburn v. Columbia Forest Products*, 197 Or App 104, 104 P3d 609, *rev. allowed* 339 Or 156 (2005). With these amendments, SB1085 passed back out to the Senate, where it seemed as if it were dead.

During the final all night session of 2005 Legislature, a Senate Conference Committee deleted the offending amendment and the bill passed out of the Senate, and re-passed in the House. On August 29, 2005 the Governor signed this bill into law. The amendments will become effective on January 1, 2006.

Section analysis

Section 1 amends the OMMA's definitions statute, ORS §475.302, in two ways. It adds to the definition of 'Delivery' this sentence: ""Delivery" does not include transfer of marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer."

This is somewhat ambiguous as application of this definition to the term 'delivery' as it is used elsewhere in the Act2 can create a construction contrary to the intent of this legislation. The clear intent of this section was to codify that cardholders sharing medical marijuana (including 'usable marijuana,' seedlings or starts and mature plants) are protected from state criminal law, so long as they are within the limits, and not engaging in unprotected activity.

The second amendment is to define a "Marijuana grow site" as 'a location where marijuana is produced for use by a registry identification cardholder and that is registered under the provisions of Section 8 of this 2005 Act.' More on this in the discussion on Sections 8 and 9, below.

Section 2 amends ORS §475.306 (the statute governing limits for cardholders) by repealing the limits (they are re-defined in Section 9) and also repealing the cardholder affirmative defense for being over the limit. It enacts a new requirement, at law enforcement's request, that cardholders who are 'using or transporting marijuana in a location other than the residence of the cardholder' must possess the registry identification card when doing so.

More significantly, Section 2 amends the direction to the Department of Human Services to define by rule when a plant is mature and when it is immature by enacting this definition: "a plant that has no flowers and that is less than 12 inches in height and less than 12 inches in diameter is a seedling or a start and is not a mature plant." The legislative intent here was that to constitute a 'mature plant,' all three prerequisites must be met.

Section 3 amends §475.309, the registry section of the OMMA to include a requirement that a new category of person (denominated 'the person responsible for the grow site') register, and also requiring that the applicant (*i.e.* patient) state in writing "whether the marijuana will be produced at a location where the cardholder or designated primary caregiver is present or at another location. It also adds 'the person responsible for the grow site' to cardholder and designated primary caregiver to define which people can collectively possess the permitted amounts of medical marijuana.

Section 4 extends the protections of the OMMA to licensed health care professionals in licensed health care facilities who are administering medical marijuana to a patient who resides in the facility. Denominated the 'Ken Brown' provision, for the Measure 33 co-chief petitioner who was paralyzed from the neck down in an accident involving a drunk driver, this provision was a part of the legislative advisory committee proposal. At the request of counsel for the Oregon Medical Association, this section also clarifies that no licensed health care professional may be required to administer medical marijuana, and, paralleling language from §475.340 related to employment, provides that no licensed health care facility is required 'to make accommodations for the administration of medical marijuana.' It also provides that if the method of administration of the medical marijuana is smoke, that there be adequate ventilation.

Section 5 amends §475.331, relating to disclosure of registry information to law enforcement. It expands the required registry to include 'the address of the authorized marijuana grow sites.' It mandates that the Department of Human Services develop a system which would allow law enforcement to verify, 24 hours a day/7days a week whether a person is registered as a patient or a designated primary caregiver. It codifies the current practice of requiring 'adequate identification, such as a badge number or similar authentication of authority.' Most significantly, post-*Raich*,3 it prohibits the rerelease or use of this information 'for any purpose other than verification' that the cardholder is a cardholder and that the place is an authorized marijuana grow site.' Although Section 5 does not require the creation of a Person Responsible for a Marijuana Grow Site registry, advocates for the OMMA anticipate that the Department of Human Services will include such a registry as a part of the registry required to be created under Section 8 of this 2005 Act.

Section 6 adds to the OMMA the new material contained within Sections 7,8,9 and 10 of the 2005 amendment.

Section 7 creates a formal Advisory Committee to codify the existing process. In the summer of 2002, patients and their advocates protested the Department's decision to withhold the issuance of cards incidental to their discovery of three cards being issued where the attending physician's signature was forged. The *ad hoc* committee met monthly at first, and has met quarterly for the last two years. One interesting facet of the new advisory committee is that the director of the

Department of Human Services is required to appoint 11 members 'from persons who possess registry identification cards, designated primary caregivers of person who possess registry identification cards and advocates of the Oregon Medical Marijuana Act.' As law enforcement has consistently opposed the Act, presumably the committee will have no law enforcement representation.

This provision was a part of the legislative advisory committee's proposal, originally introduced as SB772.

Section 8 is entirely new, and was the result of legislative compromise4. This section mandates that the department create 'a marijuana grow site registration system to authorize production of marijuana by a registry identification cardholder, a designated primary caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site.' The grow site registry card is issued to the registry identification cardholder (patient), who is required to display the card at the grow site, whenever marijuana is being produced. If marijuana is being cultivated for more than one registry identification cardholder (patient) at one grow site, each registry identification cardholder's grow site registration card must be posted there.

This section also provides that:

All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a registry identification cardholder by a person responsible for a grow site are the property of the registry identification cardholder and must be provided to the registry identification cardholder upon request.

If a patient is convicted of manufacturing or delivering a Schedule 1 or 2 controlled substance, the patient's grow site registration card is restricted in that the patient is prohibited from cultivating for 5 years. The patient could still designate a person responsible for a marijuana grow site to cultivate for him or her, but the patient could not be present at the grow site. A similarly convicted non-patient would also be so restricted. A second violation results in a lifetime restriction.

Finally, this section authorizes the patient or the designated primary caregiver to: reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the registry identification cardholder, including the cost of labor, may be reimbursed.

Section 8a clarifies that the grow site restrictions incidental to MCS/DCS convictions only applies if the conviction relates to a 'violation of ORS 475.992(1)(a) or (b) that occurred on or after the effective date of this 2005 Act.' The intent here was that the offense post date the act, not just the date of the conviction, so as to avoid *ex post facto* problems.

Section 9 sets the new limits for production and possession under the OMMA. Patients can have up to 6 mature plants, 18 marijuana starts or seedlings and up to 24 ounces of usable marijuana. Unlike current law, there is no distinction in amounts depending on whether one is at

the marijuana grow site or away from the garden. Patients whose cards are restricted by virtue of an MCS/DCS conviction are limited to possessing one ounce.

Multi-patient gardens are more complicated.

If the patient, or the patient's designated primary caregiver is **not** present at the garden, the 'person responsible for the marijuana grow site' may produce up to 6 mature plants, 18 starts or seedlings and may possess up to 24 ounces of usable marijuana for up to four registry identification cardholders or their designated primary caregivers per year. Thus, a total of 24 mature plants, 76 seedlings or starts and 6 pounds of usable marijuana may be present at such a location. When the garden ceases producing marijuana, or upon request from the patient or the patient's designated primary caregiver, the person responsible for the grow site must provide all marijuana produces to the patient or the cardholder's designated primary caregiver.

What is less clear are the different permutations which currently exist. For example, in a multi-patient dwelling, where all are present at the garden site, it would follow that there could be 6 mature plants, 18 starts or seedlings and 24 ounces for each patient. As there is no restriction in the OMMA as to the number of patients for whom a person can be the 'designated primary caregiver'5, it should follow that such a caregiver actually present at the grow site should be able to cultivate 6 mature plants, 18 starts or seedlings and possess 24 ounces for each patient for whom the person is providing care. There was some discussion during the hearings on SB772, however, suggesting that the legislature reads the statutory definition of 'designated primary caregiver' less broadly than do the advocates of the law.

OMMA advocates hope and expect that these scenarios will be clarified through administrative rulemaking.

Section 10 codifies the current practice in many counties limiting the number of plants or quantity of usable marijuana seizable by law enforcement to those plants or seedlings or usable marijuana 'that are in excess of the amount or number authorized.' This would prohibit the practice of other counties where law enforcement have a scorched earth policy of taking all the medicine.

Section 11 corrects an oversight in the section protecting physicians by clarifying that the physicians who are protected are the 'attending' physicians. *See*, ORS 475.302(1), OAR 333-008-0010 (1).

Section 12 repeals the that portion of the affirmative defense for non-cardholders which allowed medical necessity evidence to explain possession or cultivation outside of the statutory limits. It does not repeal the overall defense, and leaves intact the choice of evils defense and the ability to present medical necessity evidence.

Concluding thoughts

The 2005 legislative amendments to the OMMA are principally predicated on three premises. The first, articulated by Stormy Ray, (a co-chief petitioner of the 1998 initiative) during a hearing before the Senate Health and Human Services Committee is that the production of therapeutic

cannabis for patients is a charitable event. The second, articulated repeatedly by Stormy Ray Foundation board member Jerry Wade is that the patient owns the medicine. The third, explained in some detail on the SRF website6 is the ability to produce a perpetual supply of therapeutic grade cannabis using 18 starts and six mature plants.

The fundamental flaw here is two-fold. First, although this system may work for Stormy and Jerry, it will not work for all patients. Most simply stated, it presupposes that codifying the ability to share medicine will make up for crop failure. Second, for many outdoor annual patients and their growers, the limits are inadequate to provide for a year's supply. And lastly, those for whom more medical cannabis is medically necessary will be unable to defend against MCS/DCS/PCS charges, and will be left only to argue mitigation at sentencing.

On the other hand, many, many patients who are currently outside the protection of the OMMA will be able to come within the protection. The new limits are higher than any other state legislature has approved. Codification of 24/7 access for verification and the restriction on the redistribution of the patient verifying information will greatly help patients. And the legislative mandate that convicted patients be restricted only as to cultivation creates an additional argument why probationers should be allowed to use this medicine while on probation.

* OCDLA Sustaining member Leland Berger practices statewide from his home in NE Portland.

The assistance of . . .

Attorneys Anthony L. Johnson and Brian L. Michaels, and OMMA Advocates Dr. Rick Bayer (Co-chief Petitioner, OMMA (1998)), Madeline Martinez (Executive Director, Oregon NORML), Alicia Williamson (Board Member, Oregon NORML), John Sajo (Voter Power, Co-chief petitioner and spokesman for Measure 33 (2004)), and Laird Funk (Volunteer Lobbyist)

. . . in the drafting of this article is gratefully acknowledged.

References

1 Legislative History of SB 772 from Oregon Legislature's website:

SB 772 By Senator MORRISETTE -- Relating to medical marijuana.

2-21(S) Introduction and first reading. Referred to President's desk.

2-23 Referred to Human Services, then Ways and Means.

3-10 Public Hearing held.

4-28 Public Hearing held.

6-1 Work Session held.

8-5 In committee upon adjournment. Legislative History of SB1085 from Oregon Legislature's website: SB 1085 By COMMITTEE ON RULES (at the request of Senator Bill Morrisette and Senator Jeff Kruse) -- Relating to medical marijuana.

6-23(S) Introduction and first reading. Referred to President's desk.

6-27 Referred to Rules, then Budget.

7-1 Public Hearing and Work Session held.

7-8 Recommendation: Do pass with amendments and be referred to Budget by prior reference. (Printed A-Eng.)

7-14 Work Session held.

7-19 Recommendation: Do pass the A-Eng. bill. Second reading.

7-20 Third reading. Carried by Kruse, Morrisette. Passed. Ayes, 30. Carter, absent, granted unanimous consent to be recorded as voting aye.

7-21(H) First reading. Referred to Speaker's desk. Referred to State and Federal Affairs.

7-29 Public Hearing and Work Session held.

7-30 Recommendation: Do pass with amendments and be printed B-Engrossed.

8-1 Rules suspended. Second reading.

8-2 Third reading. Carried by Flores. Passed. Ayes, 39; Nays, 14--Ackerman, Avakian, Barnhart, Beyer, Buckley, Dingfelder, Hansen, Holvey, Kropf, Merkley, Nolan, Rosenbaum, Shields, Wirth; Excused, 2--Barker, Brown; Excused for Business of the House, 5--Farr, Greenlick, Kitts, March, Thatcher. Vote explanation(s) filed by Tomei.

8-3(S) Rules suspended. Senate refused to concur in House amendments. Ayes, 19; Nays, 11--Atkinson, Beyer, Ferrioli, Kruse, Morse, Nelson, Starr, B., Starr, C., Westlund, Whitsett, Winters. 8-3(H) Representatives Flores, Olson, Macpherson appointed House conferees.

8-4(S) Senators Prozanski, Atkinson, Morrisette, appointed Senate conferees. Work Session held. Conference Committee Recommendation: The Senate concur in House amendments dated 07-30 and B-Engrossed bill be further amended and repassed. (Amendments distributed.)

8-4(H) Conference Committee Report read in House.

8-4(S) Rules suspended. Senate adopted Conference Committee Report and repassed bill. Ayes, 26; Absent, 1--Whitsett; Attending Legislative Business, 3--Deckert, Devlin, Westlund.

8-4(H) Rules suspended. House adopted Conference Committee Report.

References, cont.

2 The term delivery is included in the definition of “Medical use of marijuana” in §475.302(7) (post 1/1/06, 475.302(8)), in explaining the scope of exception from state criminal law in §475.309(1), in §475.316(1)(c) and (1)(d) in explaining what conduct takes one out of the protection of the law (delivery to a noncardholder or delivery to anyone for consideration) and in §475.342, explaining generally that what is not authorized by the OMMA is not protected from criminal prosecution.

3 *Gonzales v. Raich*, 542 US ___, 125 S. Ct 2195, 162 LEd2d ___ (2005) (Holding that congress’ commerce clause power authorizes the federal criminalization of the personal, intrastate cultivation, non-commercial distribution and medical use of therapeutic cannabis.)

4 In addition to Senators Morrisette and Kruse, Senator Floyd Prozanski (D-Eugene) and Representative Steve March (D-Portland) were closely involved in the drafting of this bill.

5 Although not central to her ruling in the case, Senior Klamath County Judge Karla Knieps opined, in a Clackamas County case, that as there is no statute or administrative rule authorizing a designated primary caregiver to provide care to more than one patient, there was no protection under the OMMA for those who did so. DHS raised a similar argument in the defense of a declaratory judgment action.

6 www.stormyray.org/ommaway/patient_garden.htm

But Wait, There’s More!

What's just as remarkable is that S.B. 1085 almost allowed employers to fire medical marijuana patients for going to work sober.

On Friday, July 29, 2005 the House Committee on State and Federal Affairs made a surprise amendment to S.B. 1085 — a bill dealing with medical marijuana plant limits — that would allow employers to fire Oregon's medical marijuana patients for going to work sober.

That's right, with less than a day to go in the session, S.B. 1085 still contained a provision that would have allowed employers to fire medical marijuana patients simply for testing positive for marijuana metabolites. No actual impairment on the job would have been required.

Under the amended bill, patients need not even be under the influence to lose their jobs, they must simply have marijuana metabolites in their system. The Republican-controlled House committee added the employment provision to S.B. 1085, which mirrors language in H.B. 2693, a bill that languished and died in the Senate Rules Committee, then passed S.B. 1085 to the House floor. Agencies like the ACLU were fuming.

"When this bill passed the Senate it represented a carefully crafted compromise. Unfortunately, the House State and Federal Affairs Committee added a divisive amendment pushed by some employers that undermines the fragile balance of the bill," the ACLU said in a floor statement to members of the House.

"(It) would eliminate possible legal protection for disabled workers who are registered medical marijuana patients."

With the House-added provisions, SB 1085 would, in part, allow employers to fire employees because they have marijuana in their system, even when there is no evidence of on-the-job impairment.

Oregon's industry lobby orchestrated the amendment to S.B. 1085 in a cynical attempt to overturn the Oregon Court of Appeals decision in *Washburn v. Columbia Forest Products, Inc*. *Washburn* held that the medical use of marijuana does not include an employee's positive urine test, because it cannot positively identify whether an individual is under the influence of marijuana. Of course, the great irony is that many patients use medical marijuana in order to gain enough control over their lives that they can continue to work and contribute to society. S.B. 1085 would remove that opportunity.

But by contacting your legislators, you and many other activists helped send a strong message that Oregonians do not want patients to lose their jobs simply for taking their medicine. And it appears that enough key legislators heard that message. In the last hours of the session, the conference committee on S.B. 1085 had the wisdom to delete the employment portion of the bill.

WHAT NOW

this law becomes effective until January 1. Interpretations now depend on the OMMP and LE. Then Legislative and Initiative means are available.

Spending much time calculating who deserves the credit or the blame for 1085 is silly. Let's focus on the future. We might observe that to most outside commentators, the primary effect of the bill will be described as dramatically increasing the amount of marijuana a patient may possess.

First ... The OMMP Defines and Communicates to LE and Community

>>The Committees. 1085 authorized formal committee. Several others were formed at last meet > other changes coming! >The Committee, and regular OMMP Meets!

LEA; AG, DAs & Police. Form (legal.html) and network. (ACLU)

ANYONE could have undertaken this effort, or a similar one. No patient has ever been prevented from expressing his or her opinion on any of these issues to any legislator. And, EVERYONE involved in the legislative process has encouraged this kind of participation.

Notwithstanding many, many efforts to the contrary, no one group (or one alliance of groups) speaks for the entire med mj community. Once something is in play, whether it is a statewide ballot initiative, or a bill in the legislature, even when we can't speak in exactly one voice, it is a tremendous distraction to deal with personal criticism, as opposed to criticizing ideas or proposals.

The way for patients, and activists and patient activists alike to feel their needs are being heard and have the opportunity to be represented is to voice these needs directly to the decision makers or to the activists and patients and patient activists who are volunteering their time to do this work.

Or, in the grand tradition of our movement, they could start their own group.

The OMMP

Growsite determinations, and at least some of the other questions should be resolved thru administrative rule making. Also,.

Get a determination of what the bill actually means. There are many new questions and new gray areas. Lets study these thoroughly. Lets develop a comprehensive list of questions and start asking appropriate people (DAs, legislators?) for answers to these questions. As we clarify our understanding of the changes to OMMA let's do our best to educate old and new patients about the new rules. Lets make the best of the improvements and figure out how to have the parts we don't like have the least negative impact on patients.

the legislative process in Oregon has two tracks. working thru the legislature to reach compromise legislation requires compromising with law enforcement. all of the limits (plant number, starts number, quantity number and patients for whom a person resonsible for the grow site can cultivate for) reflect bottom line determination by law enforcement's political management. to change these will likely require accessing the other legislative track; the initiative.

The Legislature

Let's begin preparing NOW for the 2007 legislative session. We know that at least some legislators want to revisit inspections and the drug testing provisions. AOI is an extremely powerful lobby. We need to be united and prepared to have hope of resisting their descriminate against patients ideas. (Maybe we can convice them that it is in their interest to have OMMP patients working)

we should try to speak with one voice next session, if we do we will be more effective.

Should we form/reform an alliance of individuals and groups to work on this? we need to be very inclusive and very clear about how we operate.

The Initiative process

Lets prepare for future initiatives. we are looking at a possible Multnomah Co. initiative for 2006 and possible statewide initiatives for 2008. We need to consider all our options post 1085. Do we try some variation of improving medical at the county level or do we shift focus to the broader legalization issue?

One vote is for a multnomah county intiative creating a patient resource center. perhaps prc initiatives in multiple counties. either the compassionate model will work or it won't but either way it would be good for the 07 legislature to have given the model a full try. Our thots are it will make licensed and regulated dispesaries an obvious solution, and that this, in turn, will set the stage for relegalization

---

FAQS

1) 1085 limits "person responsible to a marijuana grow site (PRMGS)" to growing for 4 patients. We don't read anything in 1085 that limits the number of patients a "caregiver" can assist. If a caregiver assists 8 patients, can they simply have patients designate them as one PRMGS and designate one of the patients or someone else as the PRMGS for the other 4 patients? Does this provision limit absolute garden size in any way? (Our understanding is that both Morissette and Durbin said no)

The legislation's probable intent in this area is to return 'caregiver' to the statutory, health law narrow definition that DHS advocated for especially, but not only, when Mary L. ran the program. Many patients have people who caregive for them by doing the things which they are unable to do physically as a consequence of the symptoms related to their debilitating medical condition. These caregivers can provide care for an unlimited number of patients and. if they have been designated by the patient as their designated grower (DPC), they are excepted from the laws criminalizing the manufacture, possession and delivery of medical cannabis (marijuana).

Because no medical marijuana can be cultivated without a growsite registration card, the person responsible for the grow site is either the patient, the caregiver or a third person, denominated the person responsible for the grow site. Each grow site is limited to 4 patients or caregivers.

There may be room to continue to have larger gardens which take care of more patients. This has to do with the definition of grow site. A grow site could be an address, but it could also be an area within an address. If there can be multiple grow sites at a particular address (or location) then there could be more plants and more patients cared for.

In any case, this will require more people to step up as 'person's responsible'. If this happens, it will lead to the protection of more people.

We want to take care to re-read, concentrate and focus on the sections relating to medical gardens before commenting further on the size of gardens issue.

2) How does "site" or "location" figure into this?

Our expectation is that the advisory committee (which does not include law enforcement) will recommend an administrative rule to resolve this question. This can happen before the law becomes effective on Jan 1. Between then and now there is no certainty around this, but, hopefully, there will be enough lead time to develop strategies to solve most problems.

3) Would 1085 prevent a landlord from renting one room in a house to one PRMGS and another room to another PRMGS? What about plots of land? (PRMGS is "person responsible to a marijuana grow site")

We believe that it would not. It is important that the administrative rule cover these scenarios.

4) In a multiple patient garden can each patient just register themself as the PMGS?

We believe so.

5) Can a caregiver for two patients possess 48 ounces away from the garden?

The "at and away from the garden" possession distinction will no longer exist after Jan 1. We want to take care to re-read, concentrate and focus on the sections relating to medical gardens – and get confirmation from the program - before commenting further on the size of gardens issue, including quantities of medicine permitted.

6) What is the legal status of transporting plants (or seedlings) after 1085?

No clarification of the 'use in public' restriction occurred with 1085. Other than that, we still have the legislative history from 1999 which clarifies that this is a protected activity, especially given 1085's codification of sharing

7) 1085 restricts compensation of PRMGS to supplies and utilities. Does the new law restrict how patients compensate caregivers?

The answer may depend on whether the caregiver is also the PRMGS. 1085 speaks to reimbursement of PRMGS, which may mean that if a patient or caregiver is paying directly for some expense (such as rent) then the new reimbursement prohibition does not affect it because it is direct payment and not reimbursement.

8) How is the denying of cards to patients and caregivers convicted of ORS 475 felonies going to work? Are county courts going to be required to notify OMMP of all convictions?

The courts will likely develop some form for court ordered suspension, IE- drivers license suspensions (which is how LE has always viewed this issue)

9) In the case of a patient convicted of ORS 475 felonies how does the ownership play out. Normally a patient can fire a cargiver and demand all the plants and usable medical marijuana. How would this work in the case of the penalized patient? Will they be unable to fire the caregiver or would they just be unable to demand the marijuana?

We think the latter. Nothing would prohibit a suspended patient from changing Caregivers (DPC) or PRMGS. They are, however, limited in what they could possess and are prohibited from cultivating, which arguably includes possessing growing plants.

10) Where did this come from? Did the legislators introduce SB772 (later morphed into 1085?)

Sen. Morissette introduced the product of the Legislative Advisory Committee (see LAC), he requested Dr. Higginson convene. See >> HISTORY

11) Did the legislators think up the idea of using the criminal defense rights of ALL patients as a "bargaining chip" to gain favor with LEO?

The failure of the LAC to reach a compromise was because LE refused to consider any reform without repealing all the affirmative defenses. Any reform within the legislature has to take into account law enforcement's concerns because representatives are responsive to what law enforcement wants (because legislators are afraid of being defeated by a law enforcement supported opponent come election time.) there are at least two solutions to this: The long term solution is to support only candidates who support your point of view on these issues. The short term solution is to draft and utilize the initiative power to reform the law.

12) Did the legislators deliberately ignore the protests of many activists/patients, or did they follow the false advice of those who illegitimately claimed that they represented the supportive wishes of the majority of patients?

Neither. Those legislators who moved this bill tried to find the best possible compromise. We're not sure that anyone 'claimed they represented the supportive wishes of a majority of patients' but we are sure that they wanted to know how much the law could be reformed to better work for patients and still have the legislative support of LEO.

13) Did the legislators write the idea into 1085 (772) for an appointed (not elected) committee to ostensibly function in the patients' interests? Do patients get any choice in who gets appointed as their "representatives?"

We think that all this section of the bill is a codification of the status quo. We don't recall any discussion about the make up of the committee, except that no one on law enforcement is included.

14) Why was the DHS committee drafted as an appointed committee instead of an elected committee, as was done in >> M33?

Our recollection is that this language came from Grant's compromise proposal in the legislative advisory committee (LAC). Many of the M33 changes were discussed in this committee. The M33 proposal as to the advisory committee included both elected and appointed members. In some ways 1085's language is better as it excludes opponents (law enforcement) from participation on the committee.

15) What reason did Morrisette give for not being able to include a dedication provision for the fees? Is this even possible by amendment, or does it instead require the provision to be included in the drafted statute as passed? In other words, if the fee protection ain't in the original OMMA, then it can't be added on later?

These proceedings are tape recorded and the tapes are archived at the State Archive building so one can check there to be sure. We don't think the failure to include fee protection in the original OMMA presents a problem and that such an amendment is possible.

If anyone wants to take this on, the way to discover an accurate answer to this question is to seek the assistance of legislative counsel. Contact your representative and ask for someone to introduce the proposal pre-session and lobby for its passage

16) How will DHS select who will be appointed to the DHS patients' committee? Will there be some type of nomination process or any semblance of democratic input and representation for patients, or is it simply a foregone conclusion that those who cooperated in surrender of criminal defense rights and looting of the patient fees will be the favored appointees?

OMMP shared what they know about this at Monday's (9/12/2005) hearing. This provision codifies, or formalizes, the existing committee (AWGC and LAC). Under current practices (in both this advisory committee and in the legislative advisory committee) anyone who showed up was allowed to speak and all points of view were considered. There is every reason to believe these policies will continue.

SOME HISTORY

In 1998, the OMMA was drafted principally by Americans for Medical Rights, a group representing the three billionaires who funded a variety of initiatives on this issue. Some Oregon activists were invited to participate, but no one in Oregon had a final say on what the final language would be.

As you know, after Sen. Morrisette stopped the bad OMMP/ODEA bill (HB2939) last session (by refusing to give it a hearing after it passed out of the house) he wrote Grant Higginson and requested Grant convene an interim legislative advisory committee (LAC) with the purpose of presenting a consensus bill to the legislature.

The LAC held 5 meetings, each of which involved public notice, and everyone who appeared at the meeting was welcome to provide input, whether they were on the LAC or not. Concurrently, Voter Power had drafted M33, and held open public meetings inviting all activists to participate. We modified the draft based on input received at those hearings, including input received from Stormy.

When law enforcement walked out of the last LAC meeting, some activists, principly lead by Madeline and Rick, formed an alliance to discuss what to do next. Although I quit participating in this effort, I am glad that Grant's LAC compromise was presented to Morrisette and glad that he filed it.

Official Senate Bill 1085 HISTORY

Senate Bill 1085

SB 1085	**By COMMITTEE ON RULES (at the request of Senator Bill Morrisette and Senator Jeff Kruse) -- Relating to medical marijuana.**
06/23 (S)	Introduction and first reading. Referred to President's desk. (see SB772)
06/27 (S)	Referred to Rules, then Budget.
07/01 (S)	Public Hearing and Work Session held.
07/08 (S)	Recommendation: Do pass with amendments and be referred to Budget by prior reference. (Printed A-Eng.)
07/14 (S)	Work Session held.
07/19 (S)	Recommendation: Do pass the A-Eng. bill.
07/19 (S)	Second reading.
07/20 (S)	Third reading. Carried by Kruse, Morrisette. Passed. Ayes, 30.
07/20 (S)	Carter, absent, granted unanimous consent to be recorded as voting aye.
07/21 (H)	First reading. Referred to Speaker's desk.
07/21 (H)	Referred to State and Federal Affairs.
07/29 (H)	Public Hearing and Work Session held.
07/30 (H)	Recommendation: Do pass with amendments and be printed B-Engrossed.
08/01 (H)	Rules suspended. Second reading.
08/02 (H)	Third reading. Carried by Flores. Passed. Ayes, 39; Nays, 14--Ackerman, Avakian, Barnhart, Beyer, Buckley, Dingfelder, Hansen, Holvey, Kropf, Merkley, Nolan, Rosenbaum, Shields, Wirth; Excused, 2--Barker, Brown; Excused for Business of the House, 5--Farr, Greenlick, Kitts, March, Thatcher.
08/02 (H)	Vote explanation(s) filed by Tomei.
08/03 (S)	Rules suspended. Senate refused to concur in House amendments. Ayes, 19; Nays, 11--Atkinson, Beyer, Ferrioli, Kruse, Morse, Nelson, Starr, B., Starr, C., Westlund, Whitsett, Winters.
08/04 (S)	Senators Prozanski, Atkinson, Morrisette, appointed Senate conferees.
08/04 (H)	Representatives Flores, Olson, Macpherson appointed House conferees.

08/04 (S)	Work Session held.
08/04 (S)	Conference Committee Recommendation: The Senate concur in House amendments dated 07-30 and B-Engrossed bill be further amended and repassed.
08/04 (S)	(Amendments distributed.)
08/04 (H)	Conference Committee Report read in House.
08/04 (S)	Rules suspended. Senate adopted Conference Committee Report and repassed bill. Ayes, 26; Absent, 1--Whitsett; Attending Legislative Business, 3--Deckert, Devlin, Westlund.
08/04 (H)	Rules suspended. House adopted Conference Committee Report.
08/04 (H)	Repassed. Ayes, 40; Nays, 17--Anderson, Brown, Burley, Cameron, Dallum, Flores, Garrard, Hanna, Kitts, Krieger, Kropf, Krummel, Shields, Smith P., Sumner, Thatcher, Whisnant; Absent, 1--Nelson; Excused, 1--Barker; Excused for Business of the House, 1--Dalto.
08/09 (S)	President signed.
08/18 (H)	Speaker signed.

TEXT

73rd OREGON LEGISLATIVE ASSEMBLY--2005 Regular Session
Enrolled Senate Bill 1085
Sponsored by COMMITTEE ON RULES (at the request of Senator Bill Morrisette and Senator Jeff Kruse)
CHAPTER .....
AN ACT

Relating to medical marijuana; creating new provisions; and amending ORS 475.302, 475.306, 475.309, 475.316, 475.319, 475.326, 475.328 and 475.331.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 475.302 is amended to read:
475.302. As used in ORS 475.300 to 475.346:
(1) 'Attending physician' means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.
(2) 'Debilitating medical condition' means:
(a) Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;
(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:
(A) Cachexia;
(B) Severe pain;
(C) Severe nausea;
(D) Seizures, including but not limited to seizures caused by epilepsy; or
(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or
(c) Any other medical condition or treatment for a medical condition adopted by the department by rule or approved by the department pursuant to a petition submitted pursuant to ORS 475.334.
(3) 'Delivery' has the meaning given that term in ORS 475.005. { + ' Delivery' does not include transfer of marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer. + }
(4) 'Department' means the Department of Human Services.
(5) 'Designated primary caregiver' means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the department. 'Designated primary caregiver' does not include the person's attending physician.
(6) 'Marijuana' has the meaning given that term in ORS 475.005. { + (7) 'Marijuana grow site' means a location where marijuana is produced for use by a registry identification cardholder and that is registered under the provisions of section 8 of this 2005 Act. + }
{ - (7) - } { + (8) + } 'Medical use of marijuana' means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.
{ - (8) - } { + (9) + } 'Production' has the same meaning given that term in ORS 475.005.
{ - (9) - } { + (10) + } 'Registry identification card' means a document issued by the department that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.
{ - (10) - } { + (11) + } 'Usable marijuana' means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. 'Usable marijuana' does not include the seeds, stalks and roots of the plant.

{ - (11) - } { + (12) + } 'Written documentation' means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records.

SECTION 2. ORS 475.306 is amended to read:

475.306. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309 may engage in, and a designated primary caregiver of such a person may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical condition. { - Except as allowed in subsection (2) of this section, a registry identification cardholder and that person's designated primary caregiver may not collectively possess, deliver or produce more than the following: - }

{ - (a) If the person is present at a location at which marijuana is not produced, including any residence associated with that location, one ounce of usable marijuana; and - }

{ - (b) If the person is present at a location at which marijuana is produced, including any residence associated with that location, three mature marijuana plants, four immature marijuana plants and one ounce of usable marijuana per each mature plant. - }

{ - (2) If the individuals described in subsection (1) of this section possess, deliver or produce marijuana in excess of the amounts allowed in subsection (1) of this section, such individuals are not excepted from the criminal laws of the state but may establish an affirmative defense to such charges, by a preponderance of the evidence, that the greater amount is medically necessary to mitigate the symptoms or effects of the person's debilitating medical condition. - }

{ + (2) A person who is a registry identification cardholder must possess the registry identification card when using or transporting marijuana in a location other than the residence of the cardholder. + }

(3) The Department of Human Services shall define by rule when a marijuana plant is mature and when it is immature { - for purposes of this section - } . { + The rule shall provide that a plant that has no flowers and that is less than 12 inches in height and less than 12 inches in diameter is a seedling or a start and is not a mature plant. + }

SECTION 3. ORS 475.309 is amended to read:

475.309. (1) Except as provided in ORS 475.316 and 475.342 { + and section 9 of this 2005 Act + }, a person engaged in or assisting in the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied: (a) The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection (9) of this section { + , + }

{ - or - } is the designated primary caregiver of { - a - }
{ + the + } cardholder or applicant { + , or is the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under section 8 of this 2005 Act + }; and

(b) The person who has a debilitating medical condition { + , + }

{ - and - } the person's primary caregiver { + and the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under section 8 of this 2005 Act + } are collectively in possession of, delivering or producing marijuana for medical use in { - the - } amounts allowed { - in ORS 475.306 - } { + under section 9 of this 2005 Act + }.

(2) The Department of Human Services shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. Except as provided in subsection (3) of this section, the department shall issue a registry identification card to any person who pays a fee in the amount established by the department and provides the following:

(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition;

(b) The name, address and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician; { - and - }

(d) The name and address of the person's designated primary caregiver, if the person has designated a primary caregiver at the time of application { - . - } { + ; and

(e) A written statement that indicates whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location. + }

(3) The department shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:

(a) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(c) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(d) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

(4) A person applying for a registry identification card pursuant to this section may submit the information required in this section to a county health department for transmittal to the Department of Human Services. A county health department that receives the information pursuant to this subsection shall transmit the information to the Department of Human Services within five days of receipt of the information. Information received by a county health department pursuant to this subsection shall be confidential and not subject to disclosure, except as required to transmit the information to the Department of Human Services.

(5) The department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.

(a) The department may deny an application only for the following reasons:

(A) The applicant did not provide the information required pursuant to this section to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section; or

(B) The department determines that the information provided was falsified.

(b) Denial of a registry identification card shall be considered a final department action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the department's action.

(c) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the department or a court of competent jurisdiction.

(6)(a) If the department has verified the information submitted pursuant to subsections (2) and (3) of this section and none of the reasons for denial listed in subsection (5)(a) of this section is applicable, the department shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:

(A) The cardholder's name, address and date of birth;

(B) The date of issuance and expiration date of the registry identification card;

(C) The name and address of the person's designated primary caregiver, if any; { - and - }

{ + (D) Whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location; and + }

{ - (D) - } { + (E) + } { - Such - } { + Any + } other information { - as - } { + that + } the department may specify by rule.

(b) When the person to whom the department has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the department shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in paragraph (a) of this subsection.

(7)(a) A person who possesses a registry identification card shall:

(A) Notify the department of any change in the person's name, address, attending physician or designated primary caregiver; and

(B) Annually submit to the department:

(i) Updated written documentation of the person's debilitating medical condition; and

(ii) The name of the person's designated primary caregiver if a primary caregiver has been designated for the upcoming year.

(b) If a person who possesses a registry identification card fails to comply with this subsection, the card shall be deemed expired. If a registry identification card expires, the identification card of any designated primary caregiver of the cardholder shall also expire.

(8) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition shall return the registry identification card to the department within seven calendar days of notification of the diagnosis. Any designated primary caregiver shall return the caregiver's identification card within the same period of time.

(9) A person who has applied for a registry identification card pursuant to this section but whose application has not yet been approved or denied, and who is contacted by any law enforcement officer in connection with the person's administration, possession, delivery or production of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the department pursuant to subsections (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the department. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied.

SECTION 4. ORS 475.328 is amended to read:

475.328. { + (1) + } No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based on the licensee's medical use of marijuana in accordance with the provisions of ORS 475.300 to 475.346 or actions taken by the licensee that are necessary to carry out the licensee's role as a designated primary caregiver to a person who possesses a lawful registry identification card { - issued pursuant to ORS 475.309 - } .

{ + (2)(a) A licensed health care professional may administer medical marijuana to a person who possesses a registry identification card and resides in a licensed health care facility if the administration of pharmaceuticals is within the scope of practice of the licensed health care professional. Administration of medical marijuana under this subsection may not take place in a public place as defined in ORS 161.015 or in the presence of a person under 18 years of age. If the medical marijuana administered under this subsection is smoked, adequate ventilation must be provided.

(b) Nothing in this subsection requires:

(A) A licensed health care professional to administer medical marijuana; or

(B) A licensed health care facility to make accommodations for the administration of medical marijuana. + }

SECTION 5. ORS 475.331 is amended to read:

475.331. (1) { + (a) + } The Department of Human Services shall create and maintain a list of the persons to whom the department has issued registry identification cards { + , + } { - pursuant to ORS 475.309 and - } the names of any designated primary caregivers { + and the addresses of authorized marijuana grow sites + }. Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.

{ + (b) The department shall develop a system by which authorized employees of state and local law enforcement agencies may verify at all times that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. + }

(2) Names and other identifying information from the list established pursuant to subsection (1) of this section may be released to:

(a) Authorized employees of the department as necessary to perform official duties of the department; and

(b) Authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card or { - that a person is - } the designated primary caregiver of { - such a person - } { + a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. Prior to being provided identifying information from the list, authorized employees of state or local law enforcement agencies shall provide to the department adequate identification, such as a badge number or similar authentication of authority.

(3) Authorized employees of state or local law enforcement agencies that obtain identifying information from the list as authorized under this section may not release or use the information for any purpose other than verification

that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site + }.

SECTION 6. { + Sections 7, 8, 9 and 10 of this 2005 Act are added to and made a part of ORS 475.300 to 475.346. + }

SECTION 7. { + (1) There is created the Advisory Committee on Medical Marijuana in the Department of Human Services, consisting of 11 members appointed by the Director of Human Services.
(2) The director shall appoint members of the committee from persons who possess registry identification cards, designated primary caregivers of persons who possess registry identification cards and advocates of the Oregon Medical Marijuana Act.
(3) The committee shall advise the director on the administrative aspects of the Oregon Medical Marijuana Program, review current and proposed administrative rules of the program and provide annual input on the fee structure of the program.
(4) The committee shall meet at least four times per year, at times and places specified by the director.
(5) The department shall provide staff support to the committee.
(6) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the committee consider necessary to perform their duties. + }

SECTION 8. { + (1) The Department of Human Services shall establish by rule a marijuana grow site registration system to authorize production of marijuana by a registry identification cardholder, a designated primary caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site. The marijuana grow site registration system adopted must require a registry identification cardholder to submit an application to the department that includes:
(a) The name of the person responsible for the marijuana grow site;
(b) The address of the marijuana grow site;
(c) The registry identification card number of the registry cardholder for whom the marijuana is being produced; and
(d) Any other information the department considers necessary.
(2) The department shall issue a marijuana grow site registration card to a registry identification cardholder who has met the requirements of subsection (1) of this section.
(3) A person who has been issued a marijuana grow site registration card under this section must display the registration card at the marijuana grow site at all times when marijuana is being produced.
(4) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.
(5) All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the property of the registry identification cardholder and must be provided to the registry identification cardholder upon request.
(6)(a) The department shall restrict a marijuana grow site registration card issued to a registry identification cardholder who has been convicted of violating ORS 475.992 (1)(a) or (b) to prohibit for a period of five years from the date of conviction the production of marijuana otherwise authorized by this section at a location where the registry identification cardholder is present.
(b) A registry identification cardholder who has been convicted of violating ORS 475.992 (1)(a) or (b) may not be issued a marijuana grow site registration card within five years of the date of the conviction for violating ORS 475.992 (1)(a) or (b) if the conviction was for a first offense to prohibit for a period of five years from the date of conviction the production of marijuana otherwise authorized by this section at a location where the registry identification cardholder is present.
(c) A person other than a registry identification cardholder who has been convicted of violating ORS 475.992 (1)(a) or (b) may not produce marijuana for a registry identification cardholder within five years of the date of the conviction for violating ORS 475.992 (1)(a) or (b) if the conviction was for a first offense.
(d) A person convicted more than once of violating ORS 475.992 (1)(a) or (b) may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(7) A registry identification cardholder or the designated primary caregiver of the cardholder may reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the registry identification cardholder, including the cost of labor, may be reimbursed. + }

SECTION 8a. { + The provisions of section 8 (6) of this 2005 Act apply only to a person convicted of a violation of ORS 475.992 (1)(a) or (b) that occurred on or after the effective date of this 2005 Act. + }

SECTION 9. { + (1)(a) A registry identification cardholder or the designated primary caregiver of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

(b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has been convicted of violating ORS 475.992 (1)(a) or (b), the registry identification cardholder or the designated primary caregiver of the cardholder may possess one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.

(2) If the marijuana used by the registry identification cardholder is produced at a marijuana grow site where the cardholder or designated primary caregiver is not present, the person responsible for the marijuana grow site:

(a) May produce marijuana for and provide marijuana to a registry identification cardholder or that person's designated primary caregiver as authorized under this section.

(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each cardholder or caregiver for which marijuana is being produced.

(c) May produce marijuana for up to four registry identification cardholders or designated primary caregivers per year.

(d) Must obtain and display a marijuana grow site registration card issued under section 8 of this 2005 Act for each registry identification cardholder or designated primary caregiver for which marijuana is being produced.

(e) Must provide all marijuana produced for a registry identification cardholder or designated primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(f) Must return the marijuana grow site registration card to the registry identification cardholder to whom the card was issued when requested to do so by the cardholder or when the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(3) Except as provided in subsections (1) and (2) of this section, a registry identification cardholder, the designated primary caregiver of the cardholder and the person responsible for a marijuana grow site producing marijuana for the registry identification cardholder may possess a combined total of up to six mature plants and 24 ounces of usable marijuana for that registry identification cardholder.

(4)(a) A registry identification cardholder and the designated primary caregiver of the cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule of the Department of Human Services.

(b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or starts as defined by rule of the department for each registry identification cardholder for which the person responsible for the marijuana grow site is producing marijuana. + }

SECTION 10. { + A law enforcement officer who determines that a registry identification cardholder is in possession of amounts of usable marijuana or numbers of marijuana plants in excess of the amount or number authorized by section 9 of this 2005 Act may confiscate only any usable marijuana or plants that are in excess of the amount or number authorized. + }

SECTION 11. ORS 475.326 is amended to read:

475.326. No attending physician may be subjected to civil penalty or discipline by the Board of Medical Examiners for:

(1) Advising a person whom the attending physician has diagnosed as having a debilitating medical condition, or a person who the attending physician knows has been so diagnosed by another physician licensed under ORS chapter 677, about the risks and benefits of medical use of marijuana or that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, provided the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition; or

(2) Providing the written documentation necessary for issuance of a registry identification card under ORS 475.309, if the documentation is based on the attending physician's personal assessment of the applicant's medical history and current medical condition and the { + attending + } physician has discussed the potential medical risks and benefits of the medical use of marijuana with the applicant.

SECTION 12. ORS 475.319 is amended to read:

475.319. (1) Except as provided in ORS 475.316 and 475.342, it is an affirmative defense to a criminal charge of possession or production of marijuana, or any other criminal offense in which possession or production of marijuana is an element, that the person charged with the offense is a person who:

(a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest and been advised by his or her attending physician the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition;

(b) Is engaged in the medical use of marijuana; and { + (c) Possesses or produces marijuana only in amounts permitted under section 9 of this 2005 Act. + }

{ - (c) Possesses or produces marijuana only in the amounts allowed in ORS 475.306 (1), or in excess of those amounts if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's debilitating medical condition. - }

(2) It is not necessary for a person asserting an affirmative defense pursuant to this section to have received a registry identification card in order to assert the affirmative defense established in this section.

(3) No person engaged in the medical use of marijuana who claims that marijuana provides medically necessary benefits and who is charged with a crime pertaining to such use of marijuana shall be precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition, provided that the amount of marijuana at issue is no greater than permitted under { - ORS 475.306 - } { + section 9 of this 2005 Act + } and the patient has taken a substantial step to comply with the provisions of ORS 475.300 to 475.346.

(4) Any defendant proposing to use the affirmative defense provided for by this section in a criminal action shall, not less than five days before the trial of the cause, file and serve upon the district attorney a written notice of the intention to offer such a defense that specifically states the reasons why the defendant is entitled to assert and the factual basis for such affirmative defense. If the defendant fails to file and serve such notice, the defendant shall not be permitted to assert the affirmative defense at the trial of the cause unless the court for good cause orders otherwise.

SECTION 13. ORS 475.316 is amended to read:

475.316. (1) No person authorized to possess, deliver or produce marijuana for medical use pursuant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be deemed to have established an affirmative defense to criminal charges of which possession, delivery or production of marijuana is an element if the person, in connection with the facts giving rise to such charges:

(a) Drives under the influence of marijuana as provided in ORS 813.010;

(b) Engages in the medical use of marijuana in a public place as that term is defined in ORS 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth correction facility as defined in ORS 162.135 (6);

(c) Delivers marijuana to any individual who the person knows is not in possession of a registry identification card;

(d) Delivers marijuana for consideration to any individual, even if the individual is in possession of a registry identification card;

(e) Manufactures or produces marijuana at a place other than { + :

(A)(i) + } One address for property under the control of the patient { + ; + } and

{ + (ii) + } One address for property under the control of the primary caregiver of the patient that have been provided to the Department of Human Services; or

{ + (B) A marijuana grow site authorized under section 8 of this 2005 Act; or + }

(f) Manufactures or produces marijuana at more than one address.

(2) In addition to any other penalty allowed by law, a person who the department finds has willfully violated the provisions of ORS 475.300 to 475.346, or rules adopted under ORS 475.300 to 475.346, may be precluded from

obtaining or using a registry identification card for the medical use of marijuana for a period of up to six months, at the discretion of the department.

Senate Amendments (html | pdf)
A-Engrossed (html | pdf)
House Amendments to A-Engrossed (html | pdf)
B-Engrossed (html | pdf)
Conference Committee Amendments to B-Engrossed (html | pdf)
Enrolled (html | pdf) * Introduced (html | pdf)

Enrolled Senate Bill 1085 (SB 1085-BCCA)
Passed by Senate July 20, 2005; Repassed by Senate August 4, 2005
Passed by House August 2, 2005; Repassed by House August 4, 2005
Received by Governor: Approved & Filed in Office of Secretary of State:

---

sources>> visit: http://www.leg.state.or.us/searchmeas.html click on Senate Bill and enter 1085 in number field for more info.

If you have a few hours you can listen to the 6/01 hearing or others at:
http://www.leg.state.or.us/listn/listenset.ht
Click on (Date) at the bottom.

Other LINKs

Oregon governor Ted Kulongoski signed the SB 1085 amendments to the Oregon Medical Marijuana Act (OMMA), visit: http://governor.oregon.gov/Gov/action.shtml

For more information

CONTACTs:

Leland R. Berger
Attorney at Law
3527 NE 15th Ave., #103
Portland, OR 97212-2356
503-287-4688
503-287-6938 - fax
503-504-4298 - cell
lelandberger@comcast.net

Madeline Martinez from Oregon NORML

Madeline Martinez, Executive Director of Oregon NORML, at (503) 239-6110.

OMMA co-chief petitioner Dr. Rick Bayer

Oregon patients and activists (and now lobbyists)
Trista Okel and Alicia Williamson.

Trista Okel
Americans for Safe Access Oregon
503-569-3002

Laird Funk of Williams
(watchdawg)

Paul Armentano, NORML Senior Policy Analyst, at (202) 483-5500

Roger Goodman from the King County Bar Assoc. Drug policy project www.kcba.org at a nacdl/ocdla. they are working up a statewide tax and regulate initiative in WA

NEWS

www.registerguard.com | © The Register-Guard, Eugene, Oregon
July 21, 2005
Senate OKs bill clarifying medical pot
By Tim Christie
The Register-Guard

Senate Signs Off On Clarifications to Medical Marijuana Program
Associated Press| The Register Guard | 07/22/2005

http://www.dailyemerald.com/vnews/display.v/ART/2005/08/04/42f1b9812b85f
Bill adds provisions to Medical Marijuana Act
Tim O…#153;Rourke
Freelance Reporter
August 04, 2005

More LINKS

Full text of the amended legislation is available online at:
http://www.leg.state.or.us/05reg/measpdf/sb1000.dir/sb1085.en.pdf

Also thru >> http://www.leg.state.or.us/05reg/measures/sb1000.dir/sb1085.en.html

Try this link. The pdf version is a lot easier to read than the html version. http://www.leg.state.or.us/bills_laws/

See also
http://www.marijuana.com/what/Medical_marijuana

OMMP/SB1085
index.html

WHAT (IS IT)
About
#Desc
Brief Hist, What it does
Text_Latest
Text_Curr
/news

WHY
(Controversy)
#OPINs >> Issues

WHO
conx

We are preparing a series of online and offline material to inform and educate the community about SB1085. If you or your Org would like to be a Contact on an Issue or the Change in general, contact us and let us know specific contact and issue Info and which contact/issue info is Public and which is Private.

Public contact info will be included on web pages, printed material and all other lines of communication regarding this Item.

HOW
#TheProcess
/legis

WHEN
hist.html
(the LAC)

WHAT IT DOES
Facts.html
#WHAT, WHEN, WHO
(OMMP doc/stmts)
>> Items

WHAT IT MEANS
<Lee's Anal>
FAQS.html
Glossary.html
#PRMGS
>> Issues

WHAT NOW
actn.html
First ...
The OMMP
Defines and Comms to LE and Comy

>>The Committees

1085 auth'd formal comm
several were formed at last meet > other chgs!
>The Committee
Meets!

LEA; AG, DAs & Police
legal.html
(ACLU)

... then
Legis
Intv

Links.html
-text
-doc (full, n/l)
-pdf
/LIBRY

Items.html
> list <

Issues.html

>>The Committees

>The Committee

basic OMMP facts

The role of the Oregon Department of Human Services, Health Services is simply to administer the Oregon Medical Marijuana Act as approved by the voters of this State. The Department did not write the law and does not have any authority to change it or to disregard its provisions. The principal goal of the OMMP is to make the registration process work smoothly and efficiently for qualified patients.

- You must be an Oregon resident to be a registered patient in the Oregon Medical Marijuana Program (OMMP).
- You must have a qualifying debilitating medical condition as listed on the Attending Physician's Statement.
- Your physician must be a Medical Doctor (MD) or Doctor of Osteopathy (DO) licensed to practice medicine in Oregon. You must have an established patient/physician relationship with your "attending physician." Naturopaths, chiropractors, and nurse practitioners cannot sign the documentation.
- The OMMP cannot refer you to a physician. The OMMP does not have a physician referral list.
- You must list a grow site address on your application. You, or your designated primary caregiver, may grow your own medication. There is no place in the State of Oregon to legally purchase medical marijuana.
- The OMMP cannot find a designated primary caregiver for you. The OMMP does not keep a referral list of persons who want to be caregivers for patients. (You are not required to list a caregiver, unless you are less than 18 years old.) Your caregiver cannot be your physician.
- The OMMP cannot supply you with seeds or starter plants, or give you advice on how to grow medical marijuana.
- The application fee cannot be waived. Partial payments cannot be accepted.

Web sites to visit:

* 1999 Institute of Medicine/National Academy of Sciences Report **"Marijuana And Medicine: Assessing The Science Base"** By Janet E. Joy, Stanley J. Watson, Jr. And John Benson Jr., Editors. Visit:

www.nap.edu/catalog/6376.html

* A guide to OMMA and medical cannabis in general. The OMMA Web Page by Rick Bayer, MD, FACP. Visit:

www.omma1998.org

GW Pharmaceuticals Inc. * a pharmaceutical company developing a portfolio of prescription medicines derived from cannabis to meet patient needs in a wide range of therapeutic indications. Contact: Porton Down Science Park, Salisbury, Wilts, SP4 0JQ, United Kingdom * Tel: 01980 557000 * Fax: 01980 557111 * **http://www.gwpharm.com/**

Cannabis Medicine Internationale (IACM) * a scientific society advocating the improvement of the legal situation for the use of the hemp plant and its pharmacologically most important active compounds, through promotion of research and dissemination of information. Contact: IACM - Cannabis Medicine Intl * Arnimstrasse 1A, 50825 Cologne, Germany * Phone: +49-221-9543 9229 * Fax: +49-221-1300591 * **http://www.acmed.org/**

***Oregon State Activists & Orgs*:**

Alternative Medicine Outreach Program (AMOP**)** * ROSEBURG * 541.459-0542

Eugene Compassion Center 2055 W. 12th Ave., Eugene, OR 97402 * PH# (541) 484-6558 FAX (541) 484-0891 * Office Hours: Tuesday and Friday - Noon to 6pm * visit: **http://www.compassioncenter.net**

Mothers Against Misuse and Abuse (MAMA**)** * Local Patient advocacy as well as national Drug Policy Reform. * 5217 SE 28th (Steele & 28th) * Now holding clinics, contact them at **mama@mamas.org** -or- call: **503-233-4202**.

Oregon Green Free (OGF**)** * 11918 SE Division St., #122. * Portland, OR 97266 * 503.760-2671 * web: **http://www.oregongreenfree.com/**

Southern Oregon Voter Power (SOVP**)** * P.O. Box 1395 * Jacksonville, OR 97530 * 541.890-0100

The Hemp & Cannabis Foundation (THCf**)** * 4259 NE Broadway St. * PORTLAND (Hollywood dist) - call for an appointment: 503.235-4606 * **http://www.thc-foundation.org**

This information researched, prepared and presented as public service by

MERCY – the Medical Cannabis Resource Center

*** 1675 Fairgrounds Rd., Salem, Oregon, 97303 * 503.363-4588 ***

MercyCenters.org