THE MERCY NEWS REPORT

OMMP Changes

MERCYs Oregon Medical Marijuana Program Status Report

The Oregon Medical Marijuana Act was passed by Oregon voters on November 3, 1998, and went into effect on December 3, 1998. The Oregon Health Services was given the responsibility of developing a registration system for patients and caregivers by May 1, 1999.

The Oregon Medical Marijuana Program (OMMP) is a part of the Health Services division of the Oregon State Department of Human Services (DHS) and is responsible for maintaining the registration of the medical cannabis program cardholders. As stated on the About page of the OMMP website:

“On balance, the program is working better than either the proponents, or the opponents, anticipated. With larger-than-expected patient registration and physician participation, and with no wide-scale criminal abuses, it would be safe to deem the program quite successful to date. Other states (and Canada) have requested information on Oregon's program to use as a model for their own initiatives and

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SB1085 AMENDs OREGON MEDICAL MARIJUANA ACT

Limits increased, some affirmative defenses repealed, other changes enacted

SUMMARY

* Senate Bill 1085 increases mature plant limit allowed per patient from four (4) to six (6) plants.

* Increases possession amount from four (4) ounces to twenty-four (24) ounces. Mandates that a person, when transporting marijuana, must be in possession of a registration card.

* Removes “affirmative defense” for possession of marijuana in excess of allowable amounts.

* Re-defines “immature” as Plants that have no flowers and are less than 12” in height and 12” in diameter. These are also considered seedlings, starts, “clones”, etc. - and not “mature” plants and allows (18) eighteen.

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Mercy Center Hosts GlassWare Parties for Patients

Medical Cannabis Patients who utilize (plexi-) ”glass” blown pipes and hookahs have a dilemma. They can’t just go down to their local smoke shop simply ask for what they need, conversing in an intelligent manner about their specifics.

NOTE: "Smoke Shop" Protocol for Medical Cannabis Patients – Translate Buzz-words, Don’t Use Drug-Speak

Y'see, when in the store, conversations must be carefully controlled, even in the age of OMMA. Anyone heard using words like: Bong, Hash-pipe or any word that implies illegal intent in the store - could be a local LEA yokel on a boon-doggle or even a DEA agent or informant on a fishing expedition - and the owner could be fined, shut down or

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The MERCY News Report is an all-volunteer, not-for-profit project to record and broadcast news, announcements and information about medical cannabis.

For more information about the MERCY News, contact us.

Snail Mail:
**The MERCY News
1675 Fairgrounds Rd.,
Salem, Oregon, 97303
503-363-4588**

E-mail:
Mercy_Salem@hotmail.com

our WWW page:
www.MercyCenters.org

Check it out!

The MERCY News Report is produced by virtue of the expense and energy of the members and staff of MERCY, the

About MERCY

MERCY is a not-for-profit, grass roots organization founded by patients, their friends and family and other compassionate and concerned citizens in the area and is dedicated to helping and advocating for those involved with the Oregon Medical Marijuana Program (OMMP). MERCY is based in the Salem area and staffed on a volunteer basis.

The purpose is to get medicine to patients in the short-term while working with them to establish their own independent sources. To this end they provide, among other things, ongoing education to clinics, individual physicians and other healthcare providers about the OMMP, cannabis as medicine and doctor rights in general.

MERCY wants to be a strong patient advocate, which can manifest itself in a variety of ways. One of these has been maintaining lines of communication with other patient advocates and the OMMP director and workers, which we are trying to do.. At the same time we attempt Doctor education and support programs, and Patient and Caregiver projects like learning to grow and different methods for consumption. These are especially important for the first time medical cannabis user as well as those unable to apply their medication.

During the past year MERCY has assisted a number of people in getting into the OMMP as well as helping them find access to excess medicine. Through the above actions, MERCY intends to build a volunteer base for constant recruitment & administration of the organization for the future. Through marketing and communications we hope to coordinate with business and organizations to make a lasting, positive change in the community.

The mission of the organization is to help people and change the laws so that action like this isn't necessary any more. We advocate reasonable, fair and effective marijuana laws and policies, and strive to educate, register and empower voters to implement such policies. Our philosophy is one of teaching people to fish, rather than being dependent upon others. Lasting change will require that each citizen be active enough to register and effectively vote. You, and only you, the people, can make it happen. We will help in any way we can, but you have to tell us what you need. Work with us to make this your "tool shed", or resource guide, to successful medical cannabis utilization and activism.

Monthly Meetings and Office Hours

One of the missions of MERCY is to establish regular get-togethers in each community where the are (or will be!) medical cannabis patients. The purpose is to get patients networking and self-sufficient within their neighborhoods, assist those seeking information about the OMMP and pass on (or pick up!) action items of interest to the group. **Next ones happen Thursday - December 29, 2005 and January 26, 2006**

!SORRY! We REALLY do want to help everybody as much as they feel they need it. BUT the expenses of maintaining the resources - just being there - has caught up with the starting poverty level of the organizers. Therefore, a $20 Day Use fee is being instituted for use of MERCY facilities at Monthly meetings, Office hours and such. We will still accommodate the public and cardholders with their registration issues for (dumb looks still) free!, of course.

<continued from "GlassWare Party", pg 1> even jailed. No joke. Just ask Tommy Chong.

OMMA didn't fix anything in this area, it's the same old drag. SORRY! But, federal law applies, so watch yer terminology! Yep, it's a silly game we ALL must play til WE change the law.

In the meantime, GlassWare Parties are an excellent opportunity for medical cannabis patients to examine and inquire about this particular means of medicating in privacy and comfort.

For example, a GlassWare Party was arranged at the MERCY Center Sat., Jan. 28th from High Noon to 4:20pm featuring the very functional glass art of Smokin' Glass of Portland.

Smokin' Glass sells only the finest quality functional glass art and other products. Sure, WE all know what else they can be used for, but we can't talk openly about it in the store.

Cardholders were able to come preview beautiful, practical "glass" products and accessories in a nice, SAFE, friendly environment where people can discuss the FAQS openly and straightforward.

Smokin' Glass has supported individuals and groups in the medical cannabis movement since the concept began. They help as much as they can publicly, mostly by patiently educating consumers on the law when purchasing their functional glass art for use as delivery devices while giving them the best price they can. Stop on by their new location in Portland at -

1408 SE 39th, a half block north of Hawthorne up 39th, next to Jiffy Lube

- and ask about their water-pipes (NOT "bongs"!) and other functional glass pieces that OMMA cardholders may be interested in.

For more information, like to arrange your own GlassWare Party, please call MERCY at 503.363-4588

<continued from "OMMP Status Report", pg 1> registration systems. The Health Services receives regular feedback from patients who tell us that the program is working well for them." See:

http://oregon.gov/DHS/ph/ommp/about_us.shtml

On May 21, 1999, the first registration cards were issued. To date, no registered patient or caregiver has been convicted of a marijuana-related offense, and the Health Services has not revoked any issued cards. Annual renewal notices have been sent out for cards issued last May and June, and renewal applications are being sent back in.

As of December 12, 2005, there are 12,052 patients and 5,784 caregivers in the program. More than 2000 physicians are participating in the program. These physicians are Medical Doctors and Doctors of Osteopathy who are in private or group practice, or are in large Health Maintenance Organizations such as Kaiser Permanente. The program operates statewide, with registered patients from every county in Oregon.

Some STATs (Note, these as of 11/1/2005)

Number of …
…patients currently holding cards **12,040**
…caregivers holding cards for these patients
…Oregon-licensed physicians who have signed applications (MDs and DOs only) **2,049**
…new applications received (November 1, 2004 through October 31, 2005) **5,802**
…renewal applications received (November 1, 2004 through October 31, 2005) **5,978**
…pending applications on (November 1, 2005)*

* Pending applications include all new and renewal applications waiting for initial staff review after being received, "incomplete" applications, and all application files waiting for receipt of a signed and dated attending physician "verification" letter.

…patient and caregiver registry identification cards issued November 1, 2004 through October 31, 2005 **19,234**
…applications denied November 1, 2004 through October 31, 2005 **857**

Conditions. A patient may have more than one diagnosed qualifying medical condition. **Please Note secondary conditions on Form when applying!**

Condition	Count
Agitation related to Alzheimer's disease	**<50**
Cachexia	**338**
Cancer	**305**
Glaucoma	**222**
HIV+/AIDS	**274**
Nausea	**2,355**
Severe Pain	**10,525**
Seizures, including but not limited to epilepsy	
Persistent muscle spasms, including but not limited to those caused by multiple sclerosis	**2,982**

Number of patient cardholders per County*

County	Count
Benton	**146**
Clackamas	**820**
Clatsop	**113**
Columbia	**198**
Coos	**598**
Curry	**287**
Deschutes	**282**
Douglas	**1,039**
Hood River	**81**
Jackson	**1,029**
Josephine	**742**
Klamath	**225**
Lane	**1,590**
Lincoln	**288**
Linn	**297**
Marion	**509**
Multnomah	**1,951**
Polk	**148**
Tillamook	**221**
Umatilla	**56**
Union	**67**
Wasco	**90**
Washington	**825**
Yamhill	**183**

Combined total patient cardholder count for: Baker, Crook, Gilliam, Grant, Harney, Jefferson, Lake, Malheur, Morrow, Sherman, Wallowa, and Wheeler Counties. **255**

*NOTEs: To protect the confidentiality of patients, the responses for these counties have been combined. In a few instances, to protect the confidentiality of patients, the response given is "< 50." These practices are consistent with DHS policy and HIPAA requirements. These Oregon Medical Marijuana Program (OMMP) Statistics data are as of November 1, 2005. Source (Online): **http://oregon.gov/DHS/ph/ommp/data.shtml** Data will be updated and posted on this website every quarter. You can download a print version of the OMMP Data Update (pdf)

All patient and physician names and records are maintained in confidential files and a database. However, as outlined in the Act, state and local law enforcement may contact the Health Services to verify if a person is registered with the program. Law enforcement personnel must provide a specific name or address, and the Health Services may verify if the person is registered, or has an application pending. See also 24 x 7 item.

QUALIFYING CONDITIONS

In addition to administering the registration system, the Health Services was charged with accepting petitions to add conditions to the list of qualifying conditions/symptoms covered in the original Act. During the past year, the Division received petitions to add anxiety, depression, bipolar disorder, schizophrenia, adult attention-deficit disorder (ADD), sleep disorder, and post-traumatic stress disorder (PTSD) to the list of qualifying conditions. A panel of physicians, nurses, and patient advocates held meetings to consider these conditions, and made recommendations to the State Health Officer, Dr. Grant Higginson. The results were announced at the December 2005 Quarterly meeting. Unfortunately, all the petitions were summarily denied.

OMMP Director Dr. Higginson stated that it was his decision not to go forward with initiating a review panel for adding additional medical conditions and that the decision to discontinue the process to add six new conditions was made after receiving input from medical experts who felt there was insufficient methodologically sound evidence to support the inclusion of these conditions or that there were conflicting findings found in the research. Patients and advocates requested full information on specifics of study and rejection.

ADDING ADDITIONAL MEDICAL CONDITIONS

Ed Glick, a registered Nurse and Contigo-Comingo patient advocacy group representative, who submitted the petition, stated that the process was not transparent as who was evaluating the petition and he was not contacted for the raw data and to verify the data and information presented. He would like a more specific response regarding the persons evaluating the petition for who they are and their qualifications and purpose. Mr. Glick requested the letters and responses regarding the mental expert's assessments and conclusions. The response was that any concerns regarding the decision from the mental health experts needs to be addressed to Dr. Higginson in writing.

The last condition to be added was agitation due to Alzheimer's and is the only mental health related item currently allowed. MERCY will follow up on this issue and do our best to determine the specifics of the most recent petition as well as document the procedure in general, including the survey processes involved.

SURVEY COMMITTEE

There were questions if the program was monitoring patients and what the program is doing to provide statistics to the public. Dr. Higginson stated the program was not monitoring and does not see it happening in the near future. The department's position is to administer a registration program; conducting survey information is not part of running the program. A study can be proposed from an outside group using non-identifying client information. If the study includes calling clients; additionally, it would need to go through an institutional review board process.

PLEASE note secondary conditions on your application!

In the past a survey committee was discussed, the question is if one should be created. The committee will be charged with gathering additional data of issues regarding secondary conditions that are not listed as qualifying medical conditions and encountered barriers with physicians, caregivers, and medicine.

There are still some barriers to participation in the program. Some doctors are still reluctant to allow their patients to participate, fearing federal reprisals. Some patients are unable to grow medical marijuana at their homes, or find a caregiver to grow for them.

FEE INCREASE

Fee Increase Options were decided by group. It was decided to select the plan that kept the OHP/SSI fee at $20. A commitment was made to review every six months. A fee workgroup committee was formed to look into other areas where patients may qualify for the reduced fee.

REDUCED FEE GROUP FINDINGS

Committee was formed to study adding to the list of qualifying conditions for the Reduced Fee of $20, currently applied to those who meet the requirements for SSI (Supplementary Social Security Income) or OHP (Oregon Health Plan). The fee workgroup explored need-based options that are easy to verify, such as food stamps, veteran's benefits, low-income housing, and Social Security Disability Insurance (SSDI). Proof of food stamp eligibility was recommended by the group to qualify for the reduced fee and asked if it is possible to rewrite it with the new Administrative Rules. The group will continue to examine other possible programs that could be used for eligibility proof for the reduced fee.

Concerning Suggestions for also allowing those who qualify for Veterans benefits and Low Income Housing. It was too difficult to isolate need / proof for the Veterans or Housing groups at this time. But, Food Stamps had none of these issues and was ok'd by the committee. Prior to adding it, a financial impact analysis must be done and a request was made of Budget (Chris G.) to do so. No timeline on this yet.

Quarterly Meetings Hosted By OMMP

The Oregon Medical Marijuana Program provides an opportunity for public to discuss administrative issues with the OMMP management. The OMMP Quarterly meetings are typically held at the Salem or Portland office every 3 months. To discuss or propose changes one can attend these public meetings. The MERCY News Report will endeavor to get copies of all documents and stuff from the meetings, post in our online library, print out and otherwise Keep you in the loop! - as we can(!) You can also keep up on Public Meeting Notices by visiting the OMMP website at:

http://oregon.gov/DHS/ph/ommp/

The last was on December 14, 2005 from 9:00 AM to 12:00 PM and was held at Winema Place, 4074 Winema NE, Bldg 53, Salem OR 97305 in Room 227/228, the usual site for Salem meetings of the Oregon Medical Marijuana Program Advisory WorkGroup, Advisory Committee on Medical Marijuana (ACMM) and such. NEXT MEETING March 23, 2006, 9:00 a.m. to 12:00 p.m. at the Portland State Office Building, 800 NE Oregon Street, Suite 120C, Portland, OR 97232 – the usual Portland location – and is specifically for the ACMM.

The meeting was facilitated by Dr. Grant Higginson, Oregon State Health Officer. Dr. Higginson reports to the Public Health director, Susan Allen, who reports to the Director of DHS, Bruce Goldberg. Also participating were DHS employees Pam Salsbury, Christian Grorud, and numerous representatives from patient advocacy groups, other agencies – including law enforcement – as well as individual citizen-patients with questions and comments. Handouts have been archived on the MERCY website (MercyCenters.org)

PROGRAM MANAGER UPDATE

Patti Gustafson is no longer the Program Manager. Due to the history of recruiting difficulties, Pamela Salsbury will have a trial period as the OMMP manager. Due to her previous experience filling in it is not expected to take long to make it permanent. Internal shifting will help cover management responsibilities as Ms. Salsbury officially assumes more of the role as the Program Manager; an Office Specialist 2 will take on Office Management roles, and an individual with Juris Doctorate (JD) to work on the legal work of the program. Dr. Higginson will remain involved in management issues. With this shifting, a workable situation can succeed.

PROGRAM STAFFING UPDATE / PROCESSING TIMES

Currently, there are eight staff members, Office Specialist 1 and Office Specialist 2. The two vacant positions cannot be filled until the hiring freeze is lifted.

As of December 12, 2005, there are 12,052 patients and 5,784 caregivers in the program. Application processing times remain very rapid. Application goes from creation to incomplete in one day. From the date a complete application is received and a complete letter is sent is two days. From the date an application is received and cards have been issued is around ten days.

* The Program offices are Moving to 2nd floor of Portland State building on Oregon Street. Following the move there should be a reception area and means for patients – and those who care about & for them – to get forms, information and, potentially, resolve issues. The end result should be more people getting their Cards – and subsequent freedom from pain and fear – sooner. The reception area where patients are able to come into the office will not start construction until February 2006. A solid wall must be constructed separate from the office for confidentiality reasons. The plan will not only service clients better, but it will allow clients to come in to the office, submit applications and payments directly to the OMMP, rather than the Cashier's Office, and the applications will be processed quicker. There will be a ten-day hold on applications paid with a personal check payment.

* Phones. Be Patient! This involving changes in phone system. Call times now – x to x; were reduced to free staff to decrease turn-around time for cards. The turn-around – Card issued and out the door - is appx. 10 days.

GROW SITE REGISTRATION

Card machine and new Cards for PRMGS due to SB1085 changes. Cards must be issued for new group, the PRMGS. Manager (Pam) estimates 30,000 cards need to be issued, so going to take a while. Also, database changes needed. No timeline yet established.

* **New forms, etc.** for CardHolder type – PRMGS (Persons Responsible For Grow Site). Criminal background check form, policies and procedures needs to be developed, produced and distributed. Instructions, documentation and training also involved.

* **The OMMP expects a backlog after January 1, 2006 due to the many changes and is asking for patience.** The OMMP is still working on application forms, FAQ, and basic facts; which depend on the rules regarding criminal background checks for the PRMGS. Until decisions have been made, the application packets cannot be distributed.

Ms. Salsbury informed the work process of the grower card, with the requirements of 1085. The plan is provide a card and a placard with a seal for the grow site location, without posting names and the actual location. The process is to link the cards to the database and LEDS, finding a balance of providing information and confidentiality.

* **Technology.** Web and database changes are needed. The website needs to be altered to reflect changes effective Jan. 1st. The database needs adjustment to handle new PRMGS and LEDS functional logic elements. No details yet on resources available or timeline on these items. The Program has contingency plans in case these objects aren't ready when needed.

MM HANDBOOK AND WEBSITE

The handbook is still in the process of development as proper numbering and sections need attention, with the new provisions from 1085 to be added. The handbook informs of basic provisions, such as the amounts and basic how to.

Ms. Salsbury explained that the handbook has been edited through DHS to amend information as if it were from the department, to remain neutral. With an edited version that DHS has approved, a committee was formed to examine the DHS approved version

The handbook has been updated using the proposed administrative rules and a copy will be provided to Ms. Salsbury to review for any changes that need to be made; after the administrative rule hearing is finalized, the handbook will be updated

and provided to the Handbook Committee to review. Although the Handbook Committee has not met, the handbook is in process.

LEGAL QUESTIONS

Grant Higginson introduced Shannon O'Fallon as the new Assistant Attorney General, working full-time for Public Health within the Department of Human Services. A number of legal questions have already been addressed to Ms. O'Fallon.

Can a grow site be split between a patient, caregiver, and person responsible for grow site. The department's interpretation clearly states that only one grow site will be registered and recorded.

The question of plant definition to be addressed with the advisory administrative rules committee.

The placard will state the patient's card number and date of birth, caregiver card number and caregiver date of birth, if applicable, and person responsible for the grow site name and address.

The application packets are complete, except for the criminal background check. The statute says the program will run criminal background checks, however it does not give the program the statutory authority to do so.

Changes & How To

MERCY will make an effort to document processes and procedures for effecting Program changes.

1. WHO. Who to submit to, who decides, who notifies. All contacts.
2. FORMs & INSTRUCTIONs. Forms needed, if any. Instructions. What data elements (bits of info, "fields") involved and any logical notes (rules) attached to them.
3. WHEN. Timing issues; When accepted or due, how long things take, any related group meeting schedules.

Also, specifically, How To –

- **Petition process.** To add conditions.
- **To add NP or Naturopaths.** Other changes thru Rules Change process.
- **Rule Change process.** To codify or alter Oregon Administrative Rules (OAR) text.
- **Legislative process(es).** To alter OMMA (Oregon Medical Marijuana Act) text which then effects OAR text.
- **Initiative process.** To also alter OMMA text which then effects OAR text.

<continued from "OMMA Amended", pg 1>

* Limits the number of patients, for whom a grower can grow marijuana, at a "multiple patient" grow site, to four (4) patients. Formerly there was no limit.

* Establishes a "grow site registration system" to authorize the production of marijuana at a third party location.

* Mandates "24x7" system to provide law enforcement with a verification process that permits access to information twenty-four (24) hours per day, seven (7) days per week.

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

* 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.

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

* Creates an advisory committee on medical marijuana (ACMM) to replace an existing administrative work group (AWG).

More on Senate Bill 1085

Senate Bill 1085 passed by the legislature in 2005 session took effect Jan. 1st, 2006. At the December Quarterly meeting the proposed OAR text was reviewed and commented on. It was suggested that issues with the changes be brought – in writing – to the Dec. 22nd hearing that was to be held.

One thing that the Program wants to share with cardholders regarding the statute that states that a grower may only grow for four people per year. You will notice that OAR 333-008-0025(10) states that a person responsible for a grow site may grow for four patients or caregivers <u>at any one time.</u> There was enough documentation of the legislative intent that their purpose was not meant to limit growers to 4 persons per year.

Oregon Administrative Rules (OAR) for SB 1085

The OAR is basically the text of the Act (OMMA) from the legislature translated into rules for the worker bees in the Program to follow. See our latest version of the text at:

http://mercycenters.org/ommp/libry/OARs_333-008.htm

There was a public hearing for OMMP Administrative Rule changes on December 22, 2005 in Keizer, Oregon. Shannon O'Fallon, Assistant Attorney General, cautioned the group to not only express suggestions and changes to the rules at workgroup meetings, but also to submit suggestions, comments, and concerns to the Department in writing for the rules hearing that took place Dec. 22. However, it was noted that the rule making hearing is not the time to pronounce changes to the rules, but to take written and oral testimonies and comments concerning proposed changes. No definitive word yet on exactly what, when, where and how these proposals are supposed to be accomplished. MERCY will keep at it.

Section 21, describing "seedling" or starter plant. It was noted the mature plant definition is problematic and inconsistent; there are three stages of a marijuana plant, but only two are recognized. Insistence upon combined parameters of 12 inches of height **and** flowering not realistic or practical and a request to remove portion of text requiring all requirements was made. Portland-area attorney Leland Berger spoke up for patients and caregivers effected by this issue and was informed to make this request formally and in writing at the Dec. 22 Rules Hearing. It was pointed out to the rules hearing officer to no effect.

The bottom line is that if/when your plant is more than 12 inches high it's no longer considered "immature" and must be considered part of your six (6) mature plant limit. No word yet on if/how to rectify this particular idiocy. MERCY will follow up on this item and especially broadcast any relevant action ideas or activities. Also …

Section 17, describing Primary Care Physician. There was concern attending physicians at clinics will not be able to operate under the proposed 333-008-0010(17)(c) *"and"* on pg. 5 in the Administrative Rule hearing handout and requests to change *"and"* to *"or"*. There was an argument put forth that the American Board of Medical Specialists is outdated, delayed, and does not recognize physicians who specialize in medical marijuana.

The concern was about interpretation, that consulting specialist utilized by patient co-ops would have to be referred to by the patients initial Primary Care Physician that failed to fulfill the patient needs in the first place. Statement by Director was to the effect that he did not interpret it that way.

Dr. Higginson's understanding of the "Primary Responsibility" was explained as requiring an attending physician who must provide primary health care to the patient, medical specialty care, or a consultant who has been asked to provide specialty care by the physician; the physician must be providing one of the aforementioned types of cares. Additionally, the physician must review the patient's medical records, perform a physical examination, and plan to provide follow-up care. Physicians who operate with the clinics should not be affected, if they provide primary health care, review of medical records, physical examination, and plan for follow-up care in a written statement.

The patient should determine what primary heath care is, from 333-008-0010(17)(A) "*to the patient*", and list the physician they consider who provides primary health care.

Dr. Bayer – a noted physician and patient advocate - requested this be noted in the minutes and suggested that the rule be codified in case the Director was not available to insure a proper interpretation. Individuals and groups in agreement with this proposal were directed to the change request process. MERCY will follow up and document this as best we can.

Also, **New Registration Application and Verification section, after 24.** Clarification for 333-008-0020(4) was given, the OMMP will verify information on applications, but not all steps for contacting and verifying are required. Sub-section 4 text implies all steps required which is un-true as well as costly.

24-HOUR LEDS VERIFICATION UPDATE

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. Ms. Salsbury reported the program is actively working on it, even though it is required by January 1, 2006, it seems doubtful "24/7" will be ready by then.

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

The terminal connection is completed; yet, the testing portions have not been completed. There is a standstill between DHS and Oregon State Police (OSP) regarding the Memorandum of Understanding. Working with OIS, the memorandum is nearly finished. LE is also communicating with OIS and the testing will be done through the OMMP.

Also, Database changes need to happen in conjunction with this system feature and allocation of system resources not yet complete. While there is not a definite timeline for all the components, the program has contingency plans involving manual procedures until the automated systems come online. The OMMP intends to be confident in "24/7" producing accurate and complete information before it is made ready for tests and LE.

Security and confidentiality issues were raised and answered at the December Quarterly meeting. First, the communications lines involved are secure connections – even the remote ones - and prohibit potential thieves from accessing address information.

Second, LE is aware of the requirement to keep inquiry and verification information confidential. The program is mandated to allow LE to verify; the information LE receives from the OMMP is "yes" or "no" only. It was clarified that LE does not have access to the OMMP database and cannot go through the system to create any lists.

The use of 24/7 is for verification purposes and responsibility to create a log that the OMMP can verify to ensure the persons using the system are logged. There will be an audit reporting system in place to alert administrators to "phishing" for information or other abuses by police or others authorized to inquire. "Phishing" refers to gathering of confidential information under the color of authority and would apply to any law enforcement official or group who tried to build a list of cardholders for harassment or any other unwarranted purpose.

There will be a log created to track those using the system, such as a badge number or agency. If it appears LE are searching for information, the OMMP will be notified. The OMMP is trying to make the system that is easy to use for LE while protecting patients, caregivers, and persons responsible for grow site.

There does appear to be some potential equipment and training issues. Not all vehicles have a LEDS unit and announcing the garden address over the radio would be tantamount to publishing in the local newspaper, in some circles.

There will be two phases with "24/7". In the first phase, the OSP will have access via client's card number, full name, and date of birth. Due to technical script language with spaces there will be a second phase where address verification is added.

If the grow site is in a rural area, how will the physical location be checked in "24/7"? It was agreed the grow site location listed on the application should be the address patients tell LE. The topic of using GPS coordinates, tax lots, and rural properties will be addressed later when more technical issues are smoothed out.

The ADVISORY COMMITTEE ON MEDICAL MARIJUANA (ACMM)

Senate Bill 1085 mandated the creation of an Advisory Committee on Medical Marijuana to replace the existing Administrative Work Group, that is, 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 registry identification cards and advocates of the Oregon Medical Marijuana Act.' The most salient feature of this section is that no one who opposes the OMMA is on the committee.

The Advisory Committee was defined in assisting with administrative aspects, administrative rules, and fee structure. The department will continue to provide support for the effectiveness of committees. The authority of the Advisory Committee will stem from the charter and bylaws, but being an advisory committee, is without state level authority. The director can 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.

Irrespective of whomever is appointed to the Advisory Committee, Dr. Higginson (our state health officer) will undoubtedly allow all to participate. As the director he 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.

The Program will recommend 20 qualified candidates who indicate a group representing a broad constituency and the Director of DHS (Bruce Goldberg) will select the 11-member board from this pool. Interested candidates were to submit a brief explanation why they want to participate on the ACMM and their qualifications to be on ACMM to the OMMP - attn Pam Salsbury - via mail, fax, or email. Individuals can also recommend and suggest others for the ACMM. The list of candidates will be submitted to the H.S. Director (Bruce G.), who will complete the selection process.

This committee will have its first meeting Thursday, March 23, 2006 at 9:00 AM – 12:00 PM at the Portland State Office Building in Suite 120C. ACMM Bylaws have been published by the OMMP and are available at:

http://mercycenters.org/ommp/libry/Bylaws-ACMM-Draft.htm

A Section-By-Section Analysis of SB1085

by Leland R. Berger, esq.

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.

*** About the author:** 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 F**unk (Volunteer Lobbyist)

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Contacting the OHD/OMMP**:**

Oregon (Dept. of Human Resources) Health Division,
Oregon Medical Marijuana Program
800 NE Oregon Street, #21
Portland, OR 97232-2162
Mail: DHS/OMMP
PO Box 14450
Portland, OR 97293-0450
Phone: 971-673-1226
Hours of Operation: 8:00 AM - 5:00 PM
Fax: 971-673-1278
e-mail: **OMMP.QA@state.or.us**
WEBSITE: **http://oregon.gov/DHS/ph/ommp/**