

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1300 J STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
(916) 445-9555

FACSIMILE: (916) 324-2960  
(916) 324-5169

PROPOSITION 215: UPDATE #1

DATE: January 25, 1997

- ◆ People v. Martinez and Miller  
Sonoma County Municipal Court (MCR 276260)  
Chief Deputy District Attorney Kathy DeLoe (707) 527-2311  
December 17, 1996

In this case the defendants sought: (1) a subpoena for the county sheriff; (2) a protective order precluding disclosure of the identity of the recommending physician or, in the alternative, an in camera hearing exclusive of the prosecution (which could submit questions); and (3) a continuance pending legislation to provide greater protection for physicians.

The court heard the case on December 17th. The subpoena for the sheriff was quashed. The court held that all the initiative did was establish an affirmative defense. The court denied use of either the protective order or the in camera procedure.

Defendants expressed a desire to seek appellate relief, no appeal has been filed yet.

- ◆ People v. Dennis Peron, Beth Moore, et al.  
Alameda County Superior Court (Sup. Ct. No. 128473-A-F)  
Senior Assistant Attorney General Ron Bass/(415) 356-6185  
Deputy Attorney General Mark Howell/(415) 356-6238  
December 17, 1996

The defendants moved to change venue from Alameda County to San Francisco. Their motion was denied. The next hearing in the case is a 995 motion scheduled for February 27, 1997.

- ◆ People v. Dennis Peron and Beth Moore, et al.  
San Francisco County Superior Court (Sup. Ct. No. 980105)  
Senior Assistant Attorney General John Gordnier  
(916) 324-5169  
Deputy Attorney General Jane Zack Simon (415) 356-6286  
Deputy Attorney General Larry Mercer (415) 356-6259  
January 9, 1997

PROPOSITION 215: UPDATE #1

DATE: January 25, 1997

The case was on calendar for the purpose of hearing the defendants' motion to vacate the injunction preventing defendants from operating a buyers club. The court refused to vacate the injunction which precludes sale, distribution or possession for sale; however, the court did indicate the intention to modify the injunction to permit both defendants to exercise the "rights" of patients and caregivers extended by Proposition 215.

The People offered an order which would forbid the re-opening of any club because such an operation would not fall within the definition of "primary caregiver" (section 11362.5(e)). The court refused. While the court acknowledged the use of the word "individual" generally meant a single person, the judge was not prepared to say that a true cooperative could not fall within the definition.

The judge also refused to prospectively conclude the defendants would not comply with section 11362.5 based on literature they had disseminated which reflected an intention to make a profit.

The court emphasized that any profit making enterprise would fall within Health and Safety Code section 11360 and/or other sections and was not what was contemplated by his order.

The People will seek a writ reviewing the court's construction of the definition of primary caregiver. In the meantime, the club re-opened as the Cannabis Cultivator's Cooperative on January 15, 1997.