



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

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

PROPOSITION 215: UPDATE #8

DATE: September, 22, 1997

◆ People v. Dennis Peron, Beth Moore, et al.
Alameda County

Senior Assistant Attorney General Ron Bass (415) 356-6185

In this case the management of the Cannabis Buyers' Club are being prosecuted for sale related offenses. This case arose before passage of Proposition 215.

Hearings on the indictment (a 995 and discriminatory prosecution motion) occurred on April 14, 1997. On May 12, 1997, Judge Goodman in a twenty-five page written opinion denied both the 995 and discriminatory prosecution motions.

Defendants took various issues to the appellate court through the Penal Code section 999a procedure. The court asked the prosecution to respond to this motion by June 16, 1997. On July 2, 1997, the Court of Appeals denied the writ and the requested stay.

The trial court denied the "vicinage" motion. The court has asked to parties to appear on October 16, 1997, to speak to concerns about forum shopping.

◆ People v. Dennis Peron and Beth Moore

San Francisco City and County

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

The People had successfully enjoined the operation of a buyers' club prior to the passage of Proposition 215. In January, 1997, the trial judge modified the injunction to permit the club to operate provided it made no net profit.

The People filed a request for writ of mandamus from the superior court ruling modifying the injunction against operation of a buyers' club. This writ was filed February 14, 1997. On March 3, 1997, the Court of Appeals denied the writ, but invited an

appeal from the court's order of modification. Notice of appeal was filed March 7, 1997. Appellant's opening brief was filed on April 18, 1997. Argument has been scheduled for September 29, 1997.

On April 18, 1997, the superior court heard defendant's Motion to Advance the trial date on the permanent injunction. A date of August 18, 1997, was set for trial. The People argued the case should be continued pending the appellate court's decision. Defendant opposed the continuance and the matter was assigned for trial. After two days of losing various motions, including a motion to amend the answer, the defense requested a continuance. The case was ordered off calendar. Defendant's motion to amend the answer was heard on September 11, 1997, and denied. The People have filed a motion to modify the January modification in light of *Trippet*. This matter will be heard on October 2, 1997.

◆ People v. Gibson, et al.

Mariposa County

Deputy District Attorney Quinn Baranski (209) 966-3626

This case involves charges of possession and possession for sale. A motion to remand for further proceedings in the municipal court was made and granted. The theory of the motion was that because the preliminary hearing had occurred before Proposition 215 the defendants had been deprived of their right to present the affirmative defense at that hearing. When the parties appeared a dispute over the nature of the hearing arose between the court and defense counsel. The result was a motion to disqualify under C.C.P. 170.5.

Preliminary hearing occurred on June 23, 1997. Defendant called a physician witness [Doctor Schoenfeld ("Dr. Hipp")] who attempted to offer an opinion about the need to use marijuana as medicine. Defendant was bound over for trial. Arraignment occurred July 17, 1997. Motions (including PC995 and PC1538.5 motions) were set in Superior Court for Wednesday, October 1, 1997.

◆ People v. King

Tulare County

Deputy District Attorney Douglas Squires (209) 733-6411

Cultivation of a significant (thirty mature plants) controlled grow case. A search warrant was served, the defendant was observed involved in acts consistent with cultivation. Defendant has cancer. This case arose before the passage of Proposition 215.

Attorney Logan has stated his intention to raise Health and Safety Code section 11362.5 as a bar to the prosecution. In the

alternative he has stated that he will assert the affirmative defense.

The case is scheduled for preliminary hearing setting on December 4, 1997. Defendant is dying of cancer.

◆ People v. Norris and Gamble
Madera County
Deputy District Attorney Mike Keitz (209) 675-7940

These two defendants are charged with violation of Health and Safety Code section 11359 (as well as weapons counts and resisting arrest). Preliminary hearing occurred on April 18, 1997. Both defendants were held to answer, no affirmative defense was offered. Superior Court trial date is presently set for October 7, 1997.

The defense has stated its intention to have Dr. Eugene Schoenfeld testify. Dr. Schoenfeld who is the former author of "Dr. Hipp" newsletters provided his resume to the district attorney.

◆ People v. Webb
Yuba County
District Attorney Charles O'Rourke (916) 741-6201

In this case, a traffic stop revealed that both the driver (defendant Jeffery Webb) and the other adult in the car (Mrs. Webb) were in Vehicle Code section 14601 status so the car was to be towed. Defendant volunteered to the officer that there was marijuana in the vehicle. The quantity was approximately two ounces. Both Webbs were carrying cards issued by the Cannabis Buyers' Club on April 4, 1997. They claimed to be caregivers making a delivery.

Mr. Webb was arrested, subsequently charged with transportation and possession for sale. The district attorney amended the complaint to include Mrs. Webb.

On August 21, 1997, defendants asked to be permitted to proceed "in propria persona," the motion was granted. A pre-hearing conference is scheduled for September 11, 1997. Preliminary Hearing was held September 12, 1997. Mr. Webb was bound over Superior Court. Mrs. Webb's Preliminary hearing is scheduled for October 2, 1997.

- ◆ People v. Poltorak
Santa Clara County
Deputy District Attorney Steve Fein (408) 792-2789

The defendant presented a forged prescription (the prescription pad had been stolen from an ophthalmologist's office) which stated he should receive "cannabis for glaucoma." The club at which the prescription was presented was suspicious and contacted the police.

Poltorak has been charged with violation of Business and Professions Code section 4324(a). He turned himself in, was arraigned and had a preliminary hearing July 29, 1997. After the evidence had been presented, the magistrate reduced the charge to a misdemeanor. Defendant entered a plea of guilty. He is scheduled to be sentenced on September 30, 1997.

- ◆ People v. Trippet
Contra Costa County conviction
First District Court of Appeals, Division Two
Deputy Attorney General Clifford Thompson (415) 356-6241

The official citation to this case is: *People v. Trippet* (1997) 56 Cal.App.4th 1532. On September 5, 1997, the District Court of Appeals issued a modification of its opinion. This modification (see Appendix 1) made it very clear that Health and Safety Code section 11362.5 "provides a limited affirmative defense" and nothing more. The court also denied each party's request for re-hearing

- ◆ Conant, et al. v. McCaffrey, et al.
United States District Court, Northern District
Assistant United States Attorney Derrick Watson (415) 436-7073

In this class action seeking declaratory and injunctive relief several physicians advanced a first amendment theory seeking to prevent the federal agencies from acting to discipline them for recommending use of marijuana. An amended complaint was filed alleging lack of statutory authority. A hearing on the issues of preliminary injunction and the certification of the class occurred on April 11, 1997.

At the hearing, Judge Fern Smith granted a temporary restraining order precluding the federal government from taking action against any doctors. The parties were directed to attempt to negotiate a resolution of the litigation. The attempt failed.

On April 30th, Judge Smith issued an order granting the preliminary injunction sought by the plaintiffs. At the June 29th status conference the court provided a schedule for

discovery and proceedings by way of summary judgement. The schedule runs from August 1, 1997, through May 15, 1998. A hearing regarding attorneys' fees was held September 5, 1997. The Judge issued an order awarding 50% (\$95,568.48) attorneys' fees and all costs (\$17,961.64). The total received from EAJA is \$113,530.12. Plaintiff previously received a grant from the Drug Policy Foundation in the amount of \$135,000. Parties are exchanging discovery at this time and will meet and confer.

◆ United States v. Maughs, Harrell, Pearce, Marshall, Aurelio and Navarro

United States District Court, Eastern District
Nancy Simpson, Assistant U. S. Attorney (916) 554-2729

This case involves Navarro, as the president of the Redding Cannabis Cultivator's Club, contracting with the other defendants to grow marijuana. The Siskiyou County Sheriff's Office served search warrants on the "grow" which was posted as the Club's property, and seized twelve hundred fifty plants in various stages of growth.

All of the defendants have been charged with conspiracy to manufacture (cultivate) and with a second count of manufacturing (cultivation). Maughs is also charged with possession of methamphetamine.

Four of the defendants (Maughs, Harrell, Pearce and Marshall) were at the grow location. A fifth, Aurelio, was arrested at a home she and Maughs shared, another two hundred fifty plants were found at that location. The grand jury indicted all defendants except Navarro on May 8, 1997.

As to the indicted defendants, a briefing schedule that closed September 5, 1997, was established. An evidentiary hearing will occur on September 23, 1997. The two motions before the court are a motion to dismiss and a motion to suppress. Navarro's case was dismissed on August 25, 1997, because of his very serious medical condition.

◆ Matter of Dunaway

Orange County
Deputy County Counsel Wanda Florence (714) 834-3943

Mr. Dunaway was a county employee who was discharged from his job after he tested positive for marijuana. The matter is currently the subject of arbitration and, therefore, cannot be discussed in detail by County Counsel.

Dunaway has filed a claim asserting that he ingested marijuana as a result of discussion with a physician in an effort to ameliorate glaucoma. According to the claim, Dunaway, a heavy equipment operator, had sought and been denied accommodation.

Arbitration of this case scheduled for September 23, 1997, was cancelled. Trial of the case is not presently scheduled.

◆ Legislation Introduced by State Senator John Vascancellos (S.B. 535)

After agreement was reached with the University of California over certain language and "mechanical" issues (see Appendix 2, a copy of the most recent - September 5, 1997 - version), the bill went to the Assembly floor. Unfortunately it became the victim of partisan politics and was not approved by the Assembly.

This does not "kill" the legislation, instead it becomes a "two year" bill which may be considered when the Legislature reconvenes in January, 1998.

◆ Legislation Introduced by Assemblyman Margette

This legislation also seeks to amend Health and Safety Code section 11362.5. The Attorney General has sent an opposition letter based on the constitutional limitation of amendment of an initiative statute. This legislation is not moving through the process at this time.

◆ San Jose City Ordinance
Senior Deputy City Manager Carl Mitchell (408) 277-2419

San Jose continues to permit the operation of one club under emergency ordinance.

◆ Accusation Against Doctor Newport
Deputy Attorney General Jane Zack Simon (415) 356-6286

This disciplinary action is presently pending before the Board of Medical Examiners. Insofar as relevant to Proposition 215, the accusation is in three parts: (1) a departure from standards of practice to prescribe marijuana for a patient with the specific mental illness involved in this instance; (2) a departure from standards for failure to conduct a good faith examination prior to making the prescription; and (3) a departure from standards for failure to formulate a treatment plan or schedule follow-up visits.

Stipulation has been reached but has not yet been adopted.

No hearing date is presently scheduled.

- ◆ United States v. McCormick, Hermes, Zygott, Boje and Evanquelier
Central District of California
A.S.U.A. Fernando Aenlle-Rocha (213) 894-2481

This case was publicized as the "Marijuana Mansion" case. The Los Angeles Sheriff's Office served a search warrant on the home and seized approximately 4,000 plants. McCormick's bail was set at \$500,000, it was arranged by actor Woody Harrelson. The remaining four defendants each have posted their lesser bond amounts.

All five are charged in a complaint alleging as Count 1: Conspiracy to manufacture; and, as Count 2, Conspiracy to possess and distribute an amount in excess of one thousand plants. The time for preliminary hearing was waived by all defendants on July 30, 1997. At present there is nothing new to report.

- ◆ People v. Ager
Marin County District Attorney
Deputy District Attorney Teresa Leon (415) 499-6450

This case was a felony cultivation trial. Defendant, a podiatrist, was charged with cultivation of one hundred thirty-seven plants. The case was submitted to a jury which deadlocked ten to two in favor of conviction. Doctor Ager defended on the basis that his cultivation was excused by operation of Proposition 215.

A copy of the instruction given to the jury regarding the affirmative defense is attached (see Appendix 3). The District Attorney has decided to re-try the case. Trial is set for January 15, 1998.

- ◆ People v. Enos
Nevada County District Attorney
Deputy District Attorney Kathryn Kull (916) 265-1301

The defendant's home was the location to which the local fire department responded. It seems that the electrical meter by-pass used to support his ninety-one plant indoor grow had ignited. After law enforcement arrived, the defendant informed them that he was a caregiver who also used and sold. He was unable to recall his physician's name. He asserted he had a contract with the Cannabis Cultivator's Club to grow and furnish for them. His contract was verbal and the most specificity he was able to provide was that it was with "someone at CBC."

Preliminary hearing setting is scheduled for September 25, 1997.

If you have any items of general interest, please notify:

John Gordnier
Senior Assistant Attorney General
Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5169
Facsimile: (916) 324-5169

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CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

C. Thompson

FILED
Court of Appeal, First App. Dist.

SEP - 5 1997

RON D. BARKOW, CLERK
By _____ DEPUTY

THE PEOPLE,
Plaintiff and Respondent,
v.
SUDI PEBBLES TRIPPET,
Defendant and Appellant.

DOCKET
ADMS-SP
CR. S. *10/19/96*
Entered by *[Signature]*
Date *10/19/96*

A073484

(Contra Costa County
Super. Ct. No. 950331-9)

BY THE COURT:

It is ordered that the opinion filed herein on August 15, 1997, be modified in the following particulars:

1. A new footnote is to be added on page 20 at the end of the first full paragraph under the heading "DISPOSITION" and after the word "usage." The footnote should read as follows:
"Because the statute provides a limited affirmative defense, the burden is, of course, on the defendant to raise the defense and prove its elements. (See *People v. Cardenas* (1997) 53 Cal.App.4th 240, 244-246, and cases cited therein.)"
2. In the last line on page 18, the word "infer" should be inserted in lieu of the word "imply."

These modifications do not effect a change in the judgment.
The petitions for rehearing are denied.

SEP 5 1997

KLINE, P.J.

Kline, P.J.

AMENDED IN ASSEMBLY SEPTEMBER 5, 1997

AMENDED IN ASSEMBLY AUGUST 25, 1997

AMENDED IN SENATE JUNE 3, 1997

AMENDED IN SENATE MAY 23, 1997

AMENDED IN SENATE MAY 20, 1997

AMENDED IN SENATE APRIL 10, 1997

AMENDED IN SENATE MARCH 31, 1997

SENATE BILL

No. 535

Introduced by Senator Vasconcellos
(Coauthor: Senator McPherson)
(Coauthor: Assembly Member Migden)

February 24, 1997

An act to add Section 11362.59 to the Health and Safety Code, relating to marijuana, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 535, as amended, Vasconcellos. Marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient's primary care giver,

who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. Existing law establishes a Research Advisory Panel to study and approve research projects concerning marijuana or hallucinogenic drugs.

This bill would ~~authorize~~ *state the intent of the Legislature that the University of California to create a California Marijuana Research Program to develop and implement studies intended to ascertain the general medical efficacy and safety of marijuana and to solicit proposals for research projects to be included in the studies and would, to the extent the university so elects, require the President of the University to appoint a Scientific Advisory Council.* The bill would authorize the program to raise funds and to include other research projects in the studies.

The bill would appropriate \$1,000,000 from the General Fund to the *University of California for establishing and operating the program to conduct the studies.*

The bill would require the Research Advisory Panel to assume the responsibility for ~~creating the program~~ *selecting a program from proposals submitted by researchers* if the regents of the university do not implement those provisions within 60 days of the effective date of the bill.

The bill would state that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited
2 as the Marijuana Research Act of 1997.

3 SEC. 2. The Legislature finds and declares all of the
4 following:

5 (a) On November 5, 1996, the people of California,
6 with more than six million votes, approved Proposition
7 215.

8 (b) There is public and scientific controversy
9 regarding the medical efficacy and safety of marijuana.

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1 (c) There is a need for objective scientific research
2 regarding the efficacy and safety of marijuana as part of
3 medical treatment.

4 SEC. 3. It is the intent of the Legislature that the state
5 commission objective scientific research by the premier
6 research institute of the world, the University of
7 California, regarding the efficacy and safety of
8 administering marijuana as part of medical treatment.

9 SEC. 4. Section 11362.59 is added to the Health and
10 Safety Code, to read:

11 11362.59. (a) *The It is the intent of the Legislature*
12 *that, if the regents, by appropriate resolution, accept this*
13 *responsibility, the University of California shall create the*
14 *California Marijuana Research Program, which shall*
15 *develop and implement studies intended to ascertain the*
16 *general medical safety and efficacy of marijuana and, if*
17 *found valuable, to develop medical guidelines for the*
18 *appropriate administration and use of marijuana. The*
19 *program shall include the following elements:*

20 (1) Key personnel, including clinicians or scientists
21 and support personnel, who are prepared to develop a
22 program of research regarding marijuana's general
23 medical efficacy and safety. The program shall use a peer
24 review process to evaluate proposals. *In order to ensure*
25 *objectivity in the research, the program shall use a peer*
26 *review process that is modeled on the process used by the*
27 *National Institutes of Health, and that guards against*
28 *funding research that is biased in favor of or against*
29 *particular outcomes. The peer reviewers shall be selected*
30 *for their expertise in the scientific substance and methods*
31 *of the proposed research, and their lack of bias or conflict*
32 *of interest regarding the applicants or the topic of and*
33 *approach taken in the proposed research. The peer*
34 *reviewers shall judge research proposals on several*
35 *criteria, foremost among the criteria being both of the*
36 *following:*

37 (A) The ~~specific~~ *scientific* merit of the research plan,
38 including whether the research design and experimental
39 procedures are potentially biased for or against a
40 particular outcome.

1 ~~(B) An evaluation of the qualifications of the research~~
2 ~~personnel, as determined by their training and~~
3 ~~demonstrated competence in conducting research,~~
4 ~~which shall include, but not be limited to, a review of their~~
5 ~~speeches, endorsements, and public statements.~~

6 *(B) Researchers' expertise in the scientific substance*
7 *and methods of the proposed research, and their lack of*
8 *bias or conflict of interest regarding the topic of and the*
9 *approach taken in the proposed research.*

10 (2) Procedures for outreach to patients with various
11 medical conditions that may be suitable participants in
12 research on marijuana.

13 (3) A patient registry.

14 (4) An information system that is designed to record
15 information about possible study participants,
16 investigators, and clinicians, and deposit and analyze data
17 that accrues as part of clinical trials.

18 (5) Protocols suitable for research on marijuana
19 addressing patients diagnosed with AIDS/HIV, cancer,
20 glaucoma, or seizures or muscle spasms associated with a
21 chronic, debilitating condition. The program may add
22 research on other serious illnesses provided that
23 resources are available and medical information justifies
24 the research.

25 (6) A specimen laboratory capable of housing plasma,
26 urine, and other specimens necessary to study the
27 concentration of cannabinoids in various tissues, as well
28 as housing specimens for studies of toxic effects of
29 marijuana.

30 (7) A laboratory capable of analyzing marijuana,
31 provided to the program under the provisions of this
32 article, for purity and cannabinoid content and the
33 capacity to detect contaminants.

34 (b) It is the intent of the Legislature that the program
35 be established as follows:

36 (1) The program shall be located at a ~~University of~~
37 ~~California campus that has a core of faculty one or more~~
38 *University of California campuses that have a core of*
39 *faculty* experienced in organizing multidisciplinary
40 scientific endeavors and, in particular, strong experience

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1 in clinical trials involving psychopharmacologic agents.
2 The campus at which the program is located shall
3 accommodate the administrative offices, including the
4 director, as well as a data management unit, and facilities
5 for storage of specimens.

6 (2) *Grants for administration functions of the program*
7 *shall be operated by the University of California in*
8 *accordance with the principles and parameters of the*
9 *other well-tested statewide research programs*
10 *administered by the University of California, modeled*
11 *after programs administered by the National Institutes of*
12 *Health, including peer-review evaluation of the scientific*
13 *merit of applications.*

14 (3) The scientific and clinical operations of the
15 program shall occur partly at the campus where the
16 center is located, and partly at other campuses, both
17 University of California and non-University of California,
18 that have clinicians or scientists with expertise to conduct
19 the required studies. If more than one proposal for a
20 program is submitted, criteria for selection shall include
21 the elements listed in subdivision (a) and, additionally,
22 shall give particular weight to the organizational plan,
23 leadership qualities of the director, and plans to involve
24 investigators and patient populations from multiple sites.

25 ~~(3)~~

26 (4) The funds received by the program shall be
27 allocated to various research studies in accordance with
28 a scientific plan developed by the ~~group of investigators~~
29 ~~who wish to be part of the program~~ *Scientific Advisory*
30 *Council*. As the first wave of studies is completed, it is
31 anticipated that the program will receive requests for
32 funding of additional studies. These requests shall be
33 reviewed by a council of investigators consisting of senior
34 scientists associated with the program, as well as by an
35 advisory group of scientists and informed citizens.

36 ~~(4)~~

37 (5) All proposals approved by the program shall be
38 reviewed and approved also by the Research Advisory
39 Panel in accordance with Sections 11213 and 11480.

1 (6) *The size, scope, and number of studies funded shall*
2 *be commensurate with the amount of appropriated and*
3 *available program funding.*

4 (c) The program may immediately solicit proposals for
5 research projects to be included in the marijuana studies.
6 All personnel involved in participation in proposals that
7 are approved shall be authorized as required by Section
8 11604.

9 (d) The marijuana studies shall include the greatest
10 amount of new scientific research possible on the medical
11 uses of , and medical hazards associated with, marijuana.
12 The program shall consult with the Research Advisory
13 Panel, analogous agencies in other states, and appropriate
14 agencies of the federal government in an attempt to
15 avoid duplicative research and the wasting of research
16 dollars.

17 (e) The program shall make every effort to recruit
18 qualified patients and qualified physicians from
19 throughout the state for the marijuana studies.

20 (f) The marijuana studies shall employ state-of-the-art
21 research methodologies.

22 (g) The program shall ensure that all marijuana used
23 in the studies is of the appropriate medical quality and
24 shall be obtained from the National Institute on Drug
25 Abuse or any other federal agency designated to supply
26 marijuana for authorized research. If the federal agencies
27 fail to provide a supply of adequate quality and quantity
28 within six months, the Attorney General of California
29 shall provide an adequate supply pursuant to Section
30 11478. The program may review, approve, or incorporate
31 studies and research by independent groups presenting
32 scientifically valid protocols for medical research
33 regardless of whether the areas of study are being
34 researched by the committee.

35 (h) (1) To enhance understanding of the efficacy and
36 adverse effects of marijuana as a pharmacological agent,
37 the program shall conduct focused controlled clinical
38 trials on the usefulness of marijuana in patients diagnosed
39 with AIDS/HIV, cancer, glaucoma, or seizures or muscle
40 spasms associated with a chronic, debilitating condition.

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1 The program may add research on other serious illnesses
2 provided that resources are available and medical
3 information justifies the research. The studies shall focus
4 on comparisons of both the efficacy and safety of methods
5 of administering the drug to patients, including
6 inhalational, tinctural, and oral, evaluate possible uses of
7 marijuana as a primary or adjunctive treatment, and
8 develop further information on optimal dosage, timing,
9 mode of administration, and variations in the effects of
10 different cannabinoids and varieties of marijuana.

11 (2) The program shall examine the safety of marijuana
12 in patients with various medical disorders, including
13 marijuana's interaction with other drugs, relative safety
14 of inhalation versus oral forms, and the effects on mental
15 function in medically ill persons.

16 (3) This section is limited to providing for objective
17 scientific research to ascertain the efficacy and safety of
18 marijuana as part of medical treatment and should not be
19 construed as encouraging or sanctioning the social or
20 recreational use of the drug.

21 (i) Within six months of the operative date of this
22 section, the program shall report to the Legislature, the
23 Governor, and the Attorney General on the progress of
24 the marijuana studies.

25 (j) Thereafter, the program shall issue a report to the
26 Legislature every six months detailing the progress of the
27 studies. The interim reports shall include, but shall not be
28 limited to, data on all of the following:

29 (1) The names and number of diseases or conditions
30 under studies.

31 (2) The number of patients enrolled in the study per
32 disease.

33 (3) Any scientifically valid preliminary findings.

34 (k) The program shall no longer receive funding for
35 the marijuana studies after three years.

36 (l) In order to maximize the scope and size of the
37 marijuana studies, the program may:

38 (1) Solicit, apply for, and accept funds from
39 foundations, private individuals, and all other funding
40 sources that can be used to expand the scope or

1 timeframe of the marijuana studies that are authorized
2 under subdivision (a). In no case shall the program
3 expend more than 5 percent of its allocated general fund
4 funding in efforts to obtain money from outside sources.

5 (2) Include within the scope of the marijuana studies
6 other marijuana research projects that are independently
7 funded and that meet the requirements set forth in
8 subdivision (a). In no case shall the program accept any
9 funds that are offered with any conditions other than that
10 the funds be used to study the efficacy and safety of
11 marijuana as part of medical treatment. Any donor shall
12 be advised that funds given will be used to study both the
13 possible benefits and detriments of marijuana and that he
14 or she will have no control over the use of these funds.

15 ~~(m) No provision of this section shall apply to the~~
16 ~~University of California except to the extent that the~~
17 ~~Regents of the University of California, by appropriate~~
18 ~~resolution, make that provision applicable. If the Regents~~

19 *(m) If the Regents of the University of California do*
20 *not implement this section within 60 days of the effective*
21 *date of this section, the Research Advisory Panel*
22 *established pursuant to Section 11480 shall assume the*
23 *responsibility accorded to the University of California by*
24 *subdivision (a) for selecting a program in accordance*
25 *with this section from proposals submitted by researchers*
26 *at the University of California.*

27 (n) It is the intent of the Legislature that the program
28 shall, before any proposals are approved, seek to obtain
29 research protocol guidelines from the National Institutes
30 of Health and shall, if the National Institutes of Health
31 issues research protocol guidelines, comply with those
32 guidelines. If after a reasonable period of time of not less
33 than six months, but not more than a year, from seeking
34 to obtain guidelines none have been approved, the
35 program may proceed using research protocol guidelines
36 it develops.

37 *(o) The President of the University of California shall*
38 *appoint a multidisciplinary Scientific Advisory Council,*
39 *not to exceed 15 members, to provide policy guidance in*
40 *the creation and implementation of the program.*

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1 *Members shall be chosen on the basis of scientific*
 2 *expertise. Members of the council shall serve on a*
 3 *voluntary basis, with reimbursement for expenses*
 4 *incurred in the course of their participation. The*
 5 *members shall be reimbursed for necessary and travel*
 6 *expenses incurred in their performance of the duties of*
 7 *the council.*

8 *(p) It is the intent of the Legislature that no more than*
 9 *10 percent of the total funds appropriated be used for all*
 10 *aspects of the administration of this article.*

11 SEC. 5. The Legislature hereby appropriates one
 12 million dollars (\$1,000,000) from the General Fund to the
 13 *University of California for establishing and operating the*
 14 *California Marijuana Research Program to conduct the*
 15 *marijuana studies pursuant to Section 11362.59 of the*
 16 *Health and Safety Code. It is the intent of the Legislature*
 17 *to appropriate a like amount through the budget process*
 18 *for the second and for the third years of the studies.*

19 SEC. 6. This act is an urgency statute necessary for the
 20 immediate preservation of the public peace, health, or
 21 safety within the meaning of Article IV of the
 22 Constitution and shall go into immediate effect. The facts
 23 constituting the necessity are:

24 The people of California have expressed their wishes
 25 regarding the medical use of marijuana by passing
 26 Proposition 215 in November 1996. Controversy
 27 regarding the medical efficacy and safety of marijuana
 28 ought to be resolved by the expeditious conduct of
 29 objective scientific research.

It is a defense that the marijuana was planted, cultivated, harvested, dried or processed by a patient for the patient's personal medical purposes, upon and after the written or oral recommendation or approval of a physician. To establish this defense, the burden is on the defendant to prove such by a preponderance of the evidence, defined elsewhere in these instructions.

As used in this instruction, patient means a person who consulted a physician or submitted to an examination by a physician for the purpose of securing a diagnostic or preventative, palliative, or curative treatment of his physical or mental or emotional condition.

As used in this instruction, physician means a person who is licensed to practice their respective professions in this state.