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COMMENTS ON MINNESOTA SENATE FILE 345 THE “MEDICAL” MARIJUANA BILL

1. THE KEY PROVISIONS OF THE BILL LACK A SCIENTIFIC BASIS

Section 2 Sub Div. 4 of the bill lists the following conditions that “medical” marijuana could be used for: cancer, glaucoma, AIDs, hepatitis C, cachexia, wasting syndrome, severe or chronic pain, severe nausea, seizures, severe and persistent muscle spasms, Crohn's disease, Alzheimer's disease, HIV.

There is no scientific research regarding marijuana and its effectiveness, risks, benefits, dosages, interactions with other drugs, and impact on pre-existing conditions for all the above conditions. Studies on marijuana do not exist that show the quantity of dose, frequency of administration, duration of administration, time of administration, in relation to time of meals, time of onset of symptoms, or other time factors, route or method of administration of marijuana for all the medical conditions in the bill. These studies are a requirement before a drug can be used for medicine.¹

If these studies do not exist, all these conditions should not be included. In fact, smoked marijuana as medicine has been rejected by the American Medical Association, the National Multiple Sclerosis Society, the American Glaucoma Society, the American Academy of Ophthalmology and the American Cancer Society.²

2. THE FDA DOES NOT SUPPORT “MEDICAL” MARIJUANA

On April 20, 2006, the federal Food and Drug Administration (FDA) declared that marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and has a lack of accepted safety for use under medical supervision. Furthermore, the FDA stated that there is sound evidence that smoked marijuana is harmful and there are no sound scientific studies supporting the safety or efficacy of marijuana for medical use (see attached FDA statement).

3. THE BILL PERMITS POSSESSION OF HUGE AMOUNTS OF MARIJUANA

Section 2 Sub Div. 2 of the bill permits a qualifying patient to possess 12 marijuana plants and 2.5 ounces of usable marijuana and any amount of other parts of the marijuana plant.

HOW MUCH POT CAN 12 PLANTS PRODUCE?

The typical marijuana plant produces 1 to 5 pounds of smokeable materials (leaves and buds). **Maybe more if grown indoors under the right conditions.** The 12 plants permitted by the bill can thus produce a minimum of 12 to 60 pounds of marijuana per year.³

HOW MANY JOINTS ARE IN 12 TO 60 POUNDS OF POT?

The typical marijuana cigarette (joint) weighs a gram. There are 28.35 grams in an ounce. Thus 1 ounce of pot will make approximately 28.35 joints. There are 16 ounces in a pound - thus 1 pound of marijuana is approximately 454 joints (16 x 28.35).⁴

The plants can produce 1 to 5 pounds each. Thus, at a minimum, the 12 plants will produce approximately one pound of pot each or 5448 joints (12 x 454). If the 12 plants can produce up to 5 pounds each this is 60 pounds of marijuana or 27,240 joints.

This bill will permit the possession of 5,448 To 27,240 joints per person at any one time.

The bill will apply to persons over 18 years of age which includes high school and college students (or under 18 with parents' consent). The bill appears to permit the plants to be grown or possessed in a person's home or dorm room. Who will monitor this?

Young children will have access to the plants. You only have to be 18 years old to grow the plants. Many 18 year olds are in high school, thus the friends of these teenagers will have access to 5,448 to 27,240 joints.

SOME QUESTIONS:

How will they determine how much marijuana a user can smoke in a day or by the hour? Prescriptions must tell the user how much drug to use per day. What if the user smokes more marijuana in a day or in a week than he was given permission for? Can he go back and get some more?

Studies on marijuana do not exist that show the quantity of dose, frequency of administration, duration of administration, time of administration, in relation to time of meals, time of onset of symptoms, or other time factors, route or method of administration of marijuana for all the medical conditions in the bill.

Where will the person get the first 12 seeds to plant? Will the state supply the seeds or the plants? If not, who will? The only source for the plants and seeds is illegal.

What potency of marijuana will they be allowed to plant?

Will annual surveys be conducted to measure an increase in marijuana use especially by children and teens?

Who will monitor the persons who are growing marijuana?

Will this enormous amount of marijuana joints being generated in many homes give rise to a black-market as has happened in other states?

4. THE BILL DOES NOT PROTECT PHYSICIANS FROM MALPRACTICE LIABILITY

Section 3. Sub. Div 6 of the bill provides that:

“A practitioner shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by the Board of Medical Practice or by another business, occupational, or professional licensing board or entity, solely for providing written certifications or otherwise stating that, in the practitioner's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for a patient.”

This section does not protect practitioners from medical malpractice suits. Insurance companies writing malpractice insurance are carefully scrutinizing ways to limit their malpractice exposure because of escalating plaintiffs' lawsuits. One attempt to limit exposure is to exclude claims arising from the use of a non-FDA approved medication. The FDA does not approve smoked or other forms of crude marijuana. Physicians who recommend marijuana will find it extremely difficult to show that they had “rendered quality care” or met the “standard of care” that other reasonably prudent, similarly trained and experienced physicians would consider. This is because the necessary scientific research regarding marijuana and its effectiveness, risks, benefits, dosages, interactions with other drugs, and impact on pre-existing conditions is not available, and because there are no quality controls in the manufacturing process.¹

Historically, physicians rely upon the Federal Food and Drug Administration's (FDA) process for approving drugs to protect them from liability should a drug be unsafe. The FDA has rejected smoked marijuana as medicine.

5. THE BILL VIOLATES FEDERAL MEDICAL DEVICE LAW

Section 2 Sub. Div. 6 of the bill provides that:

'Medical use' means the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the medical condition.”

How will it be determined that drug paraphernalia was used for a “medical” marijuana purpose? For example, if there are three people in a house and one can use “medical” marijuana, and two cannot, and the police raid the house and find three “bongs” for smoking marijuana, how will it be decided which one is the “designated medical bong?” How will the state decide which drug paraphernalia is approved for administering “medical” marijuana? Is it better to use a bong or a pipe or a joint or mix it in brownies?

This now makes drug paraphernalia into medical devices for the delivery of a medical drug. The federal Food and Drug Administration (FDA) strictly regulate medical devices. In order for a “bong” or marijuana smoking pipe or other such device to be used it will have to be approved as a medical device by the FDA. It will also have to be properly labeled under federal law.⁵

6. THE BILL DOES NOT PROTECT EMPLOYERS AND CHILDREN FROM MARIJUANA USERS WHO ARE “HIGH” ON MARIJUANA

Section 6 of the bill provides that the protections of the bill do not apply to:

“(2) smoking of marijuana: (i) in a school bus or other form of public transportation; (ii) on school grounds; (iii) in a correctional facility; or (iv) in any public place; or (3) a person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana...”

Please note that the bill applies to possession or use in a school bus or on school grounds or in the workplace. It does not say “being under the influence” will subject a person to penalties. This means that a person could use marijuana before entering one of these places and be under the influence and there would be no penalty. You could smoke marijuana right before going to work in a child day care center and be “stoned” and the employer could do nothing about it. Does this apply to EMS and fire and police personnel also? Marijuana is very different from other drugs in that it stays in the system and affects the system for much longer time periods.

7. THE BILL CREATES PROBLEMS FOR LAW ENFORCEMENT

Section 7 of the bill provides that:

“Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution is punishable by a fine of \$500, which shall be in addition to any other penalties that may apply for making a false statement and for the nonmedical use of marijuana.”

This provides a very minimum penalty for lying to a police officer to avoid a drug charge. Why such a minimal penalty for committing fraud and lying to a police officer? This will only encourage fraud. This is going to be a real burden for law enforcement. Violators should at least be charged with a more serious crime.

8. THE BILL WILL PREVENT ENFORCEMENT OF THE STATE DUI LAWS

Sec. 6. of the bill provides that when it comes to operating any motor vehicle, aircraft, or motorboat while under the influence of marijuana a qualifying patient shall not be considered to be under the influence solely for having marijuana metabolites in the patient's system.

However, the state DUI law provides that any person who drives a motor vehicle consents “to a chemical test of that person's blood, breath, or urine for the purpose of determining the presence of alcohol, a controlled substance or **its metabolite**, or a hazardous substance.” MN ST S 169A.51

The state driving under the influence law permits the police to obtain proof of intoxicated driving under the influence of controlled substances by a drug test. Drug tests are the only effective way of determining if a suspect has been using marijuana while driving. Drug tests measure drugs in bodily fluids by measuring the metabolites of the drug found in the bodily fluid. Metabolites are compounds resulting from the breakdown of a drug in the body. This bill will make it impossible to enforce the state intoxicated driving law because detecting metabolites by a drug test cannot be used.

9. THE STATE DEPARTMENT OF HEALTH IS NOT THE APPROPRIATE AGENCY TO IMPLEMENT PARTS OF THIS BILL

Section 2 Sub. Div. 6 of the bill provides that:

*'Medical use' means the acquisition, possession, **cultivation, manufacture**, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the medical condition.*

Marijuana is a plant. The state Department of Agriculture should be making some of these decisions not the Department of Health. How will they determine what is “medical grade” marijuana? How will “medical grade” marijuana be planted, cultivated, harvested, manufactured, processed, tested, analyzed, packed, stored, labeled and shipped? What quality controls will be placed on growing marijuana?

10. THIS LAW WILL BE PREEMPTED UNDER THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION (ARTICLE VI)

Several counties in California are suing the state because they believe California's medical marijuana laws are preempted under the Supremacy Clause of the United States Constitution (Article VI) and because they conflict with a federal statute (the Controlled Substances Act) and an international treaty (the Single Convention on Narcotic Drugs). They assert they should not be required to implement California's

medical marijuana laws.⁶

References

1. "The Potential Medical Liability for Physicians Recommending Marijuana as a Medicine", Educating Voices, www.educatingvoices.org.

According to Dr. Eric Voth, the only use for cancer is the nausea associated with chemotherapy, or appetite stimulation, and there are better medications available. Only remotely documented benefit is with spasticity. None for epilepsy and HIV. See, 2001 WL 30659, brief of the Institute on Global Drug Policy of the Drug Free America Foundation; National Families in Action; Drug Watch International; Drug-free Kids: America's Challenge, et al., as Amici Curiae in Support of Petitioner, U.S. v. Oakland Cannabis Buyers' Cooperative, 121 S.Ct. 1711 (2001)

2. 57 Federal Register 10499-10508; and Alliance for Cannabis Therapeutics v. DEA and NORML v. DEA, 15 F.3d 1131 (D.C. Cir 1994)

3. Drug Identification Bible, Third Edition, page 606, Tim Marnell editor, Denver, CO, 800-772-2539 (a book for law enforcement, parents and educators)

4. "Drug Availability Estimates in the United States," Chapter 4: Estimates of Marijuana Availability in the United States, Table 4-5, footnote 87, December 2002, www.whitehousedrugpolicy.gov. Verified by: Special Agent Douglas S. Collier, Public Information Officer, NJ Division, Drug Enforcement Administration (DEA), US Department of Justice

5. 21 C.F.R. § 801.5 (Medical Devices - Labeling - Adequate directions for use means directions under which the layman can use a device safely and for the purposes for which it is intended. This includes quantity of dose, frequency of administration or application, duration of administration or application, time of administration or application, in relation to time of meals, time of onset of symptoms, or other time factors, route or method of administration or application, preparation for use, i.e., adjustment of temperature, or other manipulation or process. See also: 21 C.F.R. § 803.3 (medical device reporting); 21 C.F.R. § 807.93 (Premarket Notification Procedures); 21 C.F.R. § 808.3 (Medical Device Classification); 21 C.F.R. § 860.7 (Determination of safety and effectiveness includes the conditions of use for the device, the probable benefit to health from the use of the device weighed against any probable injury or illness from such use and the reliability of the device and there is reasonable assurance that a device is safe when it can be determined, based upon valid scientific evidence).

6. "County moves medical marijuana challenge to state court," Gig Conaughton, Staff Writer North County Times February 3, 2006