

TAOS DAILY NEWS

INSIDE THE FLY

The Marijuana Miracle

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By Leah Allen

Known by hundreds of aliases—pot, grass, weed, etc.—marijuana is, by far, the world's most popular illicit drug. It has been around for centuries and its source, the hemp plant, was being cultivated for psychoactive properties more than 2,000 years ago. Although cannabis contains hundreds of different chemical properties, its primary mind-altering ingredient is THC (delta-9-tetrahydrocannabinol). The amount of THC in marijuana determines the drug's potency, and THC levels are affected by numerous factors, including plant type, weather, soil and time of harvest. Hashish is marijuana in a more potent, concentrated form. Marijuana and hashish are both considered to be hallucinogens, although their potency is very low when compared to other hallucinogens. Their effects include a feeling of relaxation, faster heart rate, the sensation that time is passing more slowly, and a greater sense of hearing, taste, touch and smell.



While the facts about marijuana are controversial and often subjective, the certainty is that the drug is loved by many and the issue isn't going away. Whether it has any significant medicinal value depends on who you ask, and while many doctors and medical experts agree that marijuana does provide pain relief, they don't agree on how the substance works. Many maintain that it provides pain relief, but in a psychological way by relieving the stress and agitation that is brought about by pain, rather than by deadening your central nervous system as narcotic pain relievers do. Other research indicates that cannabis may be beneficial to true ADD and ADHD patients by helping them to hold a focus longer than they can on their own, or even with prescription drugs. Most importantly, it provides an appetite for those who are enduring chemotherapy treatments and otherwise wouldn't have one. The weaker a person becomes because of chemo treatments, the harder it is for them to fight the disease and they can even lose the will to live.

According to Medicalmarijuanaprocon.org, fourteen states currently legalize or decriminalize the medical use of marijuana in some manner. Since 1996, Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington have passed legislation that removes state-level penalties from marijuana use by patients who have a doctor's recommendation. In addition, Maryland passed a medical marijuana affirmative defense law in 2003, dictating that if a person is arrested for marijuana use but is found to be using marijuana out of medical necessity, she or he will only face a modest fine. These state laws specify that marijuana can be used to treat diseases such as arthritis, cachexia, cancer, chronic nervous system disorders, chronic pain, Crohn's disease, epilepsy and other seizure disorders, glaucoma, HIV or AIDS, multiple sclerosis and other muscular disorders. It can also be used to help patients cope with severe migraines, severe nausea and the side effects of chemotherapy. The requirements for patients and doctors to be protected by these laws vary from state to state. Unfortunately, the legal status of these measures is debatable. The U.S. government has challenged the California law in several cases. Federal law does not recognize a medical use for marijuana and maintains that the drug is a controlled and banned substance under all circumstances.

The federal government regulates drugs through the Controlled Substances Act (CSA) (21 U.S.C. § 811), which does not recognize the difference between medical and recreational use of marijuana. These laws are generally applied only against persons who possess, cultivate or distribute large quantities of marijuana. Under federal law, marijuana is treated like every other controlled substance, such as cocaine and heroin. The federal government places every controlled substance in a schedule according to its relative potential for abuse and medicinal value. Under the CSA, marijuana is classified as a Schedule I drug, which means that the federal government views marijuana as highly addictive and having no medical value. Doctors may not "prescribe" marijuana for medical use under federal law,

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though they can "recommend" its use under the First Amendment. I will discuss more about the First Amendment's effect on marijuana in next month's issue.

Federal marijuana laws are very serious and punishment is very steep, more so than other, more serious crimes. In several federal cases, judges have ruled that medical marijuana cannot be used as a defense, though defense attorneys should attempt to raise the issue whenever possible during trial. Federal law applies throughout California and the United States, not just on federal property. The key to federal property, such as a VA hospital, is that they are more likely than non-federal property to have federal officials monitoring it, and these officials will bust medical marijuana patients.

There are two types of federal sentencing laws: sentencing guidelines, enacted by the United States Sentencing Commission, and mandatory sentencing laws, enacted by Congress. The Sentencing Commission was created in 1987 to combat sentencing disparities across jurisdictions. The current mandatory minimum sentences were enacted in a 1986 drug bill. Federal sentencing guidelines take into account not only the amount of marijuana but also past convictions. Not all marijuana convictions require jail time under federal sentencing guidelines, but all are eligible for imprisonment. The federal government claims that marijuana is not medicine and in *Gonzales v. Raich* (2005), the United States Supreme Court held that the federal government has the constitutional authority to prohibit marijuana for all purposes. Thus, federal law enforcement officials may prosecute medical marijuana patients, even if they grow their own medicine and even if they reside in a state where medical marijuana use is protected under state law. The Court indicated that Congress and the Food and Drug Administration should work to resolve this issue. The *Raich* decision does not say that the laws of California (or any other medical marijuana state) are unconstitutional, nor does it invalidate them in any way. Also, it does not say that federal officials must prosecute patients. Decisions about prosecution are still left to the discretion of the federal government.

Policy debates regarding marijuana law reform invariably raise the issue of marijuana and driving. The National Organization for the Reform of Marijuana Laws (NORML) uses its own "Principles of Responsible Cannabis Use" to invoke a "no driving" clause, stating: "Although cannabis is said by most experts to be safer than alcohol and many prescription drugs with motorists, responsible cannabis consumers never operate motor vehicles in an impaired condition." There isn't any reason that laws cannot be adopted to regulate the safe use of marijuana. Alcohol is legal in America, and every state maintains tough laws punishing those who choose to drive impaired by it. There is no reason why similar principles should not regulate cannabis consumption. Moreover, emerging scientific research indicates that cannabis actually has far less impact on the psychomotor skills needed for driving than alcohol does, and is seldom a causal factor in automobile accidents.

While states continue to recognize marijuana's medical value and have either passed laws through their legislatures or adopted them by initiative, the federal government has not. In support of the numerous states that have taken responsibility for the health and welfare of their citizens—and have implemented medical marijuana laws—Americans for Safe Access (ASA) is fighting for states' ability and right to pass and enforce their own laws, regardless of federal law. Under our federalist system of government, the states, rather than the federal government, are entrusted to exercise a general police power for the benefit of their citizens. Due to this constitutional division of authority, the State of California may elect to decriminalize conduct such as medical marijuana activity, which remains illegal under federal law. Even if law enforcement officers take a personal position on any conflict between state and federal law, they are bound by California's Constitution to uphold state law. Under California's medical marijuana laws, patients and caregivers are exempt from prosecution by the State of California.

That being said about marijuana for medicinal use, what about general, recreational use? We use alcohol for pure pleasure, so why not cannabis? And why is the federal government digging in its heels against joining the states and loosening their criminal grip on marijuana users? Back in the late '70s and early '80s the feds used federal highway funds to get states to change the legal drinking age from 18 and 19 to 21. Wyoming was the lone hold-out until 1988 when it became the 50th and last state to change their legal drinking age to 21. Some equate that to blackmail and one can't help but wonder if that isn't going to happen again with marijuana. Hopefully, the Obama Administration will bring a novel and more common sense-based approach to at least this aspect of federal drug policy.

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