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## Medical Marijuana: Is This Watched Pot About to Boil?

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Written by Shawna L. Swanberg, Ph.D.

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Cost factor may prove the most potent ingredient yet in the long-awaited change to medical marijuana policy. Although President Obama has publicly affirmed he is 'not in favor' of the legalization of pot, the President's position on medical use is unambiguous: "Federal resources should not be used to circumvent state [marijuana] laws."

Simmering in the cauldron are state-legal medical marijuana statutes and federal-illegal controlled substance laws—a brew that soaks the nation in a \$7 billion uniquely American concoction. While medical marijuana is valid law in Alaska, California, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington, the U.S. Controlled Substances Act (CSA) positions the "manufacture, distribution, or possession of marijuana" as unlawful, criminal offenses. Despite the fact that over 115 million people reside in states where "compassionate use" laws permit very ill patients to use marijuana as medicine, federal agents are still authorized to enforce the CSA in any state.

### Not Money Well Spent

President Obama believes "we have better things to spend our money on" and appears set to revise the expensive fiscal recipe that pits federal law enforcement against ailing patients and their caregivers. He told reporters in 2007 that he supports the controlled use of marijuana for medical purposes, saying he "saw no difference between medical marijuana and other pain-control drugs."

Yet the president's approach to U.S. policy reform may be influenced as much, if not more, by the dismal economic climate. Many of his responses to medical marijuana questions have an implied capital connection: "I think our federal agents have better things to do, like catching criminals and preventing terrorism. What I'm not going to be doing is using Justice Department resources to try to circumvent state laws on this issue. We've got a lot of things for our law enforcement officers to deal with...we need to rethink how we are operating in the war on drugs."

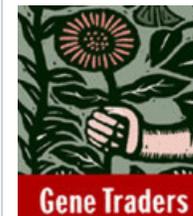
The Bush Administration considered state marijuana initiatives subversive to CSA rule and vigorously encouraged law enforcement action. Millions of dollars were allocated to state and local police to compel compliance with CSA edicts. Millions more were scattered across federal agencies to conduct investigations, raids, seizures and arrests. In the past three years, over \$20 million was expended by the DEA and associated law enforcement agencies to carry out paramilitary-style offensives on state-authorized marijuana clinics and facilities. Based on estimates released by the Americans for Safe Access, a medical marijuana advocacy group, some of these raids cost the American taxpayers as much as \$1.7M each. These figures do not include expenses for salaries, equipment, training, departmental support, etc., and do not account for the millions U.S. citizens have paid for court costs, incarcerations, inter-agency involvement and property seizure resolution. A 2005 Harvard economic study denotes \$7.7 billion per year in state and federal expenditures goes to marijuana prohibition enforcement.

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### NONVIOLENT WARRIOR

Americans' anxiety over stock market slides, escalating unemployment, widespread services cutbacks and health care costs leave little tolerance for "war on drugs" spending which Obama has described as an "utter failure." According to government documents released in 2008, federal agents executed 56 raids on medical marijuana facilities in California, Oregon and Washington from 2005 to 2007. Of these actions, only 16 resulted in DEA arrests. Dale Gieringer, state coordinator of California NORML (National Organization for the Reform of Marijuana Laws), comments: "At this time of budget deficits, we can ill afford the DEA's war on medical marijuana."

### **Courting High Court Rejections**

The pervasive expense of litigation inhibits hundreds of medical marijuana cases from ever reaching a courtroom. Three cases presented here represent more than five years and hundreds of thousands of hours of legal fees, documentation, process and service, yet have not accomplished federal dominance of the medical marijuana issue:

**Gonzales v. Raich:** U.S. Supreme ruled 6-3 that the federal government would not overstep its powers under the Commerce Clause of the U.S. Constitution if it arrested patients whose medical marijuana use is permitted under state law. The 2005 decision left most states scrambling for interpretation. The Medical Policy Project (MPP), an advocacy organization founded in 1995, explains: "The ruling did not in any way change states' ability to allow the doctor-advised medical use of marijuana under state law. Within two months, top officials in all 10 states that had medical marijuana laws in effect — including seven attorneys general — stressed that the ruling did not change those states' medical marijuana laws. Since then, these laws have continued to provide near total protection for the sick and dying patients they are intended to protect."

**County of Santa Cruz v Mukasy:** On August 20, 2008 a U.S. District Court rejected the federal government's motion to dismiss, holding that "the U.S. Constitution bars deliberate subversion by the federal government of state medical marijuana laws." In his ruling, Judge Jeremy Fogel stated "...much as the federal government may prefer that California keep medical marijuana illegal, it cannot force the state to do so."

In July 2008, California's 4th District Court of Appeals rejected the County of San Diego's contention that the state violates federal marijuana prohibitions. The appellate court found that the purpose of the federal law "is to combat recreational drug use, not to regulate a state's medical practices." County officials have since asked the U.S. Supreme Court to hear the case. A decision is not expected until later this year.

However, in December 2008, the U.S. Supreme Court refused to hear *The City of Garden Grove v The Superior Court of Orange County and Felix Kha*. The Supreme Court's rejection marks one of the most significant signals that U.S. medical marijuana policy is ripening for revision.

American public opinion has consistently favored access to medical marijuana. ProCon.org, a nonprofit and nonpartisan public education foundation, summarized 21 public polls from 1995-2007. Respondents in every poll were in favor of medical marijuana by substantial margins, ranging from 60% to 80%. Gallup and AARP polls indicate greater than 75% support for some level of medical marijuana availability. The American College of Physicians, the nation's largest organization of internal medicine doctors, supports programs and funding for rigorous scientific evaluation of medical marijuana. The American Medical Association has recommended that "adequate and well-controlled studies of smoked marijuana be conducted in patients who have serious conditions."

If the U.S. is ever to settle the medicinal value question, the Obama administration would be wise to reallocate some drug policy expenditures from raid to research. Since 1968 the government's stranglehold on marijuana research has prevented the U.S. from conducting advanced clinical trials that meet accepted scientific standards. Worldwide, clinical research into the therapeutic value of cannabinoids, the active compounds in marijuana, has spawned more than 17,000 published papers in the scientific literature. "Rethinking" the drug war could lead to more American research and eventually CSA reclassification, allowing marijuana to blend back into the stock of accepted use drug policy.

### **Marijuana was legal in the U.S.**

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Ancient records from China, India, Africa and the Roman Empire trace the use of marijuana to treat a wide range of ailments back more than 4,000 years. For nearly 100 years, cannabis was included in the United States Pharmacopoeia as a recognized medicinal, legal under U.S. federal and state laws. Sensationalized stories connecting marijuana use to violent crime and harm to users prompted Congress to enact the Marihuana Tax Act of 1937 which involved a perverse set of rules that were designed to generally discourage the medical use of marijuana. Although the American Medical Association opposed the legislation, citing potential value and the need for further research, chemical medicines including aspirin, morphine and other opium-derived drugs were becoming readily available to physicians. These medications were more cost-effective to mass-produce, and by 1941 physicians had largely cast off cannabis for the treatment of pain and other medical conditions.

Aiming to stem a rising tide of street drug use, President Nixon asked Congress to enact legislation to combat rising levels of drug abuse. This led to the Comprehensive Drug Abuse Prevention and Control Act of 1970. The Controlled Substances Act (CSA) was included in this legislation, which placed marijuana and its components in Schedule I, the most restrictive of five categories. The CSA does not distinguish between the medical and recreational use of marijuana. In February 2009, a survey released by Medical Marijuana ProCon.org shows that well over half a million people in the thirteen states with medical use laws are using marijuana for conditions approved by each state's legislature. Some states require patient registration and official patient identification cards, in some states registration is optional, and in some states there is no registration program. This figure is swiftly growing—several states are currently considering medical marijuana laws while 35 states already have relaxed personal use ordinances.

Raids, property seizures and arrests have done nothing to stop the increasing demand for safe, legal medicinal marijuana products. Kris Hermes, a spokesperson for Americans for Safe Access, estimates the number of patients using pot for pain management and symptom relief will nearly triple by the end of 2010, surpassing even U.S. government agency projections. Medical marijuana policy is rapidly moving toward the nation's front burner.

The old adage "A watched pot will never boil" is an allegorical lesson in patience. It teaches the lesson that waiting for something to happen makes it seem like it takes forever to occur. As President Obama lays out his agenda for the U.S. economic future, leftovers from a 1937 Congressional stew may be ready for reconstitution, minus the pot.

#### **Cannabis has a rich history of healing:**

2737 BC -- Emperor Shen-Nung in China prescribes cannabis for beri-beri, constipation, 'female weakness,' gout, malaria, rheumatism and absentmindedness.

2000 BC -- In Egypt, cannabis is used to treat sore eyes.

1000 BC -- Bhang, a cannabis preparation (a drink, generally mixed with milk) is used as an anesthetic and anti-phlegmatic in India.

200 BC -- In ancient Greece, cannabis is used as a remedy for earache, edema, and inflammation.

200 AD -- A Chinese physician prescribes cannabis as an analgesic in surgical procedures.

1000 AD -- Moslems produce hashish as medicine.

1621 -- English clergyman documents cannabis treatment for depression, muscle spasms and convulsions.

1690 -- Cannabis is used in Africa as an antiseptic, an analgesic and appetite stimulant

1799 -- French scientists are interested in the drug's pain relieving and sedative effects.

1854 -- The U.S. Dispensary lists cannabis compounds as suggested remedies for a multitude of medical problems, including neuralgia, depression, hemorrhage, pain relief and muscle spasm. Commercial cannabis preparations could be bought in drugstores.

1860 -- The Committee on Cannabis Indica of the Ohio State Medical Society is convened. The Committee reports successfully treated neuralgic pain, dysmenorrhea, uterine hemorrhage, hysteria, delirium tremens, mania, palsy, whooping cough, infantile convulsions, asthma, gonorrhoea, nervous rheumatism, chronic bronchitis, muscular spasms, tetanus, epilepsy and appetite stimulation.

1893 -- India Commission reports the use of cannabis as analgesic, anti-diarrhetic, and sleep-aid hypnotic.

1900 – Injectable morphine and synthetic drugs such as aspirin, chloral hydrate, and barbiturates become favored over cannabis for pain and anxiety management

1937– Marihuana Tax Act imposes fines for physician-prescribed cannabis.

1941– Cannabis is removed from the US National Pharmaceutical Formulary.

1960-1990 Anecdotal reports of medical benefits surface among recreational users throughout the world.

1996--First "Compassionate Use" Law passed in California.

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*Shawna Swanberg, Ph.D. is a freelance writer, patient education consultant and reconstructive treatment coordinator with her husband, Donald Swanberg, D.D.S., in Encino, California.*

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