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"We change laws."

History and Federal Law Enforcement Policy on Medicinal CBD Laws

Background

In 2014, 11 states enacted laws that were intended to allow patients access to one of several active components of the marijuana plant — cannabidiol, or CBD.¹ This particular compound has received a great deal of recent attention, and there is a substantial amount of anecdotal evidence that it can significantly reduce both the frequency and severity of seizures, including those experienced by minors.²

Laws that establish regulated access to CBD are often referred to as "high-CBD" laws. These laws are designed to provide a framework for cultivating and processing plants rich in CBD, which can be extracted and provided to those who qualify medically. These systems are also designed to significantly limit one ingredient in particular, tetrahydrocannabinol, or THC. While THC has significant medical qualities,³ unlike CBD, it can lead to impairment.

Unfortunately, with very few exceptions, the laws passed during 2014 were unworkable, and without significant changes, these laws are unlikely to result in functional programs for those seizure victims they were intended to help.⁴ While the Marijuana Policy Project advocates for comprehensive medical marijuana programs like those passed in nearly two dozen jurisdictions, we believe it is important that those states that choose to implement high-CBD laws establish workable programs. Simply put, while high CBD laws may help only a fraction of those who benefit from broader programs, they should function well for those whom they serve.

¹ Alabama, Florida, Iowa, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Utah, and Wisconsin

² Saundra Young, Marijuana stops child's severe seizures, CNN, August 7, 2013, <http://edition.cnn.com/2013/08/07/health/charlotte-child-medical-marijuana/>

³ THC is the only component found in marijuana that has been recognized by the federal government as having medical value, and is provided in synthetic form as an FDA-approved prescription medical called dronabinol, available under the brand name Marinol®. Unfortunately, since THC is the primary component used to treat serious conditions such as cancer, Crohn's disease, multiple sclerosis, and conditions that result in severe pain, the vast majority of patients that could benefit from comprehensive medical marijuana programs are left behind in high-CBD law states.

⁴ Largely this is due to oversights or requirements within those laws that create significant legal hurdles that, while likely well-intentioned, render the law incapable of being implemented. For instance, many high-CBD laws require colleges or universities to cultivate cannabis, placing federal funding for school programs and research in serious jeopardy, or they require physicians to distribute Schedule 1 substances to patients, or write prescriptions for marijuana-based products, which would require physicians to violate federal laws. These types of provisions are unworkable requirements.

Regulatory Framework

Hemp, marijuana, and cannabis are terms that all refer to the plant *Cannabis Sativa* L., which the federal government considers to be a Schedule 1 controlled substance, along with the compounds produced naturally in the plant. “Hemp” typically refers to varieties of the plant which contain very small amounts of THC, so the term is well-suited to describe plants used pursuant to high-CBD laws.

Several prominent medical organizations have called on federal authorities to re-classify marijuana so that more research can be conducted. These groups include, most recently, the American Academy of Pediatrics⁵ and the Epilepsy Foundation.⁶ However, the federal government has so far refused to take action. As a result, research has been limited in the U.S. despite the compelling anecdotal evidence that naturally-occurring THC and CBD contain strong medicinal qualities — particularly when used in combination.⁷

Because of the strong interest in this medicinal value, many states have implemented their own regulatory frameworks providing access for seriously ill patients. The federal government has adopted a policy articulated in a Department of Justice memorandum issued to federal prosecutors on August 29, 2013, with respect to state laws.⁸ The cornerstone of this policy is its emphasis on state regulation. Deputy Attorney General James Cole made clear that states that allow access to these products must implement a strong regulatory framework.⁹ Most states that have successful programs have created systems similar to those established in HB 2282.

A well regulated, functional high CBD program for Kansans

Lessons learned so far in the 23 states and the District of Columbia, which have comprehensive medical marijuana laws, and in the 11 states with high-CBD laws are brought to bear in HB 2282, which has adopted best practices for each of these other state laws. It provides seriously ill patients reasonable access to CBD-based medicine, yet takes into account both the limitations imposed under existing federal law, and the specific policy interests outlined by federal law enforcement authorities to fashion a well-regulated system for Kansans.

⁵ <http://aapnews.aappublications.org/content/early/2015/01/26/aapnews.20150126-1>

⁶ <http://www.epilepsy.com/article/2014/2/epilepsy-foundation-calls-increased-medical-marijuana-access-and-research>

⁷ While the federal government has approved pure, synthetically produced THC for use as a prescribed pharmaceutical medication, there is evidence that THC and CBD are most effective when used together. In particular, CBD appears to have its greatest effect when at least trace amounts of THC are also present, even if there is not enough THC to result in impairment. This phenomenon is referred to in scientific literature as the “entourage effect,” and has been the subject of study. See E. Russo, “Taming THC: potential cannabis synergy and phytocannabinoid-terpenoid entourage effects,” *Br J Pharmacol.* 2011 Aug; 163(7): 1344–1364, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3165946/>.

⁸ James M. Cole, Guidance Regarding Marijuana Enforcement, United States Department of Justice, Office of the Deputy Attorney General, August 29, 2013.

<http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

⁹ The memo states, “The Department’s guidance in this memorandum rests on its expectation that state and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.”