



OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MARIN
MEMORANDUM

TO: ALL MARIN COUNTY LAW ENFORCEMENT AGENCIES
Attn: Chiefs of Police and the Sheriff
Commanders, Investigation Units
Commander, Marin County Major Crimes Task Force
Commander, Coordination of Probation Enforcement
Unit

FROM: Paula Freschi Kamena, District Attorney

DATE: August 4, 2000

RE: Proposition 215 - "Medical Marijuana" & the Impact of
Federal District Court's Ruling in United States v.
Oakland Cannabis Buyers' Cooperative, et. al.

A decision of the Federal District Court, Northern District of California has exempted certain medical users of marijuana from an earlier injunction prohibiting the distribution of marijuana by the Oakland Cannabis Buyer's Cooperative and other named parties. On July 17, 2000, District Court Judge Charles Breyer signed an amended injunction which, in effect, permits distribution of cannabis (marijuana) by the Oakland Buyers' Cooperative and Jeffrey Jones to "patient members" who suffer from a serious medical condition, who will suffer harm without access to cannabis, who need cannabis for treatment of a medical condition or to relieve symptoms and who have no reasonable alternative. (Please see attached order.) Thus persons who qualify under this modified injunction will not be subject to federal prosecution for possession or distribution of marijuana.

Judge Breyer expressly denied the government's request for a stay of the order pending an appeal. While the U.S. Attorney's Office is seeking review by the United States Supreme Court, it could be many months before a decision is reached. **As a result of these developments, this office will not oppose motions for the return of marijuana, where such motions are made by persons who reasonably fall within the scope of the court's order.**

Some police agencies seizing marijuana when there is a claim of medicinal use, in the past have seized it because of federal law violations. You should be aware that the current state of federal law would appear to create the same or similar medical necessity for federal law. As indicated above, the U.S. Attorney is appealing this decision to the United States Supreme Court, but it will not be known for some time whether that court will consider the case. Therefore, Judge Breyer's ruling is good law in our federal circuit.

As a reminder, our policy re medical marijuana advises that if the six conditions listed in the protocol are met, absent other extenuating circumstances we will not file charges. It does NOT mean that if one of the prongs is missing that we will automatically charge a case referred to us. Law Enforcement must base its decisions regarding marijuana on the probable cause that they find at the scene of an event (including this new federal case), and we in the D.A.'s Office must base our decisions as to the proof of charges before a jury on a case by case basis.