

California Medical Marijuana Dispensary and Grower's Guidebook

A comprehensive guide for creating a medical marijuana dispensary, collectively growing medical marijuana, and operating in the current legal environment.

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California Medical Marijuana Dispensary and Growers' Guidebook: Everything you need to know about opening a marijuana dispensary and/or legally growing medical marijuana.

Authors:

Charles Restivo is an entrepreneur with a background in finance and accounting, including employment at top accounting firms in Santa Barbara, CA. Early in his career, he spent a number of years auditing 501(c)(3) non-profit corporations and became familiar with internal operations. In his position at West End Partners, a local boutique investment firm that evaluated and partnered with failing businesses in order to restructure them, Mr. Restivo gained extensive knowledge of business valuation, acquisitions and consulting. He is a UCSB graduate with an Honors degree in Economics.

Mr. Restivo has been a long-time medical marijuana advocate and has worked with a number of collectives over the last six-plus years. Locally, he was an active demonstrator and dedicated participant in the promotion of Proposition 19, the 2011 California initiative to legalize the use of marijuana.

Mr. Restivo was instrumental in obtaining Santa Barbara's first medical marijuana dispensary permit. Through this process, he gained a wealth of knowledge in the ever-evolving and somewhat controversial topic of medical marijuana dispensaries, including what is required to establish and run a successful storefront dispensary.

Through his own experience in establishing and running a collective, Mr. Restivo has had interactions with local police, district attorneys and federal DEA officers. Fortunately, these confrontations ended in only one minor possession violation. However, these interactions were an integral part of his learning process. Mr. Restivo has heard first-hand what the other side, the prosecuting district attorneys, consider "legal" and what specific details they are currently focusing on to pursue legal action. His numerous hours in court sessions and attorney briefings provide him with a unique, even priceless perspective on the medical marijuana laws.

Mr. Restivo devoted himself to attendance at medical marijuana conferences, relevant city council meetings and has extensively researched California's medical marijuana issues over the last five years.

Currently, Mr. Restivo continues to consult with private businesses, including dispensaries, retail boutiques, salons, and entertainment companies.

William Britt has over thirteen years' experience working with attorneys and has attended over 500 court proceedings throughout Southern California, reading numerous police reports, listening to testimony from experts, police and witnesses, reviewing cannabis evidence, providing reports with weights, photos, estimates of plant yields, etc., and testifying on issues such as cultivation crop yields, methods of distribution, and patterns of use by medical and non-medical users.

He has investigated more than 300 individual cases and testified as an expert on cannabis over 80 times. He has heard police officers testify in court at least 200 times, and examined, evaluated, weighed and photographed cannabis plant material at least 60 times.

From January 2007 to the present, he has worked as amicus curae to several state and federal courts and jurists, including courts in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura.

He has spent over 1,000 hours interviewing defendants and witnesses, qualified medical cannabis patients, recreational users of cannabis, doctors and police officers, including discussions on legal aspects, patterns of personal use and cultivation techniques. He has also visited and inspected numerous indoor and outdoor legal medical cannabis cultivation sites.

Mr. Britt is a court-qualified expert witness on all issues regarding marijuana, including:

- Appraisal of cannabis value on both a wholesale and retail basis
- Patterns of use of cannabis by qualified patients and methods of ingestion
- Cannabis yields and different formulas used by law enforcement
- Cannabis cultivation methods, both indoor and outdoor
- California Proposition 215 and the Medical Marijuana Program Act (SB 420)
- Methods of acquiring marijuana, such as collectives, co-ops, and the black market

In July 2004 he worked with and advised Long Beach Police Chief Anthony Batts to create police guidelines for officers who encounter qualified medical cannabis patients who use, possess, or transport marijuana in the city of Long Beach.

Mr. Britt has educated doctors on guidelines for recommending cannabis, patterns and methods of use by patients, and effects and benefits of use for patients with chronic pain. He has taught continuing education at UC Irvine Medical School of Pain Management and has been a guest speaker at USC's Keck School of Medicine regarding clinical applications of cannabis.

Over the last fourteen years, Mr. Britt has spoken at numerous community and healthcare provider meetings in southern California, working to educate healthcare professionals, law enforcement officials and politicians on Proposition 215, SB 420 and the benefits of medicinal cannabis.

Mr. Britt has over eight years of prior accounting experience. He also founded (in 1998) and currently manages the Association of Patient Advocates (APA), a nonprofit organization that assists disabled and chronically ill patients to gain access to healthcare information and social services. The APA works with healthcare providers to advocate for patient rights, to improve services and to include the patient in healthcare policy decisions.

The information contained in this guide is for informational purposes only. Any legal or financial advice that we provide is our opinion (only) based on our personal experiences. You should always seek the advice of a legal professional before acting on something that we published or recommended. Users of this guide are advised to do their own due diligence when it comes to making business decisions and all information, products and services that have been provided should be independently verified by your own qualified professionals. By reading this guide, you agree that we are not responsible for the success, failure, and possible criminal violations of your (or your organization's) decisions as they relate to any information presented in this guide. You shall assume all responsibility for any actions associated with our advice.

Introduction:

The goal of this manual is to provide readers with the tools they need to get started in the medical marijuana industry. We specifically focus on how to open and operate a California medical marijuana dispensary, as well as how to legally grow medical marijuana within the state of California. If you have ever started another business in the past, you may find some of this information redundant; however, we didn't want to leave any information uncovered. This book was first published in August 2012 and offers the most current information available.

In this book, we delve deeply into dispensary operations, from current state laws to day-to-day operations, as well as how to comply with the various state agencies. Our approach is to provide you with as many resources as we can in order for you to successfully open and operate a medical marijuana dispensary (or grow operation) under the guidelines set forth by the state of California.

We strongly suggest that you read the book from beginning to end before you make any business decisions, and that you take notes and flag areas to re-read as questions arise. However, if you need a quick answer, refer to the table of contents for a specific topic. As you may know, the California medical marijuana industry is still evolving, and your search for knowledge should not stop with this or any other book. Please visit our website or email us if you have any questions. We also encourage you to submit feedback. Thank you for purchasing this book, and we hope you are pleased with the information we have provided.

As a starting point, medical marijuana (and its usage) needs to be treated much differently than recreational marijuana (which is *illegal* in California). There are very specific guidelines that need to be followed to ensure that any marijuana activities you take part in are classified as being for medical purposes only. Please note that, although dispensaries require business-like qualities to survive, these are **not-for-profit entities** that are very complex and are fundamental for operating in this industry.

People become involved in the medical marijuana business for a number of reasons. Over the past 15 years, since medical marijuana has become legal, thousands of people have gotten involved in this industry, for various reasons. Some are marijuana activists who strongly believe in the medicinal use of the product, others are people who use medical marijuana and want better, safer access to it, and still others simply enjoy the uplifting effects of marijuana. Many people are attracted to the business side, the opportunity to be self-employed, the flexible hours, and the excitement of being in the forefront of an emerging industry that has billion-dollar yearly potential. Please note that, while some people are attracted to the potential for financial gain, your written plans must comply with the **not-for-profit** objective. Accordingly, if you are interested in this industry only for financial gain, you should be aware that for-profit marijuana entities are illegal, and you should probably consider a different business venture.

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With that being said, here is a summary of what you will need to do to get started in the California medical marijuana industry:

1. Get a doctor's recommendation to use and grow medical marijuana
2. Decide what medical marijuana profession you wish to become involved in:
 - a. Start a collective to help distribute medicinal marijuana to qualified patients, or
 - b. Grow medical marijuana, or
 - c. Both.
3. Get organized:
 - a. Brainstorm, create goals for your collective or your grow
 - b. Research current local, county and state MMJ laws
 - c. Pull together an operating team of qualified individuals (if applicable)
4. Choose an entity for your not-for-profit business
5. Create a collective or cooperative corporation (if applicable)
6. Begin to cultivate medical marijuana as a collective or cooperative:
 - a. Ensure that everyone in your collective (or co-op) has a current doctor's medical marijuana recommendation
 - b. Make sure members are aware that they are members/shareholders in the collective corporation
 - i. Require that members provide more than just money for marijuana (i.e. donate time or goods to the collective)
 - c. Keep detailed records of
 - i. income and expenses
 - ii. grow expenses and operations
 - iii. time donated by members
 - d. Ensure that all your medical marijuana is kept in a "closed loop" system, in which marijuana is cultivated by members and provided only to members (and never resold)

Overview

The ever-evolving medical marijuana industry has been around in California for over 15 years. Throughout this time, the industry has endured in an unclear legal atmosphere, and the interpretation and enforcement of laws vary widely from county to county. We, along with other medical marijuana advocates, hope that California will legalize this plant sooner rather than later. Unfortunately, every time we take a step forward toward legalization, we soon take one or two steps back. It is mandatory that you stay aware of current laws at the state, county, and city levels. Also, please be politically active and promote the positive aspects of marijuana whenever possible.

The medical marijuana industry has recently been described as the modern-day gold rush. Many people are eager to jump into the industry and, given all the positive press (and economic data), We don't blame them. In 2011, CNBC aired its *Marijuana, Inc.* documentary nationwide and has rebroadcast it repeatedly. This program showed people growing giant plants in Northern California with little fear of prosecution. However, don't be fooled; dozens of arrests are taking place every day, and there are still big risks involved with this industry.

California allows an exemption from prosecution if you are operating under specific rules, but it is important to remember that profits are not allowed in this industry. However, you can make a living wage by working as a dispensary director, employee, or grower. Given the loose regulations in place, some people are taking advantage, and you will need to work extra hard to separate yourself from the bad apples. A person can live very comfortably working within the California medical marijuana guidelines.

Chapter 1- Laws

As a starting point, we will outline the state and federal laws regarding medical marijuana. This legal chapter is first because the laws are the foundation for the usage of medical marijuana. It is extremely important that you understand and abide by all laws outlined below. Failure to abide by the state laws (and guidelines) will result in your medical marijuana exemption being disallowed, which will then render all your marijuana usage, possession, and cultivation illegal. Unfortunately, until the federal government acknowledges the benefits of medical marijuana, you will be susceptible to federal law violations.

Federal Law

The federal government still views marijuana as a Schedule 1 narcotic, on par with cocaine and heroin.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273). The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b) (1). Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a) (1), 844(a)).

California's Medical Marijuana Laws

Proposition 215: The Compassionate Use Act, November 1996

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. (§ 11362.5). Proposition 215 was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (§ 11362.5(b) (1) (A)-(B)).ⁱ

The Act further states that "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician." (§11362.5(d)). Courts have found an implied defense to the transportation of medical marijuana when the "quantity transported and the method, timing and distance of the transportation are reasonably related to the patient's current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551).

Senate Bill 420: The Medical Marijuana Program Act (MMP), January 2004

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83). The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78 ii).

This bill made it mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b)). Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder's status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. ⁱⁱ

From Senate Bill 420 to 2008

After SB 420 passed, we began to see more medical marijuana dispensaries begin to pop up throughout California, and things were going fairly smoothly. Certain cities took a more liberal approach and allowed dispensaries to flourish.

In the middle of 2007, a number of landlords in California received "advisory" letters from the DEA (under the Bush Administration) warning of the possibility of property forfeiture, and in a few instances U.S. Attorneys backed up the DEA letters with actual threats to file charges. Many property owners forced the dispensaries to close down, and the dispensary operators and their landlords who didn't close down weren't sleeping very soundly.

It wasn't until the 2008 presidential campaign that patients saw a glimmer of "hope" –Barack Obama made multiple comments during his campaign about his ideas regarding the proper allocation of scarce law enforcement resources. He said dispensaries operating in accord with

California law would not be a priority for his administration and, based on these statements, patients believed that Obama was medical-marijuana friendly and a good presidential candidate (for the MMJ industry). Unfortunately, we were deceived – the Obama Administration has continued to attack medical marijuana providers. Please see Chapter 12 for more details.

Attorney General Jerry Brown Issues Medical Marijuana Guidelines (August 2008)

California Attorney General Jerry Brown published guidelines for qualified medical marijuana patients, providers and state law enforcement in August 2008. These guidelines provide information for medical marijuana patients and law enforcement on how to comply with California's current medical marijuana laws and are the most detailed information the State has provided. Unfortunately, these guidelines are not binding in court, but they do provide a foundation for law enforcement, district attorneys and judges.

It was a great step forward for the California medical marijuana industry when these guidelines were issued: This was the state's highest-ranking law enforcement official acknowledging that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law," if they followed the rules outlined. Unfortunately, these guidelines were too general and left too much room for interpretation (which we will discuss later). However, as of the printing of this book in July 2012, this is still the most pertinent document relating to medical marijuana compliance in California (See **Attachment 1**).

State Attorney General Kamala Harris Seeks Clarification (December 2011)

In late December of 2011, the California State Attorney General, Kamala Harris, issued a statement to California lawmakers urging them to clarify the state's medical marijuana laws. She pleaded with them to provide "substantive changes" that will clear up some of the ambiguity in the industry. She went on to state that the current laws are not clearly laid out for either law enforcement or medical marijuana patients. Harris pushed the burden back on the Legislature to provide this clarification, rather than revise her predecessor's 2008 medical marijuana guidelines. If the Legislature issues specific medical marijuana requirements, it would save a lot of the state's court time and resources.ⁱⁱⁱ

Priority of Compliance

You will want to comply with all the legal rules from the state down to your local government. It is very important not to lose sight of how to prioritize the various agencies' (i.e., state, county, and city) regulations as they apply to medical marijuana. If your city allows dispensaries, it is very easy to get caught up in the local zoning issues and lose sight of the state guidelines that should carry the most weight and be your primary focus. You should, of course, be concerned with city operational requirements, but your first priority is to make sure you are operating under the state's medical exemption laws. It is much easier to fight a city violation about zoning issues (e.g., hours of operation or signage) than a criminal (state level) marijuana violation (which could include jail time and a criminal record). City violations typically show up in the mail and include small to moderate fines. We are hopeful that, at some point, the federal government will be at the top of the list, but for now there is no way to comply with them. Limiting the size of your organization and keeping it professional and compliant with the other agencies is your best bet for staying off the federal government's radar.

Unfortunately, the attorney general's guidelines are only 11 pages long and leave a lot of room for interpretation. You and everyone involved with your operation will need to study and understand the attorney general's guidelines. You will also need to review the material in this manual, do your own due diligence, consult an attorney, and stay current on all medical marijuana issues.

Chapter 2 - Becoming a Medical Marijuana Patient

To possess, use or grow medical marijuana in California, you need a doctor's recommendation. Once you have received a doctor's recommendation you can possess, use, and grow marijuana, and be immune to the criminal violations normally associated with these activities if you abide by specific guidelines set up by the state.

Doctor's Recommendation to Use Medical Marijuana

The medical marijuana industry essentially starts with the doctors. A doctor can issue a "recommendation" to use marijuana for medical needs. These typed or written recommendations are similar to prescriptions and allow patients to be exempt from the regular state marijuana laws. Since marijuana cannot legally be prescribed by a physician or dispensed by a pharmacy per federal law, the best thing a doctor can do is issue their recommendation for use. Although a verbal recommendation is sufficient according to the law, a written document is required by collectives and may reduce your chances of being arrested. Even having an expired recommendation will provide you with a defense in court. However, it is recommended that anyone using medical marijuana have a current doctor's recommendation.

Prop 215, Health and Safety Code 11262.5, states that its purpose is "To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, **or any other illness for which marijuana provides relief.**" It is this last statement that allows doctors to be liberal in writing these recommendations. California Health and Safety Code 11362.7 specifically reads, "Any other chronic or persistent medical symptom that either: (A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336)." This code seems to provide a little more limitation on what qualifies as "other" acceptable illness. It is ultimately the doctor's decision on who qualifies for medical marijuana.

The People v. Spark (2004 California Court of Appeals) is a pertinent case that states that a jury cannot second-guess a doctor's recommendation for a patient who is seriously ill, because a person's medical condition is confidential. This provides patients and doctors with more protection from prosecution.

As discussed earlier, Senate Bill 420 initiated a statewide program for the voluntary registration of qualified medical marijuana patients through an identification card system. Under this program, local counties (via the Department of Health) must issue state ID cards that verify your

recommendation to use medical marijuana. The county will verify with the recommending doctor that your recommendation is valid, take a photo, and have the card produced in a few weeks. These ID cards don't provide any more protection than the regular doctor's recommendation, although there are a few advantages to having a state-issued card: It is official, and it will likely hold more weight for local law enforcement, since they don't need to contact your doctor to verify your recommendation letter (which could easily be forged or replicated). There is a web site where these state-issued ID cards can be verified. The cost for these state IDs is currently about \$166 and can vary from county to county. Medi-Cal recipients will receive a 50% fee reduction. The state portion of the fee is \$66.00, and the counties add their \$100 administration fees.

Doctor's Exam/Interview

Prepare for the conversation you are going to have with the doctor ahead of time. What ailments do you have that are improved by the use of medical marijuana? Research your condition before you go to your appointment. You should plan ahead and have a list of questions that you would like answered. The typical appointment won't last very long, so it is good to be prepared and take advantage of your time with the doctor. Educate yourself about your medical condition and research what benefits cannabis can provide. In addition, certain strains of medical marijuana are likely to be more helpful in treating certain conditions. Start building a foundation of knowledge so that you can seek the most suitable treatments and better your life.

Doctors often recommend a set number of plants that can be grown or a given quantity of dried marijuana that can be possessed (i.e., 12 immature or 6 mature plants, or 8 ounces of marijuana). Some doctors are more knowledgeable and can provide more specific recommendations on the amount of cannabis that should be grown by an individual, based on personal consumption and grow methods. For example, if a patient plans to obtain their year's worth of medicine from a single outdoor grow, they would require a significantly higher quantity allowance compared to a patient who wants to join a collective and not personally grow his or her own marijuana.

Most doctors will have you fill out a medical history form before starting the exam. They will then take your vital signs and perform a brief physical. If pain is your issue, the doctor might ask you what your pain level is (on a level from 1-10) without the use of marijuana and then when you are medicated. The doctor will also ask about other medications you take and past experiences with marijuana. You should feel comfortable telling the doctor that you currently use marijuana and that it helps with your medical (or psychological) condition. Most doctors are sympathetic to people who are looking for alternatives to addictive pharmaceutical drugs.

You may end up with a doctor who wants to keep detailed records of his patients and why he feels marijuana is appropriate. Some doctors will want to get copies of past medical records,

e.g., MRI or x-ray records, or a diagnosis from a specialist or primary physician. The doctors will also briefly describe the state laws and how best to comply. There is no reason to be nervous at your appointment; relax and enjoy this process that opens the gates to the world of medical marijuana.

In the last five years, the number of doctors that will write recommendations has increased dramatically. Fortunately, the increase in the number of marijuana doctors has brought down the price for exams and/or recommendations. Also, the doctor's recommendation will likely be written on the spot that day. A typical recommendation is good for one year; however, some doctors offer shorter durations for discounted rates. In most large cities, these doctors are competitively marketing to patients. Some doctors will advertise a low base rate that will later be increased before you receive your recommendation, so be sure to confirm all the fees associated with the recommendation before you make an appointment. Depending on your location, you should expect to pay anywhere from \$80 - \$150 for a one-year recommendation. The price is also often discounted for those renewing a recommendation.

Some doctors will try to up-sell ID cards and other miscellaneous items. However, their ID card serves no real purpose and should not be confused with the state-issued ID cards (under SB420). Most dispensaries will not accept the ID cards and will still require that you present your original, signed (and often embossed) recommendation letter.