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## Medical Marijuana

By Stephanie Wasserman

The growing debate over the use of marijuana to alleviate pain and suffering associated with certain illnesses has been argued before state legislatures, the federal government, health care organizations, law enforcement agencies, and many state and federal courts. Even the Supreme Court has weighed in on the issue.

*Proponents of medical marijuana claim that it has many therapeutic uses.*

**Pros.** Proponents of medical marijuana claim that its therapeutic use comes from the ability of tetrahydrocannabinol (THC) to reduce pain, vomiting and nausea associated with cancer treatments, intraocular pressure associated with glaucoma, and muscle spasms from movement disorders. It can increase the appetites of patients with HIV/AIDS who are suffering from wasting syndrome. According to a 1998 study published by the *Journal of the American Medical Association*, 60 percent of the public supports the legalized use of medical marijuana.

*Opponents point out that many approved drugs already are available to address these therapeutic benefits.*

**Cons.** Others oppose medical marijuana based on the Federal Controlled Substances Act of 1970 that defines marijuana as a Schedule I drug. These drugs are defined as having the highest potential for abuse and no current accepted medical use. Opponents point out that many approved drugs already are available to address these claimed therapeutic benefits—including a synthetic form of THC. Medical marijuana policy, they argue, is simply a "back-door" approach to legalizing all uses of the drug, and undermines efforts to discourage people, especially young people, from using any illegal drugs.

### State Action

Since 1978, laws on the medical use of marijuana have quietly existed on the books in 36 states and the District of Columbia. Although laws in six states have been repealed or have expired, many of the remaining statutes, which address such issues as therapeutic research programs, were never implemented or are no longer in effect because of complicated legal issues. For example, many laws supporting research programs relied on the federal government to provide or authorize a legal supply of marijuana. California is the only state to have an operational research program.

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It is through the initiative process where medical marijuana is most often debated. Since 1996, voters in Alaska, Arizona, California, Colorado, Maine, Montana, Nevada, Oregon and Washington have approved ballot initiatives to protect patients who possess or grow medical marijuana with their doctor's approval.

Typically, these laws remove state criminal penalties on the use, possession or cultivation of a certain amount of marijuana for patients who have discussed its medical benefits with their doctors. Written documentation of this discussion allows the patient to enroll in a confidential

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state-run marijuana registry program and receive an identification card. The card serves as proof of a medical necessity defense should the patient be questioned by law enforcement agents.

With the success of these ballot measures, two state legislatures have now patterned laws after them. In 2000, Hawaii became the first state to approve medical marijuana through legislation. Vermont followed in 2004. Taking a different approach, Maryland passed a law in 2003 removing criminal penalties for medical marijuana patients who can prove a medical necessity in court. The patient, however, still faces arrest, a fine of \$100 and possible court costs.

State officials enter uncharted waters when implementing medical marijuana programs. Although some states have guidelines and amendments to clarify policies, many issues remain unresolved. Physicians in Arizona, for example, have not been prescribing marijuana to seriously ill patients, as the 1996 law allows, because they risk revocation of their licenses under federal law. In the other states, the laws require only that a patient possess a physician's recommendation, which, according to a federal court ruling, is considered constitutionally protected free speech. Even so, public officials may find such legal nuances difficult to support. The governor and attorney general of Colorado sent a letter to the president of the state medical society warning doctors about possible prosecution under federal law in 2001 preceding the implementation of Colorado's program. However, as of February 2005, more than 5,500 patients in Colorado currently possess a valid registry card, and no physicians have experienced federal reprisals. Even so, according to managers of the state registry, doctors and patients alike have expressed reluctance to participate because of the inconsistencies between state and federal marijuana laws.

Alaska, Iowa, Montana, Tennessee and the District of Columbia have reclassified marijuana from a Schedule I substance to a Schedule II drug, which acknowledges accepted medical use, but with "severe restrictions." Because federal schedules always supercede that of a state's, these actions may be meaningless and impractical.

### Federal Action

The federal government has always had a large stake in the medical marijuana debate. Currently, a bill has been introduced in the Senate to allow defendants in a federal criminal case to introduce into evidence the fact that their possession of medical marijuana is in compliance with state law. A similar bill failed in the House in 2003. In 2001, the U.S. Supreme Court ruled that parties who grow or distribute marijuana for medical purposes may not raise the defense of medical necessity under federal law. A pending case before the high court will decide whether the federal government has the authority to seize homegrown drugs under federal commerce regulations. These and other actions in the medical marijuana debate highlight the tension it raises among health care advocates, law enforcement, citizen initiatives, states' rights and the authority of the federal government.

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### Contact for More Information

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