

September 17, 2010

Arthur J. Parker
Chief, Rulemaking Section
Office of Attorney General
Legal Counsel Division
1350 Pennsylvania Ave., NW Ste. 409
Washington, DC, 20004

Submitted electronically to:

<http://www.dcregs.org/Notice/MakeComment.aspx?NoticeID=470855>

Submitted via e-mail to:

Arthur.Parker@dc.gov

**RE: Notice of proposed rulemaking to District of Columbia
Municipal Regulations to amend Title 22 by adding Subtitle C
“Medical Marijuana” (Rule No. 22-C100); and**

**Mayor’s order 2010-138 pursuant to the Legalization of
Marijuana for Medical Treatment Initiative of 1999**

Dear Mr. Parker,

Americans for Safe Access (“ASA”) appreciates the opportunity to submit these comments regarding the above-referenced notice of proposed rulemaking. ASA would like to commend the Office of the Mayor and the Department of Health for moving forward on the implementation of DC’s law to authorize the use of cannabis for medical purposes. Also, we would like to offer our sincere appreciation to Councilman Catania and the entire DC Council for their important contributions to this process.

While ASA takes issue with several provisions included in the law and these proposed rules, we promise to continue our attempts to engage in a constructive dialogue with the Office of the Mayor and the Department of Health to ensure that this program both serves the interests and meets the legitimate therapeutic needs of individuals who might benefit from the use of cannabis.

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A. Interest of ASA

ASA is the nation's largest non-profit advocacy organization dedicated to advancing safe and legal access to cannabis solely for therapeutic use and research. To advance our mission, ASA employs a multi-faceted strategy that includes public education, impact litigation, grassroots advocacy, and direct lobbying. The organization works with all levels of government to support policies that create and improve access to medical cannabis for patients and their care providers. As such, ASA, on behalf of our membership in Washington, DC, has a direct interest in the processes and procedures that will dictate the implementation of the Legalization of Marijuana for Medical Treatment Initiative of 1999 (D.C. Law 13-315; 57 DCR 3360) as amended by the Legalization of Marijuana for Medical Treatment Act of 2010 (D.C. Law 18-210; 57 DCR 4798).

B. ASA's comments concerning the proposed rulemaking to District of Columbia Municipal Regulations to amend Title 22 by adding Subtitle C "Medical Marijuana"

ASA respectfully submits regarding the proposed rule that:

1. The delegation of licensing and regulatory authority of cultivation and dispensing centers to the Alcoholic Beverage Regulation Administration ("ABRA") is wholly inappropriate and completely unnecessary. [Chapters 50-62; related, Mayor's Order 2010-138]

ASA is deeply troubled by the proposition that the licensure and regulatory authority of the cultivation and dispensary centers be delegated to ABRA. The purpose of the underlying statute is clear: to provide for the safe and legal use, cultivation, and distribution of cannabis *solely* for *medical treatment* purposes. As such, the Department of Health should have exclusive control over the licensure and regulation of medical marijuana cultivation and distribution facilities. Moreover, the regulation of cultivation and dispensary centers should follow a similar framework to that created to successfully license and control pharmacies, drug stores, and other businesses that provide access to therapeutic treatments and medical devices.

ABRA lacks the qualified personnel and institutional framework to possess or develop an expertise on the science, research, and integrated health issues concerning the use of cannabis for medical treatment. Even a cursory review of ABRA's mission, which focuses strictly on the sale, distribution, and consumption of alcoholic beverages and enforcement of ABC laws, reveals that regulation of the distribution of marijuana for medical treatment falls outside their field of expertise. On the other hand, the mission of the

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Department of Health is to advance and protect the health and safety of District residents by providing education and facilitating access to health care for the public.

Finally, ASA believes that ABRA's involvement in the regulation of these facilities sends the wrong message to patients, physicians, D.C residents, and Congress by likening the distribution of cannabis for medical treatment to the regulation of bars and nightclubs meant for recreational enjoyment. ABRA's involvement is inappropriate and may provide Congress enough cause to oppose, dismantle, or further interfere with the implementation of D.C.'s medical marijuana laws. The cultivation and distribution of cannabis for medical purposes ought to be licensed and regulated like other medical devices and products designed for medical treatment, not like recreational spirits designed for intoxication.

2. Accepting cultivation and dispensary registration business applications "on a first-come, first-serve basis" is an unsuitable selection process and will not ensure that the *best* and most innovative facilities are licensed. (Chapter 54; see 5402.1)

ASA is concerned that cultivation and dispensary registration business applications will be selected "on a first-come, first-serve basis." This selection process is unsuitable because it does not guarantee that applicants with the utmost legal integrity and expertise or those that will provide the highest standard of care will be licensed. Instead, the selection standard is to accept those applicants who can submit the appropriate paperwork and pay the enumerated fees *first*.

The "first-come, first-serve" selection process has also sparked interest by industry insiders, many from outside the District, seeking access to a process that would facilitate franchise-style operations. ASA believes that medical marijuana treatment facilities should be community-based and demonstrate strong connections with the neighborhoods in which they desire to operate.

Given the limited number of facilities to be permitted in the District, ASA urges the Administration to be selective about which collectives are chosen to operate. Qualified patients and the city's residents deserve a process that ensures that only the *best* applicants and most innovative facilities are licensed.

ASA recommends that this standard be abandoned. Instead, the selection of these facilities should be competitive and merit-based. Experience in several jurisdictions indicates that when a limited number of licenses are available, an open and competitive bidding process ensures that the facilities selected

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are fully innovative and integrated health centers. In other jurisdictions, the conditional or special use permitting process has also proved successful.

The city is capable and has a familiar framework to provide a selection process better than the proposed “first-come, first-serve” standard. ASA believes that a competitive and merit-based process would better serve patients, physicians, and the residents of Washington, DC.

3. Confidentiality provisions need to be extended to the records and reports required throughout Chapter 60. (Chapter 60; see 6000-6004)

ASA commends the Office of the Mayor for the confidentiality provisions extended to the records required in Chapter 11. However, we believe that similar confidentiality protections should be extended to the reporting provisions required throughout Chapter 60. It is imperative that the information contained in those reports and records are kept confidential and that the officials charged with inspecting those records are required to maintain confidentiality.

This issue might be resolved by vesting authority in the Department of Health, given their familiarity with confidentiality issues. Otherwise, it is necessary to amend these regulations to include strong confidentiality requirements for the reporting sections.

It is important that medical marijuana patients, their caregivers, and the compassionate individuals who engage in acts of civil disobedience against the federal government to provide a safe and secure place to access cannabis for medical treatment are extended the strictest confidentiality protections possible. It is important to bear in mind that regardless of how scrupulous their compliance with local law, medical marijuana providers remain vulnerable to federal enforcement raids, arrest, and prosecution by U.S. Attorneys. Worse still, these individuals are barred from introducing *any* evidence in federal court proceedings which might demonstrate their strict compliance with local laws and regulations. In the event of federal prosecution, those licensed to operate in the city deserve whatever confidentiality provisions might mitigate their culpability.

4. A ban on delivery services is unnecessary and creates an undue burden on qualified patients with mobility and transportation issues. (Chapter 58; see 5803.1)

ASA is troubled by the ban on delivery services, especially from collectives that are licensed and subject to the record keeping requirements included in the proposed rulemaking. Home delivery is a premier service offered by a number of pharmacies in Washington, D.C. This alone would suggest that

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there is already a framework under which such delivery services might operate without the possibility of fraud or abuse of the system.

The fact of the matter is that for qualified patients with mobility issues who, for whatever reason, can not get to a dispensing center and do not have a valid caregiver, home delivery becomes the only viable option. For older patients who fear theft upon entering or leaving a medical cannabis dispensary, home delivery becomes a welcome option. In addition, for qualified patients who have sensitive jobs, home delivery provides some measure of discretion.

C. ASA's comments concerning Mayor's order 2010-138 pursuant to the Legalization of Marijuana for Medical Treatment Initiative of 1999

ASA respectfully submits regarding the order that:

Patient representation on the Medical Marijuana Advisory Committee must be guaranteed.

The draft regulations currently provide for a committee of seven members including one appointee each by the Director of ABRA, the Chief of the Metropolitan Police Department, and the City Administrator as well as four members appointed by the Director of the Department of Health.

This committee is charged with monitoring best practices in other states, collecting the available scientific research on the use of medical marijuana, measuring the effectiveness of the District's medical marijuana program, making recommendations when the Committee is asked to consult by other agencies, and making recommendations to the Mayor and the Council by January 1, 2012 about the issue of patient cultivation.

ASA is particularly concerned about the specific lack of patient representation on this Committee. Moreover, there is no reserved space on the Committee for physicians who have provided the medical marijuana recommendations. If this were a committee set up to monitor community policing efforts and ANCs were not guaranteed space on that Committee, residents would be outraged. Likewise, if the Department of Health set up an HIV Advisory Committee and didn't guarantee that people living with HIV were represented, people would be livid!

Given that the purpose of the Committee is to review best practices and make recommendations about a program intended to serve the interests of individuals who might benefit from the use of medical marijuana, ASA

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believes that those engaged in the program deserve a strong voice on the Committee. We suggest that the Committee require at least two qualified patients and two physicians who have provided medical marijuana recommendations in accordance with the law.

Except for the few concerns raised herein, we acknowledge the solid effort and we appreciate the time and resources the Office of the Mayor and the Department have dedicated to this important issue. When you (or your designated agents) have any questions or concerns about the comments provided or about any other questions concerning the medical marijuana programs, please contact our Washington, D.C. office directly at 202-857-4272.

Respectfully yours,

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