

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1006

H.P. 742

House of Representatives, February 11, 1997

An Act to Legalize Marijuana for Medical Purposes.

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative STEVENS of Orono.
Cosponsored by Senator KILKELLY of Lincoln and
Representatives: BAKER of Bangor, BRENNAN of Portland, BROOKS of Winterport,
BULL of Freeport, MITCHELL of Portland, SAXL of Bangor, Senators: ABROMSON of
Cumberland, RAND of Cumberland.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 5 MRSA § 12004-G, sub-§14-C is enacted to read:

6 14-C. Participation \$40/Day 22 MRSA
8 Human Review Board §2424
10 Services

12 Sec. 2. 15 MRSA §5821, first ¶, as enacted by PL 1987, c. 420,
14 §2, is amended to read:

16 The Except as provided in section 5821-A, the following
18 shall-be are subject to forfeiture to the State and no property
20 right may exist in them:

22 Sec. 3. 15 MRSA §5821-A is enacted to read:

24 §5821-A. Property not subject to forfeiture based on medical
26 purposes

28 Property may not be forfeited under this chapter in the
30 following situations.

32 1. Possession of marijuana for medical purposes. The
34 alleged offense that subjects the actor's property to forfeiture
36 is possession of marijuana under Title 22, section 2383; the
38 actor possessed the marijuana for the actor's own use; and:

40 A. The actor was diagnosed by a physician before the
42 alleged offense as having glaucoma. This paragraph is
44 repealed on October 1, 2000; or

46 B. The actor suffered from significant nausea or vomiting
48 as a result of chemotherapy or radiation therapy.

50 Sec. 4. 17-A MRSA §1117 is enacted to read:

§1117. Marijuana for medical purposes

1. It is an affirmative defense to a prosecution for
possession of marijuana under Title 22, section 2383 that the
actor possessed the marijuana for the actor's own use and:

A. The actor was diagnosed by a physician before the
alleged offense as having glaucoma. This paragraph is
repealed on October 1, 2000; or

B. The actor suffered from significant nausea or vomiting
as a result of chemotherapy or radiation therapy.

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Sec. 5. 22 MRSA §2383-C is enacted to read:

§2383-C. Marijuana for medical purposes

1. Patients. Notwithstanding section 2383, subsection 1, a person may possess a usable amount of marijuana if the person possesses the marijuana for the person's own use and:

A. The person was diagnosed by a physician before the alleged offense as having glaucoma; or

B. The person suffers from significant nausea or vomiting as a result of chemotherapy or radiation therapy.

2. Juveniles. Notwithstanding Title 15, section 3103, subsection 1, paragraph B, a juvenile may possess a usable amount of marijuana if the juvenile possesses the marijuana for the juvenile's own use; the juvenile's parent or guardian authorized the possession and use; and:

A. The juvenile was diagnosed by a physician before the alleged offense as having glaucoma; or

B. The juvenile suffers from significant nausea or vomiting as a result of chemotherapy or radiation therapy.

Sec. 6. 22 MRSA c. 558-C is enacted to read:

CHAPTER 558-C

MARIJUANA THERAPEUTIC RESEARCH PROGRAM

§2421. Short title

This chapter may be known and cited as the "Marijuana Therapeutic Research Act."

§2422. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Marijuana. "Marijuana" means marijuana, tetrahydrocannabinol or a chemical derivative of tetrahydrocannabinol.

2. Practitioner. "Practitioner" means an allopathic or osteopathic physician licensed to practice in this State.

2 3. Program. "Program" means the Marijuana Therapeutic
Research Program.

4 4. Review board. "Review board" means the Participation
6 Review Board as established in Title 5, section 12004-G,
subsection 14-C.

8 **§2423. Marijuana Therapeutic Research Program**

10 1. Establishment; administration. There is established
12 within the department the Marijuana Therapeutic Research
Program, administered by the commissioner.

14 2. Rules. Subject to Title 5, chapter 375, the department
16 shall adopt rules necessary for the proper administration of the
program. In adopting rules, the department shall consider
18 pertinent rules adopted by the federal Drug Enforcement Agency,
the federal Food and Drug Administration, the National Institute
20 on Drug Abuse and any other federal agency concerned with the
subject of this chapter. Rules adopted pursuant to this section
22 are major substantive rules pursuant to Title 5, chapter 375,
subchapter II-A.

24 3. Supply. The commissioner shall contract with the
26 National Institute on Drug Abuse for the receipt of marijuana
under rules adopted by the National Institute on Drug Abuse, the
28 federal Food and Drug Administration and the federal Drug
Enforcement Agency. If, within a reasonable period of time, the
30 commissioner is unable to obtain marijuana as provided in this
subsection, the commissioner shall contract with appropriate law
32 enforcement agencies in this State for the receipt of confiscated
marijuana not intended for use as evidence in any criminal
34 proceeding. Any marijuana so received must be made free of
impurities and analyzed for potency by the department.

36 4. Distribution. The commissioner shall deliver marijuana
38 received under subsection 3 to pharmacies designated by the
commissioner. Any marijuana so delivered must be distributed to
40 patients upon the written prescription of their approved
practitioners under section 2425, subsection 3. Any pharmacy
42 designated by the commissioner under this subsection is not
liable, except for gross negligence, in any civil action on
44 account of marijuana distributed to patients under this chapter.

46 **§2424. Participation Review Board**

48 The commissioner shall appoint the Participation Review
Board to review practitioners for participation in the program.
50 The review board serves at the pleasure of the commissioner and
consists of at least:

2 1. Ophthalmology. A physician licensed to practice in this
3 State and certified by the American Board of Ophthalmology or the
4 American Osteopathic Board of Ophthalmology and
5 Otorhinolaryngology; and

6 2. Internal medicine. A physician licensed to practice in
7 this State and certified by the American Board of Internal
8 Medicine or the American Osteopathic Board of Internal Medicine
9 and also certified in the subspecialty of medical oncology.

10 Members of the review board are entitled to compensation for
11 attendance at meetings at the rate of \$40 per day.

12 §2425. Participation in the program

13 1. Application. Any practitioner who wants to participate
14 in the program must apply to the review board for approval and
15 pay a \$50 application fee.

16 2. Review and approval. The review board shall review all
17 applications submitted by patients and approve them for
18 participation if they are eligible under subsection 3 and the
19 rules adopted by the department under section 2423, subsection
20 2. In performing these duties, the review board is subject to
21 Title 5, chapter 375.

22 3. Prescriptions. A practitioner approved for
23 participation in the program may prescribe marijuana to only
24 those patients who are undergoing chemotherapy or radiation
25 therapy or suffering from glaucoma, who are in a life-threatening
26 or sense-threatening situation and are not responding to
27 conventional treatment or who are suffering severe side effects
28 even though conventional treatment is proving effective.

29 §2426. Expressly authorized possession, prescription and
30 distribution

31 A practitioner approved for participation in the program is
32 expressly authorized to prescribe marijuana under this chapter.
33 A patient approved for participation in the program and for whom
34 marijuana has been prescribed by a practitioner approved for
35 participation in the program is expressly authorized to possess
36 marijuana under this chapter. A pharmacy designated by the
37 commissioner is expressly authorized to possess and distribute
38 marijuana under this chapter.

39 §2427. Confidentiality

2 1. Access to information. Only the following persons have
3 access to the name and other identifying characteristics of a
4 patient for whom marijuana has been prescribed under this chapter:

6 A. The commissioner;

8 B. The review board;

10 C. The Attorney General or the Attorney General's designee;

12 D. Any person directly connected with the program who has a
13 legitimate need for the information; and

14 E. Any person for whom access has been specifically
15 authorized by that patient.

16 Meetings and records of the review board are not subject to the
17 requirements of Title 1, chapter 13.

20 2. Exceptions. This section does not affect the right to
21 inspect the records of any pharmacy under Title 32, section 13723
22 or prohibit access to or release of information concerning any
23 persons acting under authority of this chapter with respect to
24 conduct not expressly authorized by this chapter.

26 **§2428. Reports**

28 The commissioner and the review board shall report annually
29 their findings and recommendations regarding the program to the
30 Governor and the Legislature.

32 **SUMMARY**

34 This bill reestablishes the Marijuana Therapeutic Research
36 Program, which was repealed December 31, 1987. The program is
37 administered by the Commissioner of Human Services. The bill
38 also establishes the Participation Review Board to review and
39 approve practitioners who want to participate in the program and
40 any patient who wishes to participate in the program.
41 Participation is limited to chemotherapy or radiation therapy and
42 glaucoma patients who are not responding to conventional
43 treatment or who are suffering severe side effects, and any other
44 patient when medical evidence presented to the board justifies
45 that participation. If the Participation Review Board approves a
46 patient, the patient's physician may write a prescription that
47 can be filled at a state or privately operated licensed pharmacy
48 designated by the commissioner. The commissioner may obtain
49 analyzed marijuana available from the Federal Government and
50 deliver it to the pharmacy for dispensing to any approved patient
51 with a written prescription from the patient's physician. The
52 commissioner and the Participation Review Board are required to

2 make an annual report to the Governor and the Legislature,
enabling both the legislative branch and the executive branch to
4 monitor the program closely. This bill also defines side effects
of chemotherapy or radiation therapy as "significant nausea or
vomiting."

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