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Health Care Decisions: The Legal and Medical Environments

§9.75 a. Medical Necessity Defense and Controlled Substances Act

In September 1999, the Ninth Circuit Court of Appeals ordered the United States District Court for the Northern District of California to review its October 1998 decision that closed the Oakland Cannabis Buyers' Cooperative for violating 21 USC §841(a) of the federal Controlled Substances Act (CSA) (21 USC §§801–904). The appeals court ruled that the district court had not given proper weight to the possibility that marijuana was an indispensable treatment for people served by the club and thus protected by the “medical necessity” defense.

However, the United States Supreme Court reversed and remanded the case, ruling that 21 USC §841(a) does not allow defense claims of medical necessity. The justices ruled unanimously that the Oakland Cannabis Buyers' Cooperative should be shut down for distributing marijuana in violation of the federal CSA. *U.S. v Oakland Cannabis Buyers' Coop.* (2001) 532 US 483, 121 S Ct 1711.

Despite the federal position, in *People v Mower* (2002) 28 C4th 457, the California Supreme Court held that Health & S C §11362.5(d) provides a defendant limited immunity from prosecution that allows him or her to raise the medical-necessity defense at trial and to bring a motion to set aside an indictment or information before trial.

In *People v Mentch* (2008) 45 C4th 274, the California Supreme Court held that in order to claim a “primary caregiver defense” the caregiver needed to show proof that he or she was (1) consistently providing care-giving services; (2) independent of any assistance in taking medical marijuana; and (3) retained at or before the time he or she assumed the care-giving responsibility for assisting with medical marijuana. The defendant in this case was not a consistent caregiver and had no defense regarding the excess amount of marijuana sold.

For further discussion, see [California Powers of Attorney and Health Care Directives: Health Care Decisions: The Legal and Medical Environments](#), chapter 9 (Cal CEB). Available in print and through [OnLAW](#).



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