

NLWJC - Kagan

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Drugs - Legalization Efforts



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF NATIONAL DRUG CONTROL POLICY

Washington, D.C. 20503

December 20, 1996

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ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: DIRECTOR, OFFICE OF NATIONAL DRUG CONTROL POLICY

SUBJECT: Administration Strategy to Address Recent Drug Legalization Efforts

1. **Purpose:** The purpose of this memorandum is to recommend approval of the Federal strategy to blunt the negative consequences of the recent "medicinal marijuana" Propositions in California and Arizona. These Propositions purport to allow doctors to prescribe or recommend marijuana and other Schedule I drugs notwithstanding that, under the Federal Controlled Substances Act, Schedule I drugs have no accepted medical use. As you stated to the Drug Policy Council, there is a need for swift and focused Federal action to preserve the National Drug Control Strategy.

2. **General:** Under your leadership, the Administration has strongly opposed the California and Arizona drug legalization measures. These measures contradict Federal law and complicate the national drug strategy. They violate the medical-scientific process by which our nation evaluates and approves safe and effective medicines for use in the United States. They send the wrong message to our children. They undermine the concerted efforts of parents, educators, businesses, elected leaders, community groups and countless others to achieve a healthy, drug-free society.

3. **Objectives:** The interagency working group consisting of ONDCP, the Departments of Treasury, Defense, Justice, Labor, Health and Human Services, Housing and Urban Development, Transportation, and Education, the Postal Service, and the Nuclear Regulatory Commission met five times in November and December. We have developed the following strategic objectives for our coordinated Federal response:

A. Maintain effective enforcement efforts within the framework created by the Federal Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act.

B. Ensure the integrity of the medical-scientific process by which substances are approved as safe and effective medicines in order to protect public health.

C. Preserve Federal drug-free workplace and safety programs.

D. Protect children from increased marijuana availability and use.

4. **Courses of Action:** In developing our strategy, we gave due consideration to two key principles: federal authority vis-a-vis that of the states, and the need to ensure that American citizens have access to safe and effective medicine. To attain the four objectives, ONDCP and Federal drug control agencies have formed a partnership to undertake the following coordinated courses of action:

A. Objective 1 - Maintain effective enforcement efforts within the framework created by the Federal Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act

- **Department of Justice** will publicly take the position that a practitioner's action of recommending or prescribing Schedule I controlled substances is not consistent with the "public interest" (as that phrase is used in the Controlled Substances Act) and will lead to administrative action by the **Drug Enforcement Administration** to revoke the practitioner's registration to handle controlled substances.
- **DOJ** and **Department of Health and Human Services** will send a letter to national, state, and local practitioner associations and licensing boards stating unequivocally that DEA will seek to revoke the DEA registrations of physicians who recommend or prescribe Schedule I controlled substances. This letter will also outline the authority of the Inspector General of HHS to exclude individuals or entities convicted of criminal offenses relating to controlled substances from participation in the Medicare and Medicaid programs. For felony convictions, the law provides for a mandatory exclusion of a minimum of five years, and for misdemeanor convictions, there is a permissive exclusion of three years with the period of exclusion being reduced or increased depending upon mitigating or aggravating circumstances.
- **DOJ** will expand current enforcement programs to pursue appropriate investigations and prosecutions for their deterrent impact against physicians and others in cases involving:
(a) the absence of a bona fide doctor-patient relationship; (b) a high volume of prescriptions or recommendations of Schedule I controlled substances; (c) the accumulation of significant profits or assets from the prescription or recommendation of Schedule I controlled substances; (d) Schedule I controlled substances being provided to minors; and/or (e) special circumstances, such as when death or serious bodily injury results from drugged driving. The five U.S. Attorneys in California and Arizona will review cases for prosecution using these criteria even if the amount of the drugs involved is below the general threshold drug weight amounts that are contained within their respective prosecution guidelines.
- **DEA** will adopt seizures of Schedule I controlled substances made by state and local law enforcement officials following an arrest where state and local prosecutors must decline prosecution because of the Propositions. Once in DEA's possession the drugs can be

summarily forfeited and destroyed by DEA. State and local law enforcement officials will be encouraged to continue to execute state law to the fullest extent by having officers continue to make arrests and seizures under state law, leaving defendants to raise the medical use provisions of the Propositions only as a defense to state prosecution.

- **Department of the Treasury and the Customs Service** will continue to protect the nation's borders and take strong and appropriate enforcement action against imported or exported marijuana and other illegal drugs. The Customs Service will: (a) seize unlawfully imported or exported marijuana and other illegal drugs; (b) assess civil penalties against persons violating federal drug laws; (c) seize conveyances facilitating the illegal import or export of marijuana and other illegal drugs; and (d) arrest persons committing Federal drug offenses and refer cases for prosecution to the appropriate Federal or state prosecutor.
- **Treasury and the Internal Revenue Service** will continue the enforcement of existing Federal tax laws which discourage illegal drug activities.
- **IRS** will continue to enforce existing Federal tax law as it relates to the requirement to report gross income from whatever source derived, including income from activities prohibited under Federal or state law.
- **Treasury** will recommend that the IRS issue a revenue ruling, to the extent permissible under existing law, that would deny a medical expense deduction for amounts expended for illegal operations or treatments and for drugs, including Schedule I controlled substances, that are illegally procured under Federal or state law.
- **IRS** will continue to enforce existing Federal tax law as it relates to the disallowance of expenditures in connection with the illegal sale of drugs. To the extent that state laws result in efforts to conduct sales of controlled substances prohibited by Federal law, the IRS will disallow expenditures in connection with such sales to the fullest extent permissible under existing Federal tax law.
- **U.S. Postal Service** will continue to pursue aggressively the detection and seizure of Schedule I controlled substances mailed through the U.S. mails, particularly in California and Arizona, and to arrest those using the mail to distribute Schedule I drugs.
- **DEA** together with other Federal, state, and local law enforcement agencies will work with private mail, parcel, and freight services to ensure continuing compliance with internal company policies dictating that these companies refuse to accept for shipment Schedule I controlled substances, and that they notify law enforcement officials of such activities. Federal investigations and prosecutions will be instituted consistent with appropriate criteria.

B. Objective 2 - Ensure the integrity of the medical-scientific process by which substances are approved as safe and effective medicines in order to protect public health

- The Controlled Substances Act embodies the conclusion of the Congress, affirmed by DEA and HHS, that marijuana, as a Schedule I drug, has “high potential for abuse” and “no currently accepted medical use in treatment in the United States.” To protect the public health, all evaluations of the medical usefulness of any controlled substance should be conducted through the Congressionally established research and approval process managed by the **National Institutes of Health** and the **Food and Drug Administration**. Currently there are a few patients who receive marijuana through FDA approved investigations.
- **HHS**, to ensure the continued protection of the public health, will: (a) examine all medical and scientific evidence relevant to the perceived medical usefulness of marijuana; (b) identify gaps in knowledge and research regarding the health effects of marijuana; (c) determine whether further research or scientific evaluation could answer these questions; and (d) determine how that research could be designed and conducted to yield scientifically useful results.
- **HHS** will undertake discussions with medical organizations throughout the nation: (a) to address the “compassionate use” message; and (b) to educate medical and public health professionals by underscoring the dangers of smoked marijuana and explaining the views of NIH that a variety of approved medications are clinically proven to be safe and effective in treating the illnesses for which marijuana is purported to provide relief, such as pain, nausea, wasting syndrome, multiple sclerosis, and glaucoma.
- **HHS** and **DOJ** will identify scientific experts who could be available as needed to help inform the judicial and legislative processes on the findings and status of research on marijuana and to inform the public debate on policy issues related to marijuana.

C. Objective 3 - Preserve Federal drug-free workplace and safety programs

- **Transportation Workers: Department of Transportation** has issued a formal advisory to the transportation industry that safety-sensitive transportation workers who test positive under the Federally-required drug testing program may not under any circumstance use state law as a legitimate medical explanation for the presence of prohibited drugs. DOT is encouraging private employers to follow its example.
- **Federal Contractors and Grantees:** Under the Drug-Free Workplace Act, the recipients of Federal grants or contracts must have policies that prohibit the use of illegal drugs. Each Federal agency will be directed to issue a notice to its grantees and contractors to remind them: (a) of their responsibilities; (b) that the “medical” use of

marijuana or other Schedule I controlled substances remains a prohibited activity; and (c) that the failure to comply with this prohibition will make the grantee or contractor subject to the loss of eligibility to receive Federal grants and contracts. Further, Federal agencies will be instructed to increase their efforts to monitor compliance with the provisions of the Act, and to institute suspension or debarment actions against violators -- with special priority given to states enacting drug medicalization measures.

- **Federal Civilian Employees:** HHS will issue policy guidance to 130 Federal Agency Drug-Free Workplace program coordinators, the 72 laboratories certified by HHS to conduct drug tests, and trade publications that reach medical review officers. This policy guidance will state that the Propositions do not change the requirements of the Federal Drug-Free Workplace Program, which will continue to be fully enforced for federal civilian employees nationwide. Medical Review Officers will not accept physician recommendations for Schedule I substances as a legitimate explanation for a positive drug test.
- **DoD and the Military Services:** The Department of Defense will instruct civilian employees and military personnel in the active, reserve and National Guard components, that DoD is a drug-free organization, a fact that is not changed by the Propositions. The requirement that all DoD contractors maintain drug-free workplaces will be enforced.
- **Nuclear Industry Workers:** The Nuclear Regulatory Commission will continue to demand drug-free employees in the nuclear power industry, and is developing a formal advisory to emphasize that its drug free workplace regulations continue to apply.
- **Public Housing:** The Propositions will not affect the Department of Housing and Urban Development's continued aggressive execution of the "One Strike and You're Out" policy to improve the safety and security of our nation's public housing developments. HUD's principal tool for implementing "One Strike" will be the systematic evaluation of public housing agencies screening and evictions efforts through the Public Housing Management Assessment Program. This program will give HUD a standard measurement of the progress of all public housing authorities in developing effective law enforcement, screening, and occupancy policies to reduce the level of drug use, crime, and drug distribution and sales in their communities.
- **Safe Work Places:** Department of Labor will continue to implement its Working Partners Initiative, providing information to small businesses about workplace substance abuse prevention programs, focusing specific attention on trade and business organizations located in California and Arizona. DOL will accelerate its efforts to post its updated Substance Abuse Information Database (SAID) on the Internet. SAID will provide information to businesses about workplace substance abuse and how to establish workplace substance abuse prevention programs. DOL will give priority to its efforts in California and Arizona.

- **DOL's Occupational Safety and Health Administration** will send letters to the California and Arizona Occupational Safety and Health Administrations reiterating the dangers of drugs in the workplace and providing information on programs to help employers address these problems.
- **DOL's Mine Safety and Health Administration** will strictly enforce the prohibition on the use of alcohol and illegal drugs notwithstanding these Propositions.

D. Objective 4 - Protect children from increased marijuana availability and use

- **HHS and the Department of Education** will continue to educate the public in both Arizona and California about the real and proven dangers of smoking marijuana, using a message that will be tailored for preteens, teens, parents, educators, and medical professionals. Research demonstrates that, marijuana: (a) harms the brain, heart, lungs, and immune system; and (b) limits learning, memory, perception, judgment, and the ability to drive a motor vehicle. In addition, research shows that marijuana smoke typically contains over 400 carcinogenic compounds and may be addictive. The message will remind the public there is no medical use for smoked marijuana and will educate the public about strategies to prevent marijuana use. The message will also remind the public that the production, sale, and distribution of marijuana for medical uses not approved by DEA violates the Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act.
- **HHS** will analyze all available data on marijuana use, expand ongoing surveys to determine current levels of marijuana use in California and Arizona, and track changes in marijuana use in those states.
- **HHS** will develop the survey capacity to assess trends in drug use in all states on a state-by-state basis.
- **ED** will use provisions of the Safe and Drug Free Schools Act to reinforce the message to all local education agencies receiving Federal Safe and Drug Free School funds that drug possession or use will not be tolerated in schools. This affects approximately 95% of school districts. Notwithstanding the passage of the two Propositions, local education agencies must continue to: (a) develop programs which prevent the use, possession, and distribution of tobacco, alcohol, and illegal drugs by students; (b) develop programs which prevent the illegal use, possession, and distribution of such substances by school employees; and (c) ensure that programs supported by and with Federal Safe and Drug Free Schools funds convey the message that the illegal use of alcohol and other drugs, including marijuana, is wrong and harmful.

- **ED** will review with educators in Arizona and California the effect Propositions 200 and 215 will have on drug use by students. They will also communicate nationally with school superintendents, administrators, principals, boards of education, and PTAs about the Arizona and California Propositions and the implications for their states.
- **ED** will develop a model policy to confront "medical marijuana" use in schools and outline actions educators can take to prevent illicit drugs from coming into schools.
- **ED** will develop model drug prevention programs to discourage marijuana use. These models will be disseminated to the states at a Spring 1997 conference.
- **ONDCP** and **DOT** will provide recommendations pursuant to your October 19, 1996 directive to deter teen drug use and drugged driving through pre-license drug testing, strengthened law enforcement and other means. The recommendations will underscore the point that the use of marijuana for any reason endangers the health and safety of the public.

5. **Legislative Enactments:** HHS and DOJ will work with Congress to consider changes to the Federal Food, Drug, and Cosmetic Act and the Controlled Substances Act, as appropriate, to limit the states' ability to rely on these and similar medical use provisions. The Administration believes that working with Congress is the course of action that will affirm the national policy to control substances that have a high potential for abuse and no accepted medical use. The objective is to provide a uniform policy which preserves the integrity of the medical-scientific process by which substances are approved as safe and effective medicines. We will also continue to consider additional steps, including conditioning Federal funds on compliance with the Controlled Substances Act and the National Drug Control Strategy.

6. **Recommendation:** That the President approve the actions and recommendations provided in this strategy to send a clear message to the legalization movement that we will continue to enforce Federal law and work to prevent similar Propositions from passing in other states.

V/Tr



Barry R. McCaffrey
Director

POTUS Approval: _____