

Testimony of Representative Frank I. Smizik
Before the Joint Committee on Public Health
In Support of H 2247

An Act to Regulate the Medical Use of Marijuana by Patients Approved by Physicians and
Certified by the Department of Public Health.

December 10, 2007

What is the Problem: Former Governor William Weld signed medicinal marijuana bills into law in 1991 and 1995 which established a Therapeutic Research Program within the Department of Public Health. Unfortunately, this program and the legal protection of patients and doctors have remained inactive. This is because the law required that the only medical marijuana available for legal use, by patients qualified by their medical need and their doctors to participate in the program, was the supply under the strict control of the federal government's National Institute of Drug Abuse (NIDA). During the last eleven years, DPH has filed several research protocols with NIDA, all of which have either been ignored or rejected. Legislation is needed to remedy the situation by educating the public and providing explicit legal protection for patients who use medicinal marijuana with their physicians' approval.

The National Academy of Sciences' Institute of Medicine, at the request of the White House Office of National Drug Control Strategy, conducted a comprehensive review of all relevant scientific literature and concluded in 1999 that marijuana has medical benefits and should be legally permitted under certain circumstances. However, in June of 2005 the Supreme Court ruled in the medical marijuana case, *Gonzales v. Raich*, that patients protected by state medical marijuana legislation can still be prosecuted under federal narcotics law. The validity of medical marijuana laws was never at issue in this case and they remain in full effect for the states in question. While this may sound grim for medical marijuana users in the eleven states that have removed state penalties for patients' cultivation and possession marijuana, the intent of this case was not to determine the validity of state medical marijuana laws.

The sole purpose of the case was to determine if the federal government can prosecute patients for marijuana use; however, over 99% of all marijuana arrests are made by state and local authorities. Therefore, the Supreme Court decision merely maintains the status quo as

states are not required to enforce federal law nor does the decision legally mandate states to change their current law. Doctors in Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, Montana, Vermont, Maryland and Washington are all legally recommending marijuana to those patients who may benefit from its use, and the recent ruling has not changed this practice. Because it is now clear that the federal courts cannot be counted on to provide protection for medical marijuana patients, it is even more critical for states to adopt medical marijuana laws of their own. Also, the programs issuing ID cards for medical marijuana users and caregivers are still fully functioning with the only temporary delay following the *Raich* ruling being in Oregon where the Oregon Attorney General determined not long after that the decision did not command a legal change to their current program. Unfortunately, patients in Massachusetts who use marijuana for medicinal purposes continue to face arrest and imprisonment.

What this bill does: This bill goes a long way in ensuring that seriously ill patients who use marijuana under the recommendation of their doctor are legally protected. While DPH has existing regulations to certify physicians' recommendations this legislation would allow DPH-certified patients to possess and/or cultivate marijuana for medical purposes. To prevent abuse, it limits maximum amount of useable cannabis and plants allowed for each patient and requires that any cultivation of marijuana be within an indoor locked location. An identification card system outlined in the bill would facilitate marijuana law enforcement and quick determination of valid medical use.

The bill also gives DPH the ability to qualify a single "care-taker" for each patient, who can assist DPH-certified but disabled patients in obtaining or cultivating limited amounts of marijuana for medical use. Physicians participating in the process of qualifying their patients for medical use would be protected from penalty under state law. Furthermore, the bill expands the list of valid medical conditions to include HIV/AIDS, cachexia or wasting syndrome, severe pain, severe nausea, seizures including those characteristic of epilepsy, or severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease and any other medical condition or its treatment approved by a patient's doctor in the exercise of his or her professional judgment.

Why this bill is important: The above mentioned medical conditions are the cause of severe pain in those that are plagued by them and very often even the most potent drugs do not ease these agonizing symptoms. Marijuana has not only been recognized for its value in reducing pain but it also has far fewer negative side effects than many of the harsher pharmaceuticals that patients have been forced to take for the little benefit they have in easing their pain. It is time Massachusetts acknowledges the medical benefits of marijuana and give the citizens of the Commonwealth the ability to access the medications they need without fear of prosecution. This piece of legislation would do just that and for that reason I respectfully ask that you report House Bill 2247 favorably out of committee.