



The Vancouver Island Compassion Society

Response to Health Canada's Marijuana Medical Access Regulations

On April 7th, 2001, Health Canada released new regulations governing the possession and production of medicinal cannabis. These bureaucratic changes were in response to a July 31st, 2000 ruling by the Ontario Court of Appeals in the case of Terrance Parker, who uses marijuana to control epilepsy. The justices ruled in favor of Mr. Parker and declared our present cannabis laws unconstitutional as they do not recognize the medicinal usefulness of cannabis.

According to the document (currently available on the Canada Gazette website for a 30 day public consultation period) criteria or considerations representing the required outcomes of the new regulations must:

- ❑ Meet the mandatory requirements of all international drug control Conventions, to the extent possible, in consideration of the *Canadian Charter of Rights and Freedoms*;
- ❑ Be developed and implemented by July 31st, 2001;
- ❑ Be clear and easy to implement, administer and enforce;
- ❑ Not unduly restrict the availability of marijuana to patients who may receive health benefits from its use;
- ❑ Minimize any increase in regulatory burden on patients, medical practitioners, medical licensing authorities, and enforcement agencies.

After careful review of the new regulatory approach and discussion with senior staff at Health Canada, the Vancouver Island Compassion Society (VICS) wishes to express some very real concerns regarding Health Canada's ability to meet its stated (as well as court imposed) goals.

It is the opinion of the VICS that the "Marihuana Medical Access Regulations", as they currently stand, will serve to further restrict access to medicinal cannabis as well as infringe upon the privacy rights of patients and practitioners as well as licensed growers and suppliers due to the increased regulatory burden. Furthermore, the proposed changes will undoubtedly be more difficult to "implement, administer and enforce" than the current section 56 exemption process.

The Section 56 Application Process

Under the current regulations, anyone wishing to apply for an exemption to the Controlled Drugs and Substances Act (CDSA) in order to legally use medicinal cannabis can do so by filling out the application (available through Health Canada) with the support of a doctor. Under the new regulations, the Section 56 exemption has been divided into three categories, each requiring a different set of medical recommendations:

1. Category 1 is to be a fast-track application process reserved for terminal patients (those with under 12 months to live). Those fitting into this category will require the recommendation of one

physician in order to apply for the exemption.

2. Category 2 will address the symptoms of serious chronic conditions such as the nausea and weight loss associated with HIV/AIDS and cancer chemotherapy, spasms associated with MS, seizures associated with epilepsy, and the severe pain of spinal cord injuries or arthritis. In addition to a recommendation from a general practitioner, a statement from a specialist will also be needed to apply under this category.
3. Category 3 will address symptoms of medical conditions other than those of the first two categories. Conditions which might fit into this category are glaucoma, hepatitis-c, severe migraines. Those applying under category three will need the recommendation of 2 specialists.

Although Health Canada should be commended for realizing the urgency of terminal patients by fast-tracking the category 1 application process, the impediments facing anyone applying under category 2 or 3 are inexcusably onerous, expensive and time-consuming. The VICS urges Health Canada to show true compassion to sick and suffering Canadians by reducing the turn-around time for all section 56 applications (the current process takes between 6 and 24 months) to a maximum of 8 weeks.

The medicinal cannabis community also objects to Health Canada's unrealistic recommendation procedures. Canada is currently undergoing a health-care crisis. Doctors are overly burdened and specialists are few and far between. Under the present regulatory approach, someone like myself (who suffers from hep-c) can apply for an exemption with the support of a general practitioner. Under the new regulations, I would need the support of not one, *but two*, specialists. It currently takes me 8 months to see my gastroenterologist; add the time that it would take to locate another supportive specialist (if one were even available and taking patients) and the 8 months that my current section 56 application has taken so far...it is insulting to expect sick Canadians to suffer through this unjustified burden of bureaucracy; especially since far more dangerous and addictive substances are readily available with a doctor's prescription.

Furthermore, the new regulations require that all applicants include a statement from a doctor or specialist certifying "that all conventional treatments for the symptoms have been tried, or at least been considered" as well as why each has been found to be medically inappropriate. According to all accepted scientific studies, cannabis has a safer profile than either alcohol or cigarettes; to require that more toxic and addictive pharmaceuticals be administered first (often against the desires of the patient or the better judgment of the doctor) exposes Health Canada to charges of medical negligence. If both a patient and doctor agree that cannabis therapy stands to be the most effective treatment under the circumstances, the federal government should impose no other requirement.

Health Canada will also require that those applying under category 3 include 2 copies of a current photograph signed by the doctor. This is an unacceptable invasion of privacy and an unnecessary added step to an already cumbersome bureaucratic process.

The VICS believes that although the formation of a 3-tiered application process may benefit the terminally ill by fast-tracking their submissions, it also stands to increase the regulatory burden on patients and doctors, and therefore "unduly restrict the availability of marijuana to patients who may receive health benefits from its use".

The "compassion club" community feels that the ultimate (and inevitable) solution to many of these problems will be to re-empower doctors with the right to prescribe whatever they feel is best for their patients without fearing repercussions from their own governing bodies. In the province of British

Columbia, both the BC Medical Association and the BC College of Physicians have made disparaging remarks about medicinal cannabis in their official publications. It is clear that a massive education effort explaining the medical benefits of marijuana to practitioners must be done if this program is to have any chance of success.

Until this shift of consciousness can take place, the VICS recommends that Health Canada accept applications with a simple doctors recommendation; anything more will be seen as placing unnecessary hurdles in the path of seriously ill Canadians.

Lastly, it is suggested that “registration fees may eventually need to be imposed to recover some of the costs of administering these new regulations” (p.1220). The VICS finds it completely unacceptable that Health Canada expects applicants to shoulder the cost of this unnecessary, unwarranted and unwanted bureaucratic process.

Production

The recognition that most medicinal cannabis users will not be able to produce their own supply is a giant step forward for Health Canada. Unfortunately, this is mitigated by the assumption that all exemptees will be acquainted with someone with the knowledge, desire, time, and finances to do so for them. Why should we believe that a 60-year-old woman undergoing chemotherapy who has no previous experience with the marijuana would be able to find a grower/supplier? Even if she knew an expert grower, it would take between 4-6 months (barring any serious problems) before the first crop of medicine would be ready; what exactly should she do until then? By not immediately empowering compassion societies to supply those with pressing medical needs, Health Canada continues to force Canadians to choose between health and imprisonment. This is no way for a wealthy modern democracy to treat its weakest citizens.

Furthermore, the new regulations unduly restrict the rights of potential producers. Although it is reasonable to expect Health Canada to do inspections of grow operations, the rights of officials as defined in section 47 of the document are far too broad. Under the new regulations, inspectors will have the right to inspect any container in the grower’s home, go into any computer file, seize or copy any document, examine and “seize and retain” any substance found; all on the sole basis of “reasonable grounds”, which are to be determined by the inspector alone. The VICS feels that unless inspections have very clear, very limited parameters, abuses are sure to occur.

Furthermore, the suggestion that those convicted of a drug offence in the last ten years should be excluded from consideration as producers is insulting (since many activists who have fought for these changes in the law have received criminal records for their efforts), arbitrary (why drug offenses and not murder, fraud, or violent offences?), and illogical (many of this nation’s most experienced and knowledgeable cannabis cultivators have suffered the legal consequences of their trade). The VICS suggests that the only restriction placed on potential producers be that those currently on parole for a crime be ineligible as growers.

It is the belief of the VICS that unless an education program directed at police officers is implemented into the new regulatory budget, abuses against medicinal cannabis users will continue to take place in communities throughout Canada. In large urban areas, a police liaison officer should be appointed in order to ensure that the rights of exemptees are not violated by the continued enforcement of cannabis prohibition. As front-line authorities on medicinal cannabis, compassion societies are in a particularly

good position to accomplish this task.

Lastly, until Health Canada puts regulations in place that address issues of licensed distribution, the VICS request that the Justice department declare a moratorium on arrests for legitimate medicinal users and producers, and grant legal amnesty to suppliers such as recognized compassion societies. These continue to do Health Canada's job by helping sickest and most vulnerable in our society while still being subject to the threat of prosecution and arrest.

Conclusion

Health Canada has suggested that many of these new regulations have come about as a result of consultation with stakeholders. On February 28th, 2000 Health Canada held such a meeting with section 56 exemptees. According to the "Regulatory Impact Analysis Statement", the participants identified the following priority issues:

- ❑ Obtaining a legal source of marijuana for section 56 exemptees;
- ❑ Exemptions for caregivers;
- ❑ Addressing the need for more information on the use of marijuana for medicinal purposes;
- ❑ Addressing concerns of law enforcement agencies;
- ❑ Improvement of the process and tools for section 56 applications;
- ❑ Communications regarding section 56 process and Health Canada's activities regarding marijuana for medicinal purposes.

It is clear to the VICS and the compassion community as a whole that rather than proceeding with the half-measures proposed in the new regulations, most of these concerns would have been best addressed by the licensing of compassion societies.

Until a process is put into place that addresses the immediate needs of sick and suffering Canadians, the black-market elements of compassionate cannabis distribution will be forced to continue. It is time for Health Canada to acknowledge the very real needs of those suffering with chronic and critical illnesses and to formulate policy that reflects both scientific reality (cannabis has an incredibly benign safety profile) as well as the stated wishes of most Canadians (a Decima poll conducted in May of 2000 showed that 93% of respondents believe that medicinal cannabis should be legalized).

If the Therapeutic Cannabis Program is to have any chance of success, Health Canada must get out of the entrenched, unscientific drug war mentality that is reflected in these overly restrictive regulations and to get back to the business of helping all sick and suffering members of our society; and it must do so fairly and with all due expedience.

The Vancouver Island Compassion Society would like to thank Health Canada for the opportunity to contribute to this consultation process; we hope that our ample experience with the realities of medicinal marijuana will assist the federal government in developing a therapeutic cannabis program that is in keeping with its stated mandate; in line with the Ontario Court of Appeals ruling; and truly compassionate to those in need.

Sincerely,
Philippe Lucas

Director
The Vancouver Island Compassion Society