Opinion: Revised S. Tahoe cultivation ordinance works

Publisher's note: ***South Lake Tahoe's cultivation ordinance is on the April 19 City Council agenda. The meeting starts at 9am at Lake Tahoe Airport.***

By Steve Kubby

South Lake Tahoe City Manager Tony O'Rourke and City Attorney Patrick Enright have proposed a new medical marijuana cultivation ordinance with reduced penalties and improved security for patients from ripoffs and raids. The new version will lower the penalty from a misdemeanor with jail time to an infraction and reduce fines from $1,000 per day to $100 for the first violation. Also, building permits will not have growers' names or addresses, to protect against disclosing information publicly that could be abused by burglars and rogue federal drug agents.

City officials recognize that many patients who grow are struggling just to get through each day and lowering the penalties and fines will make these patient's lives a bit easier for them. Those who only grow small amounts will be pleased to learn that gardens which consume under 20 amps will not need to register. Of course, those who abuse the law and trash homes can still be charged for serious crimes, based upon illegal activities and/or property damage.

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This new ordinance is now a model of tolerance and safety, thanks to efforts by local dispensary operators Gino DiMatteo, Cody Bass and Matt Triglia as well as the extraordinary cooperation of the city manager and attorney. As a result, the city of South Lake Tahoe has created a marijuana cultivation ordinance that will be setting an example for cities and counties across the country.

Of course, there are those who will argue that marijuana is still against federal law and that the city has no business protecting patients or issuing permits. However, the city of South Lake Tahoe has every right to regulate and protect marijuana cultivation, because the voters of our state have said so and because the DEA continues to ignore the will of the voters and continues to fraudulently and illegally list marijuana as a Schedule 1 controlled substance.

The fact is the U.S. Controlled Substances Act lists very specific conditions for a substance to be designated as Schedule 1. In order to remain on this list, all of the following conditions must exist:

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Considering that California physicians have safely supervised hundreds of thousands of medical marijuana patients, since the passage of Proposition 215 nearly 15 years ago, it should be clear that marijuana no longer qualifies as a schedule 1 substance.

On Feb. 1, 2011, U.S. Attorney Melinda Haag (Northern District of California) wrote a letter to John A. Russo, Oakland city

attorney, in response to an Oakland City Council request for guidance regarding medical marijuana and federal law. The memo was written with consultation and approval from U.S. Attorney General Eric Holder. In that memo, Haag repudiated President Obama's campaign promise to respect state medical marijuana laws: "We will enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law."

Despite these threats and fraudulent assertions by the DEA and U.S. attorney, the courts have determined that "currently accepted medical use" does not require FDA approval or more than one state to recognize the medical use of cannabis. Once California passed Proposition 215, cannabis should have been immediately rescheduled. Instead, government at every level perpetuated this fraud and continued to arrest, prosecute and incarcerate citizens based upon a classification that was obsolete and kept in place to target and punish a particular group within society.

Here are the facts:

– Federal regulation, 21 C.F.R. § 1308.11(d)(22), says marijuana has no accepted medical use in treatment in the United States. However, not one state has asked the federal government to remove it from that classification.

– We have a United States Supreme Court ruling that tells us these federal regulations do not trump state laws on accepted medical treatments, Gonzales v. Oregon, 546 U.S. 243 (2006).

– We have a very solid federal court ruling that says accepted medical use in treatment in the United States does not mean everywhere in the United States or FDA approval, Grinspoon v. DEA, 828 F.2d 881 (1st Cir. 1987).

Fortunately, the South Lake Tahoe City Council will have an opportunity to do the right thing and protect the health and

safety of our patients, as well as our homes, with an ordinance that we can all be proud of.

Steve Kubby played a key role in the drafting and passage of Proposition 215. He has written two books on drug policy reform and serves as executive director of the American Medical Marijuana Association.