

# DELIVERY SERVICES

**7 Steps to \$70,000/Year as a  
Mobile Caregiver**

*Cannabis Commerce Reports Monograph No. 1*

HEMP PUBLICATIONS, Inc.  
37 Miller Ave. Suite 158  
Mill Valley, CA 94104  
T: 415-888-8289 / F: 415-383-1766  
[www.hemppublicatons.com](http://www.hemppublicatons.com)

## Table of Contents

Chapter One: Seven Steps.....	6
Chapter Two: Operations.....	17
Chapter Three: Primary Caregiver .....	20
Chapter Four: California Cannabis Law .....	23
Chapter Five: California County Guidelines.....	27
Chapter Six: Federal Cannabis Law.....	36
Chapter Seven: Questions from Clients.....	40
Chapter Eight: Business Models.....	44
Chapter Nine: Investors.....	49

## Introduction

*About this vest pocket monograph*

**Delivery Services** details the seven steps necessary to start a legal medical marijuana delivery service in California. It also covers: a) delivery service operations; b) the special status of primary care givers; c) relevant sections of California and Federal cannabis law; d) other cannabis business models; and e) cannabis investing. It includes an update of medical cannabis guidelines in each county of California.

*About Hemp Publication's monthly update service*

**Cannabis Commerce Reports** is a monthly publication covering medical cannabis commerce and transactions with on-the-ground insights found nowhere in print or online.

*About the editor*

Douglas Slain went to Stanford Law School and practiced at Pillsbury, Madison & Sutro. He has founded and published a number of legal titles,

some of which are now published by Thomson-Reuters, including *Insurance Litigation Reporter*, *Professional Liability Reporter*, *Securities Enforcement Reporter*, *Construction Litigation Reporter*, and *Medical Liability Reporter*.

The Law Offices of Douglas Slain represents individuals and organizations charged with marijuana-related felonies and other drug offenses. See [www.thedefenselawyer.com](http://www.thedefenselawyer.com).

Doug writes and teaches in the areas of private placements and exempt real estate offerings (see [privateplacementadvisors.com](http://privateplacementadvisors.com)) and cannabis commercial transactions and investments.

# Chapter One: Seven Steps to \$70,000

1. OBTAIN STATE ID CARD
2. NAME; PHONE AND FAX LINES; BUSINESS ADDRESS; URL
3. FORM YOUR NON-PROFIT
4. ESTABLISH BANK ACCOUNT AND OBTAIN A FEIN NUMBER
5. GET SELLER'S PERMIT
6. GET BUSINESS LICENSE
7. PURCHASE PATIENT SOFTWARE

**WAIT:** HOW ABOUT THE MONEY?

*Posit:*

8 deliveries per day on average working 6 days each week (taking off Monday for instance) with average purchase  $\frac{1}{2}$  oz. for \$100 = \$19,200

Cost of product: \$13,300 or 7 pounds @ \$1,900/pound.

\$19,200 average monthly income

\$13,300 cost of goods

\$5,900 for estimated quarterly taxes; all overhead and all costs, including yourself

$12 \times \$5,900 = \$70,800$  annual gross *taxable* income for working part-time

## **STEP ONE**

### **STATE ID CARD**

Contact the Department of Health and Human Resources in your county; go to (<http://www.cdph.ca.gov/programs/MMP/>) for the state ID card which identifies you as a patient and/or caregiver.

A caregiver card allows you to carry a given amount of marijuana for each person in your care. Start by downloading the form at [www.cdph.ca.gov/programs/mmp](http://www.cdph.ca.gov/programs/mmp)

To apply as a Medical Marijuana Program (MMP) patient in person, you need your personal information as well as your physician's [license](#) number and licensing board.

Be prepared to prove residency with a driver's license, rent slip or utility bill; prove your identity with a government-issued photo ID or a certified copy of your birth certificate; pay application fees; and be photographed by your county agency.



Take a patient to designate you as their primary caregiver. Supposedly, you must show that you care for “the core survival needs” of your patient before his/her need for marijuana arose.

If you register as the primary care giver for more than one patient, you must live in the same county as all of them. You can locate your county’s office at

[Http://www.Cdph.ca.gov/services/Pages/MMPCounties.aspx](http://www.cdph.ca.gov/services/Pages/MMPCounties.aspx)

For the office visit, the patient must be present. If the patient already has a card, he/she will need to present it for the care giver’s application. If the patient receives Medical, the fee for both the caregiver and patient is reduced 50%.

## **STEP TWO**

### **NAME, CONTACT INFORMATION, URL**

Create a business name; perhaps with “patient” or “care giver” in it. Your physical address must be in the city and county you will be serving. It cannot be a post office box.

Create a web site or URL. Part of establishing your delivery service is creating a brand for yourself. Since you lack a storefront to represent yourself, a website allows people to see what benefits you offer them.

First secure a domain name. Once you have something descriptive (words such as “patient”, “caregiver”, or “collective” are good), register the name and pay \$30 to Vistaprint (see [vistaprint.com](http://vistaprint.com)) for a web site and email address.

## **STEP THREE**

### **FORM NON-PROFIT**

The least expensive and quickest way of getting into the cannabis industry is to create a member-operator collective in the form of an unincorporated non-profit association.

You can set things up so that, although you are the president, you are also a “member operator” and therefore not responsible for the actions of other members.

Your membership agreement will set forth the rules for the membership; you and/or your lawyer will write those rules; no one can join unless she or he has signed an original of this membership agreement.

You need to create by-laws and other corporate documentation. Just to start, however, google secState Form LP/UNA 128, and send in \$10 with the name of your non-profit.

## **STEP FOUR**

### **ESTABLISH BANK ACCOUNT; GET A FEIN NUMBER**

Go to your bank and set up a business account.

You will need all your documentation, including non-profit documentation.

To qualify for a seller's permit, you will need a FEIN or EIN number. You can obtain your EIN from the IRS by phone, mail, fax, or online.

You will need to provide information on your business, including the legal name and structure and mailing address. You can download the form ahead of time at <http://www.irs.gov/pub/irs-pdf/fss4.pdf>.

To receive your EIN online, visit <http://www.IRS.gov/businesses/small/article/0,,id=102767,00.htm> The site will ask you questions, and then issue your EIN immediately, but it only takes requests Monday through Friday, 8am to 5pm Eastern Standard Time.

If you call the Business & Specialty Tax Line at (800) 829-4933 and can answer the operator's questions, you can receive your EIN immediately.

To receive your EIN by fax, print and fill out the SS-4 form then fax it to (859) 669-5760. Provide a return phone number and your EIN will be faxed back within 4 business days. You can print out the SS-4 form and mail it to:

Internal Revenue Service  
Attn: EIN Operation  
Cincinnati, OH 45999

This method may take 4 weeks to process. To find out more, see [http://](http://www.irs.gov/businesses/small/articleOvid=97860,00.html)

[www.irs.gov/businesses/small/articleOvid=97860,00.html](http://www.irs.gov/businesses/small/articleOvid=97860,00.html); or go to [irs.gov](http://irs.gov), and then click “Businesses”, then “Small Business/Self Employed.”

You will need your non-profit papers and be prepared to pay a minimum deposit to establish your account.

## **STEP FIVE**

### **SELLER'S PERMIT**

Seller's permits are obtained from the California State Board of Equalization. With your bank account information and other documentation in hand, go to the local office of the Board of Equalization and make an estimated down payment based on estimated quarterly income.

## **STEP SIX**

### **BUSINESS LICENSE**

Google “business license” and the name of your town. Download the form, if available. Go to their office and bring all of your documents. Tell them you will be operating a “home health-care delivery service” or something similar.

## **STEP SEVEN**

### **PATIENT SOFTWARE**

Go online and search for patient software. There are several good options. You can purchase software or just a license, using offshore servers if you feel more comfortable. Among other reasons you want this software is to keep track of your patients' buying habits and contact information.



## Chapter Two: Operations

### *Membership Application and Verification*

To join your association each new member must sign a written membership application. Members must agree not to use marijuana for other than medical purposes.

### *Application Requirements*

You must verify each member's status as a qualified patient or care giver. Unless he or she has a state medical marijuana identification card, you need to contact the recommending physician's office. Copies should be made of any physician's contact information or recommendation. You should maintain membership records on-site or have them reasonably available. You will need to know when members' medical marijuana recommendation and/or identification cards expire.

### *Acquire Lawfully Cultivated Marijuana*

Collectives and cooperatives should acquire marijuana only from their constituent members. Only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be distributed to other members of a collective or cooperative. The collective or cooperative then distributes it to other members of the group. The cycle should be a closed.

### *Reimbursements and Allocations*

Members may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to them collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

### *Grows*

Marijuana grown at a collective or cooperative for medical purposes may be provided free to

qualified patients and primary care givers who are members of the collective or cooperative; provided in exchange for services rendered to the entity; allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or d) any combination of the above.

### *Possession*

A patient/collective member/primary caregiver may aggregate the possession and cultivation limits for each patient. If you are in possession of more than your personal amount of medical marijuana, you should have supporting records readily available, especially when transporting medical marijuana.

## Chapter Three: Primary Caregiver

The California Supreme Court has set forth the requirements for a primary caregiver: A primary caregiver is an individual who consistently provides care giving, independent of any assistance in taking medical marijuana at or before the time he or she assumed responsibility for assisting with medical marijuana.” *People v. Mentch* (2008) 45 Cal.4th 274, 283 (85 Cal. Rptr. 3d 480, 195 P.3d 1061). The person must show “a caretaking relationship directed at the core survival needs of a seriously ill patient, not just one single pharmaceutical need.” *Id.* at p. 286.

*Growers* may serve as caregivers under certain circumstances. Caregivers can serve more than one patient, but patients can have only one primary caregiver. NORML recommends that caregiver growers limit the number of patients they serve. *Caregiver-growers* should limit themselves to a select membership list of patients

whom they personally know and who do not have other caregivers.

In general the courts have held that cannabis clubs cannot serve as primary caregivers for large numbers of patients, but a caregiver may serve more than one patient. Some of our firm's client's claim caregiver status while growing for multiple numbers of patients on the theory that they are providing health and safety. This argument has been successful in court for caregivers growing for relatively small numbers of patients.

### *Compensation*

SB 420 allows caregivers to be compensated for the costs of their services, but it does not authorize the sale of marijuana itself for profit.

### *How much marijuana can I grow and sell?*

Caregivers and patients can band together in a coop or collective and grow and distribute to the members the total amount allowed divided by the number of members. A coop with ten members

can have ten times the individual limit; to with:60 mature or 120 immature plants and up to 80 ounces of buds. However, some counties and cities have established a maximum cap

According to the AG's guidelines, SB 420 limits are to be set in proportion to the number of members. *People v. Kelly*, (2010) 47 Cal. 4th 1008) held that the parts of SB 420 setting limits on the amount of marijuana a patient or caregiver may grow were an unconstitutional amendment to the voters' initiative. SB 420 guidelines are not legally determinative of guilt in court, but they can still be used by law enforcement as guidelines for when to arrest people.

### *Distribution*

In *People v Urziceanu* (2005 Third Appellate District) 132 Cal.App.4<sup>th</sup> 747, the court ruled that, while Prop. 215 did not authorize distribution by anyone except primary caregivers, SB 420 allowed for distribution among patients and caregivers through collectives and cooperatives.

## Chapter Four: State California Cannabis Law

- ✓ Patients and caregivers with a **state-issued ID card** are **immune** from arrest and allowed to possess whatever amount the law allows them.
- ✓ Patients and caregivers **without a state-issued ID card**, even with a physician's statement or county entitlement, are **subject to case by case scrutiny** that can lead to arrest.
- ✓ Patients may keep gardens of whatever size and take dosages of any amount within their county guidelines.

Many California Health and Safety Code sections regarding possession and cultivation of marijuana do not apply to patients or patients' care givers who possess or cultivate marijuana for the personal medical use of a patient on the recommendation of a physician.

It is not as though we are not operating on the edge of the law, however. First, aside from medical marijuana, it remains the case that although possession of up to 28.5 grams is no longer enough for the police to arrest someone, they can make him or her appear in court and charge them with a misdemeanor.

Further, if a deputy DA decides at any time to charge you with another merely alleged crime — even unrelated, or if he just wants to cause you trouble, the California’s Health and Safety and Criminal codes continue to say that cultivation, processing, and sales of marijuana are all punishable as felonies.

Possession of more than 28.5 grams remains punishable by up to 6 months in jail, and giving away less than 28.5 grams is a misdemeanor. And of course, any sale of marijuana to a minor is a felony. Possession of 28.5 grams or less on school grounds when the school is open is punishable by up to 10 days in jail and a \$500 fine. More grams than that means a felony.

Finally, anyone under the age of 21 who is convicted of any 420-related offense will have his



or her driver's license suspended for up to one year, while possession of paraphernalia remains an infraction with a fine of \$300 for first offense and more thereafter.

### *Medical Marijuana Program*

The Medical Marijuana Program (MMP) was established to provide a voluntary medical marijuana identification card issuance and registry program for qualified patients and their caregivers. The web-based registry system allows law enforcement and the public to verify the validity of qualified patient or caregiver's card as authorization to possess, grow, transport and/or use Medical Marijuana in California. To facilitate the verification of authorized cardholders, the verification database is available online at [www.calmmp.ca.gov](http://www.calmmp.ca.gov).

In 2003, Senate Bill (SB) 420 (Chapter 875, Statutes of 2003) was passed as an extension and clarification of Proposition 215, the Compassionate Use Act of 1996. The Medical Marijuana Program, within CDPH, is

administered through a patient's county of residence. Upon obtaining a recommendation from their physician for use of medicinal marijuana, patients and their primary caregivers may apply for and be issued, a Medical Marijuana Identification Card. Senate Bill 420 also required that the MMP be fully supported through the card application processing fees. Both the state and the counties have authority to cover the costs for the program through these application fees.

## Chapter Five: County Guidelines

*[Editor's request: Updated information is very welcome as a few of these guidelines are moving targets]*

*Alameda:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Alpine:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Amador:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Butte:* 6 mature plants or 12 immature plants & one pound of processed (formerly 6 plants at any stage)

*Calaveras:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Colusa:* No firm policy; case-by-case review, though “tentative guidelines” of 6 mature plants or 12 immature plants & 8 ounces of bud or 1.5 lb. processed (formerly 2 plants outdoors or 4

plants indoors)

*Contra Costa:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Del Norte:* Current status remains cloudy, so follow the state minimum guidelines for maximum safety: 6 mature plants or 12 immature plants & 8 ounces of bud.

*El Dorado:* **Outdoors:** 20 plants from March 1 through July 31; 10 plants through October (or end of season); 2 lbs. of bud from September 1 through February 28; and 1 lb from March 1 to August 31. **Indoors:** 10 vegetative plants, 1 mother plant, 10 flowering plants and 1 lb of bud per patient (formerly 6 plants and/or 2 pounds processed). NB: Caregivers can take care of household plus three outside patients. Also see El Dorado County DA Policy.

*Fresno:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Glenn:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Humboldt:* 3 lbs of bud or equivalent; 100 square feet of garden canopy, no limit on plant numbers or lamp wattage. Caregiver amounts calculated per patient served. [Original DA policy: Up to 99 plants with up to 100 square feet of canopy and up to lb. of bud. **Indoor** gardens limited to 1500 watts total illumination.]

*Imperial:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Inyo:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Kern:* 6 mature plants or 12 immature plants & 8 ounces of bud.

*King:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Lake:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Lassen:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Los Angeles:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Madera:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Marin:* 6 mature plants or 12 immature plants & 8 ounces of bud, county ID cards now honored by all law enforcement.

*Mariposa:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Mendocino:* 99 plants (from 25) with permit—  
[This County's guidelines are covered in Hemp Publication's Monograph No. 2: Grows]

*Merced:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Modoc:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Mono:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Monterey:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Napa:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Nevada:* 6 mature plants or 12 immature plants any size; or, in the alternative, 75 square feet of total canopy area & up to 2 lb. of bud. Collectives must keep copies of all patients' recommendations available for inspection.

*Orange:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Placer:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Plumas:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Riverside:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Sacramento:* 6 mature plants or 12 immature plants & 8 ounces of bud

*San Benito:* 6 mature plants or 12 immature plants & 8 ounces of bud

*San Bernardino:* 6 mature plants or 12 immature plants & 8 ounces of bud

*San Diego:* 6 mature plants or 12 immature plants & 8 ounces of bud

*San Francisco:* Patient and caregiver ID cards issued by county Health Department; no patient guidelines. Case by case policy is based on police claims of indicia of illegal sales or diversion to non-medical market.

*San Joaquin:* 6 mature plants or 12 immature plants & 8 ounces of bud

*San Luis Obispo:* 6 mature plants or 12 immature plants & 8 ounces of bud

*San Mateo:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Santa Barbara:* 6 mature plants or 12 immature plants & 8 ounces of bud



*Santa Clara:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Santa Cruz:* 3 pounds of bud or equivalent, plus 100 square feet of garden canopy, no limit on plant numbers or lamp wattage

*Shasta:* 6 mature plants or 12 immature plants & 8 ounces of bud or 1.33 lb. processed

*Sierra:* 6 mature plants or 12 immature plants & 8 ounces of bud or any quantity approved by physician

*Siskiyou:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Solano:* 6 mature plants or 12 immature plants & 8 ounces of bud

*Sonoma:* County policy: Up to 30 plants with up to 100 square feet of garden canopy and up to 3 lb. of bud.

*Stanislaus:* 6 mature plants or 12 immature plants and 8 ounces of bud

*Sutter*: 6 mature plants or 12 immature plants & 8 ounces of bud

*Tehama*: 12 seedlings or 6 flowering or mature plants, and 8 ounces dried marijuana. Indoor Cultivation: 12 seedlings or 6 flowering or mature plants, and 8 ounces dried marijuana.

*Trinity*: Board of Supervisors voted to step backward and revert to the state minimum threshold of 6 mature plants or 12 immature plant & 8 ounces of bud.

*Tulare*: 6 mature plants or 12 immature plants & 8 ounces of bud

*Tuolumne*: 6 mature plants or 12 immature plants & 8 ounces of bud.

*Ventura*: 6 mature plants or 12 immature plants & 8 ounces of bud or 1 lb. dry bud or conversion.

*Yolo*: 6 mature plants or 12 immature plants & 8 ounces of bud

*Yuba:* Informal policy: 6 mature plants or 12 immature plants & 8 ounces of bud or 1.5 lb. of processed marijuana.

**The default setting is always the state's guidelines: 6 mature plants or 12 immature ones and up to 8 ounces of processed cannabis bud or flower--although a physician's letter can permit larger amounts and both cities and counties are empowered to set guidelines for more (not less!).**

NB: If you are charged with intent to sell, make sure your lawyer pays careful attention to Health and Safety Code subsection 11362.7 or ask her or him to call the Law Offices of Douglas Slain.

## Chapter Six: Federal Cannabis Law

California does not enforce Federal Criminal Statutes; (see *People v. Telehkoob*) “It is not the job of the local police to enforce the Federal drug law as such.” (*Garden v. Superior Court*)

However, Federal law cannot be ignored; prison sentences in the federal courts are severe and the Department of Justice and the IRS (as well as other federal agencies) continue to harass the industry.

The DEA prohibits cultivation of cannabis and manufacture and dispensing of marijuana by placing it in a Schedule I category.

Doctors are forbidden to *prescribe* cannabis, but they can *recommend* or *approve* its use. They cannot help patients obtain it. However, Marinol™, a synthetic THC in gel capsule form, is available by prescription as a Schedule III drug.

Penalties for possessing a federal controlled substance may include up to a year in prison, a

fine, or both. Subsequent violations: 90 days to three years plus a fine.

A conspiracy to cultivate up to 50 plants or distribute up to 50 kilograms of cannabis, 10 kilos of hash, or one kilo of hash oil could draw a sentence up to five years. More than 100 kilos or 100 plants? Mandatory five-year sentence. For 1000 kilos or 1000 plants, mandatory 10 years, plus fines.

Property including real estate, money, vehicles, securities or other things of value that can be connected to violations of federal drug law are subject to confiscation by the US government (21USC 841, 844, 844a, 881). **There is currently no medical marijuana exception.**

The Ninth Circuit has affirmed a physician's First Amendment right to treat a patient without fear of arrest in *Conant v. Walters*; (9th Cir 2002) 309 F.3d 629. The ruling enjoins the federal government from revoking a physician's license for prescribing controlled substances or conducting an investigation of a physician that might lead to such revocation—where the basis for the government's action is solely the

physician's professional recommendation of the use of medical marijuana.

*US v. Oakland Cannabis Buyers' Coop.* stands for that the doctrine of "medical necessity" does not give marijuana providers a defense against federal distribution charges, even within state borders to seriously ill patients. The court wrote, "[T]he Controlled Substances Act reflects a determination that marijuana has no medical benefits worthy of an exception (outside the confines of a Government-approved research project). *US v. OCBC*, 532 U.S. S.Ct. 483, 491 (2001).

The court in *Raich v. Ashcroft*, held that the interstate commerce clause cannot ban noncommercial cannabis in a state where it is legal. However, a divided US Supreme Court reversed *Raich* on June 6, 2005. The Supremes did not address substantive due process or medical necessity, but urged Congress to reform federal laws:

*"The question before us, however, is not whether it is wise to enforce the statute in these circumstances; rather, it is whether Congress' power to regulate interstate markets for medicinal substances encompasses ... drugs produced and consumed locally. ... The authority to grant permission*

*whenever the doctor determines that a patient is afflicted with ‘any other illness for which marijuana provides relief,’ Cal. H&S §11362.5 is broad enough to allow even the most scrupulous doctor to conclude that some recreational uses would be therapeutic. ... [T]he [CSA] statute authorizes procedures for the reclassification of Schedule I Drugs. Perhaps even more important than these legal avenues is the democratic process, in which the voices of voters allied with these respondents may one day be heard in the halls of Congress. Under the present state of the law, however, the judgment of the Court of Appeals must be vacated— *Gonzales v. Raich*, 125 U.S. S.Ct. 2195 (2005)*

NB: Jurors can acquit without penalty. It is reasonable for anyone to doubt government “facts” about cannabis and its use. American jurors, who reject any case put forth by a prosecutor, and vote to acquit, are not subject to any punishment for doing so.

## Chapter Seven: Questions from Clients

### *Why even organize?*

You must organize your collective or cooperative or delivery service with a structure that ensures the product is accurately tracked.

You need documentation that all marijuana is being grown by the non-profit's members and is being distributed to members only and only for a cost that reflects and overhead and product.

### *They took my ganja when I got my DUI; can I get it back?*

It is a violation of due process for law enforcement to refuse to return medical marijuana to a patient.

### *What are indicia of illegal sales?*

- Weapons on or near your person, home or car
- Illicit drugs of any nature
- Evidence of distribution beyond the cooperative
- Evidence of distribution outside of California



*What is the story about bubble hash vs. honey oil?*

Bubble hash (water processed) is treated the same as marijuana, as is honey oil for purposes of consumption. But with respect to manufacturing, honey oil is treated the same as meth and can be charged as a serious crime.

*How does the Compassionate Use Act work?*

The Compassionate Use Act (CUA) does not give immunity from criminal sanction; instead, it provides an *affirmative defense*. This can be used as a defense or to set aside an indictment for lack of reasonable cause. The medical marijuana defense negates an element of the crime, which is that the possession or cultivation of the marijuana is "unlawful."

*How about searches?*

Because the CUA provides an affirmative defense, rather than immunity, it does not allow for suppression of evidence or grounds for reversal if, for instance, police fail to conduct an investigation of defendant's status as a qualified patient prior to conducting a search. In other words, cops do not need to stop a search of the

premises for pot even if someone produces documents that prove they are a qualified patient.

*How about arrests?*

Senate Bill 420 prohibits the arrest and prosecution of qualified patients and their designated primary caregivers; specifically, it proscribes the arrest of any person in possession of a valid identification card for the possession, transportation, delivery or cultivation of up to eight ounces of dried marijuana and/or six mature (or twelve immature) plants, unless in violation of other marijuana laws, such as distribution for non-medical use. California law forbids law enforcement officers from refusing to accept identification cards issued by the CA Department of Public Health unless there is reasonable cause to believe that the card is being used fraudulently.

*How can I get my stuff back?*

You can file a motion or commence a civil action for the return of your seized marijuana or for monetary damages if the marijuana has been destroyed. Penal Code § 1536 imposes duties

upon the police to retain the property and to return the property if it is being withheld unjustly. Alternatively, you may commence a civil action for the return of his property by filing a petition for writ of mandate under Cal. Code of Civil Procedure § 1085. If the marijuana has spoiled, the court may require the police to pay damages.

*I got off? Now what?*

A former defendant may file a motion for determination of factual innocence under Penal Code § 851.8(c). The standard of proof is the same as in a § 995 hearing or at trial; to wit, "no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made." Proof of affirmative defense may form a basis for finding of factual innocence.

## Chapter Eight: Business Models

There are several medical cannabis and non-medical marijuana business models, with different criminal exposures and profit opportunities. ["Medical cannabis" = legal under state law. "Non-medical" = illegal under state and federal law.]

**First business model:** large scale outdoor grows.

This is a non-medical business model with families in the Emerald Triangle who have been refining it for generations.

Northern California large growers can get unstrung when talking about legalization due to their perception that medical cannabis is a large factor in their shrinking profit margins.

Impending legalization has already encouraged so many new grows, especially indoor grows, that the Northern California historic supply/demand curve is out of whack. Northern California big dog growers (big dog = anywhere from 125 lbs or

more a year, at least in Humboldt County) have seen prices drop from \$2750/lb to \$1900/lb or less in the last two years.

Many of them are making it even harder on themselves, competing year after year to grow more than their neighbors, adding further pressure to the curve. It has reached the point that, for the first time, many medium and large growers are using interstate distribution channels to keep their lb point price from going under \$2200.

The U.S Postal service and UPS and other commercial carriers are shipping massive amounts of marijuana every day. A former client and now a good friend told me, “Odor is not the issue; we solved that; now the problem is shipments not getting delivered because the employees at the shippers are getting better at knowing what to look for, and they just take the stuff.”

Another former client who has been supporting a quality life style for his wife and his two sons and a daughter for almost 20 years growing between 80 and 180 lbs a year, said, “Two years ago, if a

buyer even mentioned some out of state destination, I told him to forget it.. That subject was way out of bounds. Now I am doing what everyone else is doing, moving it east, or moving it somewhere to where it goes east.”

**Second business model:** 99-plant grows in certain counties with full legal documentation and retail distribution contracts in place.

Grows with fewer than 100 plants, under contract with dispensaries, delivery services and other cooperatives, is a business model so attractive that at least one investor group is being formed to do pretty much the same thing. It is legal and can be very profitable. (99 plants @ 2 lbs per plant = `198 lbs @ \$\$1675/lb = \$326,700).

Numerous profitable opportunities in cannabis exist despite a May 2011 *San Francisco Chronicle* headline announcing the demise of the medical marijuana industry as we know it due to recent federal actions. That headline was in error of course; nothing has changed; there has always been some federal fear factor to this industry: therein lies much of the profit margin.

The point is that the medical cannabis business is here to stay and it will grow, despite federal raids and threatening letters from federal prosecutors.

**Third business model:** dispensaries.

Dispensaries, done right, can be cash cows almost overnight; this is where most outside investors believe they want to invest.

Dispensaries do have some risk of being shut down, but you can make quite a bit of money until that happens.

Our firm knows of a dispensary in the Inland Empire that grossed \$140,000 in its first 6 weeks. With limited outdoor growing opportunities, due to the dry and desert geography, dispensaries and cannabis mobile caregivers are getting a good enough margin that one Lake County grower has begun both a dispensary and a delivery service down there himself, eliminating the need for his former broker.

**Fourth business model:** delivery services.

This is the least expensive and most expeditious way to get into the cannabis and commerce industry, albeit less profitable than some other business models. “Less profitable” is a very relative phrase, however. There are plenty of reasons to consider opening such a service in California and many other states today.

**Fifth business model:** medical cannabis broker and/or marijuana (non-medical) broker.



## Chapter Nine: Investors

Private Placement Advisors LLC (privateplacementadvisors.com)--which consists of the editor, Doug Slain, Jonathan Matthews and financial modelers who work on contract--represent investors in medical marijuana 99-plant grows on leased and purchased property in Northern California. We also prepare business plans that help dispensaries and delivery expand their services. We work with:

- *Accredited and sophisticated investors* who want property (generally off-the-grid and difficult to access without four-wheel drive) to lease or buy for grows in Sonoma, Lake, Mendocino, Napa other counties. Services include locating properties; drafting contracts with licensed medical cannabis retailers; drafting compliance documentation; communications with municipality regulators, Board of Equalization, IRS, and others; introductions to quality assurance laboratories.
- *Growers* who want to invest in dispensary and/or delivery services, an opportunity

for growers to learn more about their downstream market while diversifying their income stream.

- *Dispensaries and delivery services* who want to invest in grows, an excellent way to leverage profits and diversify at the same time.

.

