

El Dorado County Enacts Moratorium

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In a special session to consider a 45-day moratorium on new medical marijuana cultivation and new medical marijuana dispensaries, the Board of Supervisors heard testimony for several hours as patients expressed their dismay and frustration at the years of foot dragging by the Board and questioned the sudden urgency. The Board initially used the words prohibition, but the enormous turnout (and these are only our first-responders) on such a short (deliberate?) notice should be humbling to an elected official, so the Board softened and started speaking in terms of regulation.

The Pack (Long Beach) decision that started this cascade of enforcement on October 4, 2011, stated that the City of Long Beach was correct with regulating the dispensing of medical marijuana (hours of operation, where they may operate, etc.), but, it just didn't have the authority to "permit" an activity that is counter to federal law and creates an obstacle in enforcing federal law. El Dorado County has never permitted anything to do with marijuana, medical or otherwise until it was forced to adopt the state mandated Medical Marijuana Identification Card Program after the U.S. Supreme Court refused to hear San Diego County's plea to apply federal preemption and not just nullify the ID requirement, but also the MMPA (SB420) and Proposition 215. After San Diego's loss and the Anaheim decision, municipalities were no longer allowed to cite federal preemption as a reason to ban dispensaries. In the absence of another reason beside preemption to "ban" dispensaries and not being allowed to "permit" them, what is a county to do? Well, we're back to the Pack decision for guidance - "There is a distinction, in law, between not making an activity unlawful and making the activity lawful. An activity may be prohibited, neither prohibited nor authorized, or authorized."

God gave us the gray matter to figure out the gray areas, we're not always on the Island of Black and White. Stay tuned!