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Medicinal pot laws hazy for authorities

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One thing is clear about California's medicinal marijuana law -- how unclear it is to those who enforce it.

"This is all new," said Cmdr. Don Patterson, who heads the Santa Barbara County Sheriff's narcotics unit. "The real challenge is trying to understand the law and how it applies in real life and on the street."

That challenge was put to the test earlier this month when sheriff's narcotics detectives raided a Mission Hills home after getting a tip that the person living there was growing and selling marijuana.

The lengthy search and seizure on Dec. 8 was unusual for the Sheriff's Department. The search stretched for 12 hours -- double what a typical raid would last. A good portion of the time was spent combing through documentation that would back up Danielle DiSimone's assertions that she was growing marijuana for medicinal purposes. Ms. DiSimone was allowed a visit by an attorney while the raid was in full swing, unheard of in typical pot busts.

In the end, detectives left behind 30 plants out of 112

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and some growing equipment. Detectives said they confiscated 8 pounds of pot leaves and 2 pounds of marijuana buds. Ms. DiSimone was booked for cultivation of marijuana and possession of marijuana for sale.

The 50-year-old former Marine, who is expected to enter a plea in the case on Monday, called the raid at her Montrose Place home a "witch hunt."

Ms. DiSimone says she grows marijuana for medicinal purposes, for herself and for other clients, and keeps detailed records of her patients, including more than 70 letters of recommendation from their physicians. Ms. DiSimone also has a marijuana patient identification card, she said, because of chronic pain she suffers from an injury she received while in the Marines.

During the raid, detectives called patients to verify that she was their primary caregiver. Of the 74 letters found by investigators, 43 were considered not valid because patients lived in other counties. Another 25 letters were disqualified because they were more than a year old, according to the Sheriff's report. Of the remaining six patients, detectives were able to reach four who qualified as "current" patients, the report said.

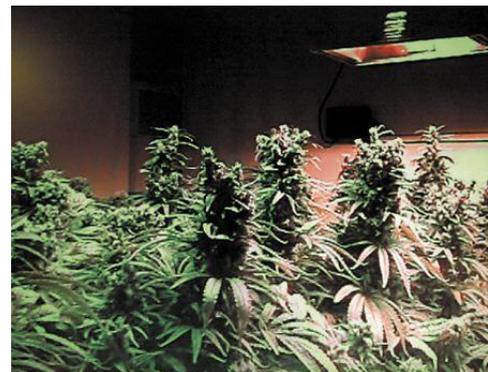
Under state law, patients and caregivers with a doctor's recommendation letter may possess up to 8 ounces of dried marijuana and grow up to six mature plants or 12 sprouts.

Detectives weren't satisfied that Ms. DiSimone was a legitimate caregiver, at least not for the amount of pot she was growing.

Ms. DiSimone says she was complying with the law and says her patient list is much more extensive, but she did not want patients' names in the hands of authorities.

"It's this type of thing that patients fear the most, losing their privacy," said Ms. DiSimone. "Most people don't want others to know what medications they use."

The bust comes as law enforcement officials find themselves caught in a web of federal, state and local



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laws and by a range of attitudes about marijuana.

California's Proposition 215, which voters passed in 1996, allows patients with a doctor's recommendation to grow, possess and use marijuana for medical reasons. Meanwhile, federal law doesn't recognize any legitimate use for marijuana, so it remains outlawed alongside other so-called Schedule 1 drugs like PCP, LSD and Ecstasy.



In the middle of this federal-state tussle, identification cards, which are not mandatory, let local law enforcement officials know medicinal marijuana users are in legitimate possession of the drug. Caregiver cards identify individuals who grow marijuana and sell it to patients.

Ms. DiSimone claims she tried numerous times to apply for a caregiver card but was given conflicting instructions. A caregiver must apply in person with the patient. There is currently no limit on the number of patients a caregiver can have.

Some public health officials, marijuana advocates and law enforcement officials agree that the caregiver designation is murky.

"It's not really clear, not a black-and-white law," said Cmdr. Patterson. "We're still trying to figure out the nuances. When we run into someone who is a caregiver, we do everything we can to make sure that we're following the law."

Joshua Braun, who opened the cannabis club HortiPharm five months ago, says he has nearly 1,250 patients, some of whom live out of the county.

"My attorney is of the opinion that Proposition 215 does not say you can only be a local caregiver," said Mr. Braun. "I accept patients out of the county; I would have to turn away patients."

There currently is no language in the state law on dispensaries or cooperatives. Local governments are left on their own to decide how to deal with them.

In the city of Santa Barbara, there are at least four pot clubs and cooperatives, including the Compassion Center of Santa Barbara County, the Santa Barbara Patients Group and HortiPharm. Santa Barbara city police have so far left them alone.

In Lompoc, the city council adopted a different approach, and banned pot clubs for two years.

"It's just an awkward situation and just not a good system" said William Brown, Lompoc's police chief and president of the California Police Chiefs Association. "Basically, we don't want a plethora of people hanging out a shingle saying we're a marijuana dispensary."

Ms. DiSimone sees the recent raid as a blow to her clients, who she says don't have any where else to go.

She also claims she was singled out by detectives. In a search warrant affidavit dated Dec. 6, Detective Troy Marino notes that he saw Ms. DiSimone at La Cumbre Plaza and recognized her from a 1993 arrest for growing marijuana. She pleaded out to cultivation of marijuana and served time under house arrest.

Ms. DiSimone says there is no way the detective could have recognized her as the person he arrested years earlier -- at that time she was a man. The former Michael DiSimone underwent a sex change operation in 2002.

"Would you recognize me?" asked Ms. DiSimone, holding up an old wedding photo of himself in a suit with his fourth bride. "This raid is just a Gestapo (tactic) and malicious."

As local marijuana advocates and law enforcement officials interpret the law and set up their own guidelines, they will likely be facing another hurdle next month.

The Public Health Department wants to pass its responsibility for issuing ID cards to the state as early as February. So far, the county has issued 362 patient and 22 caregiver cards.

If the Board of Supervisors approves the move, scheduled for a vote today, law enforcement officials would need to rethink how they handle ID cards from residents living outside of the county. Currently, local authorities use the county's database to verify the legitimacy of a card, and those from outside the county aren't in the system.

"With the changeover to the new system, we'll have to change how we handle everything and learn the new program all over again," said Cmdr. Patterson.

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