

Presentation to
NATIONAL ASSOCIATION OF BOARDS OF PHARMACY
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(Remarks made somewhat varied from this document)

**LEGAL MEDICAL USE OF MARIJUANA:
A SLIPPERY SLOPE TO LEGALIZATION OF DRUGS?**

My name is Eric Sterling. I am an attorney, not a pharmacist or scientist. I am very happy to be here this afternoon to be the concluding speaker to talk to you. I have a particularly fond memory of pharmacies. My Aunt Hazel worked in the Rexall Pharmacy in Morgantown, West Virginia when I was a kid in the 1950s and 60s. When my family would drive from New York to West Virginia for family holidays, we always stopped first at the pharmacy to check in with Aunt Hazel, and we were always treated as very special.

In the 1980s, I was a captain in the war on drugs. I was counsel to the Subcommittee on Crime of the House Judiciary Committee. I helped Members of Congress oversee the crime fighting activities of the Federal government and worked on writing new laws regarding gun control, money laundering, organized crime, pornography.

One of the pieces of legislation I developed in 1984 was to expand the DEA's power to control the diversion of pharmaceutical controlled substances to illicit channels. I am very aware of your important role in our national system to prevent drugs with the potential for abuse from being diverted.

One of the bills that I worked on was the bill to make it a federal crime to rob or burglarize a pharmacy. The story of this bill can help us

to understand the political forces in Washington.

In the 1980s as the big chain drug stores were growing, small local pharmacies like the Rexall pharmacy where my Aunt Hazel worked were being forced out of business. Their trade association, the National Association of Retail Druggists, in an effort to retain membership, made it a legislative priority to make robbery and burglary of pharmacies a federal crime. If you did not know anything about law enforcement, that probably sounded like a useful way to protect pharmacies.

With this legislative priority, it sounded like the association was doing a good job protecting its members. It recruited Congressman Henry Hyde of Illinois to be their champion. He spoke at their meetings, his picture was on the cover of their magazine, he probably got a plaque to put on his wall. He probably picked up some campaign contributions.

Now in every state it is a very serious crime to commit robbery or burglary. Such serious crimes are important priorities for local police and prosecutors, and they are skilled in using informants and other means to solve and prosecute such crimes.

The Federal Controlled Substances Act of 1970 was a comprehensive regulatory regime for controlled substances. Obtaining drugs by fraud or counterfeit prescription violated the regulatory scheme. But Congress did not make the robbery of drugs a federal crime because it was already a serious crime that could best be investigated and prosecuted locally.

Now, if your pharmacy were held up by a robber with a gun and a mask, what is the first thing you would do? Call 911 immediately. "Help, I've been robbed!" You'd describe the robbers to enable your local police to pursue and catch them.

For how many of you would your first call be to the DEA field office, probably in the state capital and many miles and hours away? None of you.

DEA does not investigate local robberies, they investigate drug trafficking organizations.

The law made no sense as a crime-fighting measure. But it made sense to retain membership for a dying trade association. It made political sense to members of Congress to build good relations with pharmacists, and to demonstrate crime-fighting toughness to the general public.

I learned that in the intersection of policy and politics appearance beats substance. Image and ignorance are too often more important than facts and logic.

I doubt that in the 25 years since this bill was enacted it has been used more than a dozen times, despite the thousands of pharmacy robberies that have taken place since then.

Is legal medical use of marijuana a “slippery slope”
to legal social use of marijuana?

Before I get to the question of the slippery slope, I want to comment on Iowa Assistant Attorney General Scott Galenbeck’s presentation a few minutes ago, about the medical marijuana petition in Iowa filed by Mr. Carl Olsen, whose old criminal record for marijuana trafficking he described at length.

For decades, both social users of marijuana and medical patients who use marijuana have been stigmatized and shamed. Think about how today medical patients who say they use marijuana for some condition

are snickered at or mocked. No other medical patients are subject to that stigma, and that is outrageous. To the extent that social users of marijuana are not only shamed but prosecuted and punished, they may feel freer to raise this issue than those we would think of as bona fide patients. They have lost so much, they lose nothing coming out for medical marijuana.

Most people treasure their privacy. For certain diseases and conditions most people want to maintain their privacy regarding those diseases and conditions. Medical privacy is an important value to the American people, and the HIPAA law is one that we are all quite familiar with.

Since medical use of marijuana is still illegal under federal law and in a majority of the states, there are a great many people who use it medically who are not going to be the least bit public about it. Given that, it should not surprise us that some people who already have a criminal record related to marijuana might be willing to be advocates for medical use of marijuana. It should not surprise us that people who think marijuana should be legal for adult social use might advocate to make it legal for medical purposes.

For social marijuana users to take political action to promote legal medical use seems to me to be morally blameless, even if it is politically counterproductive. It has a very different character from the situation in which social users pretend to doctors that they are really patients who have a medical condition in order to obtain Cannabis under a medical marijuana law. This misrepresentation, as reported to be happening in California, offends me as obtaining marijuana under false pretenses. Fraudulently claiming a medical condition in order to obtain legal sanction to possess marijuana is sneaky, and in my opinion morally much worse than the case of social users violating the law to buy and possess marijuana. I wrote about this on August 13, 2009 on my blog:

<http://tinyurl.com/yeuo6w3>

Even worse, this sneakiness by social users has tragic consequences for the many legitimate patients, for it tends to delegitimize medical use, it increases the stigma that legitimate patients have to endure, and thus deters them from seeking medication that could help them. This sneakiness also weakens the political support for legalizing medical use of marijuana and delays the enactment of laws that will enable many patients to obtain important medical treatment.

In lamenting those social users who may be sneaky, it is obvious that I am not impugning the motives of patients, in general, who use marijuana medically. Indeed, impugning the motives of patients in general serves the interests of the opponents of medical marijuana. Let me give an historical parallel.

In the 1940s the Communists attacked racial segregation in the United States in order to delegitimize the existing political order. The defenders of racial segregation then said, “If we adopt civil rights for Blacks, then the slippery slope will lead America to Communism.” They said, “Those civil rights advocates are simply fronting for the Communists; they are Communists.”

Of course ending segregation was the right thing to do, and, of course, it did not lead to Communism.

Many of us look at California today and are disappointed at what looks like a messy law. How many of you are aware that in the 1990s the California legislature twice passed medical marijuana laws only to have the bills vetoed by the Governor? Is it surprising that the citizens took matters into their own hands, but did not draft the law you or I might prefer?

It is frequently asserted that it is a mistake to legalize marijuana for medical purposes because this would lead to the legalization of marijuana for social purposes or the legalization of other drugs – it leads us down a slippery slope.

Most recently this argument was made by New Jersey Assemblywoman Mary Pat Angelini as quoted in *The Wall Street Journal* on Nov. 30, 2009.

This argument is a weak objection for the following reasons:

First, it is not a disagreement with the merits of whether cannabis can be useful for some patients for the relief of their conditions. If one has sound scientific arguments that marijuana has no medical value, one need not retreat to this argument. The slippery slope argument is, in a certain sense, a concession that the argument for the medical use of marijuana on scientific grounds is persuasive. Why raise a tangential argument if the central argument is available?

Second, the slippery slope argument is actually a classic fallacy, and identified as such in texts on logic and rhetoric. To oppose a proposition on the ground that its adoption will lead to another proposition – and always the other is presumed to be worse – requires that the first proposition have some inherent power to affect the second.

Where do we hear this argument now? How often has it been said in the recent weeks that if Congress were to enact public option health insurance it is a step onto the slippery slope to socialism. It is asserted that the public, notwithstanding the disastrous consequences of the public option, would still want more of it. That is a perfect example of the slippery slope objection, and how absurd it really is.

Let's look at the case at hand.

How does the use of marijuana for medical purposes become legal? By action of the legislature or the voters. Are legislators likely to become “addicted” to voting for marijuana law reform after they adopt a medical marijuana law? Vote to change the marijuana law one time and you become addicted to voting that way! That’s ridiculous.

Are legislators stupid? No. Is it the case that they could become blind to the differences between the two types of laws? Of course not.

The public overwhelmingly supports legal use of marijuana for medical purposes. And the public by decisive margins opposes the use of marijuana for social or so-called recreational purposes. They understand the difference, and so do legislators, to be sure.

But let’s assume that the opponents of social use of marijuana really believe that legalized medical marijuana will lead to legalizing social use of marijuana. What does it really mean? I see it as meaning one thing pretty clearly. That is, if the public becomes aware of persons who are using marijuana for medical purposes *without terrible, harmful side effects*, the public will conclude that marijuana is just not that dangerous drug certain people have been saying it is. When Americans become aware of neighbors and colleagues who are using marijuana medically, and not being destroyed by that use, we might conclude that marijuana is not more dangerous than alcohol or tobacco. And many Americans may conclude that society is not likely to be seriously harmed if marijuana were legal for social purposes.

Of course, if marijuana is actually as dangerous and likely to be misused as Dr. Andrea Barthwell suggested to us a few minutes ago, then the case against legalization of marijuana for social purposes will actually be strengthened as the tragedies of patients harmed by medical marijuana become apparent to us. If that were to happen, there will not be a slippery slope at all.

But right now, those such as New Jersey Assemblywoman Angelini are inadvertently conceding that they don't think the public is going to see a lot of harm from legal use of marijuana for medical purposes.

Assistant Attorney General Galenbeck of Iowa was right earlier on this panel when he said this conflict is a lagging result of generational conflict.

I would like to conclude by saying that we need to stop shaming the patients. Earlier, Dr. Barthwell mocked a patient because she reports that the patient suffers from three conditions for which he has recommendations, and she, in her medical opinion, believes there are better medications for those conditions. Well, is her judgment to trump that of the patient and his doctor? Are we comfortable for society to cavalierly mock a class of patients because they and their doctors have made medical decisions that we do not agree with? At a minimum, we need to stop shaming medical patients.

Finally, could I have a show of hands? How many of you think that Cannabis has medical value? I see most of you have raised your hands. How many of you think that Cannabis is not used as a medicine because of the power of politics, and not because there is no scientific evidence of its value? Again I see most of you have raised your hands.

Thank you very much.

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