Keeping The Good Faith

How Often are Cannabis Doctors Sanctioned by the Medical Board of California?
A Brief History of Federal Medical Cannabis

- Cannabis has been cultivated by humans for thousands of years, it is believed to have been used as a medicine for nearly as long.
- Cannabis was one of the most common ingredients in patent medicines in America, until cannabis prohibition began in 1937 with the passage of the Marihuana Tax Act.

**Randall v. US (1976):** Robert Randall becomes “Patient 0” and creates the federal “medical necessity” for cannabis use due to his glaucoma. This case created the Compassionate Investigational New Drug Program (IND), the federal medical cannabis program that is closed to new applicants, yet still dispenses medicine to the four patients still living (including Elvy Musikka and Irv Rosenfeld).
A Brief History of Medical Cannabis in California

• **1991**: Proposition P is passed in San Francisco thanks to the tireless efforts of Dennis Peron, a veteran who conceived the bill in memory of his partner who passed from AIDS, but not before being incarcerated for his cannabis use.

• **1996**: Peron and others formed Californians for Medical Rights and passed Prop 215, creating the first statewide medical cannabis program anywhere in the world.

• **2003**: SB 420 is passed giving some much needed structure to Prop 215.

• **2015**: The Medical Cannabis Regulatory Safety Act (MCRSA) is passed, creating the first set of statewide regulations on the medical cannabis industry in California.
GREAT WOMEN OF CANNABIS

Anna Boyce RN
co-authored
Proposition 215
Keeping the Faith

Merriam-Websters: To continue to believe in, trust, or support someone or something when it is difficult to do so.

Example: We must keep the faith that our medical doctors are complying with state law when writing cannabis recommendations.

The title of this study combines this concept of keeping the faith, with the requirement by the MBC that doctors perform a prior good faith examination before recommending medical cannabis.
Good Faith Prior Examinations

- **BPC § 2242**: “Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.”

- **BPC § 4022(a)**: If “federal law prohibits dispensing without prescription” then the drug is defined under § 4022 as a dangerous drug, and to recommend cannabis without an “appropriate prior examination” would be considered unprofessional conduct.

- **BPC § 4067(f)**: A ‘‘good faith prior examination' includes the requirements for a physician and surgeon in Section 2242.”

- Looking back at BPC § 2242 and BPC § 4022, they provide little guidance to physicians as to what is expected of them when issuing a cannabis recommendation, especially using telemedicine software.
CA BreEZe is a database that includes the MBC and several other boards managed by the California Department of Consumer Affairs.

All public records referenced in this study were obtained through BreEZe.

BreEZe does not have records of all possible legal issues which doctors may face. There are limitations on misdemeanors, felonies, malpractice judgments, arbitration awards, and non-jurisdictional actions.
Why This Study Was Needed

- **Cannabis Doctor, defined**: A doctor who has written at least one cannabis recommendation in their career, but likely has done so numerous times.

- Cannabis doctors have remained a relatively understudied and poorly understood group, the subject of negative stereotypes.
  - HempCon 2010, 2016 referred to as recommendation “pill mills.”

- This study is the first to look at the rates of probation, revocation, surrender, and other official sanctions by the Medical Board of California (MBC) directed at cannabis doctors, contrasted to the general population of licensed physicians.
Methodology 1/2: Sample Population

- This was primarily a quantitative study, with some elements of a qualitative piece. The focus was on public records obtained from BreEZe.
- My sample was generated by parsing the doctor’s recommendations which were used to check in at Harborside, the world's largest medical cannabis dispensary, from the time period between September 2014 and September 2015.
- The study only looks at doctors because only MDs and DOs can recommend cannabis.

- Sample Size: 441 Doctors
  - MD: 408 (87.64%)
  - DO: 33 (12.36%)

- General Population: The MBC publishes an annual report which says how many licensed physicians are practicing in California every year, this gave me my general population to compare against.
Methodology 2/2: Potential Biases & Mitigating Factors

- **Sampling Bias:** This was not a random sample, all records came from a geographically fixed place in Oakland, CA.

- **Polyclinism:** When a doctor works at more clinics, with a wider geographic spread, than would be humanly possible without telemedicine.

- **Margin of Error:** Due to my relatively small sample size of 441 cannabis doctors I would anticipate a MoE of ±5%.

- **Inverse Relationship Between Sample/General Population:** While the general population was always growing larger, due to new data from the MBC, my pool of known cannabis doctors was always shrinking, as I was no longer adding doctors to that data set.
Results

Table 1: Cannabis Doctors Sanctioned by the MBC, Fiscal Years 2012-2013 through 2015-2016

<table>
<thead>
<tr>
<th></th>
<th>Accusation</th>
<th>Reprimand</th>
<th>Probation</th>
<th>Probation w/ Suspension</th>
<th>Suspension</th>
<th>Surrender</th>
<th>Revocation</th>
<th>Active Cannabis Doctors (Years End)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2012-2013</td>
<td>*</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>439</td>
</tr>
<tr>
<td>FY 2013-2014</td>
<td>*</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>435</td>
</tr>
<tr>
<td>FY 2014-2015</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>433</td>
</tr>
<tr>
<td>FY 2015-2016</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>429</td>
</tr>
<tr>
<td></td>
<td>Accusation</td>
<td>Reprimand</td>
<td>Probation</td>
<td>Probation w/ Suspension</td>
<td>Suspension</td>
<td>Surrender</td>
<td>Revocation</td>
<td></td>
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<tr>
<td>FY 2012-2013</td>
<td>291</td>
<td>80</td>
<td>119</td>
<td>19</td>
<td>4</td>
<td>80</td>
<td>58</td>
<td></td>
</tr>
<tr>
<td>FY 2013-2014</td>
<td>273</td>
<td>90</td>
<td>121</td>
<td>16</td>
<td>1</td>
<td>77</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>FY 2014-2015</td>
<td>310</td>
<td>86</td>
<td>122</td>
<td>14</td>
<td>0</td>
<td>85</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>FY 2015-2016</td>
<td>300</td>
<td>106</td>
<td>129</td>
<td>3</td>
<td>0</td>
<td>87</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Accusation</td>
<td>Reprimand</td>
<td>Probation</td>
<td>Probation w/ Suspension</td>
<td>Suspension</td>
<td>Surrender</td>
<td>Revocation</td>
<td>Active Cannabis Doctors (Years End)</td>
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<td>------------------------------------</td>
</tr>
<tr>
<td>FY 2012 - 2013</td>
<td>*</td>
<td>0.45%</td>
<td>0.23%</td>
<td>0</td>
<td>0.23%</td>
<td>0.23%</td>
<td>0</td>
<td>439</td>
</tr>
<tr>
<td>FY 2013 - 2014</td>
<td>0</td>
<td>0</td>
<td>1.37%</td>
<td>0</td>
<td>0.23%</td>
<td>0.23%</td>
<td>0.46%</td>
<td>435</td>
</tr>
<tr>
<td>FY 2014 - 2015</td>
<td>0.69%</td>
<td>0</td>
<td>0.23%</td>
<td>0</td>
<td>0</td>
<td>0.23%</td>
<td>0.23%</td>
<td>433</td>
</tr>
<tr>
<td>FY 2015 - 2016</td>
<td>0.23%</td>
<td>0.23%</td>
<td>0.23%</td>
<td>0</td>
<td>0.23%</td>
<td>0.46%</td>
<td>0.23%</td>
<td>429</td>
</tr>
</tbody>
</table>
Table 4: Percent of Non-Cannabis Doctors Sanctioned By the MBC

<table>
<thead>
<tr>
<th></th>
<th>Accusation</th>
<th>Reprimand</th>
<th>Probation</th>
<th>Probation w/ Suspension</th>
<th>Suspension</th>
<th>Surrender</th>
<th>Revocation</th>
<th>Total California Doctors</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2012 - 2013</td>
<td>0.28%</td>
<td>0.08%</td>
<td>0.11%</td>
<td>0.02%</td>
<td>0.00%</td>
<td>0.08%</td>
<td>0.06%</td>
<td>104422</td>
</tr>
<tr>
<td>FY 2013 - 2014</td>
<td>0.26%</td>
<td>0.08%</td>
<td>0.11%</td>
<td>0.02%</td>
<td>0.00%</td>
<td>0.07%</td>
<td>0.05%</td>
<td>106284</td>
</tr>
<tr>
<td>FY 2014 - 2015</td>
<td>0.29%</td>
<td>0.08%</td>
<td>0.10%</td>
<td>0.01%</td>
<td>0.00%</td>
<td>0.07%</td>
<td>0.04%</td>
<td>108594</td>
</tr>
<tr>
<td>FY 2015 - 2016</td>
<td>0.27%</td>
<td>0.10%</td>
<td>0.12%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.07%</td>
<td>0.04%</td>
<td>110989</td>
</tr>
<tr>
<td>Year</td>
<td>Accusation</td>
<td>Reprimand</td>
<td>Probation</td>
<td>Probation w/ Suspension</td>
<td>Suspension</td>
<td>Surrender</td>
<td>Revocation</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
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<td>-------------------------</td>
<td>------------</td>
<td>-----------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td>FY 2012 - 2013</td>
<td>*</td>
<td>563.00%</td>
<td>209.00%</td>
<td>-∞</td>
<td>∞</td>
<td>288.00%</td>
<td>-∞</td>
<td></td>
</tr>
<tr>
<td>FY 2013 - 2014</td>
<td>*</td>
<td>-∞</td>
<td>1245.00%</td>
<td>-∞</td>
<td>∞</td>
<td>329.00%</td>
<td>920.00%</td>
<td></td>
</tr>
<tr>
<td>FY 2014 - 2015</td>
<td>238.00%</td>
<td>-∞</td>
<td>209.00% - or- 230.00%</td>
<td>-∞</td>
<td>Same, 0%</td>
<td>288.00% - or- 329.00%</td>
<td>575.00%</td>
<td></td>
</tr>
<tr>
<td>FY 2015-2016</td>
<td>-17.00%</td>
<td>230.00%</td>
<td>209.00%</td>
<td>-∞</td>
<td>∞</td>
<td>657.00%</td>
<td>575.00%</td>
<td></td>
</tr>
</tbody>
</table>
### Table 6: Number of Months from Date Accused to Action Taken by MBC

<table>
<thead>
<tr>
<th>Name</th>
<th>Date Accused</th>
<th>Date of MBC Decision</th>
<th>Time From Accusation to Action by MBC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brenda Lewis</td>
<td>11/30/14</td>
<td>5/29/15</td>
<td>6 Months</td>
</tr>
<tr>
<td>Howard Kerr Ragland Jr.</td>
<td>09/29/15</td>
<td>05/04/17</td>
<td>19 Months</td>
</tr>
<tr>
<td>Marc Richard Rose</td>
<td>08/12/14</td>
<td>05/20/16</td>
<td>9 Months</td>
</tr>
<tr>
<td>Michael Streams</td>
<td>08/18/15</td>
<td>09/13/16</td>
<td>13 Months</td>
</tr>
<tr>
<td>Edgar Suter</td>
<td>09/09/14</td>
<td>02/11/16</td>
<td>17 Months</td>
</tr>
</tbody>
</table>
Why Do Sanctions by the MBC Occur?

The main reasons why the MBC will receive a complaint about a doctor are:

I. Fraud
II. Health and Safety
III. Incompetence or gross negligence
IV. Personal conduct
V. Unprofessional conduct
VI. Assisting in the unlicensed practice of medicine

Health and safety complaints can include excessive prescribing and the sale of dangerous drugs. Incompetence/gross negligence is a catch-all for any quality of care issues. Personal conduct complaints include abuse of alcohol or other drugs, mental health issues, or the conviction of a crime. Examples of unprofessional conduct are sexual misconduct with patients, discipline by another state, or the failure to release medical records.
In addition to the six categories of complaints I tracked, the MBC has the categories of other and non-jurisdictional complaints. I did not track the other category as there were not clear metrics for what would define an ‘other’ complaint. I did not track non-jurisdictional complaints as they are not the jurisdiction of the MBC, and this study was focused on what was within the MBC’s jurisdiction.

<table>
<thead>
<tr>
<th>Total = 29,206</th>
<th>Fraud</th>
<th>Health &amp; Safety</th>
<th>Incompetence/ Gross Negligence</th>
<th>Personal Conduct</th>
<th>Unprofessional Conduct</th>
<th>Unlicensed</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Year Total</td>
<td>1.39%</td>
<td>2.49%</td>
<td>56.27%</td>
<td>6.81%</td>
<td>28.26%</td>
<td>4.78%</td>
</tr>
</tbody>
</table>
Table 8: Reasons for Complaint to the MBC, Cannabis Doctors (Percentage FYs 2012-2016)

<table>
<thead>
<tr>
<th>Total = 44 Complaints</th>
<th>Fraud</th>
<th>Health &amp; Safety</th>
<th>Incompetence/Gross Negligence</th>
<th>Personal Conduct</th>
<th>Unprofessional Conduct</th>
<th>Unlicensed</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Year Total</td>
<td>6.80%</td>
<td>11.36%</td>
<td>43.20%</td>
<td>9.10%</td>
<td>20.50%</td>
<td>9.10%</td>
</tr>
</tbody>
</table>

- **Health and Safety**: Every single instance of a health and safety compliant against a cannabis doctor had nothing to do with cannabis, and was actually related to opiates.

- **Fraud**: All complaints unrelated to recommending cannabis. Two doctors defrauded Medi-Cal, and one attempted to evade paying his business taxes then neglected to report his violation of federal law to the MBC.
Confidential 420 was originally a partnership between two doctors, Dr. Roger J Foster, and Dr. Wayne John Kelly. Until, tragically, Dr. Foster passed on Christmas Eve, 2013.

Oddly, perhaps in an effort to stay “confidential,” Dr. Kelly never changed their ID card printing machine to reflect that Dr. Foster was now deceased. I have documented cases, nearly a year after Dr. Foster passed, of cards still being printed with his license number and name.

Last year, the MBC brought an accusation against Dr. Kelly, the results are still pending.
Wayne John Kelly M.D.
1506 Sproule Ave
Sacramento, CA 95811
916-538-4216

PHYSICIAN'S STATEMENT

Date: 06/17/2014

As a medical professional, I, Wayne John Kelly M.D., hereby certify that in my professional opinion, would recommend the use of medical cannabis for patient [Name] for the treatment of [Condition]. Medical cannabis, also known as marijuana, has been found to provide relief from symptoms associated with conditions such as chronic pain, anxiety, and nausea. The potential risks and benefits should be fully discussed with the patient before initiating treatment.

I have reviewed the patient's medical history and physical examination, and believe that the use of medical cannabis is appropriate for this patient. The patient has been informed of the potential risks and benefits of using medical cannabis, and has signed a consent form indicating their agreement to use medical cannabis.

I recommend a dose of [Dose] of medical cannabis per [Frequency] to be administered [Method]. The patient should be monitored closely for any adverse effects and the dose should be adjusted as necessary. The patient should be instructed to [Instructions].

This patient is not recommended for use of recreational marijuana as medical cannabis is intended for medicinal purposes only.

Wayne John Kelly M.D.
CA License Number C43073

Physician Signature
06/17/2014

Date
Worst Actors 2/4: Morris Halfon

Dr. Halfon was a part of Operation Dirty Lake, a conspiracy to divert nearly a million OxyContin pills to the black market which fraudulently billed Medicare/Medi-Cal for nearly $9 million over a two year period, which was busted by the DEA.

The pills were worth an estimated $25 million, which according to the DEA indictment, some defendants “used proceeds from the sale of OxyContin to gamble at casinos, to purchase automobiles and jewelry, and to buy more OxyContin.”

Halfon was one of those indicted and had his license revoked, due to a combination of factors (including non-jurisdictional reasons).
Worst Actors 3/4: Daniel Susott

Dr. Susott engaged in incompetent practices relating to his recommending of cannabis to such an extreme degree that the MBC revoked his license to practice in California.

Dr. Susott was a master of telemedicine and continued to issue recommendations for Medical Cannabis from his tree-house in Hawaii, sometimes to groups of patients, until Hawaii’s Medical Board also revoked his license to practice.

➢ As Robert Randall was America’s cannabis “patient 0,” Dr. Susott was my origin point for this study.
Worst Actors 4/4: Howard Kerr Ragland Jr

Not to be confused with his father (also an MD licensed with the MBC), Dr. Ragland Jr, like Dr. Susott, was a master of telemedicine.

While Susott’s specialty was group recommendations, Ragland specialized in lightning recommendations, which are reported to often take less than 10 seconds.

Dr. Ragland also displayed the highest degree of Polyclinism of any physician observed, working in more than eighteen clinics across California, from Costa Mesa in the far south to Eureka in the extreme north, nearly 750 miles apart, and a nearly twelve hour commute.
“It cost $150 and the whole thing took under a minute, I only saw the doctor's eyes and forehead on camera.”

- Anonymous Patient
The Future of Telemedicine?
Discussion 1/3: Drugs and Telemedicine

- **Cannabis**: Improper recommending practices around Cannabis was only a stated factor in eleven complaints observed (25%).

- **Telemedicine**: Telehealth related problems factored into seven cases (15.9%). It is known from records by the MBC that another doctor was involved in a telemedicine cannabis clinic which resulted in actions by the MBC in 2014, raising the total to eight (18.2%).
  - Though all of these doctors were issuing cannabis recommendations, they could just as well have performed any other procedure, as the underlying issue was improper software/hardware being used.

- **Opiates**: Issues related to improper prescribing practices of opiates, or personal opiate abuse, were present in seven cases (15.9%).

- **Alcohol**: Over-consumption of alcohol was a reason that action was taken against three doctors (one was also reported to use opiates, cannabis, cocaine, hypnotics, and more).
Discussion 2/3: Telemedicine

- There is a lack of education around what constitutes a good-faith examination when a doctor is using telemedicine. There also is confusion over what means of communication are HIPPA compliant for such a discussion, as evidenced by numerous doctors using Skype and one reportedly issuing recommendations over phone calls without even seeing the person on the other end of the line.
Discussion 3/3: Drugs

- One interesting discovery of this study was that opioid diversion and abuse factored into nearly as many cases (7, or 15.9%) as improper issuing of cannabis recommendations (11, or 25%).

- If one is to control those cannabis cases, for ones also involving telemedicine related issues, that drops the total to just four doctors (9.1%) sanctioned for just cannabis-related issues, which is 6.8% lower than the 15.9% of cases involving opioids.

"With proper controls applied, opioid-related issues were a factor in more cases of official sanction by the MBC than cannabis issues alone."
Solutions 1/2: Cannabis Doctor Registry

- Currently there is no centralized registry of cannabis doctors, which is in part why I had to create my own definition and data-set. If such a registry existed it would not only make research easier, but it would also make it easier for patients to find a doctor, and for doctors to let patients know what they specialize in.

- This registry could be part of the regulatory scope of the California Department of Public Health, who is one of the four state agencies that will be regulating medical cannabis under the MCRSA.
Solutions 2/2: CME on Telemedicine

- Offer Continuing Medical Educational classes on telemedicine, with a focus on what a good-faith examination looks like in practice.
- Doctors need to know how to participate in telemedicine in a way that is HIPPA compliant and has a patient's informed consent, so that they can adapt to this new technological reality without losing their ability to practice medicine purely because they didn't understand it.
Acknowledgements and Thanks

**Harborside:** I would like to thank Harborside for their role in creating my sample for this study, and for the service they provide to the patients of California. They are a model for what compliance looks like in this industry.

**Medical Board of California:** I would like to thank the Medical Board of California for keeping such good records and being very forth-coming in answering any questions I had relating to my study, and over my five years working at Harborside.

**San Jose State University:** I would like to thank my professors at SJSU who cautioned me on several occasions not to become known as “the pot guy.”

**You:** Thank you for waking up early enough and drinking enough coffee to get you here at 8:30am on a Sunday morning. As I student, I would never have signed up for that class, so thank you for attending my lecture today.