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Medical Marijuana Finds a Mellow Audience in Md.; In State That's Shown Leniency, Advocates Push Legalization for Some Cases

BY DAN MORSE

Washington, D.C. -- Although far smaller in scale, a California-style approach of going easy on medical-use pot smokers has been wafting through the Montgomery County courthouse. Within minutes of each other last week, two defendants left the courthouse with slaps on their wrists: a 56-year-old man with cyclic vomiting syndrome, and a 19-year-old woman with epilepsy. Their cases show how Maryland's little-known medical marijuana law might be applied in the future and how some ill pot smokers are beginning to raise awareness of it.

"It's essential the state do more. Marijuana is critical for people with certain illnesses," said **Steven Kupferberg**, a defense lawyer in one of the cases.

Thirteen states allow the medical use of marijuana. California has led that effort, permitting storefront dispensaries to sell pot to residents with a doctor's recommendation.

Virginia is not one of the 13 states, and politicians appear to have little interest in changing that. The District also forbids the practice, but advocates got a boost this summer when the U.S. House of Representatives lifted a restriction that curbs the city from changing its drug laws. The Senate has not taken that action, advocates said. The sponsor of the 1998 D.C. measure, then-U.S. Rep. Bob Barr (R-Ga.), praised the move, calling it "an important step in the direction of individual freedom."

Maryland forbids medical use, but under a 2003 law, defendants can be shown leniency if they show medical necessity. The law is rarely used -- not all lawyers know about it, and people convicted of simple marijuana possession can receive leniency, particularly for a first arrest.

Advocates for the medical use of pot in Maryland are pushing for a law that would keep sick people from resorting to buying it on the street. And more of those buyers have been willing to speak out for

such a law. Debate over the medical use of marijuana often turns on the drug's efficacy and whether it is the only remedy available. The latter issue was evident in the two Montgomery cases. The case of William York started Feb. 8, 2008, when detectives intercepted a package of marijuana addressed to him. They delivered it to York at his home in Silver Spring, finding him dripping wet in his bathrobe after he had just gotten out of the tub. York was convicted of marijuana possession.

At his sentencing hearing Aug. 27, York's attorney submitted medical records and two doctors' notes to show that York couldn't control his cyclic vomiting syndrome with pills, in part because he threw them up. The condition is typified by episodes of severe nausea and vomiting that can persist for hours or days.

"What happens is, I wake in the morning with such bad nausea that I go into a vomiting fit, and I can't stop the vomiting," York told the judge at the hearing. "But if I use marijuana right at the point where the nausea attack hits me, most of the time it subdues, and after two hours I am able to work without any problems."

York, a project manager at a telecom company who makes more than \$100,000 a year, also spoke of the perils of having to buy an illegal, unregulated product: "I've been robbed a couple of times. The quality of the cannabis is suspect."

Prosecutor Vlatka Tomazic said at the hearing that the doctors' notes were little more than a summary of what York had told his doctors, and one wasn't even dated. No medical professionals testified.

"I get it," Tomazic said of marijuana's effect on vomiting. "Obviously, there is some research to show that it does help with nausea. But there's no indication that this is the only way that he can get better." Montgomery Circuit Court Judge David A. Boynton entered a finding of "medical necessity" and charged York a \$100 fine.

Forty-five minutes earlier, in a courtroom one floor above, attorneys had begun arguing the case of Winnie Gesumwa at her sentencing hearing. That investigation began the night of Feb. 24, when officers got a tip that someone smelled marijuana smoke at a Silver Spring apartment that doubled as a tattoo parlor, attorneys in the case said.

Officers found three people inside, including Gesumwa. In her purse, they found 17 small packets of marijuana, valued at \$170. She was charged with intent to sell because she had so many packets. Gesumwa pleaded guilty to marijuana possession, a lesser charge.

Gesumwa, a native of Kenya, was 3 when she started exhibiting brief "blank stares" that halted her speech and caused her to zone out, her mother told the judge. She also had periodic grand mal seizures that sent her into convulsions.

After Gesumwa had moved to the United States, doctors at Children's National Medical Center diagnosed epilepsy when she was 12, said her attorney, Alex Foster.

Doctors prescribed Depakote, which caused sudden weight shifts, migraines and nausea, Gesumwa told the judge at her hearing. She said that marijuana controlled daily bouts of blanking out, without Depakote-like side effects, and that she bought 17 units at once to reduce the chance of getting caught. No medical experts testified.

The state's medical-use law "has sort of flown under the radar here in Maryland," Foster said, adding that it applied "perfectly" to Gesumwa's case.

Judge Andrew Sonner ruled that she had a medical necessity and waived the \$100 fine. The debate over the medical use of marijuana isn't new in Maryland.

In a 1999 case, a 16-year-old daughter of anti-nuclear activists in Takoma Park gave police some photos of 69 pot plants growing in the family's basement. The girl's mother said she needed the pot for severe migraines and fibromyalgia, a chronic and painful disorder.

In 2002, conservative state Del. Donald E. Murphy (R-Baltimore County) took up the cause after a former Army green beret who had cancer told him that the drug eased intense nausea from chemotherapy. The measure, which went into law in 2003, lowered penalties for medical use but stopped short of legalizing it.

Critics of using marijuana as medicine say that it can do more harm than good and worry that medical use is a first step toward full-blown legalization.

Opponents of making the practice legal include the American Medical Association, the Food and Drug Administration, the Drug Enforcement Administration and the White House Office of National Drug Control Policy.

"Until the AMA weighs in otherwise, this is no more than medical folklore," said Leonard C. Collins Jr., Charles County's top prosecutor and former president of the Maryland State's Attorneys' Association. "If Eli Lilly was pushing this stuff, people would be accusing them of greed, and the users would be suing them for the bad side effects." ■

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