

Two Legal Victories for Medical Marijuana in California

The California Supreme Court granted a huge victory this week to medical marijuana patients and their physicians. The ruling sends a clear message that neither law enforcement nor the California Medical Board can engage in fishing expeditions against doctors who recommend medical marijuana, and upholds the right of patients to keep their medical records private. The court refused to review an appellate decision blocking the California Medical Board from searching the records of **Dr. David Bearman**, in *Bearman v. Superior Court of Los Angeles*.

The patient in the case, who admitted to possessing medical marijuana after being stopped by park rangers at Lake Piru Recreation Area in April 2001, showed rangers a letter from Dr. David Bearman that attested to his legal right to possess the drug under California's [Proposition 215](#), which protects seriously and terminally ill patients from criminal penalties for using marijuana medically.

"The California Medical Board's aggressive activities to sanction doctors may well chill their feeling free to recommend medical marijuana to their patients, a right directly protected by the ruling in *Conant v. Walters*," said Judy Appel, acting director of legal affairs for the Drug Policy Alliance.

The subpoena alleged that Dr. Bearman had "indiscriminately" recommended the use of medical marijuana to the patient. The Medical Board of California (MBC) attempted to access the patient's records, but both the patient and doctor refused to turn over the records, citing doctor-patient confidentiality. The court ruled that MBC "failed to demonstrate sufficient facts to support a finding of good cause to invade the patient's right of privacy" and threw out the case.

"This is a wonderful victory which sustains the sanctity of the doctor patient relationship, privacy of patient records and provides the court's common sense affirmation that a letter of approval is no more an invitation to go fishing in a patient's records than is showing a law enforcement person your prescription," Dr. Bearman wrote in comments to supporters. "It is another building block in the legal wall of support for" Proposition 215.

Dr. Bearman testified as an expert witness in another case, a case whose judges ruled that California's Compassionate Use Act does not require a patient to be "seriously ill" to use medical marijuana. An appellate panel reversed the conviction of Noel Spark, who was originally sentenced to probation and 6 months in the county jail for having 3 cannabis plants. The ruling in *People v. Spark* means California caregivers will now be free to recommend marijuana for a larger variety of health conditions.