

Spring 5-8-2014

# Medical Marijuana

Brittany Hale

University of Washington - Tacoma Campus, brittany.a.hale@gmail.com

Follow this and additional works at: [http://digitalcommons.tacoma.uw.edu/ppe\\_prize](http://digitalcommons.tacoma.uw.edu/ppe_prize)

 Part of the [American Politics Commons](#), [Economic Policy Commons](#), [Health Policy Commons](#), [Legal Theory Commons](#), [Other Political Science Commons](#), [Policy Design, Analysis, and Evaluation Commons](#), and the [Public Policy Commons](#)

---

## Recommended Citation

Hale, Brittany, "Medical Marijuana" (2014). *PPPA Paper Prize*. Paper 5.  
[http://digitalcommons.tacoma.uw.edu/ppe\\_prize/5](http://digitalcommons.tacoma.uw.edu/ppe_prize/5)

This Undergraduate Research Paper is brought to you for free and open access by the Politics, Philosophy and Public Affairs at UW Tacoma Digital Commons. It has been accepted for inclusion in PPPA Paper Prize by an authorized administrator of UW Tacoma Digital Commons.

For individuals who have cancer, migraines, or HIV, medicinal marijuana has become a key component of treating their conditions. It has grown into an accepted medical treatment in Washington State since its legalization in 1998. The main issue facing legislators today is how to regulate the medical marijuana market in order to ensure that it does not undercut the recreational market, which will be heavily taxed. Washington State voters approved recreational marijuana in 2013 with the passage of Initiative 502. In response, new, stricter medical marijuana regulations are being proposed in the form of Senate Bill 5887. These regulations will provide tax exemptions for the sale of medical marijuana, create a patient registry, and reduce possession limits for marijuana patients. State lawmakers see this legislation as a way of preventing recreational marijuana users from misusing the medical marijuana market. However, creating a tax exemption for medical marijuana is problematic in that it incentivizes recreational users to purchase from the medical market in order to avoid paying the stiff excise and sales taxes levied on the recreational market. In addition, SB 5887 fails to recognize that medical marijuana patients are reluctant to have their information scrutinized by the police or federal government. The final issue with 5887 is that the amount of marijuana needed to alleviate symptoms varies from patient to patient and additional flexibility is required.

Fortunately, Washington State lawmakers can develop rules regarding medical marijuana by looking at Colorado, the only other state to legalize both medical and recreational marijuana. After examining how Colorado has addressed these issues, it is clear that taxation on medical and recreational marijuana should be comparable, any patient registry should have a high level of privacy protection, and physicians should be in charge of how much marijuana patients can grow

or possess. With this in mind, Senate Bill 5887 should lower the excise taxes included in I-502, implement privacy protections for the patient registry, and provide a method for physicians to authorize additional amounts of marijuana. In order to understand these propositions, it is first necessary to consider the history of marijuana.

### History of Marijuana

Historically, marijuana has been utilized in many different countries to treat a variety of ailments. In the 19<sup>th</sup> century, marijuana was used by doctors in the United States to treat conditions such as: “pain, whooping cough, asthma, and insomnia...” (Bostwick, 173). In fact, in 1854, medical cannabis was legitimized by its listing in the U.S. Dispensatory (Bostwick, 173). Throughout much of the 19<sup>th</sup> century, marijuana was fashioned into extracts, cigarettes, and even plasters (Bostwick, 173). The use of medicinal marijuana continued into the 1930’s, when the federal government gradually began imposing certain restrictions, culminating in all forms of marijuana being declared illegal in 1970.

In 1970, the Controlled Substance Act, or CSA, classified marijuana as a Schedule 1 substance, meaning that it was made illegal and judged to be without medical value. The Department of Justice was tasked with enforcing the CSA, and released a memo in 2013 stating that they continue to be “committed to using (their) limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way.” The memo detailed eight priorities for the Department of Justice to focus on regarding marijuana, including: “preventing the distribution of marijuana to minors”, “preventing revenue from the sale of marijuana from going to criminal enterprises”, “preventing the diversion of marijuana from states where it is legal under state law in some form to other states”, and “preventing drugged driving...” This was all in response to the medical marijuana movement

and, more recently, the legalization of recreational marijuana in Colorado and Washington. The medical marijuana movement gained traction in 1996, when the passage of Proposition 215 in California made it the first state to legalize the consumption of medical marijuana.

Washington followed California's lead in 1998 by passing Initiative 692, which authorized the use of medical marijuana within the state. In order to qualify for medical marijuana in Washington State, a patient must be "diagnosed with a terminal or debilitating condition", "...advised by a healthcare professional about the risks and benefits...", and be "advised ... that he or she may benefit from the medical use of marijuana" (SB 5887 Analysis, 2). Currently, those individuals who have received authorization from their physician may grow their own marijuana or designate someone else to do it for them. If a patient designates someone to grow on their behalf, he or she must be at least eighteen and provide for one patient at a time (SB 5887 Analysis). Patients may also take part in collective gardens consisting of up to 10 qualifying patients who share the responsibilities of growing marijuana. Patients or providers may have up to fifteen plants and twenty-four ounces of marijuana (Initiative 692). It's important to note that patients do not have arrest protection, meaning that they can still be arrested for marijuana possession but have an affirmative defense in court. After legalizing medical marijuana, Washington State took another huge step forward by approving legalized recreational marijuana in 2012.

Initiative 502 legalized the possession of small amounts of recreational marijuana, tasking the Liquor Control Board with issuing licenses to retailers. Initiative 502 requires the Liquor Control Board to issue "licenses to marijuana producers, processors, and retailers and adopt standards for the regulation of these operations" (SB 5887 Analysis). With the initiative's passage, individuals within Washington State are now allowed to have up to "one ounce of

usable marijuana; sixteen ounces of marijuana-infused product in solid form; or seventy two ounces of marijuana-infused product in liquid form” (Initiative 502). Under 502, recreational users are not allowed to grow their own marijuana. Instead, the state is implementing a three-tiered system of producers, processors, and retailers, similar to regulations on alcohol. There will be a 25% excise tax on recreational marijuana, levied at each level in the system: producer to processor, processor to retailer, and finally retailer to purchaser, all in addition to the normal sales tax (Initiative 502). Although at first glance, legalization of recreational marijuana seems nonthreatening to the medical market, it has the potential to cause problems.

Medical marijuana regulations in Washington State have been lax prior to the passage of 502, with many loopholes that can lead to misuse of the system. In most cases, all it takes to obtain a medical marijuana authorization is a hundred dollars and a diagnosis of generalized pain. This means that individuals with a wide variety of conditions qualify for medical marijuana. Law Professor Sam Kamin points out the issue, noting “the view persists that medical marijuana is a sham, that doctors are willing to write a recommendation for anyone who walks through the door...” (“Marijuana at the Crossroads...”, 984). However, this is only a perception. It is difficult to gauge the number of medical marijuana patients who are really recreational users in disguise because Washington has no patient registry or way of tracking patients and their medical conditions. Ideally, with the passage of I-502, those recreational users who are already misusing the medical marijuana system would be drawn to the recreational market, which would not require paying for an authorization. However, because of the higher amounts of marijuana that patients can possess, and the possible tax exemption provided to them, the medical marijuana market may remain a much more attractive option to recreational users who can obtain an authorization. If marijuana users exploit the lack of regulations regarding medical

authorizations and choose to circumvent the recreational, taxed market, this could mean a loss of revenue for Washington State. The situation is further complicated by the federal government, which could be provoked into action if a lack of regulation is perceived. Adopting new regulations is the key to fixing this issue and the Liquor Control Board was the first agency to make recommendations for reform.

In response to the fear of losing tax revenue and possible misuse of medical marijuana, the Washington State Legislature tasked the Liquor Control Board and the Department of Health with developing recommendations regarding what medical marijuana regulations would minimize the potential of abuse created by the two-market system. In December of 2012, the Liquor Control Board released a long list of recommendations. Amongst the most notable recommendations was a call for a statewide patient registry, managed by the Department of Health (Liquor Control Board, 1). According to the Liquor Control Board, this registration would “expire annually and the patient or designated provider may be re-entered in the registry only after a new or follow-up examination” (2). In addition to a registry, the Board suggested lowering the amount of marijuana patients could possess. Specifically, adopting the Board’s recommendations would mean patients would be limited to three ounces of useable marijuana, as opposed to twenty-four ounces. Six plants, three flowering and three non-flowering, would be the maximum, as opposed to fifteen under current law (Liquor Control Board, 3). They recommended applying the recreational marijuana tax system to the medical market but exempting patients from the state and local sales tax (Liquor Control Board, 4). When it comes to doctors and their patients, the Board tasked the Department of Health with defining “debilitating” and “intractable” pain in an effort to discourage use of the medical market by those without a legitimate medical condition. (2). Finally, the Board suggested eliminating collective

gardens altogether to ensure that state-licensed marijuana retailers would not be competing with the gardens, which operate as dispensaries (2). In response to these recommendations, lawmakers have put together Senate Bill 5887 with the aim of regulating medical marijuana.

Senate Bill 5887 would adopt many of the Liquor Board's recommendations, including creating a mandatory registry and providing tax exemptions for medical marijuana patients. Specifically, SB 5887 would apply the recreational marijuana tax structure to medical marijuana, but provide an exemption for patients from the third round of excise taxes as well as exempt them from regular sales tax. Participating in the patient registry would allow individuals to take advantage of arrest protection, higher possession limits, tax exemptions, and the ability to grow at home. SB 5887 further adopts the Liquor Control Board's recommendations by reducing the amount of medical marijuana patients can possess from 24 ounces to three ounces. However, the bill offers flexibility by allowing doctors to prescribe a specified amount over three ounces and anywhere up to eight ounces. The amount of marijuana plants a patient can grow are reduced as well, from 15 to a maximum of three flowering and three non – flowering plants. However, a health care provider could write an authorization for a patient to grow a specified amount over six plants and up to 15. Lawmakers have agreed that new regulations relating to the medical market should be enacted, but whether SB 5887 will reach the governor's desk remains to be seen.

Now that Washington is poised to establish a recreational marijuana market, there's no doubt in legislators' minds that a new regulatory model is needed to ensure that sales in the medical market don't undermine those in the recreational market. There is also a strong desire to comply with the Department of Justice and adopt safeguards that reduce the likelihood of misuse of medical marijuana by recreational users. Although Senate Bill 5887 addresses some of these

issues, like providing sales tax exemptions and allowing for flexibility in possession amounts for those patients who register with the Department of Health, it falls short of addressing patient's privacy concerns and the extreme tax differences between the recreational and medical markets. With this in mind, it is necessary to examine how other states have handled medical marijuana regulations. Seeing as Colorado led the way in legalizing both medicinal and recreational marijuana, it makes sense to examine how they have chosen to regulate the industry in terms of taxes, patient registries, and possession limits. Examining these regulations will provide a means to see how effective laws being proposed in Washington will be at aligning medical and recreational marijuana.

#### Colorado's History

Like medical marijuana patients in Washington State, patients in Colorado are able to obtain an authorization by meeting with their doctor. In 2000, voters in Colorado approved Amendment XX, an amendment to the State Constitution which legalized medical marijuana (Kamin, "Medical Marijuana in Colorado...", 148). Kamin explains that "Amendment XX requires those seeking to register as marijuana patients to demonstrate a diagnosed, debilitating condition and to receive a doctor's advice that they might benefit from the medicinal use of marijuana" ("Medical Marijuana in Colorado...", 147). Initially, the State Department of Health enacted a limit of five patients for one caregiver (Kamin, "Medical Marijuana in Colorado...", 148). This meant that dispensaries, which act as caregivers by distributing marijuana to patients, couldn't exist. However, in 2007, the limit was overturned because "the decision had been made without sufficient public involvement" (Kamin, "Medical Marijuana in Colorado...", 148). After a failed attempt to return to the five patient limit in 2009, the medical marijuana industry exploded. Dispensaries popped up everywhere. Kamin notes, "in just a few months the number

of these businesses in Colorado went from a few dozen to several hundred” and “it is impossible to know exactly how many dispensaries actually sprung up in 2009; because there was literally no regulation...” (“Medical Marijuana in Colorado...”, 149). After realizing that fifteen doctors accounted for 75 percent of all medical marijuana recommendations, calls for new regulations grew louder (Kamin, “Medical Marijuana in Colorado...”, 150). In response, the state legislature enacted SB 1284 in 2010, creating a licensing system for medical marijuana dispensaries and implementing new regulations such as prohibiting financial connections between doctors and caregivers. This meant there would no longer be a financial incentive for physicians with close ties to dispensaries to write medical marijuana authorizations (Kamin, “Medical Marijuana in Colorado...”, 151).

In November of 2012, more than 55 percent of Colorado voters approved a new amendment to the State Constitution, legalizing the retail sale of marijuana for recreational purposes (Kamin, “Lessons Learned from the Governor’s Task Force...”, 1337). Amendment 64 removed criminal penalties for possession of one ounce of marijuana or less, allowed recreational users to grow up to six plants, and permitted individuals to give away up to one ounce of marijuana (Kamin, “Lessons Learned...”, 1338). The amendment also tasked the state legislature with enacting a regulatory system for the sale of recreational marijuana. Included in the initiative was a request for the legislature to enact an excise tax not exceeding fifteen percent (Kamin, “Lessons Learned...”, 1345). Since Colorado already had a method in place for licensing medical marijuana dispensaries, it was quite easy to transition to licensing recreational stores. Today, anyone with a government-issued ID who is twenty-one and older can purchase up to an ounce at a recreational marijuana store, while visitors from out of state can purchase up to a quarter ounce (Amendment 64).

## Taxes

Colorado and Washington have enacted two separate markets for medical marijuana and recreational marijuana. When creating two separate tax structures for the same product, large price differences can cause one market to undermine another. If an individual can get around paying a large tax for recreational marijuana by obtaining a medical marijuana authorization, then they will most likely cheat the system. An alternate option is to avoid the regulated, recreational market altogether and procure marijuana through the black market. With this in mind, it's imperative that the taxes levied on medical marijuana and recreational marijuana are low, and close enough to one another so users are less likely to misuse one system to avoid higher taxes in another. In contrast, Washington State legislators are choosing to heavily regulate the medical marijuana market to discourage arbitrage and ensure that recreational users buy through the recreational market, thereby ensuring tax revenue for the state. Colorado has taken a slightly different, understated approach by enacting a minimal amount of taxes on recreational marijuana.

Despite the small amount of taxation on recreational marijuana, Colorado has still made it a significant source of revenue. In Colorado, medical marijuana is subject to a statewide sales tax and any local taxes. The statewide sales tax is 2.9 percent and local taxes vary greatly. (Colorado Department of Revenue). For example, in Denver their cumulative sales tax is 7.62 percent (City of Denver). This means that someone with a medical marijuana authorization can purchase marijuana at a lower rate than recreational users, who pay the 2.9 percent state sales tax, a 10 percent marijuana sales tax, plus any local sales taxes (Colorado Department of Revenue). A recreational user in the city of Denver would pay a 17.62 percent sales tax for purchasing marijuana. On the other hand, a medical marijuana patient would only pay the sales tax of 7.62

percent. Due to the relatively low level of taxation on recreational marijuana, revenues have been high and Colorado experienced a large volume of sales when shops opened in January of 2014. In fact, the Governor John Hickenlooper “predicted sales and excise taxes next fiscal year would produce some \$98 million, well above a \$70 million annual estimate given to voters when they approved the pot taxes last year” (Wyatt, 1). Initiative 502, on the other hand, calls for much more taxation and could spell trouble.

Washington State’s initiative will heavily tax recreational users and push them towards either the medical market or the black market. Initiative 502 prescribes three excise taxes of 25% each: one levied against the producer, another against the distributor, and a final tax at the point of sale. Excise taxes are not charged separately like sales taxes, but are reflected in higher prices for the product. Recreational users will also pay the statewide sales tax of 6.5 percent and any local sales taxes. Between state and local sales taxes, Washington’s cumulative average sales tax is 8.87 percent (Drenkard). This means that when a recreational user goes to purchase marijuana at a retail store, the cost of the three excise taxes will be passed off to them in addition to regular sales tax (Washington Department of Revenue). For example, Washington State’s Liquor Control Board estimates that one gram of marijuana, pre-tax, costs \$12. Recreational users would end up paying close to \$25.50 for one gram after the three rounds of excise taxes and sales tax. Currently, medical marijuana patients within Washington State pay only regular sales tax and no excise taxes. If the legislature passes Senate Bill 5887, marijuana patients will not be required to pay the excise tax at the point of sale or regular sales tax. Under 5887, the same gram that cost a recreational user close to \$26 will cost a medical marijuana patient \$18.75. These price differences will only become more significant as the quantity purchased increases. To

summarize, a recreational user will pay a lot more for their marijuana due to the three excise taxes, plus sales tax, opposed to no final excise tax or sales tax for medical marijuana patients.

Essentially, the high tax rate imposed by initiative 502 will do one of two things: push some recreational users to purchase from the medical marijuana market, or ensure continued use of the black market. In fact, the task force appointed by Colorado's governor pointed out the same issue. Sam Kamin writes, "While the public is probably willing to pay a premium for legal marijuana... there are limits to how high that premium can go. At a certain point, the price of ... taxed marijuana would become high enough to lure buyers into purchasing on the black market" ("Lessons Learned...", 1346). In Washington's case, recreational users would also have the ability to purchase from the medical market, effectively evading a large part of the taxes. Instead of beefing up medical marijuana regulations, lawmakers could address the problem by amending I-502 to lower the taxes associated with recreational marijuana. However, this would be difficult because any change to an initiative would require a two-thirds majority vote to pass. To summarize, by creating a heavily taxed market next to a mostly untaxed market, lawmakers are increasing the odds that this recreational experiment will fail and are placing a high burden on patients by imposing additional regulations.

### Registries

A second complication associated with the two markets is the patient registry, which will be required under Senate Bill 5887. In Washington, law enforcement is lobbying for a medical marijuana patient registry. Their primary concern is being able to identify medical marijuana patients, their possession limits, and prescribing physician. Washington's Liquor Control Board agrees and recommends adopting a registry that is searchable by law enforcement, the Department of Revenue for tax exemption purposes, and "disciplining authorities for the health

care professions” to ensure “compliance by their licensees” (2). Furthermore, the Department of Justice’s memo mentions the need for strong regulation. In the memo, Deputy Attorney General James M. Cole writes, “The Department’s guidance... rests on the expectation that state and local governments will implement strong and effective regulatory and enforcement systems...”(2). Many have interpreted this as a call for a statewide registry and are eager to comply with the federal government’s wishes. Although the Department of Justice has been somewhat lenient regarding marijuana enforcement, a regime change at the federal level could upset the delicate balance that medical marijuana patients have struck with United States law. Currently, Washington State is the only state with legal medical marijuana that does not have a registry (Marijuana Policy Project).

Despite this, medical marijuana patients have strong concerns regarding registries and look upon them unfavorably. They fear that requiring individuals to identify as medical marijuana patients would make them vulnerable to prosecution from the federal government and open to harassment from law enforcement. Being identified as a marijuana user, even for medical purposes, could mean losing a job, state assistance, or even the ability to own a firearm, which was recently contested in Oregon. The issue of patient privacy was raised in a 2001 Alaska Supreme Court case, *Rollins vs. Ulmer*, in which the Alaska Supreme Court upheld the state’s right to create a medical marijuana registry, despite Rollins’ claim that doing so violated a patient’s constitutional right to privacy. Even though the Alaska Supreme Court sided with the state, privacy concerns continue to be at the forefront of opposition to registries.

In order to build a registry that is acceptable to medical marijuana patients, any state should guarantee a high level of privacy protection, an issue that Colorado has struggled with.

Since the passage of Colorado's Amendment XX in 2000, the Department of Health has maintained a patient registry but has got into hot water due to their lack of privacy protections. The registry provides state officials with a means of tracking medical marijuana patients and the applications submitted. More importantly, it allows Colorado's law enforcement to check on the validity of medical marijuana patients and their plants. Despite the benefits for law enforcement, privacy breaches in 2012 caused medical marijuana patients to call for the dismantling of the system. According to Kristen Wyatt, writer for the Associated Press, "Colorado's medical marijuana patient list is supposed to be accessible to law enforcement only under limited circumstances. But state auditors in June blasted the health department for lax security of the registry" (1). In one instance, Colorado's health department "turned over 107 names to an officer investigating a dispensary, a violation of protocol..."(1). In addition, auditors criticized the Department of Health for not requiring temporary employees who handle medical marijuana applications to sign confidentiality agreements (Wyatt, 1). The registry's administrator has since promised to upgrade security to avoid future breaches (Wyatt, 1).

In Washington State, installing a patient registry has been attempted at least once, with privacy protections being a top priority. The American Civil Liberties Union of Washington State has frequently lobbied on medical marijuana patients' behalf and is a strong supporter of protecting privacy when it comes to installing a registry in Washington. ACLU Drug Policy Advocate Mark Cooke summarizes the need for privacy protections, writing, "The biggest reason a privacy-protecting medical marijuana patient registry is needed is the continued federal prohibition of marijuana." In Washington, the ACLU supported Senate Bill 5073 in 2011, which would have implemented a state of the art, privacy protected registry (Cooke). A registry tailored to the requirements of SB 5073 would have "prevented disclosure of any personally identifying

patient information (names, addresses, medical conditions)...” by assigning an individual a random, unique number (Cooke). In turn, “law enforcement would be able to check the validity of the randomly generated identification number against DOH’s [Department of Health] database at any time” (Cooke). Unfortunately, the bill was partially vetoed by Governor Christine Gregoire and the registry never became law.

There is a balance to be struck when enacting a medical marijuana registry. On one hand, medical marijuana patients have a valid concern when it comes to maintaining privacy. Put simply, participating in a state-run registry could open patients up to criminal charges from the federal government. Forcing patients to admit to using an illegal substance essentially violates their 5<sup>th</sup> amendment right to be protected against self-incrimination. A quick fix for this would be reclassifying marijuana as a Schedule 2 substance or lower. However, this option seems impractical, as the federal government has been resistant to taking up new legislation regarding marijuana. The next best option is to adopt a registry similar to the one proposed in SB 5073. A registry that does not contain any personal information, and instead relies on randomly generated identifiers, will protect patients from self-incrimination and provide a means for tracking patient’s conditions, as well as their possession limits.

#### Possession Limits

The final issue stemming from the medical market is possession limits and their variability. In one example, children who suffer from seizures have found relief with medical marijuana but require large amounts that exceed standard limits because their caregivers must create liquid extracts. The Associated Press reported on the story of Ryan Day from Thurston County, Washington. The AP notes that Day “told lawmakers that his 5-year-old son has intractable epilepsy and was experiencing more than 100 seizures a day until he started taking an

extracted liquid form of marijuana” and that he “wants to grow the plants his son needs at home but the plan under discussion is too limiting...” Because of these limitations, Day would be forced to buy medical marijuana instead of growing and reports that his costs would be over \$15,000 a year (Associated Press). These are the scenarios that lawmakers must address by making sure that doctors are allowed to prescribe additional amounts to those patients who need more. Examining Colorado and Washington’s current and proposed laws, including SB 5887, reveals that Washington is going to allow for more flexibility regarding possession limits.

Currently, patients in Colorado are allowed to have up to two ounces of medical marijuana and six plants, three of which can be mature (Amendment XX). However, if a patient is arrested with more than two ounces and six plants, Amendment XX states: “For quantities of marijuana in excess of these amounts, a patient or his or her primary care-giver may raise as an affirmative defense to charges of violation of state law that such greater amounts were medically necessary to address the patient's debilitating medical condition.” This means that patients can use their physician’s recommendation for a higher amount of marijuana in court to fight any charges. If the physician’s recommendation is found to be valid, any charges brought against the patient would be dropped. This is a good step towards meeting the needs of medical marijuana patients, but the state could go further by allowing physicians to prescribe any additional amounts and, in turn, display those additional amounts on patient’s registry cards. In Washington, Senate Bill 5889 is attempting to take care of citizens like Ryan Day by enacting these kinds of regulations.

Now that Washington is considering SB 5889, which lowers the amount a patient can possess to three ounces and six plants, medical marijuana patients have raised concerns that setting a cap on marijuana possession could impact their physical health. Some are parents like

Ryan Day who have small children with medical conditions, or patients who simply require more marijuana because their symptoms are severe. They contend that the patient and their doctor, not legislators, should determine the amount of marijuana needed. With this in mind, Washington State legislators have added provisions in SB 5887 that allow physicians to prescribe additional marijuana. Additional amounts would be put on a patient's registry card to help law enforcement know if a patient is operating illegally and would prevent unnecessary arrest. These provisions extend beyond the recommendations of the Liquor Control Board, which failed to speak to this particular issue and instead set strict limits with no flexibility for physicians and their patients.

Overall, it is imperative that any legislation provides exceptions for those patients who have greater needs. Ryan Day is not the only parent who requires large amounts of marijuana for treating their child's seizures. Similar stories have surfaced in Colorado, where hundreds of families are flocking to the state in order to take advantage of medical marijuana and its positive effects treating seizures (NY Daily News, 1). Furthermore, the Epilepsy Foundation has recently announced support for medical marijuana and is calling for additional research to be conducted (Ferner, 1). Since there is disagreement between the medical marijuana community and legislators regarding what an appropriate amount of marijuana would be, it's best to leave the decision to doctors. By implementing the provisions contained in SB 5887, lawmakers are doing the correct thing by ensuring that marijuana patients have access to an adequate amount of medicine. They are also making law enforcement's job easier by displaying possession limits on registration cards.

### Conclusion

With Washington State moving forward with the legalization of recreational marijuana, lawmakers have set their sights on regulating medical marijuana, ensuring tax revenue for the

state and avoiding conflict with the U.S. Department of Justice. Considering these different forms of regulation and their impact on medical users, it is clear that Washington State is proposing some worthwhile regulations in the form of flexible possession limits. However, the state could do more to protect patient privacy and equalize the taxes associated with recreational and medical marijuana. Regarding taxes, the legislature should focus on eliminating a portion of the excise tax associated with recreational marijuana. This would better align the medical and recreational systems while discouraging misuse of medical marijuana. If the excise taxes aren't lowered, it's probable that users will find a way to get a medical marijuana authorization or continue to rely on the black market. This is an area where Washington could take a page out of Colorado's book. Colorado has found a tax structure that works, has seen increased revenue, and has not experienced issues with users cheating the medical system. With this in mind, lawmakers should focus on achieving a two-thirds majority in order to amend Initiative 502 and remove at least one of the excise taxes.

When it comes to adopting a registry, Washington has come close to embracing privacy controls and should revisit this topic again. Unfortunately, SB 5887 does not call for the same privacy protections as SB 5073 did in 2011. Doing so would help to address patient's fears. Seeing as the situation with the federal government is complex and changing, patients need to know their personal information is secure. The registry in SB 5073 would have accomplished this by not maintaining any of the patient's personal information and instead assigning them a randomly generated identifier. SB 5887 should be amended to provide a similar framework. The privacy breaches that took place in Colorado in 2012 should serve as a warning for Washington's lawmakers. If patients lose faith in the system, chances are they will return to the black market. Overall, adopting a registry with tight privacy controls will protect patients, meet some of the

federal government's criteria, and provide researchers with a way of tracking applications and studying medical marijuana.

Possession limits should be handled carefully and thoughtfully. Lawmakers addressed this issue by allowing doctors to prescribe more than what the law allows. By having this information readily accessible on the patient's registry card, lawmakers are doing right by law enforcement and patients alike. This will prevent patients from being unlawfully arrested for possessing high quantities of marijuana and save the state money by avoiding unnecessary litigation. In many cases, this is a sensitive topic. There are individuals who rely on medical marijuana to treat family members with seizure-related disorders. In this regard, Colorado would be well advised to follow Washington's lead by integrating possession limits with their state registry and indicating additional amounts on patient's registry cards.

All areas considered, SB 5887 provides some much needed regulation and flexibility, but fails to address the gap in taxes between the recreational and medical markets and doesn't provide adequate privacy protections. To address these issues, the SB 5887 should be amended to provide greater privacy protections and lower the amount of taxes on recreational marijuana. However, SB 5887 rightly allows physicians to prescribe additional amounts of marijuana for those patients who need more. There is a desire to clarify medical marijuana rules and new regulations should be a priority, but not at the expense of patients. The state's role should be to protect its citizens, acknowledging their rights to privacy and ensuring that they can get the medicine that they need. Although Washington State is taking steps to regulate and integrate the medical marijuana market, the federal government will undoubtedly be forced to address the issue of marijuana in the future.

A final comment about Senate Bill 5887 is that it does not, and cannot, touch on the overarching problem posed by the federal government's continued stance against all forms of marijuana. Until this is settled, Washington State residents are vulnerable to litigation. With more states adopting legislation that allows for the use of medical marijuana and in some cases, recreational marijuana as well, the elephant in the room will need to be addressed. As more states move forward, the federal government will eventually need to respond with a definitive answer: yes, or no. It's hard to envision back peddling from this point in America's history and more than likely, marijuana will be reclassified or outright legalized. This appears to be the logical answer, considering that 58% of Americans now favor legalizing marijuana (Swift). In the meantime, medical marijuana patients are in limbo. Until the federal government takes meaningful action, states should be cognizant of the unsteady situation that patients are in.

## Works Cited

- "Are Sales of "Medical Cannabis" Subject to Sales Tax?" *Tax Topics*. Washington State Department of Revenue, n.d. Web. 28 Feb. 2014.
- Bostwick, J. Michael, MD. "Blurred Boundaries: The Therapeutics and Politics of Medical Marijuana." *Mayo Clinic Proceedings* (2012): 172-86. Web.
- Cooke, Mark. "A Medical Marijuana Registry Should Protect Patient Privacy." American Civil Liberties Union of Washington, 9 Sept. 2011. Web. 16 Feb. 2014.
- Drenkard, Scott. "Ranking State and Local Sales Taxes." *Ranking State and Local Taxes*. Tax Foundation, 22 Sept. 2011. Web. 13 Mar. 2014.
- Ferner, Matt. "Epilepsy Group Announces Support For Medical Marijuana." *The Huffington Post*. TheHuffingtonPost.com, 20 Feb. 2014. Web. 27 Feb. 2014.
- "How to Remove the Threat of Arrest — an Extensive 2013 Report." *State-By-State Medical Marijuana Laws*. Marijuana Policy Project, 01 Dec. 2013. Web. 28 Feb. 2014.
- "I-502 Full Text." *I-502 Implementation | Washington State Liquor Control Board*. N.p., n.d. Web. 28 Jan. 2014.
- Kamin, Sam. "Lessons Learned from the Governor's Task Force to Implement Amendment 64." *Oregon Law Review* 91 (2013): 1337-354. Web.
- Kamin, Sam. "Marijuana at a Crossroads: Keynote Address." *Denver University Law Review* (2012): 977-95. Web.
- Kamin, Sam. "Medical Marijuana in Colorado and the Future of Marijuana Regulation in the United States." *McGeorge Law Review* 43.1 (2012): 147-67. *EBSCO Host*. Web. 30 Jan. 2014.
- "Medical Marijuana in Washington: Supporters Upset by Proposed Changes to System." *Oregonlive.com*. The Associated Press, 15 Jan. 2014. Web. 27 Feb. 2014.
- "Medical Marijuana Recommendations." *Washington State Liquor Control Board*. N.p., 18 Dec. 2013. Web. 31 Jan. 2014.
- "Moving for Marijuana: Families with Seizure-stricken Kids Relocating to Colorado for Strain of Pot." *NY Daily News*. N.p., 18 Feb. 2014. Web. 25 Feb. 2014.
- Rollins V. Ulmer. Alaska Supreme Court. 12 Jan. 2001. Print.
- Swift, Art. "For First Time, Americans Favor Legalizing Marijuana." *Gallop Politics*. Gallop, 22 Oct. 2013. Web. 13 Mar. 2014.

"Taxation: Information for Consumers." *Department of Revenue: Division of Taxation*. Colorado State Department of Revenue, n.d. Web. 27 Feb. 2014.

"The Constitution of Colorado", Amendment XX.

"The Constitution of Colorado", Amendment 64.

United States. Department of Finance. Treasury Division. *Denver Combined Tax Rates*. City of Denver: Tax Compliance - Audit Unit, 2011. Print.

United States of America. Department of Justice. Office of the Deputy Attorney General. *Justice Department Announces Update to Marijuana Enforcement Policy*. By James M. Cole. Department of Justice, 29 Aug. 2013. Web. 27 Feb. 2014

Washington State Senate. Committee on Health Care. *Senate Bill Report. SB 5887 : An act relating to the medical use of cannabis*. Available from: [leg.wa.gov](http://leg.wa.gov)

Wyatt, Kristin. "Colorado Marijuana Patients Protest Privacy Breaches." *CBS Denver*. N.p., 21 Aug. 2013. Web. 27 Feb. 2014.