

Medical Marijuana and Prop 36

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In California, Penal Code sections 1210.1 *et seq.* mandate probation and treatment for non-violent drug possession offenses. Sections 1210.1, *et seq.* are commonly referred to as “Prop 36” probation. In *People v. Beaty* (2010) 181 Cal.App.4th 644, the court determined that using medical marijuana alone does not make a defendant unamenable to treatment under Prop 36.

Brian Beaty was convicted of transporting and possessing methamphetamine in violation of Health and Safety Code sections 11379, subdivision (a) and 11377, subdivision (a). He was placed on Prop 36 probation and ordered to attend treatment as directed.

As the result of a motorcycle accident in 1998, Beaty is disabled. He suffers from chronic pain, slurred speech, and slow reaction times. At some point, Beaty inquired about the possibility of using marijuana for pain relief and to help with anxiety and stress. He was referred to Dr. Fry who prescribed the use of marijuana for pain relief, appetite control, anxiety management, and blood pressure reduction. Beaty meets with Dr. Fry once a year for a medical evaluation and a renewal of the marijuana prescription. Beaty admits that he uses marijuana on a daily basis.

When placed on Prop. 36 probation, Beaty told his probation officer that he had the medical marijuana prescription and about his use of marijuana. The officer told Beaty that all his medications must be approved by the Prop. 36 team. He was also advised that he could not use marijuana, even though prescribed, while on Prop. 36 probation. Beaty was counseled by his attorney that his use was legal, so he continued to use marijuana on a daily basis for medicinal purposes. Not surprisingly, Beaty tested positive for marijuana each time he was tested.

In November 2007, the dirty tests were the basis for a five-count petition alleging that Beaty had violated his probation by testing positive five times.
(*Id.* At 649-650)

The court of appeals reversed the trial court finding that Beaty was in violation of his probation. The court likened a recommendation for medical marijuana use to a prescription for a narcotic painkiller or for Aderall. Beaty has a medical marijuana card. The drug treatment program that he was ordered into as a condition of his probation claimed that he was unsuitable for treatment (a ground to terminate Beaty from the program and impose jail time) because the program required all of it’s participants to be totally drug free. The appellate court determined that without proof that the medical marijuana caused Beaty to not participate in earnest in his treatment or that a doctor believed him to be using it abusively Beaty was not unamenable to treatment.

The court expressly found that Beaty's use of medical marijuana was not a danger to the public. (*Id.* At 654) They then turned their attention to unamenability. 2 experts testified at Beaty's probation revocation hearing that chronic marijuana use makes one unsuitable and unamenable for treatment. (*Id.* At 654-655)

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"Based on the drug treatment program's refusal to allow Beaty to participate in group sessions while using marijuana regularly, the court concluded that Beaty was unamenable to treatment. In essence, the court's ruling equates to a finding that, as a matter of law, medicinal use of marijuana alone is sufficient to render an individual unamenable for treatment in a Prop. 36 drug treatment program. We conclude this conclusion is not supported by the law or the evidence and impermissibly defers a legal conclusion to the drug treatment program." (*Id.* At 656)

The heart of the court's logic, and likewise, what the defense argument should be, rests upon lines from *People v. Urziceanu* (2005) 132 Cal.App.4th 747. They said:

The Court of Appeal in *People v. Urziceanu, supra*, 132 Cal.App.4th at page 785, observed that "[t]his new law represents a dramatic change in the prohibitions on the use, distribution, and cultivation of marijuana for persons who are qualified patients or primary caregivers" Prop. 215 and its enabling statutes require new thinking on the use of marijuana by people with medical needs, and ensure "that seriously ill Californians have the right to obtain and use marijuana for medical purposes" upon the recommendation of a physician. (§ 11362.5, subd. (b)(1)(A).) The section applies to "any ... illness for which marijuana provides relief." (*Ibid.*) Under the statutory scheme, individuals using marijuana under the recommendation of a physician "are not subject to criminal prosecution or sanction." (§ 11362.5, subd. (b)(1)(B).) (*Id.* At 655)

The court in *Beaty* properly recognized that medical marijuana is not only legitimate, but "requires new thinking." The tragedy of Mr. Beaty's case is the same one revisited upon our clients on a daily basis. While the law clearly requires that Judges, probation and DA's respect our clients rights, they are loathe to do so. *People v. Beaty* (2010) 181 Cal.App.4th 644 is an important step forward for not just medical marijuana patients, it is an important step forward for personal freedom.

