

Medical Marijuana Advocate Sues County and Law Enforcement Officials

by Joel Moreno

Scott Hager says he was "stunned" when Santa Cruz police appeared at his Neary Lagoon apartment on September 2, responding to a tip that he was an armed and dangerous drug dealer.

Paralyzed over a decade ago from a swimming-related accident, Hager, 33, began smoking marijuana at the recommendation of an herbalist to control debilitating muscle spasms. He says he has been upfront in the community about his medical need for the drug.

When Santa Cruz police entered the apartment under the presumption that drugs were being cultivated on the premises, Hager explained his medical necessity to the officer and cited an earlier incident he thought had clarified the situation for local law enforcement officials.

In a January 17 attempted robbery, Hager was threatened at gunpoint by a man who broke in and demanded his marijuana plants. Hager said he resisted, and called police as soon as the man fled.

Law enforcement officials later apprehended the individual and successfully prosecuted him, with

Hager's testimony, for trying to steal the marijuana plants. He was sentenced to six years in prison.

"The police didn't take my medicine at that time," Hager said. "They didn't warn me, they didn't do anything."

However, when police were summoned to Hager's home in September, it was as if the robbery attempt and subsequent prosecution had never happened, Hager asserted.

Unsure whether to arrest Hager for cultivation, Santa Cruz Police Officer Greg Noll contacted representatives at the District Attorney's Office from Hager's residence for instructions. After waiting about 30 minutes for an answer, he was told to confiscate the plants. The officer also said he advised Hager he would need to provide documentation of his medical necessity.

Noll characterized the eight plants, three of which were about five feet high, as an excessive amount of medicine for one person.

"It was way more than anyone could ever use. It was just a phenomenal amount," Noll said.

The next night following the raid police were dispatched to Hager's residence again, reportedly finding Hager in severe physical distress. Without access to his

medicine, Hager was bucking uncontrollably with spasms and bleeding from his catheter, he said. Hager, a wheelchair athlete and Para-Olympic bronze medalist in swimming, said he finds it ironic the county defended his right to have marijuana in his house by prosecuting and sentencing a man who tried to steal it, only to come to his apartment later to seize it.

"Until this legality is resolved concerning this medicine, people like me who are up front trying to do things right just can't afford to be harassed like this," Hager said.

Hager is being represented in a civil class action lawsuit by Santa Cruz attorney Ed Frey, who has long advocated the use of marijuana for medical considerations. Hager is also receiving assistance from the Santa Cruz Citizens for Medical Marijuana.

"We're filing on behalf of all California patients who use marijuana as their best available medicine," Frey said.

The lawsuit takes two basic causes of action. One is toward declaratory relief; the other is for an injunction. No monetary damages are being sought.

"The declaration we ask for is that the law be declared unconstitutional as applied to these patients," Frey said. "Secondly, to enforce that declaration, the second cause of action calls for an injunction against enforcing the law or seizing any of their medicine if they can produce a statement from their doctor stating that this is their best medicine."

Frey is framing the suit around Article One, Section One of the California Constitution, which guarantees the right to pursue and obtain safety, privacy and happiness, as well as protection from unreasonable search and seizure. The attorney said those constitutional rights take precedence over any statutory prohibitions against marijuana.

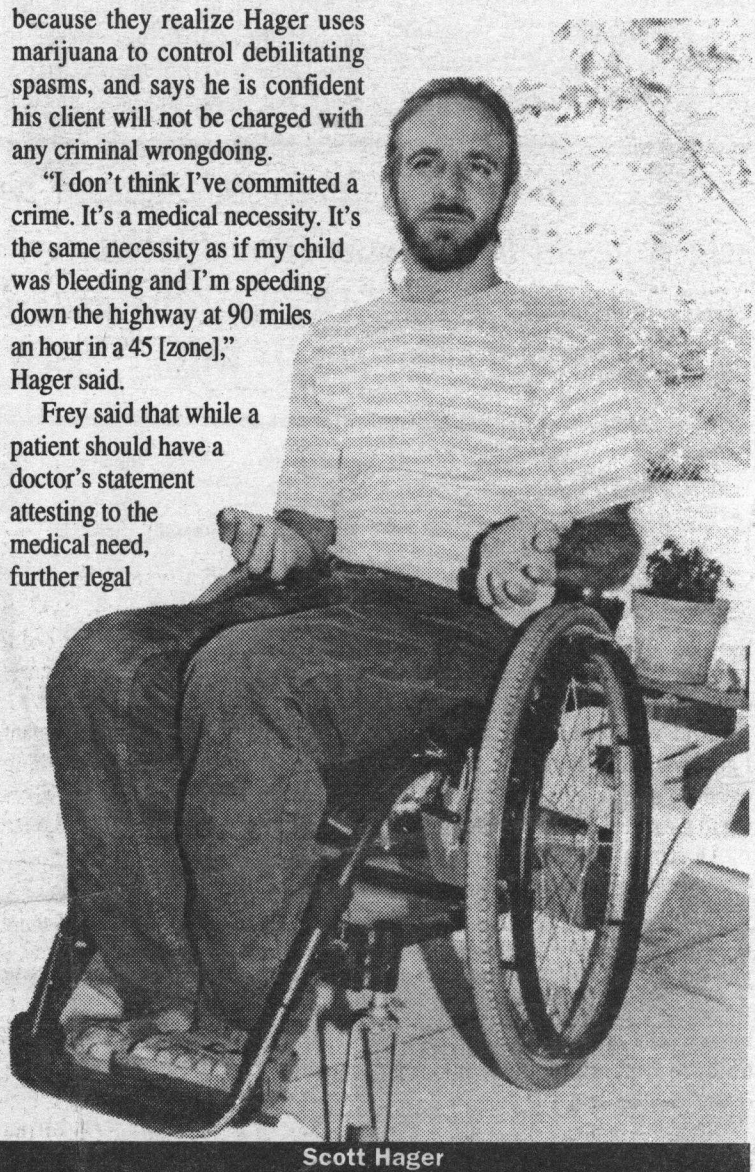
The class action suit is not expected to be acted upon in Santa Cruz County Superior Court until next year, with a stipulation that the latest date be March 17. It names a number of local and state law enforcement figures as defendants.

Frey thinks the prosecution has some "apprehension" about Hager

because they realize Hager uses marijuana to control debilitating spasms, and says he is confident his client will not be charged with any criminal wrongdoing.

"I don't think I've committed a crime. It's a medical necessity. It's the same necessity as if my child was bleeding and I'm speeding down the highway at 90 miles an hour in a 45 [zone]," Hager said.

Frey said that while a patient should have a doctor's statement attesting to the medical need, further legal



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requirements are unwarranted.

"No judge, no lawyer, no bureaucrat should have this power and authority over a person's intake of medicine," Frey said.

A licensed physician should be considered capable of determining whether or not there's medical

coma, uncontrollable spasms, among other chronic ailments.

The U.S. Food and Drug Administration views marijuana as a carcinogenic recreational drug, and has not been willing to sanction the smoking of marijuana as a standard treatment. Even pills which isolate the active ingredients in marijuana have not gained acceptance, but Hager and other medical

"I do know that it is alleged that what they call marijuana indica, the pure marijuana, has slightly different properties than the [chemical] that is active in what's available today, the dronabinol," said Dr. Ira Lubell, former Santa Cruz County Public Health Officer.

Dr. Steve Mann has his own practice in radiation oncology and said many members of the local

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necessity, Frey said. Officer Noll said Hager did not produce documentation to back his claim of medical necessity.

Marijuana has been used as a medicine for centuries, and many experts agree it is less toxic than heroin or cocaine derivatives that have medical applications. It has been used to treat a variety of ailments, particularly nausea associated with chemotherapy and AIDS treatments, intraocular pressure associated with glau-

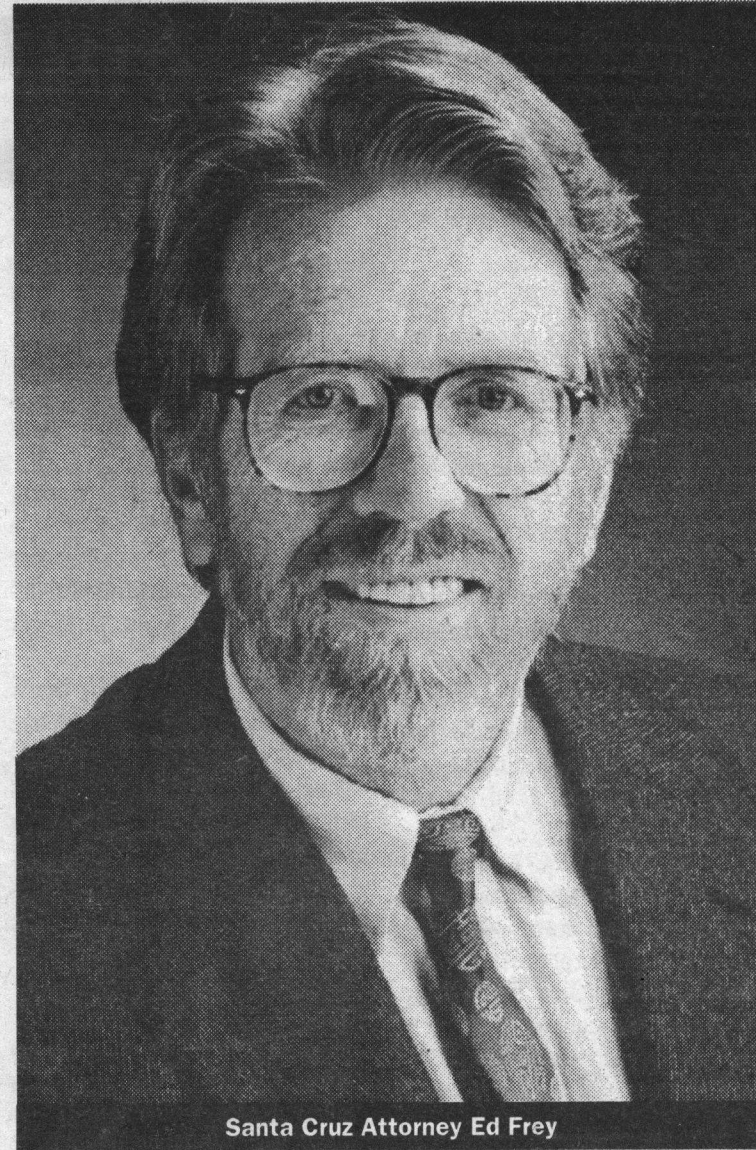
marijuana users say there is a significant difference between oral capsules and smoking the drug.

Hager prefers to smoke marijuana because he says he experiences relief more quickly and exercises more control over the dosage.

"I've tried the THC pill. I found, number one, that I lose a lot of control. Most times it's so overpowering and the side effects are so debilitating that I'm left functionless for four or five hours," Hager said.

medical community, such as members of the Santa Cruz County Medical Society, support further research into the medical uses of marijuana.

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Santa Cruz Attorney Ed Frey