



## **Policy Perspectives: An Interview with Ben Rice**

Ben Rice is an attorney in private practice. He began his career in criminal defense in 1981, first as a public defender in Santa Clara County and then in Santa Cruz County, where he opened a private practice in 1987. He has represented a variety of clients involved in medical cannabis, including cultivators, doctors and dispensaries. Ben is also a member of the Blue Ribbon Commission on Cannabis Policy, and serves as a member of its working group on tax and regulatory issues.

### **How did you come to work in the field of cannabis law?**

I was working in private practice in Santa Cruz. My story begins with that of a couple named Valerie and Michael Corral. Valerie suffered from seizures as a result of head injuries from a car accident. They tried all the treatments and medications her doctors could suggest, and they had no effect on her seizures. Michael read about cannabis helping people with seizures, and when they tried it, cannabis helped save her life. They moved to Santa Cruz and began cultivating cannabis for Valerie. Valerie was arrested and charged by our district attorney with violating state laws against possession and cultivation of cannabis.

### **So what happened next?**

On the eve of trial, the district attorney determined that Valerie could argue the “necessity defense” and her charges were dismissed. Valerie and Michael started Wo/Men’s Alliance for Medical Cannabis, (WAMM), distributing cannabis to patients with serious illnesses who could benefit from it. WAMM soon became a feature of local politics, and with widespread support by the medical community, both the city and county of Santa Cruz became supporters.

Then WAMM’s garden was raided by DEA in 2002. A SWAT team armed with automatic weapons arrested Val and Michael and cut the year’s supply of cannabis belonging to the 250 WAMM members. It was a big deal - it made the national news. The day after the raid, I met with Valerie and Michael, the mayor, and one of the county supervisors. The city decided it would allow WAMM to have their weekly cannabis give-away on the steps of city hall. That give away made international news. The case was never prosecuted criminally but with help from the ACLU, Professor Gerald Uelmen, DPA, and others, WAMM won a federal injunction and ultimately their right to exist was vindicated. Federal Judge Jeremy Fogel called WAMM the “Gold Standard” of cannabis collectives. After that my criminal practice turned into a medical cannabis practice. I have represented cultivators, dispensaries, doctors, and collectives – both people who have gotten into trouble with cannabis and people who have tried to comply with local and state laws. I have also helped draft local ordinances. It has been a long and fascinating road.

**Given your experience in the regulation of medical cannabis, what can we learn for regulation of recreational cannabis? Let’s start with cultivation.**

Unfortunately, our county passed a resolution in 2014 that was doomed to fail. It was restrictive in what it allowed. If, for example, a person had 5 acres of land, they could have 2,000 square feet under cultivation. If they had ten acres or more, they could have up to 3,000 square feet. That ordinance was designed to work with a dispensary ordinance that had already been passed, so dispensaries could purchase from people who were cultivating for a long time and who were responsible growers. These were the folks who were doing the important bio-diversity work and providing cannabis medicine like plants rich in CBD.

As a result of that ordinance, word got out that Santa Cruz was a great place to grow, and a lot of people moved to Santa Cruz to grow. Some were not respectful of the environment or their neighbors. So there was a backlash.

When they passed this ordinance in 2014, I knew they were making a mistake. I thought to myself "They don't have a way to regulate this." They only had two people in the planning department doing compliance checking related to cannabis and all other possible land use violations. At the same time, the sheriff's office had disbanded their cannabis enforcement team because they couldn't get convictions - people were usually able to show paperwork they were compliant with state law, even if they were out of compliance with county land use policy. Most of the growers agreed that they should comply with the environment and respect their neighbors, but the county did not have the staff to ensure compliance from the bad actors.

So in response as a backlash to that, early in 2015, the county then issued an ordinance banning grows of more than 100 sq. ft. on any parcel. The county made no exceptions for the 12 dispensaries that followed the rules and acted responsibly. In very short order, enough people got angry and have gathered enough signatures to force a referendum.

What I had proposed to our supervisors, along with attorney Trevor Luxon, is an ordinance that would allow the dispensaries to manage up to 15,000 square feet that they would operate. Have them manage an amount of acreage commensurate to what they pay in taxes. We should allow the dispensaries to grow three to four easy to grow forms of cannabis, do it cheaply, and pass the savings to the patients.

I also believe it is important to allow mom and pops, small cultivators, to follow reasonable regulations. This industry has been here forever, and they are not going to go away. These folks have been asking to buy in, be regulated and help pay for the county oversight. Everyone knows recreational cannabis is coming, and they want to participate legally and be regulated.

**What about at the other end of the chain, let's skip over to the retail environment, at the point of sale. What can we learn about regulation at that point?**

I think it can work with regulation and scrutiny, just like any other industry. There have to be rules and regulations. There has to be a way for people to buy into it and participate in the legal system. The carrot and stick approach makes sense. The people who don't play by the rules? It is not that hard to shut them down.

We do not limit the number of dispensaries by number, but we limit them by virtue of where dispensaries can open, with setbacks from schools and parks. If you set it up that way, you can limit the number indirectly. It is reasonable and important to have people pay their way through taxation and our dispensaries almost unanimously supported a sales tax to help the county's general fund.

It is extremely important to require testing. The products should carry labels that say, for example, "x% THC, y% CBD", the level of terpenes, and most importantly, whether mold or other contaminants are present. Third party inspectors can also test the products on the shelf to

see if the testing and labeling represented by the dispensary is accurate (for disclosure, my son is a founder of SC Labs, one of the testing labs). It makes sense to have pretty tight regulations, just like we have for alcohol.

**These are great insights from your experience dealing with medical cannabis, and I can see how some of the lessons can translate to a recreational system. But zooming out just one step, how do you deal with having a concurrent recreational and medical market; should they just be folded into one?**

It would be a terrible mistake to subsume medical under recreational. It is important for society to continue to learn about the benefits of medical cannabis. Nearly every day there is a medical article about the benefits of cannabis; it's an extraordinary plant from a medical standpoint. Where it gets problematic is when people hide behind the medical claim to get the lower tax, or people are growing cannabis for a medical garden, but then sell it in-state or out-of-state to recreational users.

I am intrigued by what Oregon is requiring: if people want to be getting medical cannabis, they have to join the registry. I like the idea of people saying: I am a patient. And by virtue of being on that list, they can grow some number of plants, and as many as four patients can pool together and have four times that number of plants. If some groups focused on patients like WAMM or the Veteran's Alliance, want a tax that is lower than a recreational tax, they should be able to obtain that. Some dispensaries should be able to dispense both recreational and medical cannabis, as long as they comply with the rules.

**So what problems do we encounter in having two systems?**

Frankly, it is too easy to get a medical recommendation for cannabis. There are doctors who are in it for the money, and they don't care who can really benefit in a medical sense. They interview a patient for just a few minutes, and they charge \$70, without receiving any documentation about the medical condition. I have represented other doctors who have come to me to do it right; there are minimum standards the state medical board requires. It is still not enough in my view. There ought to be some requirement for doctors for more of a showing of the underlying medical condition. Maybe the doctors who write the medical scripts should get extra training and regulation.

**Generally, we are talking about people who have been operating under the radar stepping into a legal, regulated system. Isn't there an inherent resistance to that?**

While in the past people have been understandably concerned about being on law enforcement's radar, the law is increasingly protecting their activities. I have many clients growing cannabis for legal dispensaries happy to come out of the dark, and get their name registered with the planning department and sheriff's department. If a neighbor calls the county to complain about potential cannabis grows, the county can determine whether that person has registered and is growing it legally.

I am a big believer in third party compliance. In fact, Santa Cruz was the birthplace of CCOF, which monitors organic agriculture. Anyone who wants to grow could be required to pay a third party compliance company, to make sure there are no environmental or land use issues, or problems with setbacks, and to test their plants or product. The grower or dispensary then has that certification available and their name is in the record, so if someone complains, the county can say "we know about them and they were looked over by the compliance company three months ago", and it eliminates a lot of legwork for the county. This way they the county can concentrate its resources checking on people not on their list and verifying work of the third party compliance company.

**I was intrigued by something you said earlier, the idea of linking the amount of tax to the amount of land that can be cultivated by the dispensary. It seems there is an interesting insight there. Can you talk more about that?**

It gives the dispensary an incentive to be forthright about what is coming in and going out of the business. If they are forthright about the amount they are selling and paying taxes on it, they can be allowed a commensurate amount of land to grow the cannabis. The input and the output are calibrated.

**What advice would you give policymakers and voters as they consider whether and how to tax and regulate cannabis for recreational use?**

I would remind them a few things. First, California was the first state to set up a medical cannabis system, and everyone else has had the benefit of learning from our mistakes. Now, we can learn from the mistakes and lessons of the other states that have set up recreational markets. We are in a nice spot, we can cherry-pick the best features from those states.

Second, we have to remember that when we overcame the prohibition of alcohol, it was not smooth sailing right away. But we have largely worked it out over time. I think we have to take a similar view with cannabis.

Third, we have to safeguard medical cannabis for the thousands of patients who will benefit from it. In my view that also requires safeguarding the ability of mom and pop operations, for the small boutique cannabis growers to survive. It would be a tragedy if the whole thing was taken over by a corporate world.

**You are saying in the design of state or local regulations, to not wipe out the possibility of small operators. But let me flip that around: would you propose any upper limits on the scale of operations?**

I don't know about an upper limit on the size of cultivation or retailers. That's a hard one for me. I would say it is just like wine: it's good to have boutique wineries but allow the really big grows for the economy of scale to keep prices reasonable.

**I have a few take-aways from our conversation. You like the concept of third party certification and oversight. And that there has to also be some added capacity for public oversight, whether in the planning department or elsewhere. Is there anything else you would add as voters and policymakers think about the question of marijuana regulation?**

I have dealt with a lot of overly strict local rules, which can be frustrating, but I don't think there should be one set of statewide detailed rules that have to be followed exactly in every community. There should be some flexibility for local government, maybe up to a limit. But there is value in smart regulation at the local level beyond the minimum standards or parameters the state sets.