

Overzealous doctors enforce "pain contracts"

Veterans Seek VA Policy That Allows Cannabis Use

By Michael Krawitz

A few months spent in an Army hospital in Hawaii marked the beginning of the end of my dreams of being a military helicopter pilot. The doctors tried their best to put me back together but my injuries were too severe. While sidelined in Bellevue, Nebraska at Offutt Air Force Base, I started volunteering at the local Veterans Outreach Center. At the time veterans were fighting for recognition of damage done by Agent Orange exposure in Vietnam. My involvement at the center would eventually lead me to the United Nations in New York in 1998 and again to a UN conference in Vienna in 2008.

My mission has been to defend the basic human right of access to required medicine. As a patient advocate I have taken on some pretty tough cases over the years. A memorable one involved a vet who was denied Hepatitis C treatment and told to go home and "show his sons how a real man faces death." That vet's story of triumph, thanks to the use of medical marijuana, is recounted in the Institute of Medicine report, "Marijuana, Accessing the Science Base."

My case was less tragic but has been more challenging. As I was checking out of the clinic after a routine appointment at the Salem, Virginia VA hospital in 2004, I was handed a "pain contract" by my doctor's assistant and told to sign. I insisted on taking the documents with me so I could show them to my lawyer, as I would with any other contract. My lawyer advised that the document didn't qualify as a contract because I wouldn't get anything and only stood to lose by signing.

The so-called contract made a host of demands, such as requiring that I submit to illegal drug tests and never run out of medicine on a weekend. Many common problems that patients experience, such as the dose becoming insufficient to control the pain, are defined as violations that could result in "being reported to other authorities" and being denied necessary pain treatment. I flatly refused to sign. The doctor, much to my surprise, discontinued my pain medicine and said my prescription would be renewed when I signed the forms."

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Although the standard of care with respect to "pain contracts" is emerging, I don't think they are an appropriate mechanism for meting out punishment. The American Academy of Pain Management suggests the use of an informed consent document called a "Treatment Attestation," which I would sign readily because it spells out the risks of the medication and the responsibilities of the patient without making arbitrary demands and threats.

Most pain contracts call for illegal drug tests and demand absolute compliance to the rules under constant threat of denial of care. Patients who violate a pain contract have difficulty for years accessing proper care. A contract violation can follow the patient around, making the new doctor less likely to prescribe pain medicine even if the violation was



PVT. KRAWITZ GRADUATES BASIC TRAINING. The author, now a pro-cannabis activist, is at the far right on the top row.

for not showing up on time at the doctors office for the nurse to do a "pill count."

Since the VA is a federal entity and because the veteran often has VA hospital Primary Care as their sole medical treatment provider—and no choice in doctor—the pain contract and its associated drug-testing provisions violate the veteran's Fourth Amendment right to be secure from unreasonable search. It violates the Fifth Amendment in that the veteran is forced to testify against him/herself by submitting to drug tests. And it violates the Fourteenth Amendment's equal protection under the law clause because the whole thing is targeted at pain patients.

Hollow Excuses

Those VA doctors who use these contracts have said the tests are "to stop illegal drugs from going on the streets," and "so the VA is doing all it can to be a good citizen" and "because we are trying to fulfill our pledge to first do no harm by protecting the public from the harm of drugs." The most common excuse I've heard from a VA doctor: "I have no choice, this is a hospital policy."

Ever since the first months of my fight, when I was suffering because I was being denied pain medicine, I have been communicating by phone with VA officials at the National Center For Ethics in Healthcare and the National Program Director for Pain Management. They seemed concerned about my situation and assured me that my case had opened their eyes to some serious issues and would be taken into account as they write a better national policy. They insisted that despite the fact that my doctor claimed to be just following orders, the official VA position is that doctors alone should decide when or even if to use pain contracts or any medical tests; and that it is unethical to withhold pain medication, even if the patient is a drug addict. These officials say they are now working on a "white paper" defining the VA's medical marijuana policy. It will likely be sent out as a Directive [memo] from the national VA to all medical centers—as was the VA memo that first suggested the use of pain contracts about 10 years ago.

Medical marijuana states

As more states passed medical marijuana laws in recent years, directors of VA hospitals in Michigan, Colorado and New Mexico asked the VA General Counsel to clarify the VA's legal position. The General Counsel's advice, issued in the form of a memorandum on May 21, 2008, was that doctors at VA

hospitals shouldn't write recommendations for marijuana and that the hospitals should ban marijuana from the premises.

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But what about the veteran who obtains a recommendation from a civilian doctor, does not bring his marijuana onto VA property, uses it in compliance with state law, and then tests positive on a drug test mandated by his VA pain contract? Most regional VA hospitals have implemented policies protecting patients in such situations from adverse consequences. But in Montana, California, and Maine I am working with veterans who, even though state law protects their medical marijuana use, are being denied or threatened with denial of pain treatment by overzealous VA doctors who claim they are just following orders.

The federal court decision in the case of *Conant et al v. Drug Czar* protected the rights of doctors to discuss marijuana as a treatment option with their patients on First Amendment grounds. Despite the *Conant* decision, the Drug Enforcement Administration is telling VA doctors that they do not have that right. The VA General Counsel's 21 May 2008 advisory opinion on medical marijuana refers to the power of the DEA (which is under the U.S. Attorney General) to punish doctors: "Physicians are required to register through the AG; the AG may deny, suspend or revoke such registration if the determination is made, based on a five-prong test, that the registration would be inconsistent with the public interest."

DEA Rules

The General Counsel's memo refers to *Conant* but suggests it has little meaning in light of more recent court decisions: "The *Pearson* decision indicated and the recent Supreme Court decision in *Raich* confirmed, the federal govern-

ment has complete authority under the Commerce Clause of the Constitution to use the CSA to regulate even small amounts of marijuana produced intrastate for consumption under the purview of a state medical marijuana program. *Gonzales v. Raich*, 545 U.S. 1 (2005). Thus the federal government has constitutional authority to pursue registration revocations or denials as well as criminal prosecutions. *Gonzales v. Oregon*, 546 U.S. 243 (2006). A VA physician's completion of a form that would permit a patient to participate in a state medical marijuana program could result in DEA action to seek actual or threatened revocation of the physicians registration to prescribe controlled substances as well as criminal charges."

As a result of DEA threats against VA doctors, vets have to see civilian doctors at their own expense to receive the appropriate recommendations for medical marijuana.

I receive calls every week from veterans across the country who are in great pain and the VA has terminated their pain treatment because they tested positive for marijuana. Access to pain treatment is a right, not a privilege. When a doctor withholds a prescription for pain meds to coerce someone to sign a pain contract, or in reaction to a positive urinalysis for marijuana, the doctor is seeing the medical treatment as a reward that can be taken away. Untreated and even under treated pain is torture.

Some clinics outside the VA have stopped all prescribing of opioid pain medications for fear of the DEA and many now deny their patients access to pain treatment if they use medical marijuana, even if legal under state law. The medical reality is, Cannabis is an adjunct treatment to opioids; it reduces the level of opioids needed to achieve adequate pain reduction. This synergistic effect of Cannabis and opioids would allow vets to reduce opioid intake while experiencing better pain relief without as many negative side effects. This is what veterans need, are looking for, and deserve.

Post-traumatic stress and long-term nerve-related pain are common afflictions among veterans. Both are difficult to treat with the pills available but respond particularly well to cannabis.

Veterans encountering cannabis-related problems with the VA are encouraged to contact Veterans for Medical Marijuana Access at

www.veteransformedicalmarijuana.org.

Good news as we go to press—

Robert A. Petzel, MD, a VA official, in a letter to Krawitz July 6: "If a Veteran obtains and uses medical marijuana in a manner consistent with state law, testing positive for marijuana would not preclude the Veteran from receiving opioids for pain management in a VA facility."

Krawitz says "Those overzealous VA doctors will have to change their approach. A vet in Montana just told me he's going to show the letter from Petzel to his doctor and say, 'How can you deny me when this is the VA policy?'"

"Those pain contracts in place in the Veterans Health Administration will need to be rewritten."

