

LEGAL MEMORANDUM

QUESTION PRESENTED:

What are the federal criminal and civil and other liabilities of “medical” marijuana dispensaries and physicians, state government employees, landlords and financiers who participate in any way in the growing, possession, manufacture, distribution, or sales of “medical” marijuana under state “medical” marijuana laws?

Working draft - comments invited

May 6, 2011

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ISSUE ONE

THE CONFLICT BETWEEN STATE "MEDICAL" MARIJUANA LAWS AND FEDERAL LAW

Based on an analysis of federal law, it is clear that "medical" marijuana dispensaries or persons such as physicians and state government employees and others acting under state "medical" marijuana laws may be subject to prosecution by the U.S. Government under the federal Controlled Substances Act (CSA) because the state "medical" marijuana laws are preempted by the CSA. Congress enacted the CSA for the purposes of consolidating various drug laws into a comprehensive statute, providing meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthening law enforcement tools against international and interstate drug trafficking. 21 U.S.C. § 801 et seq. [FN1]

a. Recent DOJ letters make their position clear

On April 13, 2011, the Governor of the State of Washington sent a letter to the Attorney General of the United States asking him for the Department of Justice's (DOJ) opinion on legislation pending in Washington that would create "licensed dispensers" of "medical" marijuana who would deliver or retail sale marijuana to a qualifying patient or designated provider and "licensed processors" who would manufacture marijuana products for wholesale distribution to licensed dispensers. This is a dispensary system for "medical" marijuana similar to the ones in several states.

The Governor of Washington also asked "whether state employees involved in inspecting the premises, auditing the records or collecting fees from the licensed dispensers, producers or processors would be immune from arrest or liability when engaged in the enforcement of this licensing law?"

The US Attorney for Washington replied the next day and stated that the US Justice Department "could consider civil and criminal legal remedies regarding those who set up marijuana growing facilities and dispensaries as they will be doing so in violation of federal law." Others who knowingly facilitate the actions of the marijuana growers "including property owners, landlords, and financiers should also know that their conduct violates federal law." In addition, state employees who conduct activities mandated by the state "medical" marijuana laws "would not be immune from liability" under the federal Controlled Substance Act. Although they may be immune under state law, they would not be under federal law.

DOJ went on to say: "Potential actions the Department could consider include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states."

The Governor's letter and the Department of Justice letter are attached in the Appendix along with other letters from several U.S. Attorneys and the Attorney General of Colorado. The letter

from the Attorney General of Colorado who reviewed some of the letters from DOJ states:

These letters indicate that while the Department of Justice will not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law, it does maintain its full authority to vigorously enforce federal law against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. Of great concern is the fact that some of the letters make clear the U.S. Attorneys do not consider state employees who conduct activities under state medical marijuana laws to be immune from liability under federal law.

b. The state “medical” marijuana laws are preempted by the CSA

The United States Supreme Court has clearly upheld federal supremacy when it comes to state laws on “medical” marijuana. In the case of U.S. v. Oakland Cannabis Buyer’s Co-op, the Court dealt its first blow to the medical use of marijuana in a case involving a California cooperative that distributed marijuana. The Oakland Cannabis Buyers' Cooperative was organized to distribute marijuana to qualified patients for medical purposes in the wake of Proposition 215, California's initiative legalizing medical use of crude marijuana. The Court held that there is no medical necessity exception to the CSA's prohibitions on manufacturing and distributing marijuana. The CSA reflects a determination that marijuana has no medical benefits worthy of an exception. Whereas other drugs can be dispensed and prescribed for medical use (21 U.S.C. § 829) the same is not true for marijuana, which has “no currently accepted medical use” at all (21 U.S.C. § 811). [FN2]

In the case of Gonzales v. Raich, some users and growers of “medical” marijuana under the California law claimed the CSA was unconstitutional as applied to them. The Supreme Court held that application of CSA provisions criminalizing the manufacture, distribution, or possession of marijuana for medical purposes was constitutional. Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except as authorized by the CSA. All controlled substances are classified into five schedules based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. Marijuana is classified as a Schedule I substance, based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment. [FN3]

In an Oregon state case regarding the state “medical” marijuana law, the Oregon Supreme Court also held that the state “medical” marijuana law was preempted by the CSA. Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries, 230 P.3d 518 (OR 2010)

ISSUE TWO

THE FEDERAL LAWS THAT MAY APPLY TO DISPENSARIES, STATE EMPLOYEES , PHYSICIANS, LANDLORDS AND FINANCIERS

Because the provisions of the state “medical” marijuana laws that authorize the possession, use, cultivation and distribution of marijuana are preempted by the CSA, those dispensaries, state employees, physicians, landlords and financiers who act pursuant to the state laws are at risk of violating federal laws. [FN4] This includes, but is not limited to:

1. It is illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana. 21 U.S.C. § 841
2. It is unlawful to use any communication facility to commit felony violations of the CSA. 21 U.S.C. § 843
3. It is illegal to conspire to commit any of the crimes set forth in the CSA. 21 U.S.C. § 846
4. It is unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances. 21 U.S.C. § 856
5. It is unlawful to distribute or manufacture controlled substances within 1,000 feet of schools, colleges, playgrounds, and public housing facilities, and within 100 feet of any youth centers, public swimming pools, and video arcade facilities. 21 U.S.C. § 860. There are enhanced penalties for distributing to anyone under the age of 21. 21 U.S.C. § 859.
6. There are federal anti-money laundering statutes that make illegal certain financial transactions designed to promote illegal activities, including drug trafficking, or to conceal or disguise the source of the proceeds of that illegal activity. 18 U.S.C. § 1956 and 1957
7. It is possible that there may be prosecutions for aiding or abetting or assisting in the violation of a federal law. “Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.” 18 U.S.C. §§ 2, 3
8. Since violations of the CSA can be federal felonies, anyone having knowledge of the actual commission of a federal felony cannot conceal it and must report it as soon as possible to a federal judge or other person in civil or military authority under the United States. 18 U.S.C. § 4
9. They may also be charged with a conspiracy when two or more persons conspire to commit any offense against the United States. 18 U.S.C. § 371

a. Consequences of a violation of the CSA

Potential actions the Department of Justice could consider include civil injunctive actions to prevent cultivation and distribution of marijuana, civil fines, criminal prosecution and prison sentences. 21 U.S.C. § 844(a). There can also be the forfeiture of all property used or intended for use in connection with drug trafficking, including, but not limited to, real property, motor vehicles, funds, as well as books, records, and research. 21 U.S.C. § 881.

b. Racketeer Influenced and Corrupt Organizations Act (RICO)

The DOJ may initiate criminal proceedings under the Racketeer Influenced and Corrupt Organizations Act (RICO). 18 U.S.C. § 1962. See United States v. Hocking, 860 F.2d 769 (7th Cir. 1988) (“governmental or public entities fit within the definition of ‘enterprise’ for purposes of RICO”). All property constituting or derived from, directly or indirectly, the proceeds of racketeering activities is subject to forfeiture regardless of any provision of state law. 18 U.S.C. § 1963(a)

The RICO statute also gives rise to a civil cause of action which may be brought by a private citizen injured by the racketeering activity where such activity proximately caused the injury. 18 U.S.C. § 1964

c. The tax consequences of trafficking in “medical” marijuana

Trafficking in “medical” marijuana has negative tax consequences even if the sale of marijuana is legal under a state “medical” marijuana law. The Internal Revenue Code states:

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted. 6 U.S.C. § 280E (expenditures in connection with the illegal sale of drugs).

Marijuana is a schedule I controlled substance for tax purposes, even if it is “medical” marijuana recommended by a physician. Provision of medical marijuana constitutes “trafficking” within the meaning of the Internal Revenue Code section disallowing business expense deductions for expenditures “in connection with the illegal sale of drugs,” even though the activity was pursuant to a state statute. Californians Helping to Alleviate Medical Problems, Inc., v. Commissioner of Internal Revenue, 128 T.C. 173, 93 TCM 3973 (2007)

Internal Revenue Service (IRS) audits of dispensaries have begun. [FN5]

d. Violations of the Federal Food, Drug, and Cosmetic Act

Medical marijuana inhalers, bongs, pipes, containers and other drug paraphernalia are advertised for “medical” marijuana. This now makes drug paraphernalia into medical devices for the delivery of a medical drug. Medical devices are strictly regulated by the federal Food and Drug Administration (FDA). In order for a “bong” or marijuana smoking pipe or other such device to be used it will have to be approved as a medical device by the FDA. It will also have to be properly labeled under federal law. [FN6]

ISSUE THREE

THE LIABILITY OF DISPENSARIES, STATE EMPLOYEES, PHYSICIANS, LANDLORDS AND FINANCIERS

a. Dispensaries

As all the letters from the U.S. Attorneys indicate, “medical” marijuana dispensaries that sell, grow and distribute marijuana will be prosecuted and have their assets seized. A number of enforcement actions are in progress in California, Michigan, Montana, and Washington. [FN7]

b. State employees

The state “medical” marijuana laws may provide for state employees to do the following actions that may put them in violation of the CSA:

1. Issue “medical” marijuana patient ID cards to qualifying patients or caregivers so they can receive and use marijuana.
2. Maintain a confidential list of the persons to whom it has issued “medical” marijuana identification cards that cannot be turned over to law enforcement agencies (including federal law enforcement) unless to verify that a person who is engaged in the suspected medical use of marijuana is lawfully in possession of a card. However, state employees and representatives cannot obey both the 18 U.S.C. § 4 obligation to report federal felonies and the state law confidentiality obligations. This will cause them to violate either state or federal laws. See, County of San Diego v. San Diego NORML, 165 Cal App.4th 798, 81 Cal.Rptr.3d 461 (2008)(CSA preempts state laws that positively conflict so that simultaneous compliance with both sets of laws is impossible). See, 21 U.S.C. § 903.
3. Regulate and inspect or support marijuana dispensaries and growing operations. If state employees are involved in affirmative actions to protect, facilitate or oversee the manufacture, distribution, and use of marijuana, they are in direct violation of federal law. 18 U.S.C. § 4

c. Are state employees immune from prosecution?

The case of U.S. v. Rosenthal, 454 F.3d 943 (CA 9 2006) dealt with the issue of granting immunity from federal narcotics law to any duly authorized officer of a political subdivision of a

state. The court referred to 21 U.S.C. § 885(d) that states, in full:

Except as provided in sections 2234 and 2235 of Title 18[relating to illegal procurement and execution of search warrants], no civil or criminal liability shall be imposed by virtue of this subchapter upon any duly authorized Federal officer lawfully engaged in the enforcement of this subchapter, or upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances. Rosenthal, 454 F.3d at 948

However, for an official to be “lawfully engaged” in the enforcement of a law relating to controlled substances, and therefore entitled to protection under statute creating immunity from federal narcotics laws, the law that the official is enforcing must itself be consistent with federal law and the state “medical” marijuana laws are not. United States v. Rosenthal, 266 F.Supp.2d 1068, 1078 (ND CA 2003). Immunity then does not apply.

d. Physicians

Under some state “medical” marijuana laws, physicians shall provide written instructions for a registered qualifying patient or his caregiver to present to a dispensary concerning the total amount of usable marijuana that a patient may be dispensed. This is far more than just a physician discussing with a patient the use of medical marijuana which may be protected by the First Amendment of the Constitution. This is taking an action to facilitate the use of marijuana. These actions by a physician violate federal law by aiding and abetting by acting with specific intent to provide the patient with the means to acquire marijuana knowing that the patient intends to acquire marijuana. Conant v. Walters, 309 F.3d 629 (CA 9 2002); cert denied Walters v. Conant, 540 U.S. 946 (U.S. Oct 14, 2003)

Enforcement actions against physicians have begun. [FN8]

e. Medical malpractice

A doctor may still be civilly liable to his patient, or a third party, for the adverse consequences of recommending marijuana. A physician who assists a patient to obtain marijuana may face a professional negligence claim for recommending a drug for which no standard of care has been adopted and which has an unknown likelihood of future harm and for which the federal Food and Drug Administration has declared that “no sound scientific studies supported medical use of marijuana for treatment in the United States, and no animal or human data supported the safety or efficacy of marijuana for general medical use” [FN9]

f. Property owners and landlords

The letters from the U.S. Attorneys make it clear that property owners and landlords who rent or provide a location for “medical” marijuana dispensaries are subject to prosecution. It is unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or

distribution of controlled substances. 21 U.S.C. § 856

g. Financiers and banks

Those who provide financing for “medical” marijuana operations may be subject to prosecution. For example, federal anti-money laundering statutes make it illegal to engage in financial transactions designed to promote illegal activities, including drug trafficking, or to conceal or disguise the source of the proceeds of that illegal activity. 18 U.S.C. § 1956 and 1957

CONCLUSION

Anyone who participates in the growing, possession, manufacturing, distribution, or sales of “medical” marijuana under state law or aids or facilitates or finances such actions is at risk of federal prosecution or other liability.

About the author:

David G. Evans has written two amicus briefs for the U.S. Supreme Court in the “medical” marijuana cases of U.S. v. Oakland Cannabis Buyers' Co-op., 532 U.S. 483 (2001), see 2001 WL 30659 and Gonzales v. Raich, 545 U.S. 1 (2005), see 2004 WL 1843964. He is also the author of The Facts About “Medical” Marijuana that is available upon request.

This opinion is endorsed by Terrence Farley, Esq., who served as Director of the National Drug Prosecution Center at the National District Attorney's Association and was the Director of the New Jersey Division of Criminal Justice in Governor Whitman's administration.

FOOTNOTES

[FN1] A legal memorandum by David Ogden, Deputy U.S. Attorney General, dated October 19, 2009, caused some confusion. It stated that as a general matter, pursuit of medical marijuana prosecutions should not focus federal resources in states on seriously ill individuals who are using “medical” marijuana whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. However, he also clearly stated that this guidance did not provide a legal defense to violations of federal law nor does clear and unambiguous compliance with state law create a legal defense to a violation of the Controlled Substances Act. For example he left open the option of prosecuting anyone who grows or distributes marijuana such as “medical” marijuana dispensaries. However, the memorandum was widely misinterpreted by the “medical” marijuana growers and distributors that they would be immune to federal prosecution as long as they complied with state law. They were wrong. The memorandum did not preclude investigation and prosecution of them. United States v. Stacy 696 F. Supp. 2d 1141 (S.D. Cal. 2010)

[FN2] U.S. v. Oakland Cannabis Buyers' Co-op., 532 U.S. 483 (2001); U.S. v. Oakland Cannabis Buyers' Cooperative, 190 F.3d 1109 (9th Cir. 1999), rev'd, 532 U.S. 483 (2001); see also, Alliance for Cannabis Therapeutics v. Drug Enforcement Admin., 15 F.3d 1131 (D.C. Cir. 1994); National Organization for Reform of Marijuana Laws (NORML) v. Drug Enforcement Administration, U. S. Dept. of Justice, 559 F.2d 735 (D.C. Cir. 1977); National Org. for the Reform of Marijuana Laws v. Drug Enforcement Admin. & Dept. of Health, Education & Welfare, No. 79-1660 (D.C. Cir. Oct. 16, 1980); National Organization for Reform of Marijuana Laws (NORML) v. Ingersoll, 497 F.2d 654 (D.C. Cir. 1974).

For a full discussion of the “medical” marijuana issue see: Sections 1:8 to 1:15 of Drug Testing Law Technology and Practice, published by the West law book company

There is an implied cause of action in the Supremacy Clause for a preemption claim. See Burgio & Campofelice, Inc. v. New York State Dept. of Labor, 107 F.3d 1000, 1006-07 (2d Cir. 1997) (discussing ERISA preemption); Wright Elec., Inc. v. Minnesota State Bd. of Elec., 322 F.3d 1025, 1028 (8th Cir. 2003) (same).

Federal Courts have federal question jurisdiction over preemption claims under 28 U.S.C. § 1331. Verizon Md. Inc. v. Pub. Serv. Comm'n, 535 U.S. 635, 643 (2002)

[FN3] Gonzales v. Raich, 545 U.S. 1 (2005); See, 21 U.S.C. § 841(a)(1), 844(a); 21 U.S.C. § 812; 21 U.S.C. § 811, 812; 21 U.S.C. § 812; 21 U.S.C. § 812(b)(1)

[FN4] See: Letter of John F. Walsh, United States Attorney District of Colorado, to John Suthers Attorney General State of Colorado dated April 26, 2011; Letter from Jenny A. Durkan, US Attorney for the Western District of Washington and Michael C. Ormsby US Attorney Eastern District of Washington to the Governor of Washington Christine Gregoire, dated April 14, 2011 and the other letters in the Appendix.

[FN5]

Medical Marijuana Businesses Targeted By IRS

http://www.huffingtonpost.com/2011/03/18/medical-marijuana-busines_0_n_837519.html

IRS Opens Audit of Denver Medical-Marijuana Dispensary”, The Denver Post, 4/26/2011.

http://www.denverpost.com/news/marijuana/ci_17927752

IRS Targets Medical Marijuana Businesses.” March 18, 2011.

http://coloradoindependent.com/79820/irs-targets-medical-marijuana-businesses?utm_campaign=twitter&utm_medium=twitter&utm_source=twitter (last accessed on April 14, 2011)

“Medical Marijuana Tax Problems?” March 23, 2011.

<http://blogs.forbes.com/robertwood/2011/03/23/medical-marijuana-tax-problems/> (last accessed on April 14, 2011)

[FN6] 21 CFR 801.5 (Medical Devices - labeling - Adequate directions for use means directions under which the layman can use a device safely and for the purposes for which it is intended. This includes quantity of dose, frequency of administration or application, duration of administration or application, time of administration or application, in relation to time of meals, time of onset of symptoms, or other time factors, route or method of administration or application, preparation for use, i.e., adjustment of temperature, or other manipulation or process. See also: 21 CFR803.3 (Medical Device Reporting); 21 CFR 807.93 (Premarket Notification Procedures); 21 CFR 808.3 (Medical Device Classification); 21 CFR 860.7 (Determination of safety and effectiveness includes the conditions of use for the device, the probable benefit to health from the use of the device weighed against any probable injury or illness from such use and the reliability of the device and there is reasonable assurance that a device is safe when it can be determined, based upon valid scientific evidence).

[FN7] See, e.g.:

It is estimated that there have been 100 “medical” marijuana raids during the Obama administration.

http://www.mjbusinessreport.com/wires/article.cfm?title=New-Jersey-Letter-US-Attorney&id=k_yjbffxaipjgeoz

Michigan - Dispensaries

<http://www.reuters.com/article/2011/04/13/us-medical-marijuana-idUSTRE73C5DA20110413>

California - Dispensaries

<http://www.theatlanticwire.com/national/2011/03/medical-marijuana/35878/>

Montana - Dispensaries

http://billingsgazette.com/news/local/article_01f9d21f-b862-5ae5-bd48-7b17723d869d.html?oCampaign=hottopics

Washington - Dispensaries

<http://www.kxly.com/news/27708933/detail.html>

[FN8] Michigan doctor jailed.

http://www.mlive.com/news/saginaw/index.ssf/2011/04/federal_agents_jail_michigan_d.html

[FN9] www.fda.gov/bbs/topics/NEWS/2006/NEW01362.html

FDA STATEMENT - INTER-AGENCY ADVISORY REGARDING CLAIMS THAT SMOKED MARIJUANA IS A MEDICINE

Claims have been advanced asserting smoked marijuana has a value in treating various medical conditions. Some have argued that herbal marijuana is a safe and effective medication and that it should be made available to people who suffer from a number of ailments upon a doctor's recommendation, even though it is not an approved drug.

Marijuana is listed in schedule I of the Controlled Substances Act (CSA), the most restrictive schedule. The Drug Enforcement Administration (DEA), which administers the CSA, continues to support that placement and FDA concurred because marijuana met the three criteria for placement in Schedule I under 21 USC 812(b)(1) (e.g., marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and has a lack of accepted safety for use under medical supervision). Furthermore, there is currently sound evidence that smoked marijuana is harmful. A past evaluation by several Department of Health and Human Services (HHS) agencies, including the Food and Drug Administration (FDA), Substance Abuse and Mental Health Services Administration (SAMHSA) and National Institute for Drug Abuse (NIDA), concluded that no sound scientific studies supported medical use of marijuana for treatment in the United States, and no animal or human data supported the safety or efficacy of marijuana for general medical use. There are alternative FDA-approved medications in existence for treatment of many of the proposed uses of smoked marijuana.

FDA is the sole Federal agency that approves drug products as safe and effective for intended indications. The Federal Food, Drug, and Cosmetic (FD&C) Act requires that new drugs be shown to be safe and effective for their intended use before being marketed in this country. FDA's drug approval process requires well-controlled clinical trials that provide the necessary scientific data upon which FDA makes its approval and labeling decisions. If a drug product is to be marketed, disciplined, systematic, scientifically conducted trials are the best means to obtain data to ensure that drug is safe and effective when used as indicated. Efforts that seek to bypass the FDA drug approval process would not serve the interests of public health because they might expose patients to unsafe and ineffective drug products. FDA has not approved smoked marijuana for any condition or disease indication.



U.S. Department of Justice

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May 2, 2011

Will Humble
Director
Arizona Department of Health Services
150 N. 18th Avenue
Phoenix, Arizona 85007

Re: Arizona Medical Marijuana Program

Dear Mr. Humble:

I understand that on April 13, 2011, the Arizona Department of Health Services filed rules implementing the Arizona Medical Marijuana Act (AMMA), passed by Arizona voters on November 2, 2010. The Department of Health Services rules create a regulatory scheme for the distribution of marijuana for medical use, including a system for approving, renewing, and revoking registration for qualifying patients, care givers, nonprofit dispensaries, and dispensary agents. I am writing this letter in response to numerous inquiries and to ensure there is no confusion regarding the Department of Justice's view of such a regulatory scheme.

The Department has advised consistently that Congress has determined that marijuana is a controlled substance, placing it in Schedule I of the Controlled Substances Act (CSA). That means growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws that purport to permit such activities. As has been the case for decades, the prosecution of individuals and organizations involved in the trade of illegal drugs and the disruption of illegal drug manufacturing and trafficking networks, is a core priority of the Department of Justice. The United States Attorney's Office for the District of Arizona ("the USAO") will continue to vigorously prosecute individuals and organizations that participate in unlawful manufacturing, distribution and marketing activity involving marijuana, even if such activities are permitted under state law.

An October, 2009, memorandum from then-Deputy Attorney General Ogden provided guidance that, in districts where a state had enacted medical marijuana programs, USAOs ought not focus their limited resources on those seriously ill individuals who use marijuana as part of a medically recommended treatment regimen and are in clear and unambiguous compliance with such state laws. And, as has been our policy, this USAO will continue to follow that guidance. The public should understand, however, that even clear and unambiguous compliance with AMMA does not render possession or distribution of marijuana lawful under federal statute.

Moreover, the CSA may be vigorously enforced against those individuals and entities who operate large marijuana production facilities. Individuals and organizations – including property owners, landlords,

Letter to Director Will Humble

May 2, 2011

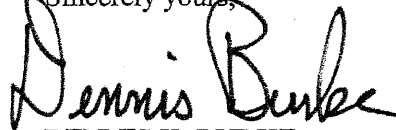
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and financiers – that knowingly facilitate the actions of traffickers also should know that compliance with AMMA will not protect them from federal criminal prosecution, asset forfeiture and other civil penalties. This compliance with Arizona laws and regulations does not provide a safe harbor, nor immunity from federal prosecution.

The USAO also has received inquiries about our approach to AMMA in Indian Country, which comprises nearly one third of the land and five percent of the population of Arizona, and in which state law – including AMMA – is largely inapplicable. The USAO currently has exclusive felony jurisdiction over drug trafficking offenses in Indian Country. Individuals or organizations that grow, distribute or possess marijuana on federal or tribal lands will do so in violation of federal law, and may be subject to federal prosecution, no matter what the quantity of marijuana. The USAO will continue to evaluate marijuana prosecutions in Indian Country and on federal lands on a case-by-case basis. Individuals possessing or trafficking marijuana in Indian Country also may be subject to tribal penalties.

I hope that this letter assists the Department of Health Services and potential registrants in making informed choices regarding the possession, cultivation, manufacturing, and distribution of medical marijuana.

Sincerely yours,

A handwritten signature in black ink that reads "Dennis Burke". The signature is written in a cursive style with a large, prominent "D" and "B".

DENNIS K. BURKE
United States Attorney
District of Arizona



U.S. Department of Justice

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April 29, 2011

BY HAND

The Honorable Lincoln D. Chafee
Governor of the State of Rhode Island
222 State House
Providence, RI 02903-1196

Re: Medical Marijuana

Dear Governor Chafee:

I write regarding the Rhode Island Department of Health's recent notification to three Rhode Island entities, the Thomas C. Slater Compassion Center, Inc., the Summit Medical Compassion Center, Inc., and the Greenleaf Compassionate Care Center, Inc., that their applications to operate medical marijuana "compassion centers" have been approved pursuant to the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, R.I.G.L. 21-28.6-1, et seq. (the Act). It is my understanding that each of these three entities now await the issuance of a "registration certificate" by the Department of Health authorizing their operation.

I now write to ensure that there is no confusion regarding the United States Department of Justice's view of state-sanctioned schemes that purport to regulate the manufacture and distribution of medical marijuana.

As the Department has stated on many occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department of Justice. This core priority includes the prosecution of business enterprises that

April 29, 2011

unlawfully market and sell marijuana. Accordingly, while the Department of Justice does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the October 2009 Memorandum of Deputy Attorney General David Ogden, the Department of Justice maintains the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

Consistent with federal law, the Department of Justice maintains the authority to pursue criminal and/or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA, such as:

- 21 U.S.C. § 841 (making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance, including marijuana);
- 21 U.S.C. § 856 (making it unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances);
- 21 U.S.C. § 860 (making it unlawful to distribute or manufacture controlled substances within 1,000 feet of schools, colleges, playgrounds, and public housing facilities, and within 100 feet of any youth centers, public swimming pools, and video arcade facilities);
- 21 U.S.C. § 843 (making it unlawful to use any communication facility to commit felony violations of the CSA); and
- 21 U.S.C. § 846 (making it illegal to conspire to commit any of the crimes set forth in the CSA).

In addition, federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may likewise be utilized. The government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

The Act, the registration scheme it purports to authorize, and the anticipated operation of the three centers appear to permit large-

April 29, 2011

scale marijuana cultivation and distribution. Such conduct is contrary to federal law and thus, undermines the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department of Justice could consider civil and criminal legal remedies against those individuals and entities who set up marijuana growing facilities and dispensaries as such actions are in violation of federal law. Others who knowingly facilitate those individuals and entities who set up marijuana growing facilities and dispensaries, including property owners, landlords, and financiers, should also know that their conduct violates federal law. Potential actions the Department of Justice could consider include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; seizure of the controlled substances and seizure and forfeiture of any personal and real property used to facilitate the production and distribution of controlled substances, or that is derived from a violation of the CSA. As the Attorney General of the United States has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

I hope this letter provides clarification and assists the State of Rhode Island and its potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana, as well as related financial transactions.

Sincerely



Peter F. Neronha
United States Attorney

cc: Michael Fine, M.D., Interim Director, Rhode Island Department of Health
Gerald J. McGraw, Jr., Thomas C. Slater Compassion Center, Inc.
Alan B. Weitberg, M.D., Summit Medical Compassion Center, Inc.
Seth Bock, Greenleaf Compassionate Care Center, Inc.



ATTORNEY GENERAL OF COLORADO

John W. Suthers

April 26, 2011

Governor John Hickenlooper
Colorado State Capitol

Members of the Colorado General Assembly
Colorado State Capitol

Re: Federal Enforcement of Marijuana Laws

Dear Governor Hickenlooper and Members of the Colorado General Assembly:

I feel compelled to advise you of recent developments in regard to the federal law enforcement position regarding medical marijuana.

As you are aware, in October of 2009 the U.S. Department of Justice issued a memo to federal law enforcement (the "Ogden memo") indicating that, while manufacturing, possession and distribution of marijuana was a violation of federal law, the department would not employ its resources to pursue individuals acting in strict compliance with state medical marijuana laws.

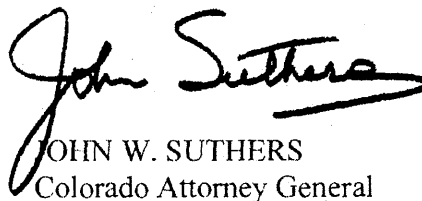
Since the Ogden memo was issued several states, including Colorado, have enacted medical marijuana regulatory schemes that have resulted in explosive growth in the number of persons claiming to be using marijuana for medical purposes. In Colorado for example, there are now approximately 123,000 registered medical marijuana patients. As a result, the DOJ, through various United States Attorneys, has responded to inquiries in order to clarify the scope of the Ogden memo. I am enclosing copies of several such letters, including a letter to me from John Walsh, the United States Attorney for the District of Colorado. These letters indicate that while the Department of Justice will not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law, it does maintain its full authority to vigorously enforce federal law against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, *even if such activities are permitted under state law*. Of great concern is the fact that some of the letters make clear the U.S. Attorneys do not consider state employees who conduct activities under state medical marijuana laws to be immune from liability under federal law.

Governor Hickenlooper, General Assembly
April 26, 2011
Page 2

The letter from U.S. Attorney Walsh, in addition to sharing the viewpoint of the other U.S. Attorneys about the legality of grow operations and dispensaries, elaborates on his specific concerns regarding Colorado House Bill 1043, currently pending in the General Assembly.

Because this clarification of the Ogden memo raises significant issues regarding the medical marijuana regulatory scheme enacted by the Colorado General Assembly in 2010 (which has resulted in widespread manufacture and distribution of medical marijuana in Colorado) and issues regarding currently pending legislation, I wanted to ensure that you were made aware of these developments as soon as possible.

Sincerely,



JOHN W. SUTHERS
Colorado Attorney General

Enclosures

c: Roxy Huber, Executive Director, Department of Revenue
Dr. Christopher E. Urbina, Executive Director, CDPHE



U.S. DEPARTMENT OF JUSTICE

John F. Walsh

*United States Attorney
District of Colorado*

1225 Seventeenth Street, Suite 700
Seventeenth Street Plaza (FAX)
Denver, Colorado 80202

303-454-0100
303-454-0400

April 26, 2011

John Suthers
Attorney General
State of Colorado
1525 Sherman St., 7th Floor
Denver, CO 80203

Dear Attorney General Suthers:

I am writing in response to your request for clarification of the position of the U.S. Department of Justice (the "Department") with respect to activities that would be licensed or otherwise permitted under the terms of pending House Bill 1043 in the Colorado General Assembly. I have consulted with the Attorney General of the United States and the Deputy Attorney General of the United States about this bill, and write to ensure that there is no confusion as to the Department's views on such activities.

As the Department has noted on many prior occasions, the Congress of the United States has determined that marijuana is a controlled substance, and has placed marijuana on Schedule I of the Controlled Substances Act (CSA). Federal law under Title 21 of the United States Code, Section 841, prohibits the manufacture, distribution or possession with intent to distribute any controlled substance, including marijuana, except as provided under the strict control provisions of the CSA. Title 21, Section 856 makes it a federal crime to lease, rent or maintain a place for the purpose of manufacturing, distributing or using a controlled substance. Title 21, Section 846 makes it a federal crime to conspire to commit that crime, or any other crime under the CSA. Title 18, Section 2 makes it a federal crime to aid and abet the commission of a federal crime. Moreover, federal anti-money laundering statutes, including Title 18, Section 1956, make illegal certain financial transactions designed to promote illegal activities, including drug trafficking, or to conceal or disguise the source of the proceeds of that illegal activity. Title 18, Section 1957, makes it illegal to engage in a financial transaction involving more than \$10,000 in criminal proceeds.

In October 2009, the Department issued guidance (the "Ogden Memo") to U.S. Attorneys around the country in states with laws authorizing the use of marijuana for medical purposes

under state law. At the time the Ogden Memo issued, Colorado law, and specifically, Amendment 20 to the Colorado Constitution, authorized the possession of only very limited amounts of marijuana for medical purposes by individuals with serious illnesses and those who care for them.¹ As reiterated in the Ogden memo, the prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the Ogden Memo, we maintain the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

It is well settled that a State cannot authorize violations of federal law. The United States District Court for the District of Colorado recently reaffirmed this fundamental principle of our federal constitutional system in *United States v. Barikowicz*, No. 10-cr-00118-PAB (D. Colo. 2010), when it held that Colorado state law on medical marijuana does not and cannot alter federal law's prohibition on the manufacture, distribution or possession of marijuana, or provide a defense to prosecution under federal law for such activities.

The provisions of Colorado House Bill 1043, if enacted, would permit under state law conduct that is contrary to federal law, and would threaten the ability of the United States government to regulate possession, manufacturing and trafficking in controlled substances, including marijuana. First, provisions of a proposed medical marijuana investment fund amendment to H.B. 1043, which ultimately did not pass in the Colorado House but which apparently may be reintroduced as an amendment in the Colorado Senate, appear to contemplate that the State of Colorado would license a marijuana investment fund or funds under which both Colorado and out-of-state investors would invest in commercial marijuana operations. The Department would consider civil and criminal legal remedies regarding those who invest in the production of marijuana, which is in violation of federal law, even if the investment is made in a state-licensed fund of the kind proposed.

Second, the terms of H.B. 1043 would authorize Colorado state licensing of "medical marijuana infused product" facilities with up to 500 marijuana plants, with the possibility of licensing even larger facilities, with no stated number limit, with a state-granted waiver based upon consideration of broad factors such as "business need." Similarly, the Department would consider civil actions and criminal prosecution regarding those who set up marijuana growing facilities and dispensaries, as well as property owners, as they will be acting in violation of federal law.

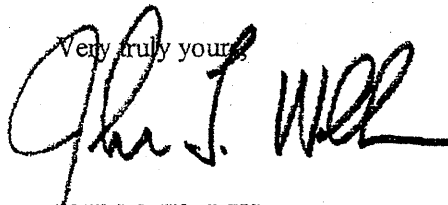
¹ As passed by Colorado voters in 2000, Amendment 20 made lawful under Colorado law the possession by a patient or caregiver of patient of "[n]o more than two ounces of a useable form of marijuana or no more than six marijuana plants with three or fewer being mature, flowering plants producing a usable form of marijuana." Colo. Const. art. XVIII, § 14(4)(a). Within these limits, the Amendment authorized a medical marijuana "affirmative defense" to state criminal prosecution for possession of marijuana. Colo. Const. art. XVIII, § 14(2)(a), (b).

John Suthers
April 26, 2011
Page 3

As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the federal law and the Controlled Substances Act in all states. Thus, if the provisions of H.B. 1043 are enacted and become law, the Department will continue to carefully consider all appropriate civil and criminal legal remedies to prevent manufacture and distribution of marijuana and other associated violations of federal law, including injunctive actions; civil penalties; criminal prosecution; and the forfeiture of any property used to facilitate a violation of federal law, including the Controlled Substances Act.

I hope this letter provides the clarification you have requested, and assists the State of Colorado and its potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana, as well as related financial transactions.

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Walsh". The signature is written in a cursive style with a large initial "J" and "W".

JOHN F. WALSH
United States Attorney
District of Colorado

cc: Eric Holder, Attorney General of the United States
James Cole, Deputy Attorney General of the United States



U.S. Department of Justice

*United States Attorney
District of Montana*

MICHAEL W. COTTER
United States Attorney

901 Front Street, Suite 1100
Helena, Montana 59628

406-457-5120

April 20, 2011

Senator Jim Peterson, Senate President
Representative Mike Milburn,
Speaker of the House of Representatives
PO Box 200500
Helena, Montana 59620-0500

Gentlemen:

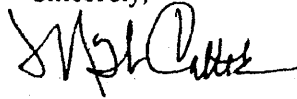
This acknowledges receipt of your letter dated April 18, 2011, requesting Department of Justice guidance concerning a proposed regulatory scheme by the Montana Legislature for the use of marijuana and marijuana infused products for therapeutic purposes. While the Department of Justice has not reviewed the specific legislative proposal for licensing and regulating medical marijuana that you indicate is being finalized, the Department has stated on many occasions that Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws that purport to permit such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. While the Department generally does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen consistent with applicable state law, as stated in the October 2009 Ogden Memorandum, we maintain the authority to enforce the CSA against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

April 20, 2011
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Hopefully this letter assists the Montana Legislature in making its decisions regarding the cultivation, manufacture and distribution of marijuana.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Cotter". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael W. Cotter
United States Attorney



U.S. Department of Justice

United States Attorney

Eastern District of Washington

*Suite 340 Thomas S. Foley U. S. Courthouse (509) 353-2767
P. O. Box 1494 Fax (509) 353-2766
Spokane, Washington 99210-1494*

Honorable Christine Gregoire
Washington State Governor
P.O. Box 40002
Olympia, Washington 98504-0002

April 14, 2011

Re: Medical Marijuana Legislative Proposals

Dear Honorable Governor Gregoire:

We write in response to your letter dated April 13, 2011, seeking guidance from the Attorney General and our two offices concerning the practical effect of the legislation currently being considered by the Washington State Legislature concerning medical marijuana. We understand that the proposals being considered by the Legislature would establish a licensing scheme for marijuana growers and dispensaries, and for processors of marijuana-infused foods among other provisions. We have consulted with the Attorney General and the Deputy Attorney General about the proposed legislation. This letter is written to ensure there is no confusion regarding the Department of Justice's view of such a licensing scheme.

As the Department has stated on many occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the October 2009 Ogden Memorandum, we maintain the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as:

- 21 U.S.C. § 841 (making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana);
- 21 U.S.C. § 856 (making it unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances);
- 21 U.S.C. § 860 (making it unlawful to distribute or manufacture controlled substances within 1,000 feet of schools, colleges, playgrounds, and public housing facilities, and within 100 feet of any youth centers, public swimming pools, and video arcade facilities);
- 21 U.S.C. § 843 (making it unlawful to use any communication facility to commit felony violations of the CSA); and
- 21 U.S.C. § 846 (making it illegal to conspire to commit any of the crimes set forth in the CSA).

In addition, Federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may likewise be utilized. The Government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

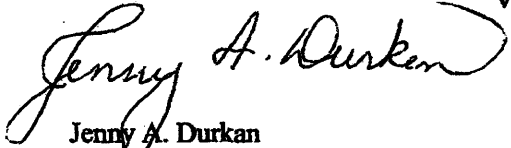
The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department could consider civil and criminal legal remedies regarding those who set up marijuana growing facilities and dispensaries as they will be doing so in violation of federal law. Others who knowingly facilitate the actions of the licensees, including property owners, landlords, and financiers should also know that their conduct violates federal law. In addition, state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA. Potential actions the Department could consider include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any

Honorable Christine Gregoire
April 14, 2011
Page 3

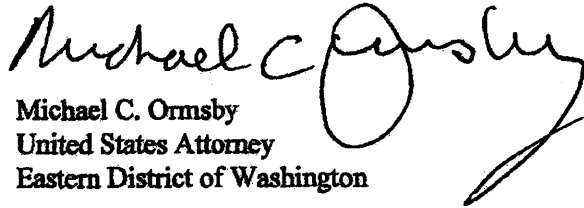
property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

We hope this letter assists the State of Washington and potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana.

Very truly yours,



Jenny A. Durkan
United States Attorney
Western District of Washington



Michael C. Ormsby
United States Attorney
Eastern District of Washington

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

April 13, 2011

The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

This letter requests written guidance on the Department of Justice's position on enforcement of the Controlled Substances Act if state law were to establish a regulatory system wherein state officials license persons to dispense, produce, and process marijuana for medical use by qualifying patients.

By way of background, in 1998 the voters of the state of Washington determined that patients with terminal or debilitating illnesses, under their physician's care, who may benefit from the use of medical marijuana, would not be guilty of a crime under state law for their possession and limited use of marijuana. It is our understanding that the Department of Justice does not focus its resources on individuals who use marijuana as part of a recommended treatment regimen in compliance with state law, as outlined in an October 2009 Memorandum from Deputy Attorney General Ogden.

The Washington Legislature, concerned with a lack of sufficient and safe supply of medical marijuana, has under consideration Engrossed Second Substitute Senate Bill 5073. This legislation would provide for the Departments of Health and Agriculture to license persons to dispense, produce, and process cannabis for medical use. Licensed dispensers would select, measure, package, and label cannabis for delivery or retail sale to a qualifying patient or designated provider. Licensed processors would manufacture, process, handle, and label cannabis products for wholesale distribution to licensed dispensers. Licensed producers would produce cannabis for medical use for wholesale distribution to licensed dispensers and licensed processors of cannabis products.

In recent days I have been in contact with the United States Attorneys for the Western and Eastern Districts of Washington regarding this legislation. They referenced a February 1, 2011, letter that the United States Attorney for the Northern District of California wrote to the Oakland City Attorney in response to a request for guidance on the City of Oakland Medical Cannabis Cultivation Ordinance. The letter indicated that the Department of Justice would enforce the Controlled Substances Act against individuals and organizations that market and sell marijuana, even if such activities are permitted under state law, consistent with the guidance set forth in the 2009 Memorandum from Deputy Attorney General Ogden.



The Honorable Eric Holder
April 13, 2011
Page 2

Within the next week lawmakers will be considering the differing versions of this legislation and determining what provisions of state law they will enact and forward to me, as Governor, for approval or disapproval. It would be very helpful to receive clear guidance on the Department of Justice enforcement position and whether the 2009 Memorandum from Deputy Attorney General Ogden should be read to encompass the activities that would be licensed under this state legislation. Also, it would be helpful if the guidance addressed whether state employees involved in inspecting the premises, auditing the records or collecting fees from the licensed dispensers, producers or processors would be immune from arrest or liability when engaged in the enforcement of this licensing law.

Thank you for your assistance as we make these important decisions.

Sincerely,



Christine O. Gregoire
Governor

cc: James Cole, Deputy Attorney General
Jenny Durkan, U.S. Attorney, Western District, Washington State
Michael Ormsby, U.S. Attorney, Eastern District, Washington State



U.S. Department of Justice

United States Attorney
District of Hawaii

PJJK Federal Building
300 Ala Moana Blvd., Room 6-100
Honolulu, Hawaii 96850

(808) 541-2850
FAX (808) 541-2958

April 12, 2011

Jodie F. Maesaka-Hirata, Director
Department of Public Safety
State of Hawaii
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

Re: SENATE BILL 1458 SD2, HD2

Dear Ms. Maesaka-Hirata:

This replies to your letter dated April 6, 2011, seeking guidance from the Attorney General and my office with regards to S.B. No. 1458, which if enacted, would establish in each County of this State for a five year test period at least one "medical marijuana compassion center" for the manufacture and distribution of marijuana. Under this bill, such marijuana distribution centers licensed by the State Department of Public Safety, would be authorized to sell marijuana within the respective counties in which they are located. In addition, the Bill also authorizes the sale of marijuana to other caregivers and non-resident patients visiting from other states. This letter is written to ensure there is no confusion regarding the Department of Justice's view of such distribution centers.

As the Department has said on many prior occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act, 21 U.S.C. § 801 et. seq. ("CSA") and as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a Federally authorized research program, is a violation of Federal law regardless of state laws permitting such activities.

As a way of emphasizing the foregoing, the CSA's penalties for felony marijuana offenses (manufacture,

Jodie F. Maesaka-Hirata
April 12, 2011
Page 2

distribution, possession with intent to distribute) should be considered:

-1,000 or more marijuana plants, or 1,000 kilograms: 10 years - life imprisonment;

-100 or more marijuana plants, or 100 kilograms: 5 - 40 years imprisonment;

-50 marijuana plants or more, or more than 50 kilograms: up to 20 years imprisonment; and

-Less than 50 marijuana plants, or less than 50 kilograms: up to 5 years imprisonment.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecutions of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law, we maintain the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity of controlled substances, including marijuana, even if such activities are permitted under state law.

Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as:

-21 U.S.C. § 841 (making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana);

-21 U.S.C. § 856 (making it unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances);

Jodie F. Maesaka-Hirata
April 12, 2011
Page 3

-21 U.S.C. § 860 (making it unlawful to distribute or manufacture controlled substances within 1,000 feet of schools, colleges, playgrounds, and public housing facilities, and within 100 feet of any youth centers, public swimming pools, and video arcade facilities);

-21 U.S.C. § 843 (making it unlawful to use any communication facility to commit felony violations of the CSA); and

-21 U.S.C. § 846 (making it illegal to conspire to commit any of the crimes set forth in the CSA).

In addition, Federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may likewise be utilized. The Government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

This Bill would create a State licensing scheme which permits the marijuana distribution center in each county to support unlimited numbers of resident caregivers and patients and non-resident patients visiting from other states. As such, this scheme would authorize large-scale marijuana manufacture and sales, which is contrary to Federal law and threatens the Federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department is carefully considering civil and criminal legal remedies if this Bill is enacted and becomes law, with respect to those who seek to create such marijuana distribution centers pursuant thereto. Individuals who elect to operate such marijuana centers will be doing so in violation of Federal law. Others who knowingly facilitate and assist the actions of the licensees (including property owners, landlords, and financiers) should also know that their conduct violates Federal law. Potential actions the Department may consider include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

Jodie F. Maesaka-Hirata
April 12, 2011
Page 4

I hope this letter assists the State of Hawaii and potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Florence T. Nakakuni".

FLORENCE T. NAKAKUNI
United States Attorney



U.S. Department of Justice

*United States Attorney
Northern District of California*

*Melinda Haag
United States Attorney*

*11th Floor, Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495*

*(415) 436-7200
FAX: (415) 436-7234*

February 1, 2011

John A. Russo, Esq.
Oakland City Attorney
1 Frank Ogawa Plaza, 6th Floor
Oakland, California 94612

Dear Mr. Russo:

I write in response to your letter dated January 14, 2011 seeking guidance from the Attorney General regarding the City of Oakland Medical Cannabis Cultivation Ordinance. The U.S. Department of Justice is familiar with the City's solicitation of applications for permits to operate "industrial cannabis cultivation and manufacturing facilities" pursuant to Oakland Ordinance No. 13033 (Oakland Ordinance). I have consulted with the Attorney General and the Deputy Attorney General about the Oakland Ordinance. This letter is written to ensure there is no confusion regarding the Department of Justice's view of such facilities.

As the Department has stated on many occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the October 2009 Ogden Memorandum, we will enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as Title 21 Section 841 making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana; Title 21 Section 856 making it

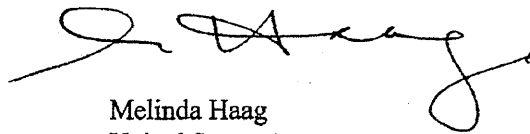
John A. Russo
February 1, 2011
Page 2

unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances; and Title 21 Section 846 making it illegal to conspire to commit any of the crimes set forth in the CSA. Federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may likewise be utilized. The government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

The Department is concerned about the Oakland Ordinance's creation of a licensing scheme that permits large-scale industrial marijuana cultivation and manufacturing as it authorizes conduct contrary to federal law and threatens the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department is carefully considering civil and criminal legal remedies regarding those who seek to set up industrial marijuana growing warehouses in Oakland pursuant to licenses issued by the City of Oakland. Individuals who elect to operate "industrial cannabis cultivation and manufacturing facilities" will be doing so in violation of federal law. Others who knowingly facilitate the actions of the licensees, including property owners, landlords, and financiers should also know that their conduct violates federal law. Potential actions the Department is considering include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

I hope this letter assists the City of Oakland and potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana.

Very truly yours,



Melinda Haag
United States Attorney
Northern District of California

cc: Kamala D. Harris, Attorney General of the State of California
Nancy E. O'Malley, Alameda County District Attorney