

CHRISTINE O. GREGOIRE
Governor



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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.



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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