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CONFIDENTIAL - ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

TO: **Maricopa County Board of Supervisors**

FROM: **Bill Montgomery, County Attorney**

DATE: **May 26, 2011**

SUBJECT: **Advice Concerning Potential Liability for County Employees Under the Federal Controlled Substances Act in Connection With Implementation of Arizona's Medical Marijuana Act**

Executive Summary

In light of the potential that County employees could be subject to federal prosecution for violation of the Controlled Substances Act if they participate in actions that would implement the Arizona Medical Marijuana Act, my Office advises the Board that it issue directives to the effect that, unless and until this apparent threat is conclusively removed, no County employee should: (a) accept any further applications for medical marijuana dispensaries or cultivation sites; (b) further process any such pending applications; or (c) issue any certificates, permits or other authorizations or justification for medical marijuana dispensaries or cultivation sites. This advice is based up the legal analysis done by this Office and is not a "policy" based recommendation.

Issues Presented

Could Maricopa County employees be subject to federal prosecution under the Controlled Substances Act ("CSA") if they issue licenses or permits for distribution centers or cultivation sites on Maricopa County land pursuant to the Arizona Medical Marijuana Act ("AMMA")? If so, should the issuance of such permits be allowed?

Brief Answer

Based on a review and analysis of (1) the state and federal statutes involved, (2) available state and federal case law, and (3) U.S. Attorney General opinion letters and news articles on the subject, attached hereto as Exhibit A, it appears that Arizona citizens who use, possess, cultivate or distribute marijuana, or *facilitate* such use, possession, cultivation or distribution, including Maricopa County employees or agents acting in accordance with the provisions of the AMMA, could be subject to federal prosecution under the CSA. There is no safe harbor from federal criminal prosecution based on, for example, the fact that distribution of marijuana, or the facilitation of that distribution, is legal under state law. Furthermore, the Governor of Arizona has directed the Attorney General to seek a declaratory judgment action in federal court to address whether state medical marijuana laws are preempted by the CSA and, therefore, would be considered null and void.

Accordingly, the County should neither accept nor process any further applications, nor issue any permits under the AMMA pending the outcome of the declaratory action filed by the State of Arizona.

Analysis

The AMMA, 2010 Prop. 203, an initiative measure, approved by the electors at the November 2, 2010 general election as proclaimed by the Governor on December 14, 2010, provides for the registration and certification by the Department of Health Services ("DHS") of "nonprofit medical marijuana dispensaries," "nonprofit medical marijuana dispensary agents," "qualifying patients" and "designated caregivers." A.R.S. § 36-2804. The DHS is mandated to adopt rules governing the registration and certification process within 120 days after the effective date of the AMMA. A.R.S. § 36-2803. Specifically, among other mandated duties, the DHS is required to adopt rules establishing the form and content of applications, the manner in which applications will be considered, and rules governing dispensaries. A.R.S. § 36-2803(A). The DHS is required to register nonprofit medical marijuana dispensaries and to issue a registration certificate within 90 days after receiving an application. A.R.S. 36-2804(B). The DHS also is required to register nonprofit medical marijuana dispensary agents and to issue registry identification cards to qualifying patients and caregivers within certain timeframes after receipt of information and documents as set forth in the AMMA. Failure by the DHS to act within the stated time frames can result in de facto issuance. A.R.S. § 36-2818(B).

Under the AMMA, a qualified patient, caregiver or dispensary agent with a registry card is allowed to acquire, possess, cultivate, manufacture, use, administer, deliver, transfer and transport marijuana .A.R.S. 36-2811. Registered nonprofit medical marijuana dispensaries and certain qualified patients and caregivers are allowed to cultivate marijuana. *Id.* Registered nonprofit medical marijuana dispensaries are allowed to dispense marijuana to qualifying patients and caregivers. *Id.* The DHS is required to maintain a web-based verification system that can be accessed on a 24-hour basis by law enforcement personnel and dispensaries to verify registry identification cards. A.R.S. § 36-2807. The DHS also is allowed to inspect dispensaries after reasonable notice. A.R.S. § 36-2806.

On May 2, 2011, the Office of the United States Attorney for the District of Arizona issued a letter to Will Humble, Director of the Arizona DHS, in connection with Arizona's Medical Marijuana Program. *See* Letter from Dennis K. Burke to Will Humble, attached hereto as Exhibit B. This letter was similar to other letters the U.S. Attorney's Office ("USAO") has issued in the past to representatives of states that have passed medical marijuana laws. *See, e.g.*, letter from Melinda Haag to John A. Russo dated February 1, 2011, attached hereto as Exhibit C. *See also*, Memorandum from David W. Ogden to U.S. Attorneys in states that have passed medical marijuana laws, attached hereto as Exhibit D. These letters make two points perfectly clear.

The first point is that 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. In this regard, 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 ("DOJ"). As such, the USAO for the District of Arizona "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." *See* Exhibit B.

The second point is that the DOJ has given its USAOs guidance that they "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." *See* Exhibit D. It has been the policy of the Arizona USAO to follow that guidance. *See* Exhibit B. At first blush, this appears to provide some form of "safe harbor" against prosecution under the CSA, so long as individuals, and by extension government agencies, are in compliance with their state's law on the issue. But, as explained below, reliance on said policy "not to prosecute" certain claims is likely ill-advised since the federal government is in no way waiving its authority to prosecute violations of the CSA, regardless of what a state's marijuana law may allow.

An analysis of the issue of whether the DHS and/or its employees could be exposed to federal prosecution under the CSA for facilitating the use, possession, cultivation or distribution of marijuana reveals that (1) the DHS and other state employees or agents acting under the AMMA could be subject to federal prosecution under the CSA, regardless of the fact that the state law allows the use, possession, cultivation or distribution of marijuana, and (2) that the CSA does, in fact, preempt the AMMA and the state law is therefore null and void. Our analysis similarly examines the case law holdings on the subject of state medical marijuana laws, whether the state laws somehow allow what CSA prohibits, and whether the federal law acts to preempt the state laws to the extent those laws purport to decriminalize the use, possession, distribution, etc. of marijuana.

We conclude that "clearly, 'patients,' 'caregivers,' and 'dispensary agents' who use, possess, manufacture or distribute marijuana pursuant to licenses issued by the [DHS] will be in violation of the CSA and therefore subject to prosecution by federal officials. There is no medical exception to the CSA. Anyone who possesses, uses, cultivates or distributes marijuana, even if such acts are legal under state

law, is subject to federal sanctions. See *Gonzales v. Raich*, 125 S.Ct. 2195 (2005), and *United States v. Oakland Cannabis Buyers' Cooperative*, 121 S.Ct. 1711 (2001). In addition, [DHS] employees and agents, by virtue of actions taken as required by the [AMMA], will facilitate the possession, manufacture and distribution of marijuana, all of which are illegal under the CSA. [DHS] employees and agents could be held liable as aiders or abettors under 18 U.S.C. § 2, which provides that '[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.'"

This analysis and our conclusions apply with equal force to the question of whether Maricopa County employees could be subject to federal prosecution under the CSA in connection with the issuance of licenses or permits for distribution centers for medical marijuana. Given that distribution of marijuana *facilitates* the drug's use and therefore plainly violates the CSA, the conclusion in our case is yes, County employees could be subject to federal criminal prosecution. This office has reviewed reference materials and case law, the U.S. Attorney's Office's guidance letters and memoranda, and has performed an independent analysis of the issues raised by the conflict between the federal and state laws. Based on this analysis, this office concludes that: (1) Arizona citizens who use, possess, cultivate or distribute marijuana, or *facilitate* such use, possession, cultivation or distribution, including Maricopa County employees or agents, even if they are acting in accordance with the provisions of the AMMA, could be subject to federal prosecution under the CSA, (2) There is no safe harbor from federal criminal prosecution based on legality under state law, primarily because the CSA does not recognize a "medical exception" for marijuana, and (3) it is very likely that Arizona's state medical marijuana laws are preempted by the CSA. Additional salient points are:

- Marijuana is a Schedule I drug under the CSA, meaning it has a high potential for abuse, lacks any accepted medical use and can't be used safely even under the supervision of a physician. As a Schedule I drug, the manufacture, distribution or possession of marijuana is a criminal offense under the CSA.

- The consequences of violating the CSA include the imposition of fines and/or imprisonment.[1]

- County employees/agents who, by virtue of actions taken as required by the AMMA, will facilitate the possession, manufacture and distribution of marijuana, all of which are illegal under the CSA, and therefore could be held liable as aiders or abettors under 18 U.S.C. § 2.

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[1] Penalties for violating the CSA are severe. Simple possession of marijuana constitutes a misdemeanor, punishable by up to one year in prison and a minimum fine of $1,000, with repeat offenders facing more severe penalties. 21 U.S.C. § 844(a). The manufacture, distribution or possession with intent to distribute, marijuana constitute felonies, punishable by up to five years in prison and fines up to $250,000 for individuals and $1 million for entities. Again, repeat offenders face more severe sanctions.

- County employees/agents could similarly be liable under other theories, including conspiring to commit an offense against the United States (18 U.S.C. § 371), assisting an offender thereby becoming an accessory to the crime (18 U.S.C. § 3), and concealing knowledge of a felony from the United States (18 U.S.C. § 4).[2]

- Implementation and facilitation of "medical" marijuana laws constitute federal crimes. The CSA provides limited immunity from prosecution for certain actions by State officials, but such immunity is not applicable here. *United States v. Rosenthal*, 454 F.3d943 (9th Cir. 2006).

- The United States Supreme Court has held that a medical marijuana cooperative formed pursuant to municipal ordinance to manufacture and distribute marijuana to medical marijuana patients under California's medical marijuana law was in violation of the CSA. *Unites States v. Oakland Cannabis Buyers' Co-Op*, 532 U.S. 483 (2001).

- The Supreme Court has also held that local cultivation and consumption of marijuana was prohibited by the CSA, despite the challenge made to congressional authority under the Commerce Clause. Thus, the Supreme Court specifically has rejected constitutional challenges to the application of the CSA to states with "medical" marijuana laws. *Gonzales v. Raich*, 125 S.Ct. 2195 (2005).

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[2] Further complicating the situation is the fact that A.R.S. § 36-2810 requires the DHS to maintain the confidentiality of all information it receives in the course of its duties. The AMMA provides criminal sanctions for DHS employees and agents who breach the confidentiality requirement. A.R.S. § 36-2816 provides: "It is a class 1 misdemeanor for any person, including an employee or official of the Department or another state agency or local government, to breach the confidentiality of information obtained pursuant to this chapter." DHS employees and agents cannot comply with both Title 18's reporting obligation and the AMMA's confidentiality obligations. Whatever they do, they will subject themselves to liability at either the Federal or State level.

- The Oregon Supreme Court has acknowledged the principles of the foregoing Supreme Court cases and has concluded that the Oregon Medical Marijuana Act was actually preempted by the CSA, leading to the conclusion that that an employee's use of "medical" marijuana under Oregon's medical marijuana law constituted an "illegal use of drugs" under Oregon law. *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries*, 230 P.3d 518.[3]

- Similarly, to the extent the AMMA authorizes the use of medical marijuana in direct conflict with the provisions of the CSA, the Arizona statute would likely also be preempted.

Finally, there is the question of the effect of the current federal administration's policy of prioritizing federal resources so that the USAO will purportedly not prosecute certain cases involving "clear and unambiguous compliance with existing state laws providing for the medical use of marijuana." The Arizona USAO has admitted to following this policy. However, reliance upon the DOJ's or USAO's adherence to this so called policy involves a substantial risk. For, although the DOJ has issued guidance to its USAOs to focus their resources on "core federal enforcement priorities," the DOJ and its USAOs have continued to state, in no uncertain terms, that "this guidance . . . does not legalize marijuana or provide a legal defense to a violation of federal law" nor does "clear and unambiguous compliance with state law . . . create a legal defense to a violation of the Controlled Substances Act." *See* Exhibit D. Further, the USAO for the Northern District of California has stated that it "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. *See* Exhibit C. Finally, the USAO for the District of Arizona has cautioned that "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." *See* Exhibit B. Collectively, these statements do

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[3] Like Oregon's medical marijuana law, the AMMA directs state employees to issue marijuana cards to "patients" who receive recommendations from doctors. The card then authorizes the "patient" to engage in using "medical" marijuana and provides an affirmative defense to charges of criminal liability under state statutes. In concluding that the employee's use of "medical" marijuana under Oregon's "medical" marijuana law constituted an "illegal use of drugs" under Oregon law because the authorization to use marijuana was preempted by the CSA, the Oregon Supreme Court noted that its state law stood "as an obstacle to the accomplishment of the full purposes of the federal law."

Similarly, the provisions of the AMMA authorizing the use by patients of "medical" marijuana are in direct conflict with the CSA and are null and void. The AMMA goes even further than Oregon's "medical" marijuana law in that it not only authorizes use by patients, it also authorizes cultivation of marijuana by patients, cultivation and distribution by "caregivers" and even large-scale cultivation and distribution of marijuana by dispensary owners. In fact, dispensary owners are authorized to grow and distribute unlimited quantities of marijuana. There could be no more blatant conflict with the CSA.

not inspire great confidence that federal prosecution will be precluded in all cases involving clear and unambiguous compliance with the AMMA.

Thus, public statements by supporters of implementing the AMMA to the effect that the federal government has not prosecuted persons to date and therefore this is an invalid concern, make for good press, but they beg the ultimate legal question and would therefore put our County employees at great risk. Maricopa County employees should not have to read the headlines published in the newspapers to determine whether the CSA will be enforced against them should they carry out their administrative duties under state law.

In summary, the current administration's philosophy concerning prosecution of those acting under state "medical" marijuana laws (a) does not change federal law; (b) sets priorities which allow a U.S. Attorney to exercise discretion and charge a low priority case where appropriate; (c) could change at any time; and (d) is inconsistent with the policies of the Drug Enforcement Administration, which continues to pursue those acting under state "medical" marijuana laws," our office concurs. The DOJ has never supported the proposition that there could be a safe harbor where the use of medical marijuana is authorized by state law. In fact, just the opposite is true. The DOJ continues to qualify its "guidance" about the efficient use of resources with language that confirms that it will enforce federal law whenever appropriate and, of course, the DOJ will determine what is appropriate.

Under the foregoing analysis, issuing licenses or permits for marijuana distribution centers or cultivation sites could be construed as facilitating the use, possession or distribution of marijuana, which are acts illegal under the CSA, regardless of what is permitted by Arizona law. Although the DOJ has issued guidance that the USAOs should not necessarily focus their limited resources on prosecuting crimes where there has been clear and unambiguous compliance with state law, the fact remains that the DOJ has not waived, and has specifically reserved, its authority to prosecute such crimes. Thus, there is a very definite risk that Maricopa County employees who are involved in issuing licenses or permits for marijuana distribution centers or cultivation sites, and thereby facilitate the use, possession or distribution of marijuana, could be subject to federal prosecution under the CSA.

Conclusion

The AMMA was passed by the voters of the State of Arizona and implementation is underway. Applications for dispensaries and cultivation sites have been received by the County and those employees tasked with processing these applications are engaged in implementing the law. Thus, the letter from United States Attorney Burke poses an immediate threat of prosecution to state and county employees currently processing the applications filed with the various state and county agencies pursuant to the AMMA. Unless and until the potential criminal prosecution of county employees is resolved, the prudent course of action is to cease accepting, processing, or issuing any permits or licenses for dispensaries or cultivation sites under the jurisdiction of Maricopa County.

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PHOENIX NEWTIMES

Marijuana Biz

U.S. Attorney Dennis Burke's Buzz-Kill on Medical Marijuana: Feds to Act Against "Large" Grow Operations -- But Won't Define "Large"

By Ray Stern Mon., May 2 2011 at 3:22 PM

Categories: Marijuana Biz

Comments (18)

Federal agents may bust anyone participating in a "large" pot-growing operation, despite Arizona's voter-approved medical marijuana law, says Arizona U.S. Attorney Dennis Burke in a letter to the state.

In a recent letter to Will Humble, the director of the state Department of Health Services, Burke reiterates that the feds will look the other way when truly sick people use marijuana -- but that the patients' suppliers might be inviting trouble.

Burke compounds the schizophrenic stance by stating that federal law "may be vigorously enforced against those individuals and entities who operate large marijuana production facilities. Individuals and organizations -- including property owners, landlords and financiers" face legal problems including seizure of their property and other assets.

Problem is, Burke gives no definition of "large."

Robbie Sherwood, Burke's spokesman, didn't know what "large" meant, either, adding that Burke could not be reached because he was on a plane to Washington D.C.

We e-mailed Burke back in February, asking him for his stance on the issue following our report on an ominous letter to California officials by one of that state's top federal prosecutors, Melinda Haag. Unfortunately, Burke blew us off. But after we saw his letter on the subject on another news site today, Sherwood was kind enough to e-mail us a copy. (See below.)

Though Burke claims in the letter that he's trying to avoid confusion, he really does anything but. Not that it's his fault: Voters knew, or should have known, from the beginning that Arizona's Proposition 203 ran afoul of federal law. Buying, keeping, growing or using marijuana is against federal law, period.

A showdown is coming. It might not be this year, but sooner or later the rights of the 15 states that have medical marijuana laws, including Arizona, must be dealt with in a logical manner. For now, though, the state's weed-minded entrepreneurs have to live with the risk in their quest for the *Pot of Gold*.

Burke's opinion is hamstrung by the Obama Administration's indecision on the issue. Rather than simply make a decision, Obama's Justice Department chooses to play games with people's lives -- and money. Go ahead, the feds say, invest your hundreds of thousands of dollars in a medical weed-related business. Maybe you'll be a millionaire, or maybe you'll end up serving a few years behind bars. But whether you'll get the prize or prison will be based on a whim. Your operation may be too "large," while someone else's may be just right.

Perhaps the criteria will come down to success: The people running the most efficient, profitable businesses may be first against the wall.

Humble, the DHS director, has publicly stated that he would prefer a few large cultivation facilities that supply several dispensaries rather than having every dispensary growing marijuana. That makes sense from a regulators point of view, because there would be less to regulate. By claiming that "large" grow operations, whatever those are, will be targeted, the feds can't help but indirectly guide the burgeoning industry away from Humble's idea.

In fact, the feds' lack of leadership on the issue may well result in the most unregulated scenario of all: A free-for-all in which most qualifying patients in Arizona can grow their own pot because too few dispenaries are open. State law allows patients to grow up to 12 plants unless they are within 25 miles of a dispensary.

If the feds drive most dispensaries out of business, the state is likely to be full of thousands of small-time growers instead of a few big ones The feds don't have the resources to go after small-time growers and state law enforcement will be legally prohibited from busting medical marijuana patients. Patients, who can legally possess up to 2 1/2 ounces at any time no matter where they got it from, may even turn to black-market weed for their medicine.

In other words, drug cartel kingpins probably can't wait for the feds to target state-approved pot suppliers.

Andrew Myers of the Arizona Medical Marijuana Association thinks the federal stance is "asinine," but that it was too early to tell how Burke's letter will affect the industry. The state is set to begin taking applications for dispensaries on June 1. Myers says his office has been taking numerous calls this afternoon from concerned people in the medical marijuana industry.

It makes sense to us that the answer to all of this won't come until 2013. Obama probably won't want to antagonize either side of the issue by making an actual decision before the election.

The Washington Post

U.S. eases stance on medical marijuana

By Carrie Johnson
Washington Post Staff Writer
Tuesday, October 20, 2009; A01

Attorney General Eric H. Holder Jr. directed federal prosecutors Monday to back away from pursuing cases against medical marijuana patients, signaling a broad policy shift that drug reform advocates interpret as the first step toward legalization of the drug.

The government's top lawyer said that in 14 states with some provisions for medical marijuana use, federal prosecutors should focus only on cases involving higher-level drug traffickers, money launderers or people who use the state laws as a cover.

The Justice Department's action came days after the Senate's second-highest-ranking Democrat introduced a bill that would eradicate a two-decade-old sentencing disparity for people caught with cocaine in rock form instead of powder form. Taken together, experts say, the moves represent an approach favored by President Obama and Vice President Biden to put new emphasis on violent crime and the sale of illicit drugs to children. Legislation that would cover a third administration commitment, to support federal funding of needle exchanges, is moving through the House.

The announcement set off waves of support from advocacy groups that have long sought to relax the enforcement of marijuana laws. But some local police and Republican lawmakers criticized the change, saying it could exacerbate the flow of drug money to Mexican cartels, whose violence has spilled over the Southwestern border.

In a statement, Holder asserted that drug traffickers and people who use firearms will continue to be direct targets of federal prosecutors, but that, on his watch, "it will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana."

The turnaround could pave the way for Rhode Island, New Mexico and Michigan to put together marijuana-distribution systems for residents of those states, according to Graham Boyd, director of the Drug Law Reform Project at the American Civil Liberties Union. Advocates say marijuana use can help alleviate pain and stimulate appetite in patients suffering from cancer, HIV-AIDS and other ailments. But the American Medical Association since 2001 has held firm to a policy opposing marijuana for medical purposes.

Under the Controlled Substances Act, which is more than three decades old, marijuana remains within the category of drugs most tightly restricted by the government. Donna Lambert, who is awaiting criminal trial in San Diego County Superior Court for allegedly providing medical marijuana to another patient, injected a note of skepticism into Holder's announcement. In an interview, Lambert noted that senior administration officials had made public comments this year in line with the Justice Department policy, only to have law enforcement agents, including the Drug Enforcement Administration, take part in raids soon afterward.

Ethan Nadelmann, executive director of the Drug Policy Alliance, said he and other advocates will watch closely whether federal agents refuse to participate in raids or send other signals to district attorneys in the states that allow some medical use of marijuana.

Americans for Safe Access, which supports medical marijuana programs nationwide, estimated that during the Bush administration federal authorities conducted 200 raids in California alone. A 2005 U.S. Supreme Court case made clear that the federal government has the discretion to enforce federal drug laws even in states that had approved some relaxation of marijuana statutes for sick patients.

White House press secretary Robert Gibbs, at a daily briefing in Washington, declined to address "what states should do" in response to the Justice Department guidance. But Gibbs said that the president since January had outlined his medical marijuana policy and that the Justice Department memo, signed by Deputy Attorney General David W. Ogden, helped to fill in the details.

The administration stopped far short Monday of endorsing wholesale marijuana legalization, frustrating some activists. At the libertarian Cato Institute, official Tim Lynch described the war on drugs as a "grand failure." He exhorted the White House to take "much bolder steps to stop the criminalization of drug use more generally."

In the three-page memo, Ogden made clear that the department is not creating a new legal defense for people who may have violated the Controlled Substances Act. Instead, the memo is intended to guide prosecutors on where to train their scarce investigative resources.

The International Association of Chiefs of Police "strongly believes that the federal government must continue to play a central role in the investigation and prosecution of . . . traffickers, dispensary operators, and growers," said Meredith Mays, a spokeswoman for the group.

Rep. Lamar Smith (Tex.), the top Republican on the House Judiciary Committee, said the Justice Department guidelines "fly in the face of Supreme Court precedent and undermine federal laws that prohibit the distribution and use of marijuana."

He added: "We cannot hope to eradicate the drug trade if we do not first address the cash cow for most drug-trafficking organizations -- marijuana."

The cocaine bill is still pending in the Senate, although advocates say its prospects are stronger now than over the past decade. The sponsor, Sen. Richard J. Durbin (D-Ill.), said in an interview last week that he was working to enlist GOP co-sponsors to ease the bill's passage.

View all comments that have been posted about this article.

From the Phoenix Business Journal:
http://www.bizjournals.com/phoenix/news/2011/05/02/burke-no-safe-harbor-in-arizona-on.html

Burke: No safe harbor in Arizona on federal pot laws

Phoenix Business Journal - by Mike Sunnucks and Angela Gonzales

Date: Monday, May 2, 2011, 2:59pm MST

Related:

Health Care

U.S. Attorney for Arizona **Dennis Burke** told the state government Monday that Arizona's new medical marijuana law will not provide any safe harbor from existing federal statutes where marijuana possession, distribution and trafficking are still illegal.

But Burke did say his prosecutor's office won't be going after seriously ill medical marijuana patients.

Instead, medical marijuana producers, distributions and other businesses may be targeted by federal prosecutors for violating existing anti-drug laws.

Burke wrote Arizona Department of Health Services director **Will Humble** today advising him that the feds "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".

The Phoenix-based federal prosecutor said his office will follow 2009 Justice Department policy that would not have prosecutors go after seriously ill medical marijuana users that have a physician's approval.

Humble said the letter is a "pretty clear shot across the bow" that large dispensaries and growers could be targeted by federal prosecutors. He said the letter mirrors one sent by U.S. Attorneys in Washington state, and shows the feds will not go after patients or doctors prescribing medical marijuana. Instead, they will scrutinize large growers and dispensary companies that want to set up shop in Arizona.

Humble expects the federal promise of enforcing existing federal statutes to reduce the number of those applying under the Arizona law. Those applications are due June. 1.

State voters approved the Arizona Medical Marijuana Act last year. The state has been formulating rules and regulations for 120 medical marijuana clinics in Arizona under the

new law. The state law allows patients with chronic pain or serious conditions such as AIDS, cancer or Parkinson's disease to use medicinal marijuana with a doctor's approval.

Burke said his office may vigorously enforce federal anti-drug laws when it comes medical marijuana producers, financiers and landlords for those facilities. Marijuana possession, sales and distribution are still illegal under the federal Controlled Substances Act.

"Individuals and organizations —including property owners, landlords 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," Burke said in his May 2nd letter.

"This compliance with Arizona laws and regulation does not provide safe harbor nor immunity from federal prosecution."

Arizona Capitol Times http://azcapitoltimes.com

US Attorney issues warning over medical marijuana

by The Associated Press

Published: May 2nd, 2011

Federal prosecutors issued a sharp warning Monday to people planning to open medical marijuana dispensaries or large-scale growing operations under Arizona's new medical marijuana law.

The federal government will vigorously prosecute anyone involved in unlawfully manufacturing, distributing and marketing marijuana, U.S. Attorney Dennis Burke said in a letter to the state health department.

The letter came in response to numerous inquiries and to ensure there was no confusion about the U.S. Department of Justice view of the state's plan to regulate marijuana for medical use, Burke said.

"This compliance with Arizona laws and regulations does not provide a safe harbor nor immunity from federal prosecution," Burke wrote.

The letter was sent to Arizona Department of Health Services Director Will Humble.

The Justice Department has consistently advised that Congress determined marijuana is a controlled substance, and that possessing, growing or distributing marijuana in any capacity other than federal authorized research is a violation of federal law.

Burke wrote that the Justice Department has told its prosecutors not to focus resources on people who use marijuana under the auspices of a state program.

In practical terms, Humble said the letter was a warming to large-scale operators.

"I think it's a pretty clear shot across the bow for applicants who intend to have large-scale cultivation facilities or a big dispensary," Humble said.

Voters passed the Arizona Medical Marijuana Act in November, and empowered the health department to license users and dispensaries. The state started accepting applications for medical marijuana user cards last month and will begin taking dispensary applications on June 1.

"I believe the federal government ought to enforce their laws," Gov. Jan Brewer said. "I have been calling on them to do that with regards to illegal immigration, and they have refused, so I guess that they pick and choose which ones they want to enforce."

Brewer has been battling the federal government over its efforts to prevent the state's law cracking down on illegal immigrants from being enforced.

She also said the voters of Arizona approved the medical marijuana law, and she assumes it will

be implemented as planned.

Humble said the first dispensary licenses should be issued in early August.

"I think the biggest impact the letter could have would be to cut down on the number of dispensary applications that we get, especially for people who have a lot to lose and people that were planning to have a business model that included large-scale cultivation or a large dispensary," he said. "Because it makes it clear that even if they were in total compliance with our rules ... they could go to the pokey. "

The letter also said federal officials could bring forfeiture actions against dispensaries and their owners.

"It's not just losing your freedom, it's losing your stuff, too," Humble said.

Complete URL: **http://azcapitoltimes.com/news/2011/05/02/us-attorney-issues-warning-over-medical-marijuana/**

azfamily.com

Medical marijuana: Ariz. law does not protect growers, sellers from federal prosecution

by Catherine Holland

azfamily.com

Posted on May 3, 2011 at 6:49 AM

Updated Tuesday, May 3 at 8:46 AM

PHOENIX – Even though Arizona passed a law allowing the use of marijuana for medical purposes, that won't stop the feds from going after marijuana producers and distributors.

Javier Soto breaks down the warning from the U.S. Attorney for Arizona Dennis Burke about medical marijuana.

"The CSA [Controlled Substances Act] may be vigorously enforced against large marijuana-production facilities," Burke wrote to Will Humble, director of the state Department of Health Services. "Individuals and organizations – including property owners, landlords, 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."

While Burke said growers and sellers could face federal charges, he also said he had no plans to go after "seriously ill individuals who use marijuana as part of a medically recommended treatment regimen and are in clear and unambiguous compliance" with Arizona's law.

Even though Burke said he will not devote his "limited resources" on those will

medical marijuana cards based on guidance from former Deputy Attorney General David Ogden in late 2009, he was quick to clarify that possession of marijuana is illegal under federal law.

The Arizona Department of Health said it's possible -- even probable -- that Burke's promise to prosecute those who grow and sell marijuana might reduce the number of applications for dispensary licenses. Those applications are due by June 1. Approved dispensaries are expected to begin operations some time in October.

To learn more about Arizona's medical marijuana law (Prop. 203), go to **www.azdhs.gov/prop203/**.

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D.C. Council approves medical marijuana, posing challenges for doctors

By Lena H. Sun
Washington Post Staff Writer
Wednesday, May 5, 2010; B01

For doctors such as Pradeep Chopra, long accustomed to prescribing carefully tested medications by the exact milligram, medical marijuana presents a particular conundrum.

On Tuesday, the D.C. Council gave final approval to a bill establishing a legal medical marijuana program. If Congress signs off, District doctors -- like their counterparts in 14 states, including Rhode Island, where Chopra works -- will be allowed to add pot to the therapies they can recommend to certain patients, who will then eat it, smoke it or vaporize it until they decide they are, well, high enough.

The exact dosage and means of delivery -- as well as the sometimes perplexing process of obtaining a drug that remains illegal under federal law -- will be left largely up to the patient. And that, Chopra said, upends the way doctors are used to dispensing medication, giving the strait-laced medical establishment a whiff of the freewheeling world of weed.

Even in states that allow for marijuana's medical use, doctors cannot write prescriptions for it because of the drug's status as an illegal substance. Physicians can only recommend it. And they have no control over the quality of the drug their patients acquire.

"I worry about that," said Chopra, a pain medicine specialist. "That's what's throwing a lot of [doctors] off."

The District's measure, like those elsewhere, specifies certain conditions and illnesses that qualify for medical marijuana. A patient who has HIV, glaucoma, multiple sclerosis, cancer or a chronic debilitating condition will be able to receive a doctor's recommendation to possess up to four ounces in a 30-day period.

Unlike in many states, the District law would not allow patients and caregivers to grow their own marijuana, at least initially; an advisory committee would later decide whether to permit cultivation. Until then, patients could only acquire the drug illegally or from five to eight government-regulated dispensaries.

The bill goes to Mayor Adrian M. Fenty (D), who is expected to sign it and send it to Congress, which has 30 days to review the measure before it becomes law.

In the District, physician reaction was mixed.

Internist Mahmoud Mustafa said a few of his sickest HIV patients already smoke marijuana to ease pain and stimulate appetite. "I think it'd be great," he said. "I don't have to worry about [my patients] being arrested."

Hunter Groninger, medical director for palliative care at Washington Hospital Center, said he would be uncomfortable recommending marijuana because the medical community doesn't know enough about its benefits.

Because there are no uniform standards for medical marijuana, doctors have to rely on the experience of other doctors and their own judgment. That, they say, can lead to abuse.

In California, "quick-in, quick-out mills" that readily hand out recommendations have proliferated, worrying advocates, including Frank Lucido, a physician who spends half his time evaluating patients for medical marijuana. The state, the first to legalize medical marijuana 14 years ago, allows for a wider range of conditions, including anxiety.

To guard against abuse, some doctors say they recommend marijuana only after patients exhaust other remedies. Some doctors perform drug tests as part of pre-screenings.

Under Michigan's law, all 200 of Sandro Cinti's HIV patients at his University of Michigan clinic would qualify for marijuana. But in the year since the law took effect there, he has signed off on just three or four patients suffering extreme pain in their fingers and toes.

Cinti, an infectious disease specialist, said some patients have acknowledged using marijuana all along for pain relief and weight gain, smoking it two to five times daily. He counsels them about adverse effects, including impaired mental state and lung disease. "We're using it as a last resort in patients who have not had any relief with anything else," he said.

If the experience of doctors from other states is any guide, some District doctors might be slow to recommend the drug -- and some patients reluctant to take it.

Chopra has approved the drug for five patients since Rhode Island's program began four years ago, he said. He recently turned down a request from a man in his 40s complaining of back pain. The man said he had tried chiropractors and physical therapy, but Chopra found no documented evidence. The patient then asked for a medical marijuana recommendation. Chopra refused.

Some patients decline the drug, he said, for fear of sending the wrong message. Last week, when he suggested pot to a patient after narcotics and surgery had failed to ease excruciating head and facial pain, she broke down in tears.

Her teenage son uses marijuana and she wants him to stop, she told him. " 'How am I going to look if I start taking it?' " he recalled her saying.

When Chopra suggested that another patient, Ellen Smith, 60, try marijuana three years ago, she was reluctant, as was her primary-care doctor. She is in constant pain from a rare degenerative disorder and is allergic to most pain medication, so there were no other options. She asked her four grown sons for help procuring the drug.

She now grows her own plants, grinds the buds to a powder that she adds to heated olive oil and mixes with apple sauce. Two teaspoons, strained, lets her sleep through the night.

"I don't look at this as pot: It's my lifeline," she said.

Some doctors describe finding themselves acting as intermediaries in families that have mixed feelings about marijuana use. Todd Handel, a Rhode Island rehabilitation specialist, recalls recommending marijuana to Chris Snow, 23, who has spina bifida and used the drug as a teenager. Yes, he would get stoned, Snow said, but pot also made the pain bearable. Only after consulting with Snow's mother and father -- a police sergeant -- did Handel recommend marijuana.

Snow, who lives with his parents, grows 12 plants -- the state's maximum allowed -- in the basement. He uses a vaporizer that heats the drug, releasing a mist that he inhales four breaths per session, two to three times a day.

His father, who did not want to be identified, said he was conflicted about his son's marijuana use initially, as was Snow's older brother, also a police officer, who moved out of the house in protest. But the father now supports the son because he is doing much better.

Still, Handel says he wishes he had more knowledge about marijuana and more control over dosage. But, like his patients, he is figuring things out as he goes along. "There isn't one dosage that works for everybody," he said.

Staff writer Tim Craig and researchers Madonna Lebling and Meg Smith contributed to this report.

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Criminal Law Reform | Marijuana Law Reform

ACLU Calls On Holder To Make Clear DOJ Will Not Prosecute People Complying With State Medical Marijuana Laws

May 10, 2011

Recent Letters Issued By U.S. Attorneys Threaten Prosecution

FOR IMMEDIATE RELEASE
CONTACT: (212) 549-2666; media@aclu.org

NEW YORK – The American Civil Liberties Union has called on U.S. Attorney General Eric Holder to make clear that the Department of Justice (DOJ) will not prioritize prosecution of people who comply with state medical marijuana laws, in keeping with previous DOJ policy.

In a letter sent late yesterday, the ACLU expresses deep concern about recent letters from several U.S. attorneys from across the country that threaten people who comply with state medical marijuana laws, including state employees and state licensed providers of medical marijuana, with federal prosecution.

"Patients, providers and legislatures need clear guidance from DOJ so they can proceed in confidence that state law will be respected," said Jay Rorty, Director of the ACLU Criminal Law Reform Project and one of the authors of the ACLU's letter. "Patients who suffer from serious medical conditions need safe and reliable access to their medicine without the fear of federal prosecution." The ACLU's letter was also signed by Laura W. Murphy, Director of the ACLU Washington Legislative Office and Jesselyn McCurdy, ACLU Senior Legislative Counsel.

U.S. attorneys in Washington, Montana, Colorado, Arizona, Rhode Island and Vermont have in recent weeks issued letters that diverge widely from what was previously understood as DOJ policy to not use federal resources to prosecute those who are clearly complying with state medical marijuana laws.

In a 2009 memo issued to all U.S. attorneys, then-Deputy Attorney General David Ogden wrote, "As a general matter, pursuit of [DOJ drug enforcement] priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the use of medical marijuana." And in a subsequent 2009 statement, Holder said, "For those organizations that are [possessing and distributing medical marijuana] sanctioned by state law and do it in a way that is consistent with state law, and given the limited resources that we have, that will not be an emphasis for this administration."

But in a New York Times story Sunday, a Justice Department spokesman says the recent letters issued by the U.S. attorneys are "a reiteration of the guidance that was handed down in 2009 by the Deputy Attorney General," a glaring inconsistency the ACLU says in its letter "requires clarification and an unambiguous statement from [Holder] that the prosecution of those complying with state law is not a priority for the department."

According to the ACLU's letter, the recent efforts by U.S. attorneys to dissuade states from enacting and implementing medical marijuana laws through threats of prosecution is an abuse of their role as impartial prosecutors and creates the appearance that the DOJ is attempting to undermine the outcome of lengthy and public legislative processes by various sovereign states.

"Nearly one-third of the states have now decriminalized [medical marijuana] in recognition of the unique and substantive benefit this drug provides to patients with certain serious conditions," the ACLU's letter reads. "The states to which the recent U.S. Attorneys' letters have been directed have wisely recognized not only the needs of patients and the value of marijuana as a medicine, but also the need for a rational distribution scheme that channels this drug to humanitarian uses without contributing to a black market."

The ACLU also says in its letter that the recent U.S. Attorneys' letters conflict with a DOJ representation to a federal court that the Ogden memo represented a significant policy shift, under which those individuals and entities that use or distribute medical marijuana in full compliance with state medical marijuana laws would no longer be targeted by federal law enforcement. Based on that representation, the ACLU in 2009 voluntarily dismissed a lawsuit against the federal government arising from a 2002 DEA raid of a California medical marijuana garden, in which the ACLU represents a group of plaintiffs including Santa Cruz, Calif. city and county officials, which sanctioned the garden. The federal court had previously upheld the ACLU's 10th Amendment claim alleging the federal government had selectively enforced federal marijuana laws in an improper federal attempt to undermine and disable the functioning of state medical marijuana laws.

"If, contrary to the assurances its attorneys provided the court in the Santa Cruz case, the federal government's enforcement policies now include 'vigorously enforcing' federal drug laws against individuals and entities who manufacture and distribute marijuana on a completely non-profit basis and in full compliance with state medical marijuana laws, it marks a significant departure from the federal government's position in the Santa Cruz litigation and could lead to that case being reinstated in its October 2009 posture with discovery proceeding as originally planned," the ACLU's letter reads.

A copy of the ACLU's letter is available online at: www.aclu.org/drug-law-reform/aclu-letter-holder-demanding-clarification-...

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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,

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,

Dennis Burke

DENNIS K. BURKE
United States Attorney
District of Arizona

C

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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

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 hkewise be utilized. The govemment 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 regardhig those who seek to set up industrial marijuana growing warehouses in Oakland pursuant to licenses issued by the City of Oakland. hidividuals 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 fumly 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

D

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FOR IMMEDIATE RELEASE

Monday, October 19, 2009

Attorney General Announces Formal Medical Marijuana Guidelines

Attorney General Eric Holder today announced formal guidelines for federal prosecutors in states that have enacted laws authorizing the use of marijuana for medical purposes. The guidelines make clear that the focus of federal resources should not be on individuals whose actions are in compliance with existing state laws, while underscoring that the Department will continue to prosecute people whose claims of compliance with state and local law conceal operations inconsistent with the terms, conditions, or purposes of those laws.

"It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana, but we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal," Holder said. "This balanced policy formalizes a sensible approach that the Department has been following since January: effectively focus our resources on serious drug traffickers while taking into account state and local laws."

The guidelines set forth examples of conduct that would show when individuals are not in clear and unambiguous compliance with applicable state law and may indicate illegal drug trafficking activity of potential federal interest, including unlawful use of firearms, violence, sales to minors, money laundering, amounts of marijuana inconsistent with purported compliance with state or local law, marketing or excessive financial gains similarly inconsistent with state or local law, illegal possession or sale of other controlled substances, and ties to criminal enterprises.

Fourteen states have enacted laws in some form addressing the use of marijuana for medical purposes. A copy of the guidelines, in a memo from Deputy Attorney General David W. Ogden to United States Attorneys, can be found here: http://blogs.usdoj.gov/blog/archives/192

09-1119

Attorney General

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U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

October 19, 2009

MEMORANDUM FOR SELECTED UNITED STATES ATTORNEYS

FROM: David W. Ogden
Deputy Attorney General

SUBJECT: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana

This memorandum provides clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana. These laws vary in their substantive provisions and in the extent of state regulatory oversight, both among the enacting States and among local jurisdictions within those States. Rather than developing different guidelines for every possible variant of state and local law, this memorandum provides uniform guidance to focus federal investigations and prosecutions in these States on core federal enforcement priorities.

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. One timely example underscores the importance of our efforts to prosecute significant marijuana traffickers: marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels.

The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources. In general, United States Attorneys are vested with "plenary authority with regard to federal criminal matters" within their districts. USAM 9-2.001. In exercising this authority, United States Attorneys are "invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such authority." *Id.* This authority should, of course, be exercised consistent with Department priorities and guidance.

The prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on

individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities.

Typically, when any of the following characteristics is present, the conduct will not be in clear and unambiguous compliance with applicable state law and may indicate illegal drug trafficking activity of potential federal interest:

- unlawful possession or unlawful use of firearms;
- violence;
- sales to minors;
- financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity and/or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;
- amounts of marijuana inconsistent with purported compliance with state or local law;
- illegal possession or sale of other controlled substances; or
- ties to other criminal enterprises.

Of course, no State can authorize violations of federal law, and the list of factors above is not intended to describe exhaustively when a federal prosecution may be warranted. Accordingly, in prosecutions under the Controlled Substances Act, federal prosecutors are not expected to charge, prove, or otherwise establish any state law violations. Indeed, this memorandum does not alter in any way the Department's authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property. This guidance regarding resource allocation does not "legalize" marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party or witness in any administrative, civil, or criminal matter. Nor does clear and unambiguous compliance with state law or the absence of one or all of the above factors create a legal defense to a violation of the Controlled Substances Act. Rather, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion.

Finally, nothing herein precludes investigation or prosecution where there is a reasonable basis to believe that compliance with state law is being invoked as a pretext for the production or distribution of marijuana for purposes not authorized by state law. Nor does this guidance preclude investigation or prosecution, even when there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests.

Your offices should continue to review marijuana cases for prosecution on a case-by-case basis, consistent with the guidance on resource allocation and federal priorities set forth herein, the consideration of requests for federal assistance from state and local law enforcement authorities, and the Principles of Federal Prosecution.

cc: All United States Attorneys

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