

THIRD TIME THE CHARM?

State Laws on Medical Cannabis Distribution and Department of Justice Guidance on Enforcement

A White Paper
prepared by Americans for Safe Access

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The Supreme Court has concluded that a virtue of our federalist system of government is that “a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”¹

1. EXECUTIVE SUMMARY

Currently 37% of the US population lives in a state where medical marijuana (cannabis) is legal, and over one million Americans are legally using cannabis as a medicine. Yet the federal government has not only refused to acknowledge that cannabis has medical uses but also actively interfered in state attempts to protect patients and regulate distribution. Campaigning for President in 2008, Barack Obama said he would not expend federal resources to interfere with those laws. Since his Administration began, the US Department of Justice (DOJ) has three times issued memorandums on how the nation’s US Attorneys should enforce federal laws in relation to state-regulated production and distribution of cannabis. The latest memo, issued on August 31, 2013, appears to come closest to fulfilling the President’s promise, but after two previous memos offering seemingly contradictory advice, patients, advocates, municipalities, state representatives, and members of Congress have all been asking “what does this really mean for medical cannabis laws?” The following report attempts to answer that question by analyzing the various state and local medical cannabis laws in relation to the DOJ’s eight enforcement priorities. It also considers the effects on state laws of the federal enforcement actions that followed the two previous memos and offers recommendations for state and federal policy.

Our analysis shows that state laws and regulations governing medical cannabis programs are already in compliance with the DOJ’s latest guidelines. In a few states, regulations would be stronger had threats from federal prosecutors not interfered with state and local regulatory efforts. In all cases, state law reflects the same priorities as the latest guidelines. In the absence of metrics for federal enforcement priorities, the DOJ should defer to each state’s enforcement systems and determinations of compliance with that state’s laws.

2. *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932).

The history of how US Attorneys, the Drug Enforcement Administration, and other federal agencies and officials have interfered with state medical cannabis programs demonstrates that a ‘guideline’ is not enough to protect individuals participating in good faith in these programs. The previous memos did not curb federal enforcement on state-authorized medical cannabis distribution, especially in states that have a history of prosecuting marijuana cases, such as California, Washington, and Michigan. In fact, the Obama Administration has outspent all predecessors, with enforcement targeting medical cannabis programs and participants that has cost taxpayers over \$300 million and destroyed thousands of lives. (For details, see “What’s the Cost: A Report on the Federal War on Patients,” <http://AmericansForSafeAccess.org/WhatstheCost.pdf>).

The analysis that follows in this report should not be interpreted as an endorsement of the latest guidelines issued by the DOJ. Non-binding memos are not the solution. As patient advocates, we are hopeful that this latest policy will act as a stepping-stone for change in federal law and facilitate states enacting laws that regulate medical cannabis while serving the needs of their patient populations.

Thousands of patients have been cut off from safe and legal access due to federal activity, and scores of individuals remain tied up in the federal legal system due to confusion over government policy and its conflicts with state laws. The recent memo does nothing to redress that injustice, only action by Congress can. It is our hope that this report sheds light on how well regulated medical cannabis is in the states that have passed such laws and inspire federal representatives to replace harmful, outdated policies with ones that allow the laboratory of democracy to flourish.

2. THE OBAMA ADMINISTRATION AND MEDICAL CANNABIS

During his presidential campaign in 2008, then-Senator Barack Obama pledged to end federal interference with state medical cannabis laws, saying, “I think the basic concept of using medical marijuana for the same purposes and with the same controls as other drugs prescribed by doctors, I think that’s entirely appropriate. I’m not going to be using Justice Department resources to try to circumvent state laws on this issue.”²

Soon after President Obama’s inauguration in January 2009, a White House spokesman and his newly appointed Attorney General, Eric Holder each reiterated that the new President would honor his campaign promise concerning medical cannabis. In October of 2009, the DOJ issued formal guidance reflecting the Administration’s stated position on medical cannabis in a memo for federal prosecutors written by the second-ranking member of the Department, Deputy Attorney General (DAG) David W. Ogden (see appendix).

The 2009 Ogden Memo stated that it was not the Administration’s policy to prosecute anyone “in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.” That was widely viewed as a green light for the implementation of state medical cannabis laws, and several states developed plans for centralized cultivation and distribution facilities that state and local officials could tightly control. In 2010, Arizona voters approved a medical cannabis initiative, and lawmakers in New Jersey and the District of Columbia passed bills creating licensed distribution programs.

But Drug Enforcement Administration (DEA) agents and federal prosecutors in several medical cannabis states chose to ignore the DOJ’s guidance. They continued to raid and prosecute state-licensed medical cannabis businesses. This led to considerable confusion in communities attempting to regulate safe access, created additional hardship for state-qualified patients, and sent dozens of people to federal prison.

Nonetheless, state legislatures continued to move forward, crafting laws and regulations to meet the needs of their citizens who were using medical cannabis on the advice of their doctors. Over the next few years, elected officials in more than a dozen states and localities introduced medical cannabis distribution laws, only to have US Attorneys threaten them with injunctions and criminal prosecution if they attempted to regulate the distribution of medical cannabis (see appendix).

2. “He favors long-term timber-payments solution,” *Mail Tribune* [Oregon], March 23, 2008.

Some were even threatened with the arrest of state employees and the forfeiture of state buildings used to process any distribution applications or other licenses. Private property owners who leased space to licensed medical cannabis businesses were threatened with asset forfeiture and criminal prosecution if they did not evict their state-compliant tenants. These proved effective tactics, causing governors to suspend programs or veto legislation and landlords to terminate the leases for hundreds of businesses providing medicine to patients.

The outcry over this departure from the Administration's stated policy prompted another DOJ memo in June 2011, this time written by the new Deputy Attorney General, James M. Cole (see appendix). The 2011 Cole Memo, "Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use," reversed the Ogden memo's declared ceasefire with the states, stating that the various threat letters sent by US Attorneys were in step with DOJ's position on enforcing marijuana laws, and that any business or large-scale cultivation and distribution operation related to medical cannabis was a target, regardless of state law. The result of the 2011 memo was more federal threats, raids, and people going to prison.

This exacted a price in unnecessary human suffering, but a dollar cost was piling up, also. In a June 2013 report, Americans for Safe Access calculated that the Obama Administration had by then expended nearly \$300 million on medical cannabis enforcement, a cost to taxpayers of roughly \$180,000 per day to stop the implementation of state laws. That's more than all previous Administrations combined, and brings to over half a billion dollars the total cost since 1996 of the federal government's interference with patient access to medical cannabis. (For more information on the millions spent and lives ruined, see ASA's report, *What's the Cost?* at AmericansForSafeAccess.org/WhatsTheCost.pdf.)

However, medical research on the remarkable safety and efficacy of medical cannabis continued to accumulate, and support for safe access to this ancient herbal medicine continued to expand, both among the public and state lawmakers. Recent polls by CBS News (Oct 2011) and ABC News/Washington Post (Jan 2010) found 77-81% of Americans favor allowing doctors to prescribe cannabis. Connecticut, Delaware, Massachusetts, Illinois, and New Hampshire each enacted new laws protecting medical cannabis patients and establishing regulated distribution plans. And in 2012, voters in Washington and Colorado, where medical access programs have been on the books for more than a decade, made cannabis legally available to adults without a doctor's recommendation.

On August 29, 2013, the DOJ responded to numerous requests for clarification from state officials with a new memo from Deputy Attorney General Cole (see appendix). That memo to US Attorneys, “Guidance Regarding Marijuana Enforcement,” says enforcement decisions can generally be left to state officials, while setting forth eight guidelines for federal prosecutors to use in determining if a state law, distribution program, or particular operation warrants federal intervention.

3. OVERVIEW OF THE LATEST DOJ POLICY

This latest memo from DAG Cole updates—and, in some respects, reverses—his 2011 memo. The guidance in the 2013 memo in many ways resembles the Obama Administration’s original position on state cannabis laws, as outlined in statements from President Obama and the White House, Attorney General Holder, and the 2009 memo from DAG Ogden. The 2009 DOJ memo contained seven enforcement guidelines; the 2011 memo purported to clarify those guidelines; the 2013 memo contains eight guidelines. The one consistent element in all three memos has been a clear statement that prosecutors should not target individual patients and their caregivers for personal cultivation.

The 2013 memo’s eight guidelines for identifying current federal enforcement priorities include the prevention of:

1. distribution to minors,
2. revenue from marijuana sales going to criminals, gangs or cartels,
3. state-authorized conduct being a pretext to traffic other illegal drugs or other illegal activity,
4. diversion into states that do not have laws authorizing marijuana conduct,
5. violence or the use of firearms in cultivation and distribution,
6. drugged driving and other harms to public health,
7. the growing of marijuana on public lands,
8. marijuana use on federal property.

The current memo states that the DOJ wants state regulations and enforcement mechanisms that are strict both on paper and in practice; if the DOJ determines that a state’s efforts are insufficient, the federal government may intervene with its own enforcement actions.

The most notable change from the 2011 memo is the reversal of DOJ policy regarding the size of a state-approved cannabis provider’s operation. Previously, the DOJ had instructed prosecutors to use the size of an operation as a measure for determining the degree of threat to federal priorities—the larger it is, the more of a target—confounding state attempts to more closely monitor cultivation and distribution operations by centralizing them or issuing limited numbers of licenses. In contrast, the latest memo says “prosecutors should not consider the size or commercial nature of a marijuana operation alone” in deciding if it should

be a target of federal enforcement but should rather weigh whether the operation is in compliance with a strong and effective regulatory system.

On September 10, 2013, just days after the release of the new memo, the Senate's Judiciary Committee held an oversight hearing that included testimony from Deputy Attorney General Cole. During the hearing, Senator Sheldon Whitehouse (D-NH), who is a former US Attorney, read through the 2013 memo's eight priority guidelines for federal marijuana enforcement and made clear he was interpreting them in the same manner he had the 2009 Ogden Memo—as providing protection from federal prosecution for state-authorized conduct related to medical cannabis. Deputy Attorney General Cole did not dispute that interpretation.

However, just as with the 2009 Ogden Memo, the 2013 Cole Memo is merely a guide and does not constrain the decisions of federal prosecutors to prosecute or seize the property of any patients or providers, regardless of how well the state law, program, or operation satisfies the DOJ enforcement priorities. Nor does the new memo provide a legal defense for individuals who violate federal marijuana law while being scrupulously compliant with state law, or even allow them to mention state law or medical necessity at trial. It provides no relief for any of the scores of individuals prosecuted and imprisoned by the federal government for participating in their state's medical cannabis program. The non-binding, advisory nature of the 2013 Cole Memo means that it carries no legal authority in federal court.

The new memo also explicitly limits its guidance to future conduct, so medical cannabis providers who were already in conformity with the new guidelines before they were issued are not protected from prosecution or other enforcement actions. A glaring instance of this is the continued civil forfeiture lawsuit targeting the property in Oakland, California used by Harborside Health Center, one of the state's largest medical cannabis dispensaries. The forfeiture action began in July 2012 with an announcement from U.S. Attorney Melinda Haag that she was targeting them because "[t]he larger the operation, the greater the likelihood that there will be abuse of the state's medical marijuana laws."³ This is exactly the rationale the 2013 Cole Memo notes should not be used in determining whether further investigation or prosecution is appropriate, yet US Attorney Haag's attempt to close Harborside continues undeterred.

3. Statement of U.S. Attorney for Northern California Melinda Haag, as reported by the *San Francisco Chronicle*, "U.S. Attorney: Why I'm busting Harborside Health Center," July 11, 2012.

Defining compliance with the new DOJ guidelines

During the September 2013 Judiciary Committee hearing, Senators Whitehouse and Richard Blumenthal (D-CT) urged DAG Cole to provide metrics for states to follow. While the non-binding nature of the memo means the eight guidelines can be interpreted (or ignored) as each of the nation's 93 US Attorneys choose, public officials in medical cannabis states and the District of Columbia have said or implied that they have received federal assurances that their medical cannabis laws are do not offend federal enforcement priorities.⁴ That fits the analysis of the guidelines and state laws set out in this report.

The DOJ's concerns are not unique—the 21 medical cannabis programs in the US all reflect conscientious efforts to limit possible harms associated with medical cannabis production and distribution. A few would have more robust regulations had federal prosecutors not threatened injunctions and criminal prosecutions of state officials and employees if the state adopted the very regulations the federal government now expects.

The following analysis identifies the types of conduct and regulations that comply with the current guidance of the DOJ.

Personal Cultivation

As mentioned above, the one method for obtaining medical cannabis all three DOJ memos have said the federal government is unconcerned with is personal cultivation by a qualified patient or that patient's caregiver. While the constraints of the law and the DOJ's duty to enforce it prevent any explicit advice to patients or states on what conduct can be considered permissible, each memo says consistently that the concern of Congress and the DOJ is the sales and distribution of marijuana. Personal cultivation involves neither sales nor distribution. Each memo also invokes some version of the individual patient or caregiver providing medicine as an example of who should not be prosecuted. The 2009 Ogden memo stated that US Attorneys should not prosecute, for example, cancer patients using marijuana for treatment “or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana.” The 2011 Cole memo echoed the previous guidance.

4. Council of the District of Columbia, Committee on Health, Public Oversight Roundtable, October 21, 2013, testimony of Feseha Woldu, Senior Deputy Director of the D.C. Health Regulation and Licensing Administration, and statement of Councilmember Yvette Alexander.

Letter from Delaware Governor Jack Markell to State Senator Margaret Rose Henry and State Representative Helene M. Keeley announcing the relaunch of the state's medical cannabis program under SB 17 (2011), August 15, 2013, available at <http://www.scribd.com/doc/160521934/Governor-Markell-letter-on-restarting-Delaware-s-medical-marijuana-program>, (last accessed Nov. 21, 2013).

With the 2013 Cole memo, the DOJ has conceded that sales and distribution is now a proven, regulated model. The 2013 memo does not draw the same contrast with individual medical use and caregiver providers, but the memo notes the DOJ “has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property.” None of the eight enforcement priorities are implicated by the personal cultivation of medical cannabis by either an individual patient or a patient’s caregiver, indicating it as a way of providing medicine that states can allow with ample confidence and limited regulation.

The eight guidelines of the 2013 Cole Memo

1. Preventing the distribution of marijuana to minors

The 2013 Cole Memo addresses the issue of minors in a bit more detail than the other enforcement priorities. The DOJ specifically calls for enforcement when “an individual or entity sells or transfers marijuana to a minor.” All state medical cannabis laws include language about minors. Most states allow for the medical use by minors but include additional restrictions such as recommendations from multiple physicians, including pediatricians, the informed consent of the parents or legal guardians, and the parent or guardian’s direct control of the minor patient’s medical cannabis use. That degree of regulation, coupled with DOJ direction to U.S. Attorneys not to prosecute conduct that is permitted by state law, suggests medical cannabis use by minors under the supervision of their doctors and parents or legal guardians satisfies the guideline.

The DOJ has coupled the prevention of sales to minors with a “buffer zone,” prohibiting the distribution of medical cannabis within 1,000 feet of a school. Historically, US Attorneys have used that 1,000-foot rule as a pretext for interfering with local zoning decisions by threatening the landlords of dispensaries and other medical cannabis business with the forfeiture of their property. However, such interference in local zoning would appear to be a similar violation of the Constitution’s Tenth Amendment to the one found in the 1995 US Supreme Court ruling in *United States v. Lopez*, 514 U.S. 549, which held that a federal law prohibiting the possession of a firearm within a school zone violated the Commerce Clause of the Constitution. While the particulars of the *Lopez* decision do not directly apply, it nonetheless represented a federal entity unconstitutionally dictating local land use policy that is the purview of states. Land use decisions are local ones and should be protected from federal interference.

State Laws Addressing 2013 Cole Memo Priorities	
<i>1. Preventing distribution to minors</i>	
AZ	Ariz. Rev. Stat. § 36-2804.03(B).
CA	Cal. Health & Safety Code § 11362.7(e).
CO	Colo. Const. Art XVIII, § 14 cl. 6.
CT	Conn. Gen. Stat. § 21a-408(10).
DC	D.C. Code § 7-1671.02(e).
DE	Del. Code Ann. Tit 16 § 4909A(b).
IL	Public Act 098-0122 § 30(a)(3)(G) (Ill., Eff. Jan 1 2014).
ME	Me. Rev. Stat. Tit. 22, § 2425(2).
MA	105 Code Mass. Rules 725.010(J).
MI	Mich. Comp. Laws § 333.26426(b) (2008)
MT	Mont. Code Ann. § 50-46-307.
NV	Nev. Rev. Stat. § 453A.210(3).
NH	2013 N.H. Laws 126-W:4(V).
NJ	N.J. Stat. § 24:6I-5.
NM	N.M. Stat. § 26-2B-4(C).
OR	Or. Rev. Stat. § 475.309(3).
RI	R.I. Gen. Laws § 21-28.6-6(b).
VT	Vt. Stat. Ann. Tit. 18, § 4473(b)(1).
WA	Wash. Rev. Code § 69.51A.010(1)(a).

As an example, the District of Columbia's medical cannabis law, the Legalization of Marijuana for Medical Treatment Amendment of 2010, clearly defines the conditions that must be met for minors to receive medical cannabis therapy. The law authorizes youth to “possess and administer medical marijuana” if their parent or legal guardian signs and adheres to a four-point agreement. First, the parent or legal guardian must affirm that they understand the qualifying condition their child has. Second, they must declare they have been made aware of the “potential benefits and potential adverse effects of medical marijuana” for minors. Third, they must affirmatively agree to the use of medical cannabis for their minor's condition. Last, they must agree to become, or designate another adult to serve as, the minor patient's caregiver who “controls the acquisition, possession, dosage, and frequency of use,” of medical cannabis.

The D.C. law contains the two common components of regulated medical cannabis distribution to minors—parental consent and parental control over the medicine. The first, parental consent, is part of any medical treatment for a child. But it is the second component that is most important in satisfying the concerns outlined in the 2013 Cole Memo. By not allowing minor patients to purchase or possess medical cannabis independently of their parent or legal guardian, the D.C. law achieves the goal of preventing the “distribution of marijuana to minors.” Minors only possess or administer medical cannabis within the limited scope of their parent or legal guardian's written consent and direct supervision.

A District government official has reported being told by a DOJ representative that D.C.'s law containing a provision allowing a caregiver to acquire and transfer medical cannabis to a minor does not warrant federal interference. (footnote to DC Council hearing).⁵ Additionally, by informing the District government that their law does not offend current enforcement priorities, DOJ has acknowledged that D.C.'s 300-foot buffer between medical cannabis dispensaries and schools and youth facilities does not necessitate federal interference, even though federal law mandates special penalties for marijuana distribution within 1,000 feet of schools.

2. Preventing revenue from the sales of marijuana from going to criminal enterprise, gangs, and cartels;

3. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illicit drugs or other illegal activity.

These two guidelines are met whenever a state passes and implements a system for regulating and licensing distribution of medical cannabis. The application process for becoming a distributor or producer of medical cannabis typically involves a criminal background check and a highly competitive process in which applicants vie for a limited number of licenses. Those safeguards protect against the involvement of criminals. Likewise, sales are regulated by the state, as with all other products, and businesses are typically required to keep strict tabs on inventory.

Once a medical cannabis business is open to customers, they are subject to inspection by state or local authorities or both, preventing the sale of other drugs. Since the sale of other drugs in the federal Controlled Substances Act is also illegal under state law, the state's themselves have a great interest in making sure no sales of those substances take place, whether at a dispensary or anywhere else.

5. Oct. 21, 2013 D.C. Council hearing.

State Laws Addressing 2013 Cole Memo Priorities <i>2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels.</i> <i>3. Preventing state-authorized activity from being used as a cover or pretext for trafficking other illegal drugs or other illegal activity.</i>	
AZ	Ariz. Rev. Stat. § 36-2806.
CA	Cal. Health & Safety Code § 11362.83.
CO	Colo. Rev. Stat. § 12-43.3-101 et. seq.
CT	Conn. Agencies Regs. § Sec. 21a-408-24
DC	D.C. Code § 7-1671.06.
DE	Del. Code Ann. Tit 16 § §4919A.
IL	Public Act 098-0122 § 15(c) (Ill., eff. Jan. 1, 2014).
ME	Me. Rev. Stat. Tit. 22, § 2428.
MA	105 Code Mass. Rules 725.105(I).
MI	Mich. Comp. Laws §§ 333.26423(h) and § 333.26424(k).
MT	Mont. Code Ann. § 50-46-308.
NV	Nev. Rev. Stat. § 453A.356.
NH	2013 N.H. Laws 126-W:7.
NJ	N.J. Stat. § 24:6:7(d)(1).
NM	N.M. Stat. § 26-2B-3(D).
OR	2013 Or. Laws Chap. 726.
RI	R.I. Gen. Laws § 21-28.6-12.
VT	Vt. Stat. Ann. Tit. 18, § 4474f.
WA	Wash. Rev. Code § 69.51A.055(3).

Given the level of scrutiny given to medical cannabis businesses, it would be difficult for criminals to gain entry to such a market. Moving medical cannabis sales from an underground market to a regulated one also removes much of the incentive for criminal involvement, just as the repeal of alcohol prohibition in 1933 took alcohol sales revenue out of the hands of gangsters and transferred it to responsible business operators.

4. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states

Keeping medical cannabis from being diverted from its state of origin to else-

where is addressed by each state medical cannabis law in some form. Every state has a possession limit or guideline on how much medicine a patient may have at any given time. Each defines medical use and limits access to obtaining and possessing for the patient's use only. Legal protections from state criminal penalties only apply if the conduct is solely for the patient's medical use within the state. As a result, patients, caregivers, and providers in all states are subject to criminal marijuana penalties for conduct that diverts marijuana either to non-qualified individuals or to anyone outside the state.

Patients who transport their personal medicine from their home state to a state

State Laws Addressing 2013 Cole Memo Priorities	
<i>4. Preventing diversion of marijuana from states where it is legal under state law in some form to other states</i>	
AZ	Ariz. Rev. Stat. § 36-2806.02(A).
CA	Regulated at the City and County level
CO	Colo. Const. Art XVIII, Section 14, cl. 3.
CT	Conn. Gen. Stat. § 21a-408h(G).
DC	D.C. Code § 7-1671.03.
DE	Del. Code Ann. Tit 16 § §4919A(e).
IL	Public Act 098-0122 § 130(h) (Ill., eff. Jan. 1, 2014).
ME	Me. Rev. Stat. Tit. 22, § 2426(1)(E).
MA	105 Code Mass. Rules 725.004 "Qualifying Patient."
MI	Mich. Comp. Laws §§ 333.26424(a), 333.26423(d), and 333.26426(a)(6).
MT	Mont. Code Ann. § 50-46-330.
NV	Nev. Rev. Stat. § 453A.210(2)(c).
NH	2013 N.H. Laws 126-W:1(XIII).
NJ	N.J. Stat. § 24:6I:3 "Qualifying patient."
NM	N.M. Stat. § 26-2B-3(G).
OR	Or. Rev. Stat. § 475.300(4).
RI	R.I. Gen. Laws § 21-28.6-6(f)(2).
VT	Vt. Stat. Ann. Tit. 18, § 4474f(a)(2).
WA	Wash. Rev. Code § 69.51A.200(2)(f) Diversion of cannabis intended for medical use to nonmedical uses

with reciprocity for medical cannabis patients would not be “diverting” their medicine under the medical use provision of each state, as it remains in the qualified patient’s possession for personal use. Practically speaking, even if these patients cross into states that do not extend the same legal protections, it is still not diversion so long as the medical cannabis does not change hands. Patients are taking an obvious legal risk by transporting medicine, and therefore have a substantial incentive not to use their medicine where they are not legally authorized to do so.

5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana

Acts of violence and the use of firearms in the conduct of any business are illegal

State Laws Addressing 2013 Cole Memo Priorities <i>5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana</i>	
AZ	Ariz. Rev. Stat. § 36-2801(7).
CA	Regulated at the City and County level
CO	1 Colo. Code Regs. § 212-1.305.
CT	Conn. Agencies Regs. § 21a-408-24(a).
DC	D.C. Code § 22-4501 et seq.
DE	Del. Code Ann. Tit 16 § §4915A.
IL	Public Act 098-0122 § 10(l) (Ill, eff. Jan. 1, 2014).
ME	Me. Rev. Stat. Tit. 22, § 2428(5).
MA	105 Code Mass. Rules 725.110.
MI	Mich. Comp. Laws § 333.26423(h).
MT	Mont. Code Ann. § 6-18-202.
NV	Nev. Rev. Stat. § 453A.300(1)(c).
NH	2013 N.H. Laws 126-W:7(IV)(13)(c).
NJ	N.J. Stat. § 24:6I:7(d)(1).
NM	N.M. Stat. § 26-2B-7(A)(6).
OR	Or. Rev. Stat. § 475.304(6).
RI	R.I. Gen. Laws § 21-28.6-12(c)(1)(vi).
VT	Vt. Stat. Ann. Tit. 18, § 4474e(j)(2).
WA	Wash. Rev. Code § 69.51A.200 (2)(g).

under all state laws. Every state government has an enforcement priority to prevent violence and the use of firearms, irrespective of medical cannabis laws. In addition, criminal background checks further help prevent violence and the use of firearms in the cultivation and distribution of medical cannabis. Many states do not allow anyone with a criminal conviction for felony violence to obtain a medical cannabis business license. Many states also run similar checks on employees who work at such businesses.

Additionally, most states require that cultivation take place in locations with tight security. But even in states such as California that do not require extraordinary security measures by law, studies by law enforcement, researchers and journalists have shown that the areas around dispensaries are safer than other parts of the community, due to the security steps taken by operators and employees in the normal course of business.⁶

The primary threat of violence and firearms is one created by the DOJ, which has systematically forced medical cannabis businesses into running on an all-cash basis by preventing them from using financial services or secure transport. The federal government has threatened banking institutions and other financial service companies with penalties if they maintain accounts for those who sell marijuana, including state-approved medical cannabis providers. The 2011 Cole Memo concludes by noting “[t]hose who engage in transactions involving the proceeds of such activity [i.e. cultivating, selling or distributing marijuana] may also be in violation of federal money laundering statutes and other federal financial laws.” These threats have prevented licensed cannabis businesses from accepting credit cards or depositing normal cash receipts. The DOJ has made similar threats to armored car and armed guard agencies to prevent them from transporting cash securely or protecting business facilities.

This policy creates a perverse incentive for operators to possess firearms for their own protection and that of their employees and patrons. Until the federal government makes it clear to banking institutions and security firms that they can lawfully work with medical cannabis providers, the current policy will continue to engender the very situation that the guideline seeks to prevent. DAG Cole faced questioning from the Senate Judiciary Committee on this but could only say that the DOJ acknowledges the problem and is working on a solution.

6. Freisthler B, Kepple NJ, Sims R, Martin SE. Evaluating medical marijuana dispensary policies: spatial methods for the study of environmentally-based interventions. *American Journal of Community Psychology*. 2013, 51;1-2: 278-288.

“LAPD chief: Pot clinics not plagued by crime,” *Los Angeles Daily News*, Jan. 16, 2010.

“Checking Bonnie’s Facts,” *San Diego City Beat*, Oct. 27, 2009.

“Rand study finds less crime near medical marijuana dispensaries,” *Los Angeles Times*, Sep. 21, 2011.

State Laws Addressing 2013 Cole Memo Priorities 6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use	
AZ	Ariz. Admin. Cod R9-17-317.
CA	Cal. Health & Safety Code § 11362.79.
CO	5 Colo. Code Regs. § 1006-2.
CT	Conn. Gen. Stat. § 21a-408a(b)(2).
DC	D.C. Code § 7-1671.03(d)(2).
DE	Del. Code Ann. Tit 16 § § 4904A.
IL	Public Act 098-0122 § 30(a)(5) (Ill., eff. Jan. 1, 2014).
ME	Me. Rev. Stat. Tit. 22, § 2426(1)(D).
MA	105 Code Mass. Rules 725.650(B)(1).
MI	Mich. Comp. Laws § 333.26427(b)(4).
MT	Mont. Code Ann. § 50-46-320.
NV	Nev. Rev. Stat. § 453A.300(1)(a).
NH	2013 N.H. Laws 126-W:3(II)(a)(1).
NJ	N.J. Stat. § 24:6I:8.
NM	N.M. Stat. § 26-2B-5(2).
OR	Or. Rev. Stat. § 475.316(1)(a).
RI	R.I. Gen. Laws § § 21-28.6-7(a)(3).
VT	Vt. Stat. Ann. Tit. 18, § 4474c(a)(1)(A).
WA	Wash. Rev. Code § 69.51A.060(8).

6. Preventing impaired driving and the exacerbation of other adverse public health consequences associated with marijuana use.

Under no medical cannabis state law is it legal for patients to operate a motor vehicle while under the influence of medical cannabis or any other drug that can create impairment. In fact, in some medical cannabis states, patients may be subject to criminal penalties merely for having the presence of trace amounts of cannabis metabolites in their system. At present there is no definitive way to correlate levels of cannabis in one's blood, saliva, hair, or urine with real-time impairment. Statistically, states with medical cannabis laws have experienced a

4. Anderson DM, Rees DI. Medical Marijuana Laws, Traffic Fatalities, and Alcohol Consumption. 2011. Available at <http://ftp.iza.org/dp6112.pdf> (last accessed November 20, 2013).

Anderson DM, Hansen B, Rees DI. Medical Marijuana Laws, Traffic Fatalities, and Alcohol Consumption. *Journal of Law and Economics*. 2013; 56, 2: 333-369.

decrease in traffic fatalities after such laws were adopted. Studies in both 2011 and 2013 demonstrated that vehicular fatalities in medical cannabis states dropped 9%-13%, even when other factors are controlled.⁴

Any other risk to public health is mitigated by the requirements present in all state laws that patients be examined and diagnosed by a licensed medical professional before receiving a recommendation that would allow them to participate in a medical cannabis program. As with all medications, physicians and other prescribing medical professionals have a duty to explain to patients both the potential benefits and adverse effects of medical cannabis therapy. Standards of medical practice require them to only prescribe or recommend courses of treatment when they think the benefits outweigh the potential adverse effects.

State Laws Addressing 2013 Cole Memo Priorities	
<i>7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on</i>	
AZ	Ariz. Rev. Stat. § 36-2806(E).
CA	Regulated at the City and County level
CO	1 Colo. Code Regs. § 212-1.205.
CT	Conn. Agencies Regs. § 21a-408-20(58).
DC	D.C. Code § 7-1671.06(h).
DE	Del. Code Ann. Tit 16 § 4902A(f).
IL	Public Act 098-0122 § 105(d) (Ill., eff. Jan. 1, 2014).
ME	Me. Rev. Stat. Tit. 22, § 2428 (6)(I).
MA	105 Code Mass. Rules 725.105(B)(1)(c).
MI	Mich. Comp. Laws § 333.26423(d).
MT	Mont. Code Ann. § 50-46-308.
NV	Nev. Rev. Stat. § 453A.352.
NH	2013 N.H. Laws 126-W:8(XV)(c).
NJ	N.J. Admin. Code 8:64-10.4.
NM	N.M. Stat. § 26-2B-7(A)(6).
OR	Or. Rev. Stat. § 475.304.
RI	R.I. Gen. Laws § 21-28.6-12(c)(1)(iv).
VT	Vt. Stat. Ann. Tit. 18, § 4474e(d)(1).
WA	Line-item vetoed out of of 2011 Wash. Sess. Laws 1345.

7. Preventing the growing of marijuana on public land and the attendant public safety and environmental dangers posed by marijuana production on public lands

Cultivating any crop for private consumption on public land without a permit is against the law, and all businesses and agricultural operations are subject to all existing environmental laws at both the state and federal level. No medical cannabis law has an exception for cultivation on public land or an exemption from environmental law. In states that authorize the cultivation of medical cannabis for retail sale to patients, locations where medical cannabis may be cultivated are clearly defined and controlled by local land use rules. The cultivation of marijuana on public land is a direct consequence of prohibition. Legal jeopardy creates incentives to grow on public land—its ownership cannot be traced to the grower, and the property cannot be seized. Nonetheless, medical cannabis is typically grown under close supervision in controlled environments, not on public lands. State medical cannabis laws help further prevent the cultivation of marijuana on public land by providing legal protections for individuals and their private property.

8. Preventing marijuana possession or use on federal property

State Laws Addressing 2013 Cole Memo Priorities <i>8. Preventing marijuana possession or use on federal property</i>	
All	State laws cannot authorize the use of marijuana on federal property.

State law has no authority over conduct engaged in on federal property. In general, the legal provisions that work to prevent diversion to non-qualified individuals or transport to other states also help prevent possession and use on federal property. But enforcement of federal law on federal property is strictly the responsibility of the federal government; states have no jurisdiction.

4. HOW THE NEW DOJ POLICY APPLIES TO STATES

States with Existing Distribution Systems

	Preventing distribution to minors	Preventing revenue from going to criminal enterprises	Preventing diversion of marijuana to other states	Preventing trafficking other illegal drugs or other illegal activity	Preventing violence and the use of firearms	Preventing drugged driving	Preventing growing of marijuana on public lands	Preventing marijuana possession or use on federal property
AZ	Ariz. Rev. Stat. § 36-2804.03(B).	Ariz. Rev. Stat. § 36-2806.	Ariz. Rev. Stat. § 36-2806.02(A)	Ariz. Rev. Stat. § 36-2806.	Ariz. Rev. Stat. § 36-2801(7).	Ariz. Admin. Cod R9-17-317.	Ariz. Rev. Stat. § 36-2806(E).	State law cannot authorize
CA	Cal. Health & Safety Code § 11362.7(e).	Cal. Health & Safety Code § 11362.83.	Regulated at the City and County level	Cal. Health & Safety Code § 11362.83.	Regulated at the City and County level	Cal. Health & Safety Code § 11362.79.	Regulated at the City and County level	State law cannot authorize
CO	Colo. Const. Art XVIII, § 14 cl. 6.	Colo. Rev. Stat. § 12-43.3-101 et. seq.	Colo. Const. Art XVIII, Section 14, cl. 3.	Colo. Rev. Stat. § 12-43.3-101 et. seq.	1 Colo. Code Regs. § 212-1.305.	5 Colo. Code Regs. § 1006-2.	1 Colo. Code Regs. § 212-1.205.	State law cannot authorize
CT	Conn. Gen. Stat. § 21a-408(10).	Conn. Agencies Regs. § Sec. 21a-408-24	Conn. Gen. Stat. § 21a-408h(G).	Conn. Agencies Regs. § Sec. 21a-408-24	Conn. Agencies Regs. § 21a-408-24(a).	Conn. Gen. Stat. § 21a-408a(b)(2).	Conn. Agencies Regs. § 21a-408-20(58).	State law cannot authorize
DC	D.C. Code § 7-1671.02(e).	D.C. Code § 7-1671.06.	D.C. Code § 7-1671.03.	D.C. Code § 7-1671.06.	D.C. Code § 22-4501 et seq.	D.C. Code § 7-1671.03(d)(2).	D.C. Code § 7-1671.06(h).	State-level law cannot authorize
ME	Me. Rev. Stat. Tit. 22, § 2425(2).	Me. Rev. Stat. Tit. 22, § 2428.	Me. Rev. Stat. Tit. 22, § 2426(1)(E).	Me. Rev. Stat. Tit. 22, § 2428.	Me. Rev. Stat. Tit. 22, § 2428(5).	Me. Rev. Stat. Tit. 22, § 2426(1)(D).	Me. Rev. Stat. Tit. 22, § 2428 (6)(I).	State law cannot authorize
MT	Mont. Code Ann. § 50-46-307.	Mont. Code Ann. § 50-46-308.	Mont. Code Ann. § 50-46-330.	Mont. Code Ann. § 50-46-308.	Mont. Code Ann. § 6-18-202.	Mont. Code Ann. § 50-46-320.	Mont. Code Ann. § 50-46-308.	State law cannot authorize
NJ	N.J. Stat. § 24:6I-5.	N.J. Stat. § 24:6:7(d)(1).	N.J. Stat. § 24:6I:3 "Qualifying patient."	N.J. Stat. § 24:6:7(d)(1).	N.J. Stat. § 24:6I:7(d)(1).	N.J. Stat. § 24:6I:8.	N.J. Admin. Code 8:64-10.4.	State law cannot authorize
NM	N.M. Stat. § 26-2B-4(C).	N.M. Stat. § 26-2B-3(D).	N.M. Stat. § 26-2B-3(G).	N.M. Stat. § 26-2B-3(D).	N.M. Stat. § 26-2B-7(A)(6).	N.M. Stat. § 26-2B-5(2).	N.M. Stat. § 26-2B-7(A)(6).	State law cannot authorize
RI	R.I. Gen. Laws § 21-28.6-6(b).	R.I. Gen. Laws § 21-28.6-12.	R.I. Gen. Laws § 21-28.6-6(f)(2).	R.I. Gen. Laws § 21-28.6-12.	R.I. Gen. Laws § 21-28.6-12(c)(1)(vi).	R.I. Gen. Laws § 21-28.6-7(a)(3).	R.I. Gen. Laws § 21-28.6-12(c)(1)(iv).	State law cannot authorize
VT	Vt. Stat. Ann. Tit. 18, § 4473(b)(1).	Vt. Stat. Ann. Tit. 18, § 4474f.	Stat. Ann. Tit. 18, § 4474f(a)(2).	Stat. Ann. Tit. 18, § 4474f.	Stat. Ann. Tit. 18, § 4474e(j)(2).	Stat. Ann. Tit. 18, § 4474c(a)(1)(A).	Stat. Ann. Tit. 18, § 4474e(d)(1).	State law cannot authorize
WA	Wash. Rev. Code § 69.51A.010(1)(a).	Wash. Rev. Code § 69.51A.055(3).	Wash. Rev. Code § 69.51A.200(2)(f)	Wash. Rev. Code § 69.51A.055(3).	Wash. Rev. Code § 69.51A.200(2)(g).	Wash. Rev. Code § 69.51A.060(8).	Line item vetoed 2011 Wash. Sess. Laws 1345.	State law cannot authorize

ARIZONA

The Arizona Medical Marijuana Act (Proposition 203, 2010) prevents the distribution of marijuana to minors by only allowing those under the age of 18 to become patients if their parent or legal guardian grants informed written consent and agrees to “control the acquisition of the marijuana, the dosage and the frequency of the medical use of marijuana by the qualifying patient.” The law’s registration requirements work to ensure that criminal enterprise can neither profit from medical cannabis sales nor use them as a pretext for other illegal activity. Diversion is prevented by only allowing patients to obtain a 14-day supply of medical cannabis every two weeks, and by limiting legal protections to conduct related to medical use. Individuals with convictions for violent felonies are not allowed to work at medical cannabis dispensaries or cultivation sites. In addition to it being illegal to drive a car in Arizona while under the influence of medical cannabis, labeling requirements also help prevent the possibility of patients inadvertently taking a larger dose than needed. Medical cannabis cannot be grown on public land or anywhere else that is not an enclosed, locked facility. The program does not authorize patients or providers to bring medicine onto federal property. Arizona allows qualified patients and caregivers to cultivate a limited number of plants if the patient lives more than 25 miles from a licensed dispensary.

CALIFORNIA

California’s Compassionate Use Act (Proposition 215, 1996) authorizes cities and counties in the state to create local rules pertaining to the production and distribution of medical cannabis. Over 50 cities and counties in California have passed such ordinances since the legislature enacted the Medical Marijuana Program Act (SB 420, 2003). Cities and counties that decline to pass local ordinances are subject to the default rules in the California Health and Safety Code. While California’s decentralized medical cannabis regulation system under SB 420 results in varied local regulations, the 2009 Ogden Memo repeatedly specified “compliance with state OR LOCAL LAW” (emphasis added) as the standard, including within each of the memo’s seven guidelines.

The medical cannabis program created in California under Prop. 215 and SB 420 also satisfies the present-day 2013 Cole Memo guidelines. The law requires parents to be the caregivers of minor patients. Diverting medical cannabis for non-medical purposes is illegal. To prevent criminal enterprise from taking part in the market, SB 420 calls for local governments to create and enforce local regula-

tions. It is illegal for medical cannabis patients to consume their medicine in a moving motor vehicle. The remaining guidelines are covered by many of the over four-dozen local medical cannabis ordinances. California allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

COLORADO

Colorado's Medical Use of Marijuana law (Amendment 20, 2000) and subsequent action by the state legislature (HB 1284 & SB 109, 2010) established a Marijuana Enforcement Division (MED) that vigorously monitors and enforces adherence to the state's laws and rules for the distribution of medical cannabis to patients with a valid physician's recommendation. The law allows minors access for medical use only if two physicians recommend the therapy and a parent or legal guardian agrees in writing to the treatment. The law authorizes the MED to create strict monitoring regulations to ensure revenue does not go to criminal enterprise and that distribution may not be used as a pretext for other illicit activity. Diversion is a violation of law and is prevented by only allowing registered Colorado patients to enter dispensaries or purchase medicine. Violence prevention is addressed in the regulations by allowing the MED to temporarily suspend the license of any operator whose business creates a public safety risk. The program does not authorize patients to use a motor vehicle while under the influence of medical cannabis. The monitoring regulation enforced by the MED prevents medical cannabis from being grown on public lands. The program does not authorize patients or providers to bring medicine onto federal property. Colorado allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

DISTRICT OF COLUMBIA

The District of Columbia's Legalization of Marijuana for Medical Treatment Amendment Act of 2010 (B18-622, implementing Initiative 59, 1998) prevents distribution of marijuana to minors by requiring parents or legal guardians to grant written consent and agree to be the minor patient's caregiver in charge of acquisition and administration of the medicine. Section 7 of the D.C. medical cannabis statute, along with the 114 pages of regulations for the medical cannabis program, work to ensure that criminal enterprise cannot use the program to earn revenue from medical cannabis sales or use the program as a pretext for other illicit activity. The District program prevents diversion by only extending legal

protection to patients and caregivers whose conduct is in accordance with the strict provisions of the act. The cultivation of medical cannabis in the District is limited to cultivation centers, and medical cannabis cannot be grown on public lands. The use of firearms by D.C. medical cannabis businesses is prevented by the strict gun laws of the District. D.C. law forbids both the operation of motor vehicles under the influence and the undertaking of any professional task that would constitute negligence or professional misconduct. The program does not authorize patients or providers to bring medicine onto federal property.

MAINE

The Maine Medical Marijuana Initiative (Ballot Question 2, 1999) prevents distribution to minors by requiring parents or the legal guardian of a youth patient to give written consent to the treatment option and to be in control of “the acquisition of the marijuana and the dosage and the frequency of the medical use of marijuana by the qualifying patient.” Maine prevents criminal enterprise from entering the market or using medical cannabis as pretext for other illegal activity via the licensure system set forth in 22 MRSA §2428. The law prevents diversion to other states by only granting legal protection to those engaging in conduct related to medical use. Violence and the use of firearms are curbed by background check requirements, as well as the inspection provisions of the law. It is illegal for patients to operate motor vehicles while under the influence of medical cannabis. All cultivation of medical cannabis must take place in an enclosed, locked facility. The program does not authorize patients or providers to bring medicine onto federal property. Maine allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

MONTANA

The Montana Medical Marijuana Act (MMMA, 2004), enacted by 62% of voters, enabled qualified patients to receive medical cannabis from their caregiver in exchange for compensation. The MMMA also contained provisions that meet the eight federal enforcement guidelines set forth in the 2013 Cole Memo. That program was largely dismantled by the passage of SB 423, following 26 simultaneous DEA raids in 13 Montana cities on March 16, 2011. In October 2012, a state judge intervened on the basis of a state constitutional challenge brought by Montana marijuana businesses and issued an injunction preventing enforcement of provisions that would have eliminated distribution. Montana’s medical

cannabis program currently operates under that injunction preventing the state lawmakers' changes to the voter initiative.

Montana lawmakers could resolve the court injunction by introducing a bill that would meet the new federal guidelines and restore the intent of the law passed overwhelmingly by voters. Currently, Montana allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

NEW JERSEY

The New Jersey Compassionate Use Medical Marijuana Act (SB 119, 2010) prevents distribution of marijuana to minors by only allowing minors to have medical access if their parent or legal guardian grants written consent and agrees to be the caregiver in control of the acquisition and possession of the minor's medicine. The state prevents criminal enterprise from profiting from medical cannabis revenue by requiring background checks of all prospective medical cannabis operators. Diversion is prevented by limiting the ability to legally purchase medical cannabis to qualified New Jersey patients or their caregivers. Violence and use of firearms is prevented by requiring owners and employees to submit to criminal background checks. It remains illegal for patients to operate any motor vehicle while under the influence of medical cannabis. The program does not authorize patients or providers to bring medicine onto federal property.

NEW MEXICO

The Lynn and Erin Compassionate Use Act (SB 523, 2007) prevents distribution to minors by requiring that the custodial parent or legal guardian of a youth patient grant written consent to medical cannabis therapy for the child, and requiring the parent or legal guardian to be the youth patient's caregiver in charge of dosage and frequency of medical use. To prevent revenue from going to criminal enterprise and medical cannabis sales from being used as a pretext for other crimes, the law only authorizes "licensed producers" to engage in commercial production and sales. Section 4 of the Act prevents diversion by limiting criminal protections to conduct that is related to medical use. Violence and the use of firearms at productions facilities is mitigated by the requirement for all medical cannabis production to take place on "secured grounds." This same provision also ensures that medical cannabis cannot be grown on public lands. Not only does drugged driving remain illegal, but also New Mexico's medical cannabis law specifies that those who drive under the influence of medical cannabis are

liable for damages and subject to criminal prosecution. The program does not authorize patients or providers to bring medicine onto federal property. New Mexico allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

RHODE ISLAND

The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act (SB 0710, 2006) prevents distribution of marijuana to minors by requiring parents or legal guardians to grant written consent, and to agree to be the minor patient's caregiver in charge of acquisition and administration of the medicine. Rhode Island prevents criminal enterprise from entering the market or using medical cannabis as a pretext for other illegal activity via the licensure system set forth in 22 MRSA § 21-28.6-12. Diversion is addressed by only granting legal protection to patients and caregivers engaging in conduct related to medical use. Violence and use of firearms are prevented by detailed security procedures that owners of medical cannabis businesses must submit to the state for approval. Driving under the influence of medical cannabis remains illegal. The program does not authorize patients or providers to bring medicine onto federal property. Rhode Island allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

VERMONT

Vermont's Act Relating to Marijuana Use by Persons with Severe Illness (SB 76, 2004) prevents distribution of marijuana to minors by requiring parental consent for minors to become legally protected patients. Those who provide medical cannabis to patients must be registered with the state, which prevents revenue from ending up in the hands of criminal enterprise and the program from being used as a pretext for other illicit activities. The law requires the implementation of regulations "with the goal of protecting against diversion and theft." Driving under the influence of medical cannabis is illegal. The cultivation of medical cannabis is prevented on public lands by requiring all medical cannabis to be grown in an "enclosed, locked facility." The program does not authorize patients or providers to bring medicine onto federal property. Vermont allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

WASHINGTON

Under Washington's Medical Use of Marijuana Act (Initiative 692, 1998), patients under the age of 18 are only permitted use of medical cannabis under the direction of a physician, as with prescription medications. Washington state law allows qualified patients and caregivers to cultivate a limited number of plants for personal use. Additionally, several municipalities throughout the state have enacted local zoning and regulation ordinances pertaining to distribution. For example, Seattle City Ordinance No. 123661 subjects the "manufacture, production, processing, possession, transportation, delivery, dispensing, application, or administration of cannabis" to all existing city laws, such as business licensing, building and construction code, and food service and handling requirements. Section 69.51A.140 of the Revised Code of Washington authorizes county and municipal governments to draft ordinances "pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction. As of November 2013, over a dozen cities and counties in Washington State have passed ordinances regulating how patients and caregivers may operate collective gardens. Washington lawmakers and other state officials are currently developing new statewide regulations for the distribution of marijuana, with the intent of satisfying federal concerns.

STATES WITH RECENTLY CREATED DISTRIBUTION PROGRAMS

	Preventing distribution to minors	Preventing revenue from going to criminal enterprises	Preventing diversion of marijuana to other states	Preventing trafficking other illegal drugs or other illegal activity	Preventing violence and the use of firearms	Preventing drugged driving	Preventing growing of marijuana on public lands	Preventing marijuana possession or use on federal property
CT	Conn. Gen. Stat. § 21a-408(10).	Conn. Agencies Regs. § Sec. 21a-408-24	Conn. Gen. Stat. § 21a-408h(G).	Conn. Agencies Regs. § Sec. 21a-408-24	Conn. Agencies Regs. § 21a-408-24(a).	Conn. Gen. Stat. § 21a-408a(b)(2).	Conn. Agencies Regs. § 21a-408-20(58).	State law cannot authorize
DE	Del. Code Ann. Tit 16 § 4909A(b).	Del. Code Ann. Tit 16 § 4919A.	Del. Code Ann. Tit 16 § 4919A(e).	Del. Code Ann. Tit 16 § 4919A.	Del. Code Ann. Tit 16 § 4915A.	Del. Code Ann. Tit 16 § 4904A.	Del. Code Ann. Tit 16 § 4902A(f).	State law cannot authorize
IL	Public Act 098-0122 § 30(a)(3)(G) (Ill., Eff. Jan 1 2014).	Public Act 098-0122 § 15(c) (Ill., eff. Jan. 1, 2014).	Public Act 098-0122 § 130(h) (Ill., eff. Jan. 1, 2014).	Public Act 098-0122 § 15(c) (Ill., eff. Jan. 1, 2014).	Public Act 098-0122 § 10(l) (Ill., eff. Jan. 1, 2014).	Public Act 098-0122 § 30(a)(5) (Ill., eff. Jan. 1, 2014).	Public Act 098-0122 § 105(d) (Ill., eff. Jan. 1, 2014).	State law cannot authorize
MA	105 Code Mass. Rules 725.010(J).	105 Code Mass. Rules 725.105(I).	105 Code Mass. Rules 725.004 “Qualifying Patient”	105 Code Mass. Rules 725.030(A).	105 Code Mass. Rules 725.110.	105 Code Mass. Rules 725.650(B)(1)	105 Code Mass. Rules 725.105(B)(1)(c).	State law cannot authorize
NV	Nev. Rev. Stat. § 453A.210(3).	Nev. Rev. Stat. § 453A.356.	Nev. Rev. Stat. § 453A.210(2)(c).	Nev. Rev. Stat. § 453A.322 .	Nev. Rev. Stat. § 453A.300(1)(c).	Nev. Rev. Stat. § 453A.300(1)(a).	Nev. Rev. Stat. § 453A.352.	State law cannot authorize
NH	2013 N.H. Laws 126-W:4(V).	2013 N.H. Laws 126-W:7.	2013 N.H. Laws 126-W:1(XIII).	2013 N.H. Laws 126-W:7.	2013 N.H. Laws 126-W:7(IV)(13)(c).	2013 N.H. Laws 126-W:3(II)(a)(1).	2013 N.H. Laws 126-W:8(XV)(c).	State law cannot authorize
OR	Or. Rev. Stat. § 475.309(3).	2013 Or. Laws Chap. 726.	Or. Rev. Stat. § 475.300(4).	2013 Or. Laws Chap. 726.	Or. Rev. Stat. § 475.304(6).	Or. Rev. Stat. § 475.316(1)(a).	Or. Rev. Stat. § 475.304.	State law cannot authorize

CONNECTICUT

In 2012, Connecticut legislators passed An Act Concerning the Palliative Use of Marijuana (HB 5389) by a margin of 2:1, even though Governor Dan Malloy received a letter from U.S. Attorney for Connecticut David Fein that threatened prosecution of state employees. The state’s Department of Consumer Protection issued final regulations on September 6, 2013 that meet or exceed the current federal standard. The Connecticut program exceeds the guideline on preventing distribution to minors by not allowing anyone under the age of 18 to become a

registered patient, even if it is medically necessary. Connecticut prevents criminal enterprises from obtaining medical cannabis revenue by licensing those who cultivate and sell medical cannabis. Diversion into other states is prevented by only allowing registered residents of Connecticut to enter a dispensary. Connecticut prevents medical cannabis from being used a pretext for other criminal activity by requiring criminal background checks of everyone who applies to work for a state-licensed medical cannabis provider. This background check, in conjunction with the state's strict gun laws, helps prevent violence and the use of guns in cultivating and distributing medical cannabis. Growing on public lands is prevented by state regulations that limit all medical cannabis to indoor production facilities. Driving under the influence of medical cannabis is illegal. The program does not authorize patients or providers to bring medicine onto federal property.

DELAWARE

Governor Jack Markell signed into law the Delaware Medical Marijuana Act (SB 17) on May 13, 2011, creating a system of medical cannabis dispensaries in the state to be capped at one per county in the initial years of the program. The Delaware Department of Health and Social Services issued draft regulations to implement the program; however, Governor Markell suspended the program in February 2012 after he received a letter from the US Attorney for Delaware advising him that state employees may be prosecuted for implementing the law. As a result, Delaware's medical cannabis program remained dormant for more than a year. Then, on August 15, 2013, two weeks before the 2013 Cole Memo was issued, Governor Markell announced the program would be restarting. New draft regulations were issued in October, which will be finalized by January 1, 2014. The Department of Health and Social Services is expected to select a vendor to operate a single distribution center by May 2014, which would open in the summer. The center will only be allowed to cultivate up to 150 marijuana plants, and keep an inventory of no more than 1,500 ounces (93.75 lbs.) of cannabis.

The Delaware Medical Marijuana Act and draft regulations either meet or exceed the guideline standards set forth in the 2013 Cole Memo. Delaware is one of only two states that completely forbid those under the age of 18 from becoming registered cardholders, regardless of their medical necessity—a level of restriction that exceeds the 2013 Cole Memo guideline on minors. By creating a system of regulated dispensaries, the Delaware program helps ensure that revenue from the sales of medical cannabis only go to those who are vetted and licensed by the

state, and who will be closely monitored to prevent any criminal activity. The law bans anyone who has ever been convicted of a felony from owning or working for a medical cannabis provider in the state. Cannabis grown for the program must be cultivated in an enclosed, locked facility authorized by the state, thereby preventing marijuana from being grown on public lands. The program does not authorize patients or providers to bring medicine onto federal property.

ILLINOIS

Illinois' Compassionate Use of Medical Cannabis Pilot Program Act (HB1, 2013), one of the strictest medical cannabis laws in the country, meets or exceeds each of the eight guidelines set forth in the 2013 Cole Memo. The law exceeds the guideline on preventing distribution to minors by making it illegal to use medical cannabis in the presence of minor. Criminal enterprise is prevented from entering the market by Section 15 of the Act, which sets parameters for licensing and regulating providers. Diversion is prevented by only allowing patients to obtain a 14-day supply of medicine. Violence and firearm involvement is prevented by prohibiting anyone with a record of serious violent crime from becoming a medical cannabis provider. Driving while under the influence of medical cannabis is prohibited. Marijuana is prevented from being grown on public land by requiring that all medical cannabis be grown in an enclosed, locked facility. The program does not authorize patients or providers to bring medicine onto federal property.

MASSACHUSETTS

Massachusetts' Law for the Humanitarian Medical Use of Marijuana (Ballot Question 3, 2012) places much of the regulatory details of the program in the hands of the Massachusetts Department of Public Health, which issued regulations in May and June of 2013. Those regulations prevent distribution to minors by only allowing people under the age of 18 to become qualified patients if they have a "life-limiting illness" or obtain a recommendation from two separate physicians; the minor's parent or legal guardian must also grant written consent to medical cannabis therapy after being informed about its risks and benefits and agreeing to act as the designated caregiver.

Criminal enterprises are prevented from obtaining medical cannabis revenue by the state licensing and monitoring those who will be cultivating and selling cannabis. The regulations prevent the program from being used as a pretext to

sell other illegal drugs by prohibiting those with felony drug convictions from becoming dispensary agents and by screening prospective dispensary owners for criminal histories. Diversion into other states is prevented by only allowing registered Massachusetts resident cardholders to enter dispensaries. The law prevents cannabis from being grown on public property by requiring dispensaries to cultivate cannabis in a designated facility that is open to inspection by the state. The program does not authorize patients or providers to bring cannabis onto federal property. Massachusetts allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

NEVADA

Nevada's Medical Marijuana Initiative (Ballot Question 9, 2000), amended by the legislature in 2001 and 2013, includes a medical cannabis dispensary program which meets the guidelines. Diversion to minors is prevented by requiring parents to give written consent and agree to be the child's designated caregiver. The passage of S.B. 374 enables state regulators to create a medical cannabis dispensary system that prevents criminal enterprise from obtaining medical cannabis revenue or using the program as a pretext for criminal activity. Existing law in Nevada prevents the diversion of medical cannabis from exiting the state and prevents the use of firearms with medical cannabis conduct. Nevada patients are explicitly prohibited from being under the influence of cannabis while behind the wheel. Growing on public land is prevented by specifying all legal medical cannabis cultivation must take place in an enclosed, locked facility. The program does not authorize patients or providers to bring medicine onto federal property. Nevada allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

NEW HAMPSHIRE

New Hampshire's Act Relative to the Use of Cannabis for Therapeutic Purposes (HB 573, 2013) meets the standard set forth in the 2013 Cole Memo. Distribution to minors is prevented by requiring minor patients to have written consent from their parent or legal guardian, who must also agree to be the designated caregiver. Section 126-W:7 of the act sets forth the parameters which will prevent revenue from going to criminal enterprise as well as prevent the medical cannabis law from being a pretext for other criminal activity. The law prohibits out of state patients from being able to purchase medical cannabis in New Hampshire, pre-

venting diversion into other states. The law prevents violence at cultivation and distribution locations by requiring review of each dispensary application “for the safety of the public.” Growing on public lands is prevented by requiring all medical cannabis cultivation to take place in an enclosed, locked facility. It is illegal for medical cannabis patients in New Hampshire to drive while under the influence of medical cannabis. The program does not authorize patients or providers to bring medicine onto federal property.

OREGON

The Oregon Medical Marijuana Act (Ballot Measure 67, 1999) contains provisions that meet the majority of guidelines set forth in the 2013 Cole Memo, and the addition of HB 3460 (2013) ensures that all eight of these benchmarks are addressed by state law. Distribution to minors is prevented by requiring parents to grant affirmative consent and agree to be the designated caregiver. HB 3460 will set up a system of licensed and regulated dispensaries in the state, ensuring criminal enterprise will not benefit from medical cannabis revenue. Diversion is prevented by not granting legal protection for non-medical cannabis conduct. The OMMA requires that all medical cannabis growers undergo a criminal background check, helping to prevent violence with cultivation and distribution. Operating a motor vehicle while under the influence of medical cannabis is prohibited. Rules to prevent medical cannabis from being grown on public land are addressed by regulations. The program does not authorize patients or providers to bring cannabis onto federal property. Oregon allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

STATES WITH PENDING LEGISLATIVE PROPOSALS

	Preventing distribution to minors	Preventing revenue from going to criminal enterprises	Preventing diversion of marijuana to other states	Preventing trafficking other illegal drugs or other illegal activity	Preventing violence and the use of firearms	Preventing drugged driving	Preventing growing of marijuana on public lands	Preventing possession or use on federal property
AR	Arkansas Medical Cannabis Act § 105(b) (2014).	Arkansas Medical Cannabis Act § 109 (2014).	Arkansas Medical Cannabis Act § 105 (8) (2014).	Arkansas Medical Cannabis Act § 109 (2014).	Arkansas Medical Cannabis Act § 109 (d) (2014).	Arkansas Medical Cannabis Act § 107 (a)(3) (2014).	Arkansas Medical Cannabis Act § 106(e)(4) (2014).	State law cannot authorize
FL	Dept. of Health to regulate - Article X, Section 29(d)(1)(a)	Article X, Section 29(d)(1)	Article X, Section 29(c)(1)	Article X, Section 29(d)(1)	Article X, Section 29(d)(1)(c)	Article X, Section 29(c)(3)	Article X, Section 29(d)(1)(c)	State law cannot authorize
ID	39-9110(2)	39-9115	39-9106(1)(e)	39-9115	39-9106(1)(e)(iv)-(v)	39-9105(4)	39-9115(3)	State law cannot authorize
MI	Mich. Comp. Laws § 333.26426(b) (2008)	Mich. Comp. Laws §§ 333.26423(h) and § 333.26424(k)	Mich. Comp. Laws §§ 333.26424(a) 333.26423(d) 333.26426(a)(6).	Mich. Comp. Laws §§ 333.26424(a) 333.26423(d) 333.26426(a)(6).	Mich. Comp. Laws § 333.26423 (h).	Mich. Comp. Laws § 333.26427(b) (4).	Mich. Comp. Laws § 333.26423 (d).	State law cannot authorize
WI	A.B. 480, 101st Leg., § 33 (Wi. 2013).	A.B. 480, 101st Leg., § 6 (Wi. 2013).	A.B. 480, 101st Leg., § 26 (Wi. 2013).	A.B. 480, 101st Leg., § 6 (Wi. 2013).	A.B. 480, 101st Leg., § 6 (Wi. 2013).	A.B. 480, 101st Leg., § 38 (Wi. 2013).	A.B. 480, 101st Leg., § 38 (Wi. 2013).	State law cannot authorize

ARKANSAS

The Arkansas Medical Cannabis Act is an initiative for which signatures are being gathered in order to place it on the November 2014 ballot. The law contains provisions that meet each of the eight guidelines in the 2013 Cole Memo. Distribution to minors is prevented by requiring that parents consent in writing to medical cannabis therapy for their child and agree to be the child's caregiver in control of dosage. Criminal enterprise is prevented from obtaining medical cannabis revenue or from using medical cannabis as a pretext for other criminal activity by directing the Department of Health to issue regulations on nonprofit dispensaries. Violence and the use of firearms is prevented by requiring criminal background checks of dispensary staff. Diversion is prevented by limiting the

amount a patient may obtain and by requiring patients to sign a statement swearing they will not illicitly divert any of their medicine. It would remain illegal for patients to drive while under the influence of medical cannabis. Growing on public lands is prevented by requiring the cultivation of all medical cannabis to take place in an enclosed, locked facility. The program does not authorize patients or providers to bring medicine onto federal property. If passed, the Arkansas Medical Cannabis Act would allow patients with certain hardships to cultivate medical cannabis for personal use with the approval of the state health department.

FLORIDA

Another initiative currently gathering signatures for the 2014 ballot is Florida's Constitutional Amendment "Use of Marijuana for Certain Medical Conditions," which would create a program to regulate dispensaries and allow for patient cultivation. The initiative is similar to Massachusetts's Question 3 (2012), in that both measure leave much authority and decision-making to the state health department. In Massachusetts, the Department of Public Health has enacted rules that are compliant with the 2013 Cole Memo, and Florida can be expected to follow suit. Florida's amendment would allow the Department of Health (DOH) to create rules that would allow minor's to have access to medical marijuana only with written consent of their parent and only if the parent agrees to remain in control of the possession and administration of the medicine. The DOH would create rules pertaining to dispensaries and cultivation facilities that would prevent violence and revenue going to criminals, while ensuring that medical marijuana is not cultivated on public land. The program does not authorize patients or providers to bring cannabis onto federal property.

IDAHO

Idaho's Initiative Relating to Medical Marijuana, currently circulating for signatures to make the 2014 ballot, would be compliant with the guidelines in the 2013 Cole Memo. The measure would prevent distribution to youth by only allowing them to become patients if their parent or legal guardian grants written consent and agrees to be their caregiver in charge of the acquisition, possession and administration of their medical cannabis. The Department of Health and Welfare would be charged with creating rules that would permit medical organizations to be registered with the state to cultivate and sell medical cannabis to

patients and their caregivers, preventing revenue from going to criminal enterprise or medical cannabis being used as a pretext for other illegal activity. Additionally, the department must also draft regulations to prevent safety threats and diversion at medical cannabis cultivation and sales locations. Medical cannabis must be cultivated on private property, thereby preventing cultivation on public lands. The law forbids patients from operating motor vehicles while under the influence of medical cannabis. The program does not authorize patients or providers to bring cannabis onto federal property.

MICHIGAN

The Medical Marihuana Provisioning Center Regulation Act (HB 4271) under current consideration by the Michigan House of Representatives would create a system to “regulate medical marihuana provisioning centers and other related entities,” enabling qualified patients to purchase medical cannabis from licensed, regulated businesses. Distribution to minors would be prevented by allowing only the parent or legal guardian of a patient under the age of 18 to purchase medical cannabis from provisioning centers. HB 4271 would prevent criminal involvement by not allowing anyone with a felony conviction in the past 10 years to become an agent (employee or owner) of a provisioning center and allowing patients to buy medical cannabis under the regulatory parameters of the 2013 Cole Memo and not from criminal enterprises. Under HB 4271, diversion would be prevented by only allowing transportation of medical cannabis between the provisioning center and the residence of a patient or caregiver living in the state. The business license of a provisioning center would be revoked if the center knowingly or negligently distributed medical cannabis to non-authorized persons.

Violence and use of firearms would be prevented by HB 4271’s language prohibiting anyone with a felony conviction within the past 10 years from becoming a dispensary agent, just as Michigan’s current law prohibits those individuals from cultivating medical cannabis or acting as caregivers. Like the existing medical cannabis law in Michigan, HB 4271 could not be used as a shield for engaging in conduct with other illegal drugs or other illegal activity. Michigan’s current program explicitly forbids anyone from driving a car or operating any other sort of motor vehicle while under the influence of medical cannabis. Environmental damage and growing on public lands is prevented under current law by only permitting medical cannabis to be grown in enclosed, locked facilities that are on property owned or leased by the patient or caregiver. Neither current law nor HB 4271 authorizes possession or use on federal property. Michigan law currently

allows qualified patients and caregivers to cultivate a limited number of plants for personal use.

WISCONSIN

Wisconsin's pending medical cannabis dispensary legislation (AB480, SB363), introduced in October 2013, would prevent distribution to minors by only allowing them to become patients if their parent or legal guardian grants written consent and agrees to be their designated caregiver in control of the medicine. The bill would authorize the Department of Health to license and regulate compassion centers, which would prevent criminal enterprise from profiting from medical cannabis or using it as a pretext for criminal activity. Diversion would be prevented by denying a legal defense to anyone who diverts medical cannabis for non-medical uses. Growing on public lands is prevented by licensing and inspection requirements that mandate dispensaries be "safe and secure faciliti[es]," and that all cannabis plants be grown in a "lockable, enclosed facility." Medical cannabis patients may not operate a motor vehicle if they are under the influence. The program does not authorize patients or providers to bring medicine onto federal property.

5. HISTORY SHOWS SOME US ATTORNEYS IGNORE GUIDELINES

Since California enacted the first medical cannabis law in 1996, states have consistently acted to regulate the production and distribution of medical cannabis to ensure safe access for patients while minimizing any negative impacts on the community. As a result, state laws effectively satisfied the enforcement concerns of the federal government—inconsistent and highly selective federal enforcement actions notwithstanding.

2009 Ogden Memo

The DOJ memorandum issued October 19, 2009, by then-Deputy Attorney General David A. Ogden was widely received as the fulfillment of President Obama’s campaign pledge to not use limited federal resources against state-approved medical cannabis programs. The memo’s direction to federal prosecutors that they “should not focus federal resources in [their] States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana” was understood by many state lawmakers and medical cannabis advocates to include anyone operating state-regulated dispensaries or other distribution mechanisms. That is because the memo distinguishes sales and distribution conducted in compliance with state law from that which is not when it says “prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department.”

As Senator Sheldon Whitehouse (D-RI), a former US Attorney, noted during the September 10, 2013, U.S. Senate Committee on the Judiciary hearing, “Conflicts between State and Federal Marijuana Laws”:

A close reading of the paragraph indicates that the term ‘unlawful’ refers to state law... So we come out of the Ogden memorandum with protection from federal prosecution for patients, caregivers, and lawful commercial enterprises...that would presumably include dispensaries.

From 2009 until the issuance of the 2011 Cole Memo, the States of Colorado, Michigan, Montana, New Jersey, and Delaware, as well as the District of Columbia, approved new medical cannabis laws or expanded already existing programs.

The Ogden Memo lists seven characteristics of noncompliance, including: unlawful possession or use of firearms; violence; sales to minors; financial and market-

ing activities inconsistent with state law; amounts of marijuana inconsistent with compliance with state or local law; illegal possession or sale of other controlled substances; or ties to other criminal enterprises. Despite those concrete guidelines, US Attorneys in several states decided to prosecute medical cannabis providers for violations of federal law without offering evidence that they failed to comply with state law. The first raid of state-approved medical cannabis providers in the wake of the Ogden Memo came in January 2010, just two months after it was issued. That was followed by five more federal raids the next month, another five in April, and then with even more frequency as the year progressed. By the end of 2010, the number of known federal raids on state-licensed or otherwise compliant medical cannabis providers grew to 50, with federal interference reaching California, Colorado, Michigan, and Nevada.

On February 1, 2011, the first known letter threatening federal prosecution of state officials and state or municipal employees was sent by U.S. Attorney Melinda Haag to Oakland City Attorney John Russo (see appendix). The letter informed Russo that in addition to the individuals who operate a medical cannabis facility, “others who knowingly facilitate the actions of the licensees...should also know that their conduct violates federal law,” and that “[p]otential actions the Department is considering include...criminal prosecution.”

Similar letters were sent to public officials in at least 10 other states during the first half of 2011, many with far-reaching consequence, including one that derailed the Washington State legislature’s attempt to create a more robustly regulated medical cannabis dispensary system. In vetoing provisions of a dispensary licensing bill, then-Governor Christine Gregoire said:

We cannot presume to assure protections to one group of people—patients, providers and health care professionals—in a way that subjects another group, Department of Health and Department of Agriculture employees, to federal arrest or criminal liability. That is not acceptable to me; it is not workable.

Also in 2011, the DEA got a federal court order to gain access to the State of Michigan’s patient records, even though the state’s medical cannabis law guaranteed patient privacy and prohibited such disclosures.⁵

Threats of prosecution and violations of patient privacy were not the only federal tactics aimed at commandeering state public health policy. Just hours before a

5. "Judge: Michigan must turn over medical marijuana records related to a federal drug investigation," MLive Media, June 4, 2011.

March 14, 2011, vote in the Montana Senate on a bill to repeal the medical cannabis law approved by voters, the DEA simultaneously raided 26 providers across the state. The raids resulted in the gutting of the state's medical cannabis law instead of the passage of proposed regulations for distribution, as well as 16 federal indictments, with one operator of a licensed business left to face a mandatory minimum sentence of 90 years in federal prison.

Not only did the DEA and other federal agents raid providers in Montana, California, Colorado, Michigan, and Nevada without apparent consideration of the providers' compliance with state law, once the providers became defendants in federal court, they were (and continue to be) denied the right to even mention their state's medical cannabis law, much less demonstrate how they complied with it.

2011 Cole Memo

The 2011 DOJ memorandum issued June 29, 2011 by incoming Deputy Attorney General James M. Cole was framed as a clarification of the policy set forth in the Ogden Memo but made clear that only individual patients and their primary caregivers would be protected from federal marijuana enforcement. All distribution operations, no matter how closely regulated by state or local authorities, were now vulnerable to federal prosecution. The Cole memo also stated that the threat letters sent to state and local officials were entirely consistent with DOJ policy.

On August 15, 2011, the Eureka City Council received a letter from the U.S. Attorney for the Northern District of California stating that the city's publicly vetted licensing plan "threatens the federal government's efforts to regulate, the possession, manufacturing, and trafficking of controlled substances." The letter added that, "If the City of Eureka were to proceed, this office would consider injunctive actions, civil fines, criminal prosecution, and the forfeiture of any property used to facilitate a violation of [federal law]" (see appendix). Because of these threats, the City of Eureka suspended implementation of its local ordinance.

In September 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), another arm of the DOJ, issued a memo prohibiting gun dealers from selling firearms to registered medical cannabis patients. The ATF offered no substantiated claim for why medical cannabis patients should be denied their Second Amendment right to bear arms.

In October 2011, the four U.S. Attorneys for California held a rare press confer-

ence, announcing a campaign to destroy the state's 15-year-old production and distribution system, using raids, criminal prosecutions, and asset forfeiture. In addition to raids and prosecutions, the U.S. Attorneys' threat letters to landlords of medical cannabis businesses has resulted in the closure of more than 600 dispensaries. Forfeiture lawsuits have been filed against more than two-dozen property owners. In January 2012, US Attorney for Colorado John Walsh sent similar letters to dozens of property owners in his state, publicly characterizing them as "not a bluff."

On June 11, 2012, just four days after Attorney General Holder testified before Congress that the DOJ was only raiding those "out of conformity with state law," federal agents stormed El Camino Wellness Center, a licensed medical cannabis dispensary in Sacramento, California. El Camino Wellness was a non-profit cooperative that served 27,000 patients in the Sacramento area and was one of a number of medical cannabis businesses that operated with union workers (UFCW Local 5). It was located nowhere near a school, met all state and local guidelines for operation, and had the support of Sacramento City Council members—one of whom wrote to U.S. Attorney Benjamin Wagner questioning the need to target city-sanctioned health facilities. Threats of criminal prosecution and asset forfeiture have resulted in the closure of almost all of the dispensaries that were operating in unincorporated Sacramento County.

On July 10, 2012, one of California's best-known medical cannabis dispensaries, Harborside Health Center, was sued by U.S. Attorney Melinda Haag for "forfeiture of property" against the "third-party" property owner, Real Property and Improvements, though the Oakland dispensary has been fully permitted and operating since 2006 without incident. This action mirrors another property forfeiture lawsuit she has recently leveled against Berkeley Patients Group, another well-respected Bay Area dispensary that has operated with the strong support of local officials for more than a decade.

6. ENDING THE STATE AND FEDERAL CONFLICT

The 2013 Cole Memo was written as a guide for US Attorneys in deciding when to prosecute marijuana cases. However, the vast discretion left to individual US Attorneys usurps state law enforcement authority and undermines equal protection under the law. During the September 2013 US Senate Judiciary Committee hearing on state marijuana laws, Senators Whitehouse and Blumenthal noted the potential pitfalls of such broad discretion and requested the DOJ issue clearly defined metrics for the enforcement priorities in the 2013 Cole Memo. When questioned about whether such metrics would be issued, DAG Cole responded that the Department is working to produce them. In the meantime, US Attorneys should defer to state enforcement efforts made under their current laws. If the forthcoming DOJ metrics mean some states will need to adjust their programs to better align with federal priorities, DOJ should allow states attempting to meet the guidelines sufficient time to bring themselves into compliance through normal legislative processes.

Both through its statements and actions, the DOJ has made clear any binding reforms in federal policy with respect to state medical cannabis laws must come from the Congress. The three DOJ memos all contain the refrain, “Congress has determined that marijuana is a dangerous drug.” Attorney General Holder has declined to use his authority under the Controlled Substances Act to reschedule marijuana or remove it from the CSA, instead opting to maintain the outdated position that it has “no currently accepted medical use in treatment in the United States.” The autonomy with which US Attorneys operate has meant some state medical cannabis programs have been almost untouched while federal prosecutors in other states have threatened lawmakers; violated patient privacy protections; recruited local law enforcement to engage in anti-medical cannabis lobbying campaigns; and raided, arrested, prosecuted and incarcerated scores of patients and providers.

States such as California, Washington, Oregon, Michigan and others where most of the total federal enforcement against medical cannabis providers has been carried out are not likely to see relief. Statements made by US Attorneys in response to the 2013 Cole Memo reveal that some prosecutors have no intention of coming into compliance with the DOJ guidelines, despite their history of targeting medical cannabis.

“We looked at this and the conclusion was this doesn’t really change anything

for us,” said Amanda Marshall, the US Attorney for Oregon, in an interview with *The Oregonian*. “We would still be prosecuting these same cases we have done in the past and the same cases we have open right now.”

That view was echoed by a spokeswoman for US Attorney for the District of Northern California Melinda Haag, who told the *East Bay Express*, “The office is evaluating the new guidelines, and for the most part it appears that the cases that have been brought in this district are already in compliance with the guidelines. Therefore, we do not expect a significant change.”

All of this highlights the need for Congress to take action on comprehensive solutions that avoid needless human suffering, end the waste of millions of taxpayer dollars, and ensure all states and the medical cannabis patients in them enjoy equal application of the law.

FEDERAL RECOMMENDATIONS

Temporary Fix—CJS Appropriations Amendment

On May 9, 2012, several members of Congress introduced a bipartisan amendment to the Commerce-Justice-Science (CJS) appropriations bill that would have barred the Department of Justice and Drug Enforcement Administration from using any of the approved funds to prevent the implementation of state medical cannabis laws. The amendment received the support of 73% of Democrats and 12% of Republicans, a significant increase from the 2007 version.

The CJS Amendment would recognize the right of states to operate their own programs with respect to medical cannabis, without prohibitive interference from the DOJ. The CJS Amendment would not reschedule or otherwise “legalize” medical cannabis. It also would not prevent the DOJ from using funds to enforce federal laws against those who do not operate in compliance with state and local medical cannabis laws. But it would allow the states of Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington, as well as the District of Columbia, to fully implement the programs authorized by their laws.

This approach would allow states that are presently seeking to add statewide medical cannabis regulations a period of time to consider changes that may better comport with the new DOJ guidelines, while simultaneously providing more pro-

tection and confidence in the states that have already approved regulated distribution models. However, this approach would only last one fiscal year, and without some sort of permanent solution would need to be passed again.

Intermediate Solution—Truth in Trials, Marijuana Businesses Access to Banking, and Small Business Tax Equity, Respect State Marijuana Laws Act

Short of comprehensive federal legislation, there are several meaningful and binding individual-issue bills that Congress can adopt to ensure that the DOJ and other federal agencies respect state medical marijuana laws.

For more than a decade, Congressman Sam Farr (D-CA) has repeatedly introduced the Truth in Trials Act (HR 710, 113th). This bipartisan legislation would allow federal medical cannabis defendants to offer evidence in federal court of their lawful state conduct, which is something they are presently forbidden from doing. Though the Truth in Trials Act has been introduced regularly with between 12-32 cosponsors, the bill has yet to receive a committee hearing. Truth in Trials is an essential intermediate bill because it would give meaning in federal court to the eight enforcement guidelines set forth in the 2013 Cole Memo. Had Truth in Trials been in effect at the time of the 2009 Ogden Memo, the efforts of the Obama Administration to undermine state medical cannabis laws likely would have been substantially reduced.

Medical cannabis businesses currently face financial challenges unlike any other state-authorized businesses. The federal crackdown on state medical cannabis laws means these businesses are unable to deposit revenue into banks, which means they are forced to act as cash-only operations. Similarly, the federal tax code forbids medical cannabis businesses from deducting business expenses from their federal tax liability. To address these issues, Representatives Earl Blumenauer (D-OR) and Ed Perlmutter (D-CO) have respectively introduced the current versions of the Small Business Tax Equity Act (HR 2240) and Marijuana Businesses Access to Banking Act of 2013 (HR 2652). HR 2240 would allow state-authorized medical cannabis businesses to deduct businesses expenses when filing their federal taxes, while HR 2652 would grant “safe harbor” to financial institutions who accept deposits from medical cannabis businesses. These two bills would mean that medical cannabis businesses would no longer be subject to the discrimination and tax burden that no other state-authorized businesses are forced to bear.

Another intermediate measure would prohibit federal enforcement of the Controlled Substances Act against medical cannabis conduct that is in compli-

ance with state law. Representative Dana Rohrabacher (R-CA) has introduced the Respect State Marijuana Laws Act (HR 1523), which would allow medical cannabis patients and providers to act in accordance with their respective state laws without fear of federal prosecution. These patients and providers would still be subject to the medical cannabis laws of their state, and those who violate state law could still face prosecution. While HR 1523 would stymie the present DOJ crackdown, it does not address issues such as rescheduling and facilitating medical research.

Permanent Solution—HR 689

Introduced by Rep. Earl Blumenauer (D-OR), the State’s Medical Marijuana Patient Protection Act (HR 689) would reclassify marijuana to recognize its medical value and prevent interference by the federal government in any local or state-run medical cannabis program. The bill would bar the federal government from prohibiting or restricting an individual or entity authorized under state law from obtaining, possessing, transporting within their state, or manufacturing marijuana on behalf of an authorized patient. HR 689 would reclassify marijuana out of our Schedule I and requires the US Attorney General to transfer control of marijuana for medical research from the National Institute on Drug Abuse to an arm of the Executive Branch that is not focused on researching addiction.

STATE RECOMMENDATIONS

For state officials, the 2013 Cole Memo presents the best available set of guidelines to avoid federal inference when creating new medical cannabis programs or amending existing ones. To be clear, the 2013 Cole Memo does not provide guidance on how to create patient-focused medical cannabis legislation, as the memo was drafted without regard to the medical value of cannabis. Lawmakers should consider ASA’s “Legislating Compassion” guide for ways to create patient-focused legislation, as it is possible to draft legislation that is both patient-focused and compliant with the 2013 Cole Memo.

States that are considering adopting or revising a medical cannabis program can look to how other states have established well-regulated medical cannabis distribution systems that guard against the concerns the 2013 Cole Memo says are DOJ enforcement priorities. In looking to other states for examples, lawmakers should realize that while it may appeal to some political factions to draft the “strictest” medical cannabis laws in the country, there is no need to establish overly restric-

tive programs in order to ensure their programs are compliant with the most recent set of DOJ guidelines. In fact, overly restrictive programs harm patients by making it difficult to obtain a physician's recommendation, get registered in a program, or have dispensaries open with medicine available for patients.

Lawmakers should consider first the needs of patients when tailoring their programs to be compliant with the 2013 Cole Memo guidelines. For example, when drafting a provision that prevents distributions to minors, a compassionate law will give parents and legal guardians the right, when medically necessary and appropriate, to allow their children to receive medical cannabis therapy with informed written consent. Additionally, state lawmakers should also recognize that, since 2009, the DOJ has consistently maintained that individual cultivation of medical cannabis by patients or their caregivers is not a federal enforcement concern.

ABOUT THIS REPORT

This report was produced by Americans for Safe Access (ASA). ASA is the largest national member-based organization of patients, medical professionals, scientists, and concerned citizens promoting safe and legal access to marijuana for therapeutic use and research. ASA works in partnership with state, local and national legislators to overcome barriers and create policies that improve access to marijuana for patients and researchers. ASA has more than 50,000 active members with chapters and affiliates in all 50 states.

Learn more about ASA at AmericansForSafeAccess.org.



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.

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

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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U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

June 29, 2011

MEMORANDUM FOR UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding the Ogden Memo in Jurisdictions
Seeking to Authorize Marijuana for Medical Use

Over the last several months some of you have requested the Department's assistance in responding to inquiries from State and local governments seeking guidance about the Department's position on enforcement of the Controlled Substances Act (CSA) in jurisdictions that have under consideration, or have implemented, legislation that would sanction and regulate the commercial cultivation and distribution of marijuana purportedly for medical use. Some of these jurisdictions have considered approving the cultivation of large quantities of marijuana, or broadening the regulation and taxation of the substance. You may have seen letters responding to these inquiries by several United States Attorneys. Those letters are entirely consistent with the October 2009 memorandum issued by Deputy Attorney General David Ogden to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana (the "Ogden Memo").

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 that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large scale criminal enterprises, gangs, and cartels. The Ogden Memorandum provides guidance to you in deploying your resources to enforce the CSA as part of the exercise of the broad discretion you are given to address federal criminal matters within your districts.

A number of states have enacted some form of legislation relating to the medical use of marijuana. Accordingly, the Ogden Memo reiterated to you that prosecution of significant traffickers of illegal drugs, including marijuana, remains a core priority, but advised that it is likely not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or their caregivers. The term "caregiver" as used in the memorandum meant just that: individuals providing care to individuals with cancer or other serious illnesses, not commercial operations cultivating, selling or distributing marijuana.

The Department's view of the efficient use of limited federal resources as articulated in the Ogden Memorandum has not changed. There has, however, been an increase in the scope of

Memorandum for United States Attorneys
Subject: Guidance Regarding the Ogden Memo in Jurisdictions
Seeking to Authorize Marijuana for Medical Use

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commercial cultivation, sale, distribution and use of marijuana for purported medical purposes. For example, within the past 12 months, several jurisdictions have considered or enacted legislation to authorize multiple large-scale, privately-operated industrial marijuana cultivation centers. Some of these planned facilities have revenue projections of millions of dollars based on the planned cultivation of tens of thousands of cannabis plants.

The Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law. Persons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law. Consistent with resource constraints and the discretion you may exercise in your district, such persons are subject to federal enforcement action, including potential prosecution. State laws or local ordinances are not a defense to civil or criminal enforcement of federal law with respect to such conduct, including enforcement of the CSA. Those who engage in transactions involving the proceeds of such activity may also be in violation of federal money laundering statutes and other federal financial laws.

The Department of Justice is tasked with enforcing existing federal criminal laws in all states, and enforcement of the CSA has long been and remains a core priority.

cc: Lanny A. Breuer
Assistant Attorney General, Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, AGAC

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigations



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation



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
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*(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

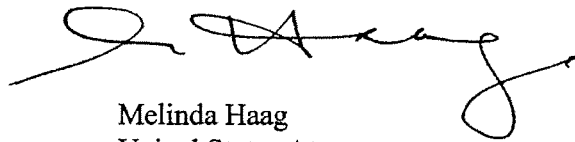
John A. Russo
February 1, 2011
Page 2

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,

A handwritten signature in black ink, appearing to read 'Melinda Haag', with a stylized, flowing script.

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



U.S. Department of Justice

United States Attorney
District of Arizona

Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408

Main: (602) 514-7500
MAIN FAX: (602) 514-7693

March 23, 2011

Dear Tribal Leader:

In keeping with my belief that frequent communication between us is key to improving public safety in Indian Country, I write to provide you with the latest updates on USAO matters and programs that bear on your community. In December, I wrote to you to discuss the transfer of juveniles to adult status in federal criminal matters, and to advise you that the law provides your tribal government with opportunity for input to the process when the juvenile suspects from your community are under the age of 15. Today I write with additional news I think will be of interest to all of you, including an update on the progress of our Tribal SAUSA program, which I introduced in an earlier letter.

Tribal SAUSA Program

In November, I sent you a model letter of agreement detailing the Tribal SAUSA Program, so you could evaluate it and consider whether your government might participate by nominating a tribal prosecutor or other tribal attorney. Several of you have responded in the affirmative and have requested or entered into a final letter of agreement. This office is setting up initial meetings with the tribal prosecutors thus far designated by their leaders and we anticipate this first group (of approximately six tribal prosecutors) will submit papers for the federal background check in April, with SAUSA training for the first class to take place in June. We will repeat the process three months later for up to six additional tribal attorneys. For those tribal leaders still considering whether to participate in the Tribal SAUSA program, I sincerely hope you will take advantage of it and then monitor the benefits to your community. If this is at all a possibility, I encourage you to contact Tribal Liaison John Tuchi at (602) 514-7543 or Deputy Tribal Liaison Marnie Hodahkwen at (602) 514-7568 to discuss it. And if you have decided to participate, please contact John or Marnie to get a final letter agreement addressed to the appropriate official.

USAO Approach to Medical Marijuana in Tribal Lands

Since the voters of the State of Arizona passed, by referendum, a medical marijuana regime in November, several of you have contacted us to discuss the position the United States Department of Justice will take regarding criminal prosecution of marijuana offenses in Indian Country. In October 2009, then-Deputy Attorney General David Ogden issued Department-wide policy guidance on this issue for all districts in which states had enacted laws authorizing medical marijuana cultivation, distribution, possession and use. I enclose with this letter a copy of that policy, which provides in brief that where a target is in "clear and unambiguous compliance" with the state law, federal prosecutors ought not devote scarce resources to the prosecution of program participants. I also attach guidance our

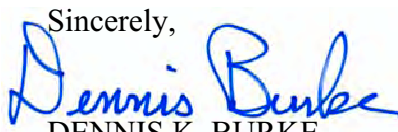
office has recently developed to address the particular circumstance of medical marijuana on tribal lands. That guidance, while honoring the Department-wide policy, also recognizes the unique circumstance of Indian Country, where state law does not apply and tribal criminal law does not reach non-Indians; the guidance therefore provides that we will evaluate every case submitted from Indian Country involving marijuana on a case-by-case basis, and where sufficient evidence is developed taking the matter out of "clear and unambiguous compliance" with the state scheme, we will consider prosecution. A copy of that guidance also is attached. Should you have any questions about either of these policies or medical marijuana in general, please contact John or Marnie at the above numbers.

Special Law Enforcement Commission Program Issues

Another major thrust of our Public Safety Operational Plan is to promote the Special Law Enforcement Commission (or SLEC) Initiative to every tribe with a 638-contract police force. SLEC is a program administered by BIA that allows tribal police officers, upon completing required training in substantive federal law and federal criminal procedure, to act as federal agents for purposes of investigating and prosecuting federal felonies (including the so-called "Major Crimes") in Indian Country. This Office aggressively promotes SLEC status because we recognize that it multiplies the number of trained officers available to properly investigate and bring federal charges against the most serious and dangerous offenders in Indian Country. SLEC also improves the training and ability of those most likely to be the first responders to serious violent crimes in Indian Country - your tribal police.

As we have assumed an increasing role in delivering SLEC training to tribes, we also have observed practices in administering the program that needlessly inconvenience and even discourage otherwise qualified tribal officers and their departments from participating in SLEC. Our concern for the treatment of tribal police officers in Arizona led us to draft substantial portions of a letter from the U.S. Attorney community to Mr. Darren Cruzan, BIA's Assistant Director for Justice Services, pointing out some of the obstacles the current system has placed before those seeking SLEC certification, and suggesting ways to make the program more officer-friendly. I have attached a copy of that letter for your review as well. We are hopeful that BIA will act on our suggestions to make obtaining SLEC a less frustrating and more respectful process for tribal law enforcement.

I hope you find the information in this letter useful. As always, please call me or any member of our Indian Country Team whenever we can be of help.

Sincerely,

DENNIS K. BURKE
United States Attorney
District of Arizona

enclosures

United States Attorney's Office - District of Arizona

Policy Guidance on Medical Marijuana in Indian Country

The United States Attorney's Office for the District of Arizona remains committed to the enforcement of the Controlled Substances Act. Our District policy remains one of "zero tolerance" for illegal distribution or other trafficking of any controlled substance—including marijuana—in Indian Country, no matter what the quantity. Now that the voters of Arizona have enacted by referendum a medical marijuana regime, this District will be subject to, and expected to follow, the attached policy directive from the office of the Deputy Attorney General of the United States, dated October 2009. It provides that USAOs should refrain from devoting scarce resources to the prosecution of individuals who possess or handle marijuana in clear and unambiguous compliance with a state's duly enacted medical marijuana laws. We will therefore handle prosecutions in Indian Country—as with the rest of our potential medical marijuana prosecutions on other federal land and elsewhere—in accordance with the DAG memo. This will not interfere with our commitment to prosecuting illegal drug trafficking on tribal land. We will evaluate every marijuana prosecution referred to us on a case-by-case basis to determine whether there are indicators that an individual is not in clear and unambiguous compliance with state law, which can be indicated in many ways—possessing a quantity of the drug greater than allowed by the state scheme; possession of other controlled substances in concert with marijuana; evidence of distribution for profit; or carriage of a firearm in connection with marijuana. This list is not exhaustive, and in cases where these other factors exist, we will evaluate for federal prosecution.

Recognizing that in many cases, individuals may be subject to stiffer penalties for certain crimes under tribal law than in the federal court system, each tribe may also wish to work to formulate its own policies and regulations for medical marijuana cases. We are also open to further discussions on medical marijuana policy if any tribes have concerns or questions.



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

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.

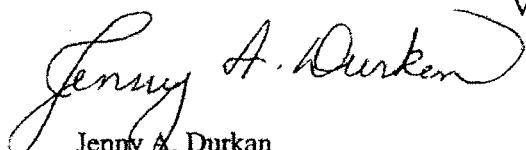
The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking 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

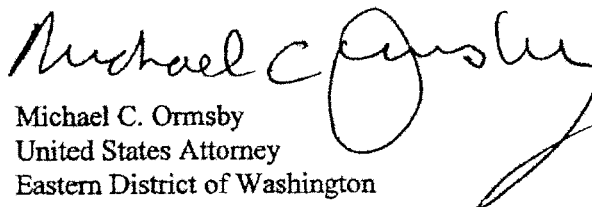
property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

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



U.S. Department of Justice

***United States Attorney
District of Montana***

MICHAEL W. COTTER
United States Attorney

901 Front Street, Suite 1100
Helena, Montana 59626

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:

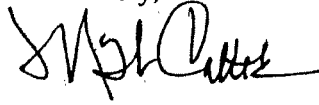
This acknowledges receipt of your letter dated April 18, 2011, requesting Department of Justice guidance concerning a proposed regulatory scheme by the Montana Legislature for the use of marijuana and marijuana infused products for therapeutic purposes. While the Department of Justice has not reviewed 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
Page 2

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", written over a horizontal line.

Michael W. Cotter
United States Attorney



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

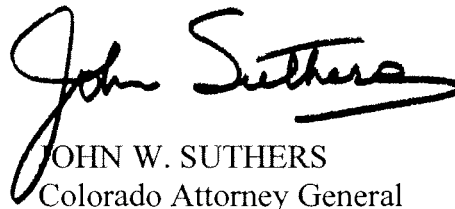
April 26, 2011

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. Bartkiewicz*, 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.

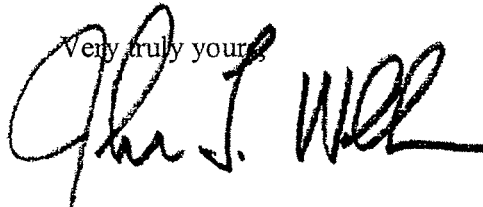
¹ As passed by Colorado voters in 2000, Amendment 20 made lawful under Colorado law the possession by a patient or caregiver of patient of "[n]o more than two ounces of a useable form of marijuana or no more than six marijuana plants with three or fewer being mature, flowering plants producing a usable 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 fluid and cursive, with the first name "John" being the most prominent part.

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 Rhode Island*

Fleet Center
50 Kennedy Plaza, 8th Floor
Providence, Rhode Island 02903

(401) 709-5000
FAX (401) 709-5001

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

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.



U.S. Department of Justice

*United States Attorney
District of Arizona*

*Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408*

*Main: (602) 514-7500
Main FAX: (602) 514-7693*

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

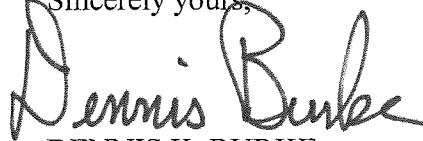
Page 2

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 fluid and cursive, with the first name "Dennis" and last name "Burke" clearly distinguishable.

DENNIS K. BURKE
United States Attorney
District of Arizona



U.S. Department of Justice

*United States Attorney
District of Vermont*

*United States Courthouse and Federal Building
Post Office Box 570
Burlington, Vermont 05402-0570*

*(802) 951-6725
Fax: (802) 951-6540*

May 3, 2011

Commissioner Keith W. Flynn
Vermont Department of Public Safety
103 South Main Street
Waterbury, VT 05671-0001

Dear Commissioner Flynn:

I am writing in response to Deputy Commissioner Rosemary Gretkowski's request for information about the Department of Justice's position on marijuana dispensary legislation, specifically, on S. 17, a bill that would establish registered marijuana dispensaries in Vermont. The purpose of this letter is to ensure there is no confusion regarding the Department of Justice's view of such state-authorized marijuana dispensary operations.

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 purporting 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 cultivate 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.

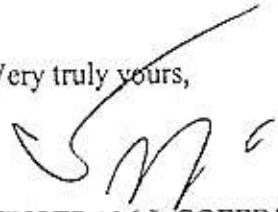
Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as Title 21, United States Code, Section 841, making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana; Title 21, United States Code, 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, United States Code, 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 significant marijuana cultivation and manufacturing operation contemplated in S. 17 as it would involve 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 will carefully consider legal remedies against those who facilitate or operate marijuana dispensaries or marijuana distribution or production as contemplated by S. 17, should that measure become law. Individuals who elect to operate marijuana cultivation facilities will be doing so in violation of federal law. Others who knowingly facilitate such industrial cultivation activities, 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.

I hope this letter assists you in making informed decisions regarding proposed marijuana dispensary legislation such as S. 17.

Very truly yours,

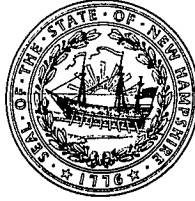


TRISTRAM J. COFFIN
United States Attorney
District of Vermont

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY
ATTORNEY GENERAL



May 10, 2011

Honorable Jeb Bradley
State House Room 302
107 North Main Street
Concord, NH 03301

Re: House Bill 442; relative to the use of marijuana for medicinal purposes

Dear Senator Bradley:

I am writing to voice my opposition to House Bill 442, relative to medical marijuana, including the floor amendment that is currently being considered by the Senate.

I am firmly opposed to House Bill 442 because it will authorize the establishment of state-sanctioned operations for the cultivation and distribution of marijuana—operations that constitute criminal violations under the federal law. While the US Department of Justice has taken the position that it will not focus enforcement efforts on seriously ill individuals who use marijuana as part of a medically recommended treatment program consistent with applicable state laws, it has stated that it will enforce the laws against individuals and organizations that participate in the business of manufacturing and distributing marijuana, even if permissible under state law. Attached is a letter from John Kacavas, U.S. Attorney for the District of New Hampshire, confirming that position. By enacting this bill, the legislature would be giving individuals and state employees false assurance that they will be immune from criminal liability for their activities under the law.

Above and beyond the illegality of the proposed system under federal law, I have a number of other concerns. First, the bill does not prohibit alternative treatment centers from acquiring marijuana from any source, including illegal drug dealers within and without the state. It is simply bad policy to allow state-sanctioned services to be founded on the procurement of contraband. Another potential source of marijuana is out-of-state individuals and entities who are authorized to cultivate medical marijuana in their home state. By allowing that, this state would be encouraging interstate distribution of a controlled drug, which is a clear violation of the federal law.

The bill creates a concern for law enforcement. The bill provides for immunity from arrest for any qualified patient or caregiver who is in possession of less than one-half ounce of

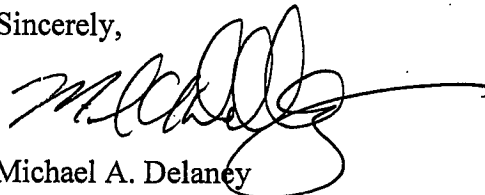
marijuana. However, there is no requirement that marijuana dispensed by the treatment center be retained in its original packaging. Thus, law enforcement has no ability to determine if, in fact, that substance was lawfully obtained. Further, the bill appears to permit designated caregivers to service an unlimited number of patients. This will create confusion as to how much marijuana a caregiver will lawfully be allowed to possess at any one time. Also, it is unknown how much marijuana any alternative treatment center will be allowed to lawfully acquire, cultivate, possess and distribute since it is unknown how many individuals will be designated as registered qualifying patients.

Given the experiences of other states that have attempted to implement similar laws, it is clear that a well-established regulatory system is critical to maintaining control over marijuana dispensaries. Despite the bill's clear statement that no state funds shall be used to implement or administer the chapter, the Department of Health and Human Services will, by necessity, be required to expend time and resources to develop that system before any alternative treatment centers are certified. The Department will have to promulgate rules, create a system for issuing the various identification cards, and review applications, among other things. My Office will be required to expend resources to provide legal counsel to the Department. Yet, there is no fiscal note attached to the bill. I have grave concerns about the adequacy of the regulatory system that will be created given the significant financial constraints the Department is experiencing.

Finally, the amendment calls for the Department of Health and Human Services to lower its standards for certification of an additional treatment center if, after two years, the registered alternative treatment centers in operation are not sufficient to ensure access of marijuana to registered qualifying patients. In that instance, the bill mandates the Department to issue a registration certificate to the applicant which "achieves the highest score," regardless of whether the Department considers that score sufficient.

For all these reasons, I urge you to vote House Bill 442 inexpedient to legislate.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Delaney", with a long horizontal flourish extending to the right.

Michael A. Delaney
Attorney General



U.S. Department of Justice

John P. Kacavas
United States Attorney
District of New Hampshire

*Federal Building
53 Pleasant Street
Concord, New Hampshire 03301*

*Phone 603-225-1552
Fax 603-226-7789*

May 10, 2011

Attorney General Michael A. Delaney
New Hampshire Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

In re: House Bill 442

Dear Attorney General Delaney:

I am writing in response to your request for guidance on "the position of the United States Department of Justice [the Department] as it relates to enforcement of 21 U.S.C. Chapter 13, the Uniform Controlled Substances Act, against state-established treatment centers that would dispense, produce and process marijuana for medical use by qualifying patients." This letter will set forth the Department's view of state-sanctioned schemes that purport to regulate the manufacture and distribution of medical marijuana.

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

The disruption of drug trafficking organizations and the prosecution of individuals and organizations involved in the trade of any illegal drugs is a core priority of the Department. This core priority includes the prosecution of business enterprises that unlawfully market and sell marijuana. As I publicly stated last year, while my office will not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen that complies with state law, the Department maintains the authority to enforce the CSA vigorously against organizations and individuals who unlawfully manufacture and distribute 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.

Attorney General Michael A. Delaney

May 10, 2011

Page 2

Consistent with federal law, the Department maintains the authority to pursue criminal and/or civil actions for any CSA violation when the Department determines that 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).

Additionally, federal money laundering and related statutes that prohibit financial activities that facilitate the movement of drug proceeds may also 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.

As I understand it, House Bill 442 would authorize the New Hampshire Department of Health and Human Services (DHHS) to register an unlimited number of treatment centers to cultivate, process and dispense marijuana. Accordingly, the legislation appears to permit large-scale marijuana cultivation and distribution, which is contrary to federal law and undermines 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 against those entities and individuals who establish marijuana growing facilities and dispensaries, as such actions constitute a violation of federal law. Others, including property owners, landlords, and financiers who knowingly assist those entities and individuals should be aware that their conduct also violates federal law. Consequently, the Department could consider pursuing injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA, civil fines, criminal prosecutions, seizure of the controlled substances, and seizure and forfeiture of any personal and real property used to facilitate the

Attorney General Michael A. Delaney

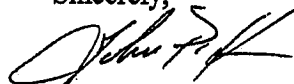
May 10, 2011

Page 3

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 stated repeatedly, the Department remains firmly committed to enforcing the CSA in all states.

I hope you find this letter responsive to your request regarding the Department's position on the state-sanctioned cultivation, manufacture and distribution of marijuana, as well as related financial transactions.

Sincerely,

A handwritten signature in dark ink, appearing to read "John P. Kacavas", with a stylized flourish at the end.

John P. Kacavas

JPK/tal



MAY 17 2011

Department of Justice

*United States Attorney
District of Maine**100 Middle Street
6th Floor, East Tower
Portland, ME 04101**(207) 730-3257
TTY (207) 730-3060
Fax (207) 730-3504
www.usdoj.gov/maine*

May 16, 2011

Hon. Earle L. McCormick
Maine State Senate
100 State House Station
Augusta, ME 04333-0100

Hon. Meredith N. Strang Burgess
Maine House of Representatives
100 State House Station
Augusta, ME 04333-0100

Re: Medical Marijuana Act Legislation

Dear Senator McCormick and Representative Strang Burgess:

I am in receipt of your letter inquiring whether this office has concerns about legislation to amend Maine's Medical Marijuana Act (MMA) now pending before the 125th Legislature and your Committee on Health and Human Services. I write to ensure that there is no confusion regarding the United States Department of Justice's view on such legislative proposals.

We can neither endorse nor comment on the specifics of the MMA or the proposed amendments other than to advise you those activities by users (patients), caregivers and dispensaries remain illegal under the federal Controlled Substances Act (CSA).

This office has consulted with leadership offices within the Department of Justice to assure that our response is consistent with replies of United States Attorneys in other districts.

Congress has determined that marijuana is a controlled substance and has placed marijuana in Schedule I of the CSA. 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 are core priorities of the Department. This priority includes prosecution of individuals and enterprises that unlawfully cultivate 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 Memorandum by then Deputy Attorney General David Ogden, we will enforce the CSA vigorously against individuals and organizations

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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 no state can authorize violations of federal law. Claims of compliance with state or local law may mask operations inconsistent with the terms, conditions or purposes of those federal laws.

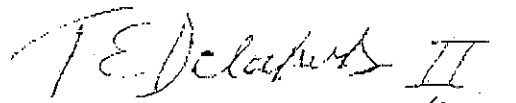
Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever it is determined that such legal action is warranted. This includes, but is not limited to, actions regarding the manufacturing, distribution, or possession with intent to distribute any controlled substance including marijuana, as well as conduct to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances; and, conduct 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, properly traceable to such proceeds, and property used to facilitate drug violations.

The Department is concerned about recent efforts to amend Maine's Medical Marijuana Act, as the legislation involves conduct contrary to federal law and threatens the federal government's efforts to regulate controlled substances. The Department of Justice remains firmly committed to enforcing the CSA in all states.

Any decision to pursue civil or criminal remedies will be made on a case by case basis and using the prosecutorial discretion vested in this office.

I hope this letter provides clarification and assists the State of Maine to make informed decisions regarding legislative efforts on the subject of medical marijuana.

Very truly yours,


Thomas E. Delahanty II
United States Attorney

TED/br

cc: William J. Schneider, Attorney General
Jane Orbeton