



Advancing Legal Medical Marijuana Therapeutics and Research

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Counsel for the City of Huntington Beach
Jennifer McGrath
P.O. Box 190
Huntington Beach, CA 92648

Dear Attorney McGrath:

I am Chief Counsel for Americans for Safe Access (“ASA”), which is the largest organization devoted to protecting the rights of medical marijuana patients. I write to ask you to reconsider your ban on medical marijuana dispensaries in light of the recently published decision in *Qualified Patients’ Association v. City of Anaheim*, -- Cal.App.4th --, G040077 (4th.App.Dist. Aug. 18, 2010).

In *Qualified Patients’ Association, supra*, the Court made clear that federal law does not preempt local regulations of medical marijuana dispensaries under California’s Medical Marijuana Program Act (Cal. Health & Saf. Code, §§ 11362.7-11362.9 [hereinafter “MMPA”]), and that bans on medical marijuana dispensaries, such as yours, may violate California law. The MMPA, as the Court noted, was designed to advance the goal of the Compassionate Use Act to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the persons health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine or any other illness for which marijuana provides relief.” (*Qualified Patients’ Association*, slip opn. at *6 [quoting Cal. Health & Saf. Code, § 11362.5, subd. (b)(1)(A)].) To this end, the MMPA specifically exempts medical marijuana collectives and cooperatives from criminal prohibitions on selling marijuana, which “indicates [the Legislature] contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana.” (*Qualified Patients’ Association, supra*, at *8 [quoting *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 785]; see also Stats. 2003, C. 875, Section 1, subd. (b)(3) [declaring that the purpose of the MMPA is to “[e]nhance the

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access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects”].) Based on this law, the Attorney General has recognized that “a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law. . . .” (*Qualified Patients’ Association, supra*, at *18 [quoting California Attorney General’s “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use,” at p. 11, available at http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf].)

In light of this expressly stated purpose and function of the MMPA, it is not lawful for localities to ban medical marijuana dispensaries absolutely, due to a preference for contrary federal law. “Just as the federal government may not commandeer state officials for federal purposes, a city may not stand in for the federal government and rely on purported federal preemption to implement federal legislative policy that differs from corresponding, express state legislation concerning medical marijuana.” (*Qualified Patients’ Association, supra*, at *32-33.) Based on this new authority, I ask that you reconsider your ban on medical marijuana dispensaries.

Furthermore, while leaving unanswered at this stage of the proceedings whether a local ban on medical marijuana dispensaries conflicts with, and is therefore preempted by California law, the *Qualified Patients’ Association* case makes clear that regulation of dispensaries, rather than an outright ban, is consistent with State law and is not preempted by federal law. And the empirical evidence establishes that medical marijuana dispensaries benefit both patients and the community. (See “Medical Cannabis Dispensing Collectives and Local Regulation,” available at <http://safeaccessnow.org/downloads/dispensaries.pdf>.) For these reasons, I ask that you regulate medical marijuana dispensaries, rather than ban them, and offer our assistance in working with you to comply with California law in this area. Otherwise, we will explore our legal options.

Sincerely,

Joseph D. Elford

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