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February 12, 2010

The Honorable Presiding Justice and Associate Justices
California Court of Appeal
Fourth Appellate District, Division Three
925 N. Spurgeon Street
Santa Ana, CA 92701-3724

Re: *Qualified Patients Association v. City of Anaheim, No. G040077*

**POST-HEARING LETTER BRIEF**

To the Honorable Presiding Justice and Associate Justices:

By Order dated December 21, 2009, this Court called for additional briefing on a question of legislative intent concerning certain sections of the Health and Safety Code. I am writing in response to that Order.

I am a resident of the State of California and I currently serve as the State Senator representing the 3rd Senate District. From 2002 to 2008, I was an Assembly member representing the 13th Assembly District.

While serving as an Assembly member, I was a principal coauthor of Senate Bill 420, which created the Medical Marijuana Program Act, Stats. 2003, ch. 875, (Health & Safety Code § 11362.7, et seq.) [hereinafter "MMPA"]. Prior to that, I was actively involved in issues concerning the implementation of the Compassionate Use Act (Health & Safety Code § 11362.5.) It is therefore my opinion that I am qualified to speak to the legislative intent of the MMPA and that my personal understanding may be helpful to this Court.

Prior to the enactment of the Compassionate Use Act in 1996, the possession and use of marijuana was illegal for nearly all purposes in the State of California, and that illegality was expressed in many places in the statutes, including Health and Safety Code Section 11570. The voters' enactment of the Compassionate Use Act by initiative in 1996 not only changed this, but it called upon the Legislature to "implement a plan for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (§ 11362.5, subd. (b)(1)(C).). The MMPA was the legislative response to this challenge.

To this end, the Legislature enacted Health and Safety Code Section 11362.765 and 11362.775, which provided for medical marijuana collectives and cooperatives. In order to make such provision complete, the Legislature exempted such entities from a host of Health and Safety Code Sections that could be used to hinder medical marijuana collectives, including the nuisance statute (§ 11570), which bars as a nuisance the use of any premises for distribution, storage, or manufacture of controlled substances without providing any explicit enforcement mechanism. The intent of this provision was to prevent government entities from seeking to target medical marijuana collectives for sanctions of any kind based on nuisance law, since this would interfere with the practical implementation of the distribution system envisioned by the MMPA.

Thus, although Section 11570 does not refer to criminal sanctions, it was appropriate for the MMPA to refer to this Section in order to provide practical regulations permitting medical marijuana collectives and cooperatives to operate throughout the State. The use of the term "criminal" in Sections 11362.765 and 11362.775 refers to the relevant Health and Safety Code Sections listed in these Sections. It was never my intention that this term would allow for less-than-criminal or civil sanctions against persons or entities attempting to operate under the MMPA. To permit otherwise would undermine the expressly stated intent of the legislation: to "enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects" and to "promote uniform and consistent application of the act among the counties within the state."

For these reasons, I submit that the clear intent of the MMPA in providing an exemption under the nuisance law was to preempt local ordinances and enforcement efforts based on nuisance law of any kind.

Respectfully submitted,

Mark Leno