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9
10 Attorneys for Plaintiffs

11 **IN THE UNITED STATES DISTRICT COURT**

12 **FOR THE DISTRICT OF ARIZONA**

13 STATE OF ARIZONA; JANICE K.
14 BREWER, Governor of the State of Arizona,
15 in her Official Capacity; WILL HUMBLE,
Director of the Arizona Department of
16 Health Services, in his Official Capacity;
17 ROBERT C. HALLIDAY, Director of the
Arizona Department of Public Safety, in his
18 Official Capacity;

19 Plaintiffs,

20 vs.

21 UNITED STATES OF AMERICA; UNITED
22 STATES DEPARTMENT OF JUSTICE;
23 ERIC H. HOLDER, JR., Attorney General of
the United States of America, in his Official
24 Capacity; DENNIS K. BURKE, United
States Attorney for the District of Arizona, in
25 his Official Capacity; ARIZONA
26 ASSOCIATION OF DISPENSARY
PROFESSIONALS, INC., an Arizona
27 corporation; JOSHUA LEVINE; PAULA

Case No.

**COMPLAINT FOR
DECLARATORY JUDGMENT**

1 PENNYPACKER; DR. NICHOLAS
2 FLORES; JANE CHRISTENSEN; PAULA
3 POLLOCK; SERENITY ARIZONA, INC.,
4 an Arizona nonprofit corporation;
5 HOLISTIC HEALTH MANAGEMENT,
6 INC., an Arizona nonprofit corporation;
7 JEFF SILVA; ARIZONA MEDICAL
8 MARIJUANA ASSOCIATION; DOES I-X;
9 DOES XI-XX;

Defendants.

10 Plaintiffs, State of Arizona; Janice K. Brewer, Governor of the State of Arizona, in
11 her Official Capacity; Will Humble, Director of Arizona Department of Health Services,
12 in his Official Capacity; and Robert C. Halliday, Director of Arizona Department of
13 Public Safety, in his Official Capacity, through undersigned counsel, bring this civil
14 action for declaratory judgment and allege as follows:

THE AMMA

15 1. On November 2, 2010, Arizona voters were asked to consider whether the
16 State should decriminalize medical marijuana. Proposition 203, an initiative measure
17 identified as the “Arizona Medical Marijuana Act” (“The Act” or “AMMA”), envisioned
18 decriminalizing medical marijuana for use by people with certain chronic and debilitating
19 medical conditions. Qualifying patients would be able to receive up to 2 ½ ounces of
20 marijuana every two weeks from medical marijuana dispensaries or to cultivate their own
21 plants under certain conditions. Proposition 203 provided that its purpose “is to protect
22 patients with debilitating medical conditions, as well as their physicians and providers,
23 from arrest and prosecution, criminal and other penalties and property forfeiture if such
24 patients engage in the medical use of marijuana.”

25 2. Arizona voters passed Proposition 203 in November 2010; the Governor
26 signed it into law on December 14, 2010.

1 3. The Act requires the Arizona Department of Health Services (“ADHS”) to
2 be responsible for implementing and overseeing the Act.

3 4. Specifically, the Act provides for the registration and certification by the
4 ADHS of “nonprofit medical marijuana dispensaries,” “nonprofit medical marijuana
5 dispensary agents,” “qualifying patients,” and “designated caregivers.”

6 5. Under the Act, the ADHS is mandated to adopt rules governing the
7 registration and certification process within 120 days after the effective date of the
8 AMMA.

9 6. Under the Act, the ADHS is required to adopt rules establishing the form
10 and content of applications, the manner in which applications will be considered, the
11 amount of application and renewal fees within certain maximum limits, and rules
12 governing dispensaries.

13 7. As required by the Act, the ADHS promulgated final rules that were filed
14 with the Secretary of State on April 13, 2011.

15 8. On April 14, 2011, the ADHS began accepting applications from persons
16 who sought to be certified as Qualifying Patients and Designated Caregivers. As of May
17 24, 2011, 3,696 Qualifying Patients and 69 Designated Caregivers were certified by the
18 ADHS.

19 9. Under the Act, the ADHS is required to register nonprofit medical
20 marijuana dispensaries and to issue a registration certificate within 90 days after
21 receiving an application.

22 10. Under the Act, the ADHS is required to register nonprofit medical
23 marijuana dispensary agents and to issue registry identification cards to qualifying
24 patients and designated caregivers within certain time frames after receipt of information
25 and documents as set forth in the AMMA.

26 11. The ADHS will begin accepting applications for nonprofit medical
27 marijuana dispensaries and nonprofit medical marijuana dispensary agents on June 1,

1 2011. Nonprofit medical marijuana dispensaries and nonprofit medical marijuana
2 dispensary agents must be registered by the ADHS before they can lawfully operate
3 under the Act.

4 12. Beginning August 2011, the ADHS will begin issuing registration
5 certificates for nonprofit medical marijuana dispensaries and registry identification cards
6 for nonprofit medical marijuana dispensary agents.

7 13. Under the Act, a qualified patient, designated caregiver, or nonprofit
8 medical marijuana dispensary agent with a registry card is allowed to acquire, possess,
9 cultivate, manufacture, use, administer, deliver, transfer, and transport marijuana.

10 14. Under the Act, registered nonprofit medical marijuana dispensaries and
11 certain qualified patients and designated caregivers are allowed to cultivate marijuana.

12 15. Under the Act, registered nonprofit medical marijuana dispensaries are
13 allowed to dispense marijuana to qualifying patients and designated caregivers.

14 16. Under the Act, the ADHS is required to maintain a web-based verification
15 system that can be accessed on a 24-hour basis by law enforcement personnel and
16 nonprofit medical marijuana dispensaries to verify registry identification cards.

17 17. Under the Act, the ADHS is required to receive a full set of fingerprints
18 from certain applicants for the purpose of obtaining a state and federal criminal
19 background check. The ADHS has contracted with the Arizona Department of Public
20 Safety ("DPS") to perform these background checks.

21 18. Under the rules for the Act, applicants submitting an application for a
22 registry identification card or to amend, change, or replace a registry identification card
23 for a qualifying patient, designated caregiver, or nonprofit medical marijuana dispensary
24 agent must submit the application electronically through a web-based system created by
25 the ADHS.

26 19. Under the Act, the ADHS is allowed to inspect nonprofit medical marijuana
27 dispensaries after reasonable notice.

1 20. Under the Act, the ADHS is required to generally maintain the
2 confidentiality of all information it receives in the course of its duties.

3 21. The Act provides criminal sanctions for the ADHS employees and agents
4 who breach the confidentiality requirement. Specifically, A.R.S. § 36-2816 provides,
5 “[i]t is a class 1 misdemeanor for any person, including an employee or official of the
6 Department or another state agency or local government, to breach the confidentiality of
7 information obtained pursuant to this chapter.”

8 22. On or about April 14, 2011, Jenny A. Durkan, United States Attorney for
9 the Western District of Washington and Michael C. Ormsby, United States Attorney for
10 the Eastern District of Washington issued a letter to Christine Gregoire, Washington State
11 Governor regarding medical marijuana legislative proposals (“Durkan/Ormsby Letter”).
12 Attached hereto as Exhibit A.

13 23. The Durkan/Ormsby Letter states that “state employees who conducted
14 activities mandated by the Washington legislative proposals would not be immune from
15 liability under the CSA.”

16 24. On or about April 18, 2011, Plaintiff Will Humble, Director of the ADHS
17 (“Director Humble”) spoke by telephone with Assistant United States Attorney Patrick
18 Cunningham inquiring whether the Arizona United States Attorney’s Office was
19 considering sending a letter regarding medical marijuana, and if so, if that letter could
20 address whether state employees would be at risk of federal prosecution for
21 implementation of the AMMA.

22 25. On May 2, 2011, Dennis Burke, the U.S. Attorney for the District of
23 Arizona, issued a letter (“Burke Letter”) addressed to Director Humble, regarding the
24 State’s implementation and oversight of the Act. In that letter, the U.S. Attorney advised
25 Director Humble that the growing, distribution, and possession of marijuana “in any
26 capacity, other than as part of a Federally authorized research program, is a violation of
27 Federal law regardless of State laws that purport to legalize such activities.” The letter

1 further provides that the U.S. Attorney will continue to vigorously prosecute individuals
2 and organizations that participate in unlawful manufacturing, distributing, and marketing
3 activities involving marijuana, even if such activities are permitted under state law.
4 Importantly, the U.S. Attorney wrote that “compliance with Arizona laws and regulations
5 does not provide a safe harbor, nor immunity from Federal prosecution.” A copy of this
6 letter is attached as Exhibit B.

7 26. The Burke Letter ultimately ignored Director Humble’s request for
8 clarification on the issue of federal liability for state employees implementing the
9 AMMA.

10 27. The actions by the Defendant United States Department of Justice (“DOJ”)
11 and its United States Attorneys demonstrate a calculated and coordinated effort on the
12 part of the federal government to threaten prosecution of individuals including state
13 employees who conduct lawful activities under a state’s medical marijuana law.

14 28. Citizens of Arizona and the United States have a right to reasonable
15 certainty with respect to the application of both state and federal law, especially with
16 regard to making medical and business decisions. Further, employees of the ADHS are at
17 risk of being prosecuted by federal authorities if they comply with and implement the
18 AMMA in accordance with its terms.

19 29. On or about October 19, 2009, David W. Ogden (“Deputy AG Ogden”),
20 Deputy Attorney General for the United States Department of Justice, issued to all United
21 States Attorneys a Memorandum for Selected United States Attorneys regarding
22 investigations and prosecutions in states authorizing the medical use of marijuana
23 (“Ogden Memo”). Attached hereto as Exhibit C.

24 30. Since that time, citizens, business entities, and state entities have been
25 operating under the guidelines and assumptions of the Ogden Memo in making their
26 business and medical decisions.

27

1 medical marijuana dispensaries and nonprofit medical marijuana dispensary agents.
2 Activity surrounding a state's authorization and/or licensing of medical marijuana
3 dispensaries has garnered the attention of U.S. Attorneys in other states. Director
4 Humble sues in his Official Capacity and on behalf of the ADHS employees who are
5 following state law in implementing the AMMA.

6 36. Plaintiff Robert C. Halliday ("Director Halliday") is the Director of the
7 DPS. The DPS employees, under the direction of Director Halliday, perform criminal
8 background checks and use the web-based verification system to verify registry
9 identification cards as contemplated under the AMMA. Director Halliday sues in his
10 Official Capacity and on behalf of the DPS employees who are following state law in
11 implementing the AMMA. Additionally, the DPS, as a state law enforcement entity,
12 faces conflicts, as do other law enforcement entities, between the activity permitted by
13 the AMMA and not permitted by federal law which places those law enforcement
14 employees in an untenable position.

15 37. Defendant United States of America ("United States") is a sovereign
16 government of those limited enumerated powers specified in the Constitution of the
17 United States. All references in this Complaint refer to Defendant United States of
18 America in its sovereign capacity.

19 38. Defendant DOJ is an executive department of the United States
20 government. The DOJ and its subordinate agencies are responsible for enforcement of
21 the CSA, 21 U.S.C. §§ 801, *et seq.*, under the direction of the United States Attorney
22 General.

23 39. Defendant Eric H. Holder, Jr. is the Attorney General of the United States
24 of America ("U.S. Attorney General") and, as head of the DOJ, has responsibilities
25 associated with national drug policy including but not limited to enforcement and
26 prosecution of violations of the CSA. The U.S. Attorney General is sued in his Official
27 Capacity.

1 40. Defendant Dennis K. Burke is the United States Attorney for the District of
2 Arizona (“U.S. Attorney Burke”), and as such, is the chief federal law enforcement
3 officer in the District of Arizona. U.S. Attorney Burke is charged with the responsibility
4 to prosecute violations of federal law, including violations of the CSA. U.S. Attorney
5 Burke is sued in his Official Capacity.

6 41. Defendants United States, DOJ, U.S. Attorney General, and U.S. Attorney
7 Burke are hereinafter referred to as the “Government Defendants.”

8 42. Defendant Arizona Association of Dispensary Professionals, Inc.
9 (“AZADP”) is an Arizona corporation with its principal place of business at 17233 N.
10 Holmes Boulevard, Suite 1615, Phoenix, Arizona 85053. The AZADP is an organization
11 comprised of approximately 8000 members. The AZADP membership includes patients,
12 caregivers, dispensary candidates, and other business owners whose operations are
13 directly related to the Arizona medical marijuana industry.

14 43. Numerous members of the AZADP, acting in good faith and in full
15 compliance with state laws, and in reliance upon the full faith and credit of the
16 Constitution of Arizona, have made significant personal and financial investments into
17 various medical marijuana business operations throughout Arizona.

18 44. Defendant AZADP’s standing and legal position in this action may be
19 adverse to that of the government Defendants.

20 45. The judgment obtained in this action could have far reaching adverse
21 consequences for the Defendant AZADP’s members, causing severe and irreparable
22 personal and financial harm.

23 46. Upon information and belief, Defendant Joshua Levine (“Mr. Levine”) is
24 and, at all times relevant hereto, has been an Arizona resident and registered Independent
25 voter. Mr. Levine has declared that he voted in favor of Proposition 203 and believes that
26 his rights, power and influence as a voter will be injured and infringed if Proposition 203
27 is not fully implemented.

1 47. Upon information and belief, Defendant Paula Pennypacker (“Ms.
2 Pennypacker”) is and, at all times relevant hereto, has been an Arizona resident and
3 registered Republican voter. Ms. Pennypacker has declared that she voted in favor of
4 Proposition 203 and believes her rights, power, and influence as a voter will be injured
5 and infringed if Proposition 203 is not fully implemented.

6 48. Upon information and belief, at all times relevant hereto, Defendant Dr.
7 Nicholas Flores (“Dr. Flores”) was an Arizona licensed physician specializing in
8 oncology and radiology. Upon information and belief, Dr. Flores has contractually
9 agreed to serve as a medical director for an intended dispensary applicant and believes
10 that his financial interests, contractual and other rights will be compromised and injured
11 if Proposition 203 is not fully implemented.

12 49. Upon information and belief, at all times relevant hereto, Defendant Jane
13 Christensen (“Mrs. Christensen”) was an Arizona resident. Upon information and belief,
14 Mrs. Christensen is a prospective dispensary applicant and has spent significant sums in
15 pursuit of a license and believes she stands to suffer injury to her financial and other
16 interests if Proposition 203 is not fully implemented.

17 50. Upon information and belief, at all times relevant hereto, Defendant Paula
18 Pollock (“Ms. Pollock”) was an Arizona resident. Upon information and belief, Ms.
19 Pollock was a prospective dispensary applicant and has spent significant sums in pursuit
20 of a license and believes she stands to suffer injury to her financial and other interests if
21 Proposition 203 is not fully implemented.

22 51. Upon information and belief, at all times relevant hereto, Defendant
23 Serenity Arizona, Inc. (“Serenity Arizona”) was an Arizona nonprofit corporation. Upon
24 information and belief, Defendant Serenity Arizona is a prospective dispensary applicant
25 and has spent significant sums in pursuit of a license and believes it stands to suffer
26 injury to its financial and other interests if Proposition 203 is not fully implemented.
27

1 52. Upon information and belief, at all times relevant hereto, Defendant
2 Holistic Health Management, Inc. (“Holistic Health”) was an Arizona nonprofit
3 corporation. Upon information and belief, Defendant Holistic Health is a prospective
4 dispensary applicant and has spent significant sums in pursuit of a license and believes it
5 stands to suffer injury to its financial and other interests if Proposition 203 is not fully
6 implemented.

7 53. Upon information and believe, at all times relevant hereto, Defendant Jeff
8 Silva (“Mr. Silva”) was an Arizona resident suffering from a debilitating condition and
9 has been advised by health care professionals that his condition would benefit from the
10 use of medical marijuana. Upon information and belief, Mr. Silva believes that he stands
11 to suffer injury if Proposition 203 is not fully implemented.

12 54. Defendant Arizona Medical Marijuana Association (“AZMMA”) is a real
13 party in interest in regard to the Act’s implementation. The AZMMA was established
14 after the 2010 passage of Proposition 203. The AZMMA’s membership includes the
15 individuals who, as the registered political committee known as the Arizona Medical
16 Marijuana Policy Project, qualified this measure for the ballot and then secured its
17 passage. The AZMMA and its members are committed to the Act’s implementation in a
18 manner that establishes a well-regulated medical marijuana program to serve the needs of
19 patients with debilitating medical conditions and furthers the intent of the Act.

20 55. Defendants DOES I-X are sued under fictitious names because their true
21 names and capacities are unknown: that DOES I-X are persons, partnerships,
22 associations, corporations, limited liability companies, limited partnerships, or some
23 other form of entity that is subject to the jurisdiction of this Court. DOES I-X assert that
24 the AMMA is a valid and enforceable law that should be fully implemented in
25 accordance with its terms; that the true names and interests of DOES I-X will be
26 determined and this Complaint amended when this information is ascertained.

27

1 69. The CSA states that under federal law it is unlawful to conspire to commit
2 any of the violations set forth in the CSA. 21 U.S.C.A. § 846.

3 70. The CSA states that under federal law it is unlawful to knowingly open,
4 lease, rent, use, or maintain property for the manufacturing, storing, or distribution of
5 controlled substances. 21 U.S.C.A. § 856.

6 71. Under federal law, it is unlawful to aid and abet the commission of a
7 federal crime. 18 U.S.C.A. § 2.

8 72. Under federal law, it is unlawful to conspire to commit an offense against
9 the United States. 18 U.S.C.A. § 371.

10 73. Under federal law, it is unlawful to assist an offender thereby becoming an
11 accessory to a crime. 18 U.S.C.A. § 3.

12 74. Under federal law, it is unlawful to conceal knowledge of a felony from the
13 United States. 18 U.S.C.A. § 4.

14 75. Under federal law, it is unlawful to make certain financial transactions
15 designed to promote illegal activities or to conceal or disguise the source of the proceeds
16 of that illegal activity. 18 U.S.C.A. § 1956.

17 **STATES ENACTING MEDICAL MARIJUANA LAWS AND WARNINGS /**
18 **ENFORCEMENT HISTORY OF THE FEDERAL GOVERNMENT**
19 **DEFENDANTS**

20 76. Approximately 16 States and the District of Columbia have enacted laws
21 relating to medical marijuana. Those states include: Arizona, Washington, Montana,
22 Colorado, California, Rhode Island, Hawaii, Vermont, Nevada, New Mexico, New
23 Jersey, Michigan, Alaska, Delaware, Maine, and Oregon.

24 77. At least two States, Rhode Island and Vermont, have suspended their
25 medical marijuana programs following certain acts of enforcement by the Defendants.

26 78. Growers and dispensary owners in several states with medical marijuana
27 laws have endured federal raids of their facilities operating under duly enacted state laws.

1 Such states suffering federal raids include, but are not necessarily limited to, Michigan,
2 Nevada, Montana, and California.

3 79. In Arizona, applicants for nonprofit medical marijuana dispensaries have
4 filed for Special Use Permits under the AMMA to operate such facilities.

5 80. Based upon the stated course of action that will be taken by the federal
6 government against those lawfully working in furtherance of the states' laws regarding
7 implementation of the AMMA, the property, revenue, and liberty interests of the State of
8 Arizona and its citizens are at risk of seizure, forfeiture, and federal prosecution while
9 acting in compliance with state law.

10 81. The employees and officers of the State of Arizona have a mandatory duty
11 to implement and oversee the administration of the AMMA. Failure to faithfully
12 implement the AMMA exposes Plaintiffs to legal action. Yet, pursuant to Exhibits A and
13 B, the Plaintiffs and their employees and officers risk prosecution and penalties under
14 federal criminal statutes if they faithfully comply with Arizona law.

15 82. The ADHS' employees and agents cannot comply with both the federal
16 requirements of reporting wrongdoing (18 U.S.C.A. §§ 3, 4, and 371) and with the
17 AMMA's confidentiality obligations (A.R.S. §§ 36-2810 and 2816).

18 83. In implementing and overseeing the administration of the AMMA,
19 employees and officers of the State of Arizona face a very definite and serious risk that
20 they could be subjected to federal prosecution for aiding and abetting the use, possession,
21 or distribution of marijuana under the CSA.

22 84. Not only do the Plaintiffs have a personal stake in the controversy at issue,
23 they also assert the interests of other employees, officers, and citizens of the State of
24 Arizona who are or may be similarly situated.

25 85. These employees, officers, and citizens of the State of Arizona would
26 otherwise have standing to sue in their own right. The interests of these employees,
27 officers, and citizens of the State of Arizona are germane to the purposes of the Plaintiffs

1 in filing this action. Neither the claims asserted nor the relief requested requires the
2 participation of these individuals in this action.

3 86. The Plaintiffs, employees, officers, and citizens of the State of Arizona are
4 presented with the certain and immediate dilemma to choose between complying with
5 Arizona state law and risking serious federal prosecution and other serious penalties.

6 87. The Government Defendants have communicated a specific warning or
7 threat of criminal prosecution and other legal proceedings to Director Humble, even if the
8 Plaintiffs and employees, officers, or citizens of the State of Arizona are following
9 Arizona state law. The federal government has made clear its intent to threaten and
10 eventually eliminate any business or enterprise related to the medical use of marijuana.
11 As such, these actions qualify as pre-enforcement warnings or threats to initiate
12 proceedings against Plaintiffs, and those similarly situated.

13 88. The Government Defendants have a history of enforcement against those
14 acting under state law with regard to the medical marijuana laws of other states.

15 89. The property of the Plaintiffs and that of citizens are at risk of seizure and
16 forfeiture. The State of Arizona and its citizens stand to lose revenue. The employees,
17 officers, and citizens of the State of Arizona are at risk of prosecution and other penalties
18 if they follow the duly enacted AMMA in compliance with the laws of Arizona.

19 90. With all due respect to the Government Defendants, the actions of these
20 Government Defendants serve to undermine efforts of the Plaintiffs to implement state
21 law in accordance with the will of the people of the State of Arizona.

22 91. In addition, upon information and belief, the remaining Defendants contend
23 that AMMA should be implemented in accordance with its terms and that such
24 implementation will not constitute a violation of the CSA.

25 THE OGDEN MEMO

26 92. On or about October 19, 2009, (“Deputy AG Ogden”), Deputy Attorney
27 General for the United States Department of Justice, issued to all United States Attorneys

1 a Memorandum for Selected United States Attorneys regarding investigations and
2 prosecutions in states authorizing the medical use of marijuana. *See* Exhibit C.

3 93. The stated purpose of the Ogden Memo was to provide “clarification and
4 guidance to federal prosecutors in States that have enacted laws authorizing the medical
5 use of marijuana” and to “provide uniform guidance to focus federal investigations and
6 prosecutions in these States on core federal enforcement priorities.”

7 94. The Ogden Memo states, *inter alia*, that “[t]he Department of Justice is
8 committed to the enforcement of the Controlled Substances Act in all States.”

9 95. The Ogden Memo states that “Congress has determined that marijuana is a
10 dangerous drug, and the illegal distribution and sale of marijuana is a serious crime. . . .”

11 96. The Ogden Memo states that “[i]n general, United States Attorneys are
12 vested with ‘plenary authority with regard to federal criminal matters’ within their
13 districts. USAM 9-2.001. In exercising this authority, United States Attorneys are
14 ‘invested by statute and delegation from the Attorney General with the broadest
15 discretion in the exercise of such authority.’ *Id.* This authority should, of course, be
16 exercised consistent with Department priorities and guidance.”

17 97. The Ogden Memo states that “[t]he prosecution of significant traffickers of
18 illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and
19 trafficking networks continues to be a core priority in the Department’s efforts against
20 narcotics and dangerous drugs, and the Department’s investigative and prosecutorial
21 resources should be directed toward these objectives.”

22 98. The Ogden Memo states that “[a]s a general matter, pursuit of these
23 priorities should not focus federal resources in your States on individuals whose actions
24 are in clear and unambiguous compliance with existing state laws providing for the
25 medical use of marijuana. For example, prosecution of individuals with cancer or other
26 serious illnesses who use marijuana as part of a recommended treatment regimen
27 consistent with applicable state law, or those caregivers in clear and unambiguous

1 compliance with existing state law who provide such individuals with marijuana, is
2 unlikely to be an efficient use of limited federal resources.”

3 99. The Ogden Memo states that “prosecution of commercial enterprises that
4 unlawfully market and sell marijuana for profit continues to be an enforcement priority of
5 the Department. To be sure, claims of compliance with state or local law may mask
6 operations inconsistent with the terms, conditions, or purposes of those laws, and federal
7 law enforcement should not be deterred by such assertions when otherwise pursuing the
8 Department’s core enforcement priorities.”

9 100. The Ogden Memo states that “[o]f course, no State can authorize violations
10 of federal law.”

11 101. The Ogden Memo states that “[i]ndeed, this memorandum does not alter in
12 any way the Department’s authority to enforce federal law, including laws prohibiting the
13 manufacture, production, distribution, possession, or use of marijuana on federal
14 property.”

15 102. The Ogden Memo states that “[t]his guidance regarding resource allocation
16 does not ‘legalize’ marijuana or provide a legal defense to a violation of federal law, nor
17 is it intended to create any privileges, benefits, or rights, substantive or procedural,
18 enforceable by any individual, party or witness in any administrative, civil, or criminal
19 matter. Nor does clear and unambiguous compliance with state law or the absence of one
20 or all of the above factors [unlawful possession or unlawful use of firearms, violence,
21 sales to minors, financial and marketing activities inconsistent with the terms, conditions,
22 or purposes of state law, including evidence of money laundering activity and/or financial
23 gains or excessive amounts of cash inconsistent with purported compliance with state or
24 local law, amounts of marijuana inconsistent with purported compliance with state or
25 local law, illegal possession or sale of other controlled substances, or ties to other
26 criminal enterprises] create a legal defense to a violation of the Controlled Substances
27 Act.”

1 AMMA will not protect them from federal criminal prosecution, asset forfeiture and
2 other civil penalties. This compliance with Arizona laws and regulations does not provide
3 a safe harbor, nor immunity from federal prosecution.”

4 THE STATE OF WASHINGTON

5 108. In or about 1998, the State of Washington first enacted a law to
6 decriminalize medical marijuana.

7 109. On or about April 14, 2011, Jenny A. Durkan, United States Attorney for
8 the Western District of Washington and Michael C. Ormsby, United States Attorney for
9 the Eastern District of Washington issued a letter to Christine Gregoire, Washington State
10 Governor regarding medical marijuana legislative proposals (“Durkan/Ormsby Letter”).
11 *See* Exhibit A.

12 110. The Durkan/Ormsby Letter states, *inter alia*, that “we maintain the
13 authority to enforce the CSA vigorously against individuals and organizations that
14 participate in unlawful manufacturing and distribution activity involving marijuana, even
15 if such activities are permitted under state law.”

16 111. The Durkan/Ormsby Letter states that “[t]he Washington legislative
17 proposals will create a licensing scheme that permits large-scale marijuana cultivation
18 and distribution. This would authorize conduct contrary to federal law and thus, would
19 undermine the federal government’s efforts to regulate the possession, manufacturing,
20 and trafficking of controlled substances. Accordingly, the Department [of Justice] could
21 consider civil and criminal legal remedies regarding those who set up marijuana growing
22 facilities and dispensaries as they will be doing so in violation of federal law.”

23 112. The Durkan/Ormsby Letter states that “[o]thers who knowingly facilitate
24 the actions of the licensees, including property owners, landlords, and financiers should
25 also know that their conduct violates federal law.”

26
27

1 dispensaries, as well as property owners, as they will be acting in violation of federal
2 law.”

3 127. The Walsh Letter states that “[a]s the Attorney General has repeatedly
4 stated, the Department of Justice remains firmly committed to enforcing the federal law
5 and the Controlled Substances Act in all states.”

6 128. The Attorney General of Colorado issued a letter dated April 26, 2011, to
7 the Governor of Colorado, John Hickenlooper and Members of the Colorado General
8 Assembly regarding the federal enforcement of marijuana laws (“COAG Letter”).
9 Attached hereto as Exhibit F.

10 129. The COAG Letter states “[o]f great concern is the fact that some . . . U.S.
11 Attorneys do not consider state employees who conduct activities under state medical
12 marijuana laws to be immune from liability under federal law.”

13 THE STATE OF CALIFORNIA

14 130. In or about 1996, the State of California first enacted a law to decriminalize
15 medical marijuana.

16 131. On or about February 1, 2011, Melinda Haag, United States Attorney for
17 the Northern District of California issued a letter to the Oakland City Attorney, John A.
18 Russo (“Haag Letter”). Attached hereto as Exhibit G.

19 132. The Haag Letter states, *inter alia*, that “[t]he prosecution of individuals and
20 organizations involved in the trade of any illegal drugs and the disruption of drug
21 trafficking organizations is a core priority of the Department. This core priority includes
22 prosecution of business enterprises that unlawfully market and sell marijuana.”

23 133. The Haag Letter states that “we will enforce the CSA vigorously against
24 individuals and organizations that participate in unlawful manufacturing and distribution
25 activity involving marijuana, even if such activities are permitted under state law. The
26 Department’s investigative and prosecutorial resources will continue to be directed
27 toward these objectives.”

1 result demonstrates the need for judicial intervention and a declaration of rights regarding
2 the AMMA and federal law.

3 165. Further, the deliberate and ominous shift in tone of the more recent U.S.
4 Attorneys' Letters, including Exhibit B, has had a negative and palpable effect and
5 created uncertainty as to the application of federal law to state medical marijuana
6 programs, and in particular, the AMMA. The Court should resolve this uncertainty by
7 declaring whether the AMMA complies with federal law and should be implemented in
8 accordance with its terms, or conversely, whether the AMMA is preempted by the CSA
9 and therefore void.

10 CONCLUSION

11 166. By virtue of the foregoing, the federal government's position places the
12 AMMA in conflict with the CSA as well as the policies of the DOJ that have been
13 implemented to enforce the CSA.

14 167. Defendants DOES I-X, contrary to the federal government, contend that the
15 AMMA does not violate federal law and that it should be strictly implemented in
16 accordance with its terms.

17 168. Defendants DOES XI-XX, in accordance with the federal government,
18 contend that the AMMA does violate federal law and that it should not be implemented.

19 169. A controversy has arisen and now exists between Plaintiffs and Defendants
20 and, indeed among Defendants, relating to their rights and duties.

21 170. In light of this controversy and the competing claims of the parties,
22 Plaintiffs desire a declaration of Plaintiffs' rights with respect to whether the AMMA
23 complies with federal law and should be implemented and enforced in accordance with
24 its terms, or whether the AMMA should be declared preempted in whole or in part
25 because of an irreconcilable conflict with federal law.

26 171. Such a declaration is necessary so that Plaintiffs may ascertain their rights
27 and duties because of the unsettled and competing claims of the parties.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request a declaratory judgment as follows:

A. The Court declare the respective rights and duties of the Plaintiffs and the Defendants regarding the validity, enforceability, and implementation of the AMMA.

B. The Court determine whether strict compliance and participation in the AMMA provides a safe harbor from federal prosecution.

C. The Court grant such other and further relief as it deems appropriate and proper.

Dated this 27th day of May, 2011.

THOMAS C. HORNE
Attorney General

s/ Kevin D. Ray
Kevin D. Ray
Lori S. Davis
Aubrey Joy Corcoran
Assistant Attorneys General

Attorneys for Plaintiffs

#1924728

EXHIBIT A



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.

Honorable Christine Gregoire
April 14, 2011
Page 2

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.

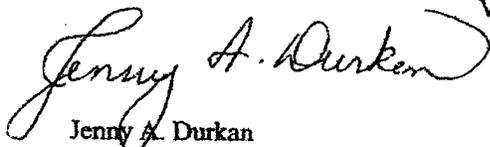
The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking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

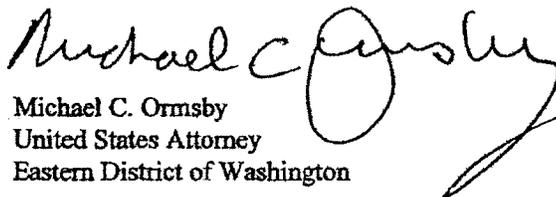
property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

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

EXHIBIT B



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,

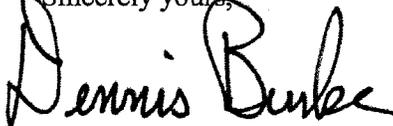
Letter to Director Will Humble
May 2, 2011
Page 2

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 written in a cursive style with a large, prominent "D" and "B".

DENNIS K. BURKE
United States Attorney
District of Arizona

EXHIBIT C



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

Memorandum for Selected United States Attorneys

Page 2

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

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.

Memorandum for Selected United States Attorneys

Page 3

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

Lanny A. Breuer
Assistant Attorney General
Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Acting 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 Investigation

EXHIBIT D



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:

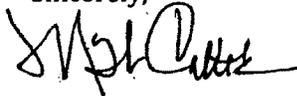
This acknowledges receipt of your letter dated April 18, 2011, requesting Department of Justice guidance concerning a proposed regulatory scheme by the Montana Legislature for the use of marijuana and marijuana infused products for therapeutic purposes. While the Department of Justice has not reviewed 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". The signature is stylized and written in a cursive-like font.

Michael W. Cotter
United States Attorney

EXHIBIT E



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

John Suthers
April 26, 2011
Page 2

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. Bartkowicz*, 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.

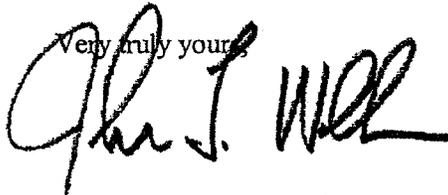
¹ As passed by Colorado voters in 2000, Amendment 20 made lawful under Colorado law the possession by a patient or caregiver of patient of "[n]o more than two ounces of a useable form of marijuana or no more than six marijuana plants with three or fewer being mature, flowering plants producing a usable 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 written in a cursive, somewhat stylized font.

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

EXHIBIT F



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.

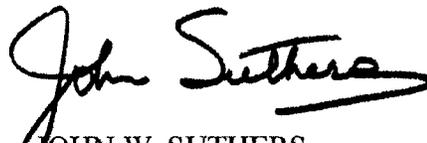
Since the Ogden memo was issued several states, including Colorado, have enacted medical marijuana regulatory schemes that have resulted in explosive growth in the number of persons claiming to be using marijuana for medical purposes. In Colorado for example, there are now approximately 123,000 registered 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

EXHIBIT G



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
San Francisco, California 94102-3495*

*(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

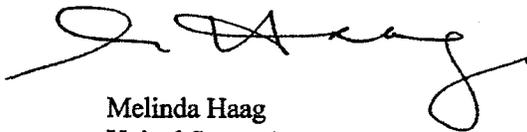
John A. Russo
February 1, 2011
Page 2

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,



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

EXHIBIT H



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

The Honorable Lincoln D. Chafee -2-

April 29, 2011

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-

The Honorable Lincoln D. Chafee

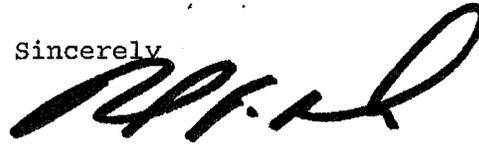
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April 29, 2011

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.

EXHIBIT I



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) 541-2830
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
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-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
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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

EXHIBIT J

Westlaw.

2007 WL 2333160 (N.M.A.G.)

Page 1

2007 WL 2333160 (N.M.A.G.)

Office of the Attorney General
State of New Mexico

*1 August 6, 2007

Re: Request for Opinion - Exposure to Federal Prosecution

Dr. Alfredo Vigil
Cabinet Secretary Designate

Dear Dr. Vigil:

You have asked our advice whether a Department of Health ("Department") employee, or representative acting on behalf of the Department, may be subject to federal prosecution under the Controlled Substances Act ("CSA"), 21 U.S.C.A § 801 et seq., for implementation or management of the medical use marijuana registry and identification card program, if acting in accordance with the statutory mandate of the Lynn and Erin Compassionate Use Act ("Compassionate Use Act" or "Act"). You have also asked whether the Department may facilitate by regulatory authority the licensing of independent producers and production facilities for the purposes of cultivating, possessing and distributing **medical marijuana** pursuant to the Compassionate Use Act. Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us at this time, we conclude that a Department employee, or representative acting on behalf of the Department, may be subject to federal prosecution under the Controlled Substances Act. Assuming arguendo that the Compassionate Use Act does not violate federal law, the Act grants express statutory authority to the Department to promulgate rules that list the requirements for the licensure of producers and cannabis production facilities and procedures to obtain a license.

There is a nationwide public policy debate regarding the propriety of state **medical marijuana** laws. The 2007 New Mexico legislature enacted the Lynn and Erin Compassionate Use Act to govern the use of **medical marijuana** in New Mexico. See 2007 N.M. Laws, Ch. 210. The law's enactment raised questions concerning the Department's exposure to federal prosecution under the CSA resulting from its implementation of the Compassionate Use Act and the scope of the Department's authority under that Act.

There are three rules of statutory construction that apply to this matter. First, the United States Supreme Court sets "the law of the land." Bradley v. Milliken, 519 F.2d 679, 680 (1975). Second, a state legislature can enact a statute that authorizes an agency to adopt implementing regulations. See New Mexico Petroleum Marketers Ass'n v. New Mexico Environmental Improvement Bd., 2007-NMCA-060, ¶ 13, 2007 WL 1593294. Third, an agency's authority is limited by statute and therefore regulations must be fully authorized by and consistent with the directions of the governing statute. See Howell v. Heim, 118 N.M. 500, 504, 882 P.2d 541 (1994); Chalambas v. Environmental Improv. Div., 102 N.M. 63, 67, 691 P.2d. 64 (Ct. App.1984).

1. Exposure to Federal Prosecution Under the CSA

A series of United States Supreme Court and federal court cases govern the topic of legal exposure to federal

prosecution for **medical marijuana** activity. In 2001, the Supreme Court ruled: "The Controlled Substances Act ... prohibits the manufacture and distribution of various drugs, including marijuana." United States v. Oakland Cannabis Buyers' Co-Op., 532 U.S. 483, 486 (2001). The Court rejected the concept of a **medical marijuana** exemption. This means the Court has concluded that the manufacture and distribution of marijuana, even for **medical marijuana** use, is illegal. Federal authorities have relied on this ruling to enter into homes to destroy **medical marijuana** and to prosecute citizens for growing **medical marijuana**—even when those citizens were acting pursuant to state **medical marijuana** laws. See Gonzales v. Raich, 545 U.S. 1 (2005) (holding that the federal Commerce Clause prohibits the manufacture, distribution, or possession of marijuana by intrastate growers and users of marijuana for medical purposes—under a preliminary injunction relief analysis); United States v. Rosenthal, 266 F.Supp.2d 1068, 1077 (N.D. Cal. 2003) (defendant who openly grew marijuana for use in a local **medical marijuana** program authorized by California state law was prosecuted and convicted of federal criminal violation and served one day in jail) aff'd in part, rev'd in part, 454 F.3d 943 (9th Cir. 2006).

*2 The Attorney General's Office has the statutory duty to provide legal advice and representation to state agencies. See NMSA 1978, § 8-5-2 (1975). Therefore, while proponents of state **medical marijuana** laws may argue that federal authorities have shown little enthusiasm for prosecuting patients beyond the above-mentioned cases and that federal authorities have shown no interest in prosecuting state agencies for implementing a marijuana registry and identification card program, we must caution that the Department and its employees, or representatives acting on behalf of the Department, may be subject to federal prosecution for implementing the Compassionate Use Act. [FN1]

Should an employee or a representative of the Department be charged with violating the CSA, that person likely would be unable to seek legal representation from the Attorney General's office. By statute, "the attorney general of New Mexico is directed to act, if requested, as attorney for any officer, deputy, assistant, agent or employee of the state or of a state institution in the event such person is named as a party in any civil action in connection with an act growing out of the performance of his duty" NMSA 1978, § 8-5-15 (1959) (emphasis added). See also NMSA 1978, § 36-1-21 (1905) (providing for fine and removal from office if attorney general "shall consult with any accused defendant, or in any other manner shall aid the defense of any person accused of any crime or misdemeanor in this state"). This means the legislature has not authorized our office to defend state officers and employees in criminal cases.

2. Department's Authority to Promulgate Implementing Regulations

The Department's authority to regulate the licensing of independent producers and production facilities for the purposes of cultivating, possessing and distributing **medical marijuana** is governed by the Compassionate Use Act. Assuming arguendo that it does not violate federal law, the Compassionate Use Act grants express statutory authority to the Department to promulgate "rules in accordance with the State Rules Act ... [that] identify requirements for the licensure of producers and cannabis production facilities and set forth procedures to obtain a license." 2007 N.M. Laws, Ch. 210, § 7(A)(5). The deadline for these regulations is October 1, 2007. "[R]egulations ... are presumptively valid and will be upheld if reasonably consistent with the authorizing statutes." See New Mexico Mining Ass'n v. New Mexico Water Quality Control Comm., 2007 -NMCA- 010, ¶ 12, 141 N.M. 41, 46. Thus, the regulations will be presumptively valid under state law if promulgated in a manner that is procedurally and substantively consistent with the governing statute. [FN2]

Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in

the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,
*3 Steve Suttle

Zachary Shandler
Assistant Attorneys General

[FN1]. As discussed in the text, patients who use **medical marijuana** pursuant to the Compassionate Use Act are also at risk of federal prosecution. The Legislature's Fiscal Impact Report on Senate Bill 523, the bill enacted as the Compassionate Use Act, noted: "The Office of the Attorney General has noted that until such time as the U.S. Attorney General or the Congress make possession of medical cannabis lawful under federal law, a contrary state law gambles with the personal liberty of those who use medical cannabis as authorized by state law but that still subjects them to criminal prosecution under federal law."

www.legis.state.nm.us/Sessions/07%20Regular/firs/SB0523.html.

See also www.legis.state.nm.us/Sessions/05%20regular/firs/SB0492.html.

[FN2]. It is our understanding that the Department initially deliberated whether to promulgate regulations for the marijuana registry and identification card program by emergency regulation, but elected to follow the Act's provisions governing the issuance of temporary certificates for patient participation in medical use of cannabis program. See 2007 N.M. Laws, Ch. 210, § 10.

2007 WL 2333160 (N.M.A.G.)
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EXHIBIT K



MM U V MR F

DEPARTMENT OF JUSTICE
United States Attorney
District of Maine

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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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May 16, 2011
Hon. Earle M. McCormick
Hon. Meredith N. Strang Burgess
Page 2

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.

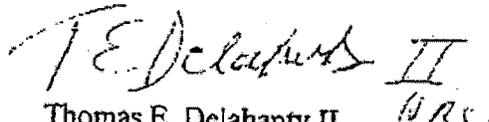
Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever it is determined that such legal action is warranted. This includes, but is not limited to, actions regarding the manufacturing, distribution, or possession with intent 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