



## OFFICE OF THE BUTTE COUNTY COUNSEL

Phone (530) 538-7621  
Facsimile (530) 538-6891

### MEMORANDUM

DATE: October 13, 2011

TO: Board of Supervisors

FROM: Bruce Alpert, County Counsel  
Kathleen Kehoe Greeson, Deputy County Counsel

SUBJECT: Medical Marijuana Dispensaries Ordinance

---

Summary: On January 12, 2010, the Board of Supervisors approved an interim urgency ordinance placing a moratorium on medical marijuana dispensaries. On February 23, 2010, the Board of Supervisors extended the duration of the interim urgency ordinance for an additional 22 months and 15 days. The interim urgency ordinance will expire on January 10, 2012.

Background: At the time of our last meeting regarding marijuana dispensaries, most agencies were awaiting a decision in the *Qualified Patients Assn. vs. City of Anaheim* case. In that case, in 2007, the City of Anaheim approved a dispensary ban and a local dispensary sued.<sup>1</sup> The city won at the trial court level and the dispensary appealed. At the appellate level, the California Court of Appeals determined that the federal Controlled Substances Act did not preempt Prop 215 or the Medical Marijuana Program Act (SB 420) (the "MMP") as there was no conflict with federal law and the City was not authorized to enforce federal law. Further, the court held there was no violation of the Unruh Civil Rights Act with respect to enactment of legislation. However, the decision did not settle the issue of whether dispensary bans were permissible under the law. The case was then remanded to trial court for determinations as to whether Prop 215 or the MMP preempted the City's ordinance. On August 15, 2011, Judge David Chaffee of the Orange County Superior Court released a minute order holding that the City of Anaheim's dispensary ban was not preempted by California law, Prop 215 or the MMP. The court held:

"Simply stated, a city can enact a valid nuisance law against certain activities involving medical marijuana if those activities pose a threat to public safety."

---

<sup>1</sup> *Qualified Patients Assn. v. City of Anaheim*, Case No. G040077.

The order did sever a criminal sanction remedy to the ban, but otherwise upheld the ordinance. Qualified Patients Association's attorney indicated that the decision will be appealed to the 4<sup>th</sup> District Court of Appeal, and therefore this decision is not settled law.

In the time since our urgency ordinance passed, Los Angeles County struggled with over 1,000 dispensaries operating in their boundaries. The county enforced its ordinance against a dispensary with a preliminary injunction, the dispensary resisted, and in *County of Los Angeles v. Hill*, the California Court of Appeal held that the County could obtain a preliminary injunction prohibiting defendants from dispensing marijuana anywhere in the unincorporated portion of the county without obtaining the necessary licenses and permits required by County code.<sup>2</sup> The court went on to state that the limited statutory immunity from prosecution under the "drug den" abatement law pursuant to Health & Safety Code section 11362.775 does not prevent a county from applying its nuisance laws to medical marijuana dispensaries that do not comply with valid ordinances. The court went on to state: "The statute does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose."

Additionally, in *Pack v. Superior Court*, the California Court of Appeal recently held that an ordinance enacted by the City of Long Beach which permitted and regulated medical marijuana dispensaries infringed on federal law. The court held that by permitting the dispensaries and not simply decriminalizing them, the ordinance was preempted by federal law. Please note that this decision will likely be appealed and may be considered by the California Supreme Court.

Further, the California legislature recently enacted AB 1300, which amended California Health and Safety Code section 11362.83 to read that local agencies may adopt "local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective.." and to provide for civil or criminal enforcement of the same.

Lastly, the U.S. Department of Justice has recently sent letters to both dispensaries and landlords of dispensaries, putting parties on notice that dispensary operations are in violation of federal law and that the Department of Justice intends to vigorously prosecute such violations of the law. The dispensaries and landlords are subject to criminal and civil sanctions, including forfeiture of rents or property. A copy of one such letter is attached to this memorandum for your information.

Based on the foregoing, it appears that there is additional support for the adoption of regulations regarding marijuana dispensaries by local agencies. If you would like additional information, please contact this office.

---

<sup>2</sup> *County of Los Angeles v. Hill* (2011) 192 Cal.App.4<sup>th</sup> 861. Please note that since the time this litigation commenced, Los Angeles County has banned all dispensaries. The cases do not extend to this current ordinance. However, on May 12, 2011, the Los Angeles Superior Court did issue a preliminary injunction against a dispensary pursuant to the new comprehensive ban in Los Angeles County.



**U.S. DEPARTMENT OF JUSTICE**

*United States Attorney  
Eastern District of California*

*Benjamin B. Wagner  
United States Attorney*

Robert T. Matsui  
United States Courthouse  
501 I Street, Suite 10-100  
Sacramento, CA 95814

Phone 916/554-2700  
Fax 916/554-2900  
TTD 916/554-2855

October 6, 2011

**CERTIFIED U.S. MAIL RESTRICTED DELIVERY RETURN RECEIPT REQUESTED**

Reed Francis  
2961 State Highway 32, Suite 2  
Chico, CA 95973

RE: North Valley Holistic Health 2961 Highway 32, Suite 17, Chico, CA 95973 APN: 042-090-085

Dear Reed Francis:

This office has received information that the above-referenced property is being used to cultivate and/or distribute marijuana in violation of federal law, and that you are an owner, or have management or control, of the property. This letter is formal notice that continued use of the property in violation of federal law may result in forfeiture and criminal or civil penalties. You should consult an attorney concerning this letter.

Cultivation and distribution of marijuana are felony crimes under the federal Controlled Substances Act. It is also a felony for a property owner to rent, lease or otherwise make a place available for cultivation or distribution of marijuana. Violation can result in imprisonment and a fine of up to \$500,000; or a civil penalty of \$250,000 or twice the gross receipts, whichever is greater.

In addition, any property used to cultivate or distribute marijuana may be forfeited to the United States without compensation, along with any proceeds of the illegal activity. Under federal forfeiture law, the "innocent owner" defense is unavailable to those who know or have reason to know of the illegal use of their property. This letter puts you on notice.

It is not a defense to claim the property is providing so-called "medical marijuana." Congress has determined that marijuana is a dangerous drug, and that the manufacture and distribution of

marijuana are serious crimes. The Department of Justice remains firmly committed to enforcing the Controlled Substances Act in all states. Accordingly, we will vigorously enforce the prohibitions against cultivation and distribution of marijuana, even if such activities are permitted by state law. Those who allow their property to be used for such activities do so at their peril.

If you have any questions about this letter, please contact Assistant U.S. Attorney Kevin C. Khasigian at (916) 554-2700.

Sincerely,

BENJAMIN B. WAGNER  
United States Attorney



KEVIN C. KHASIGIAN  
Assistant U.S. Attorney