

Commentary

July 19, 2011

The US Department of Justice and Drug Enforcement Administration Each Affirm Their Positions on “Medical Marijuana”

The United States Drug Enforcement Administration (DEA) and its parent organization, the Department of Justice (DOJ) recently issued separate rejections of the use of marijuana as a medicine. Sixteen states now permit the use of so-called “medical marijuana” by individuals with a recommendation from a doctor for such use. The communications from the DOJ and DEA are consistent with a US Supreme Court ruling that that federal law supersedes state law for the sale and distribution of “medical marijuana.”¹ Marijuana is classified as a Schedule I controlled substance under the Controlled Substances Act.

In a memorandum from DOJ dated June 29, 2011, James M. Cole, Deputy Attorney General, provided guidance to US Attorneys regarding enforcement of the Controlled Substances Act in jurisdictions where “medical marijuana” is permitted.² The Cole memo affirmed the position taken by DOJ in a 2009 memo from Deputy Attorney General David Ogden which stated that while the Department does not focus on seriously ill marijuana users, it can and will prosecute the marijuana dispensaries that manufacture and sell marijuana.³ The Cole memo made it clear that businesses seeking to make profits from marijuana through cultivation, sales, and distribution of marijuana were in violation of federal law and were at risk of federal prosecution, even if these activities complied with state laws.

Meantime, in a recent letter to the Coalition for Rescheduling Cannabis, DEA Administrator Michele M. Leonhart confirmed that there is no basis for initiating proceedings to reschedule marijuana.⁴ She stated that marijuana will remain a Schedule I drug because it is widely abused, it currently has no accepted medical use in treatment in the US, and it lacks accepted safety for use under medical supervision.

In 2005, the US Supreme Court clearly established the federal preemption of states laws on “medical marijuana” and rejected the claims of “medical necessity.”⁵ Robert L. DuPont, M.D., President of the Institute for Behavior and Health, Inc. (IBH), joined in the submission of an *amicus* brief to the Supreme Court in that case that stressed the lack of scientific evidence for the efficacy of marijuana as a medicine and the importance of maintaining the nation’s system of medical drug approval with its closed distribution system for drugs, particularly those with high abuse potential.

IBH commends DOJ for once again clearly stating the federal government’s commitment to enforcement of the Controlled Substances Act which unambiguously prohibits “medical marijuana.” Additionally, IBH applauds the DEA for adhering to this Act by maintaining marijuana as a Schedule I drug. The Cole memorandum and Leonhart letter both support the 2005 Supreme Court decision and commit the resources of the federal government to the continued enforcement of this vital public health law.

For more information on the Institute for Behavior and Health, Inc. visit www.ibhinc.org.

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¹ Gonzales v. Raich, 545 U.S. 1 (2005).

² J. M. Cole, personal communication, June 29, 2011.

³ D W. Ogden, personal communication, October 19, 2009.

⁴ M. M. Leonhart, personal communication, June 21, 2011.

⁵ Gonzales v. Raich, 545 U.S. 1 (2005).