

Commentary

April 22, 2011

Department of Justice Takes Strong Stance Against “Medical Marijuana” Dispensaries: They Remain Illegal Under Federal Law and Are Subject to Prosecution

Last week Washington State Governor Christine Gregoire sent a letter to United States Attorney General Eric Holder seeking written guidance on “the Department of Justice’s position on enforcement of the Controlled Substances Act [CSA] if state law were to establish a regulatory system wherein state officials license persons to dispense, produce, and process marijuana for medical use by qualifying patients.”ⁱ Washington is one of fifteen states and the District of Columbia which currently permit “medical marijuana.” Marijuana remains a prohibited Schedule I drug of abuse under the CSA. A category of Schedule I means that a drug has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of the drug under medical supervision.ⁱⁱ No prescriptions may be written for Schedule I drugs. They are subject to production quotas by the Drug Enforcement Administration (DEA) under the head of the US Department of Justice.

The state of Washington is currently considering legislation to permit its Departments of Health and Agriculture to license persons to dispense, produce and process marijuana for medical use. US Attorneys in Washington State, Jenny A. Durkan and Michael C. Ormsby, responded as representatives of the Department of Justice to the Governor’s concern over this new legislation.ⁱⁱⁱ They replied that under federal law the DEA has “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 towards these objectives.”

The recently proposed Washington State legislative licensing plans would violate federal law. Attorneys Durkan and Ormsby warn that if passed, the Department of Justice could take strong measures against growing facilities, dispensaries, as well as individuals who participate in the manufacturing and dispensing of marijuana, including state employees.

This letter confirms the sense of a memorandum written by US Deputy Attorney General David W. Ogden in 2009^{iv} -- in which he states that while the Department of Justice does not focus on seriously ill marijuana users, it can and will prosecute the marijuana dispensaries that manufacture and sell marijuana.

Similarly, a February 2011 letter from US Attorney Melinda Haag of the Northern District of California provided guidance to Oakland City Attorney John A. Russo, Esq. on the City of Oakland Medical Cannabis Cultivation Ordinance which solicited applications for permits to operate “industrial cannabis cultivation and manufacturing facilities.”^v She confirmed that any person electing to participate in the operation of such facilities is in violation of federal law and may be subject to prosecution.

Concerns among states with “medical marijuana” laws appear to be growing. This week the New Jersey Attorney General Paula Dow reportedly sent letters to US Attorney General Holder and New Jersey US Attorney Paul Fishman asking for clarification regarding the state’s “medical marijuana” legislation.^{vi}

Throughout this series of letters and memoranda, the US Department of Justice has made it clear that: (1) State law does not supersede federal law, and, (2) “Medical marijuana” dispensaries are in violation of federal law, thereby demonstrating a commitment to enforcing the CSA and US treaty obligations. There is no ambiguity about the legality of dispensaries. Moreover, these communications are consistent with the ruling by the US Supreme Court in *Gonzales v. Raich* (2005) which clearly established the federal preemption of states laws on “medical marijuana” and rejected the claims of “medical necessity.”^{vii}

Recently support for “medical marijuana” has waned in the many of the states that have laws permitting marijuana use for medical purposes. Although Montana’s “medical marijuana” law was approved by the voters in a 2004 ballot initiative, legislation to repeal the law passed both the state House and Senate before being vetoed by Governor Brian Schweitzer. The grassroots efforts of Montanans to repeal the law are leading the way for other states to develop legislation to repeal their “medical marijuana” laws. Similar repeal grassroots efforts are underway in Arizona and in California. These efforts are fueled by the negative effects of the current “medical marijuana” programs which are clearly not limited to a small number of seriously ill people but which function as de facto legalization of marijuana use.

“Medical marijuana” is neither good public health policy nor compassionate healthcare for the sick. It is the Trojan Horse of marijuana legalization. Many supporters of “medical marijuana” are motivated by sincere belief that marijuana offers unique benefits for some people who suffer from serious illnesses. However, an important distinction must be made between “medical marijuana” which is crude marijuana plant material and pharmaceutical products such as Marinol or synthetic tetrahydrocannabinol (THC; the psychoactive ingredient in marijuana). Marinol is approved by the Food and Drug Administration (FDA) and has been available for any physician to prescribe to any patient since 1985.

The Institute for Behavior and Health, Inc. (IBH) supports the use of purified cannabinoids, including THC, as medications that are approved by the FDA, prescribed by licensed physicians to bona fide patients, and that are distributed just as are all other prescribed medicines in the United States. IBH objects to “medical marijuana” programs and dispensaries which provide virtually unlimited amounts of the marijuana plant to anyone who wants it for almost any reason.

The important news today is that the US Department of Justice has clearly stated that “medical marijuana” dispensaries, which manufacture and distribute an illegal drug of abuse, are in violation of federal law and are subject to federal prosecution.

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

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ⁱ C. O. Gregoire, personal communication, April 13, 2011.

ⁱⁱ Drug Enforcement Administration. (2011). Title 21 – Food and Drugs, Chapter 13 – Drug Abuse Prevention and Control. Retrieved April 20, 2011 from <http://www.justice.gov/dea/pubs/csa.html>

ⁱⁱⁱ A. J. Durkan & M. C. Ormsby, personal communication, April 14, 2011.

^{iv} D. W. Ogden, personal communication, October 19, 2009.

^v M. Haag, personal communication, February 1, 2011.

^{vi} Livio, S. K. (2011, April 19). Paula Dow wants to know if N.J. medical pot legislation violates federal law. Retrieved April 20, 2011 from

http://www.northjersey.com/news/041911_Attorney_general_wants_to_know_if_NJ_medical_pot_legislation_violates_federal_law.html

^{vii} Gonzales v. Raich, 545 U.S. 1 (2005).