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STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

September 29, 2000

Honorable Tom Orloff
Alameda District Attorney
1225 Fallon Street, Room 900
Oakland, CA 94612

Dear Mr. Orloff:

I am writing to discuss with you the approach my office is taking on the question of whether or not to promulgate new statewide law enforcement guidelines with regard to marijuana possession. I have concluded that, at least for the time being, it is neither legally necessary nor appropriate to do so. Here is my thinking on the matter.

Since California voters enacted Proposition 215 in November of 1996, a number of controversies continue to complicate the implementation of that measure and the enforcement of marijuana possession and use laws in our state. Immediately upon assuming office, I invited an expert and representative panel to meet in Sacramento to discuss how to effectuate the will of the voters in implementing Proposition 215. The group consisted of representatives from law enforcement, the medical community, lawyers and advocates for the pain management and "death-with-dignity" interests. The task force was co-chaired by Senator John Vasconcellos and Santa Clara County District Attorney George Kennedy. The group met monthly for seven months and produced a legislative proposal that was ultimately introduced by Senator Vasconcellos as Senate Bill 848.

Senate Bill 848 contained many of the ideas agreed upon by the task force, including a statewide voluntary registry system, identification cards for medicinal marijuana patients and limitations on the use of medicinal marijuana by minors, probationers and prisoners. Senate Bill 848 did not include "guidelines" or "standards" addressing the quantity of marijuana a person with a valid recommendation could possess. This issue was discussed and debated many times within the task force before the final legislative recommendations were drafted. However, the strong consensus of the task force was that the amount of marijuana a patient may possess might well depend on the type and severity of illness, and is, in any event, ultimately a medical

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question more appropriately analyzed and decided by medical professionals. Hence, SB 848 included a provision directing the California Department of Health Services to issue emergency regulations setting forth the amount of marijuana a person could possess pursuant to Proposition 215.

As you undoubtedly know, the legislative session ended on August 31, 2000, without passage of a bill to clarify Proposition 215. Senate Bill 2089 (Johannessen), which died in committee, sought to specify the maximum amount of marijuana a physician could recommend for medicinal use. At this point, in my opinion, it is highly unlikely that any legislation setting forth specific maximum amounts will succeed until we have more and better answers to questions about the medical efficacy of marijuana.

The Governor did sign Senate Bill 847 (Vasconcellos) appropriating three million dollars to the University of California to study marijuana's medicinal properties. These funds have recently been allocated to the University of California, San Diego, and it is expected that research will commence in January, 2001.

In the meantime, several counties and communities have informally established their own guidelines for the maximum amount of marijuana an individual may possess with a valid doctor's recommendation. An update, including those local guidelines of which my office has thus far been informed, is included with this letter. As you can see, the amounts adopted vary greatly from community to community. In Oakland, a patient with a valid recommendation can possess up to six pounds of marijuana in particle form if they grew the marijuana themselves. In Simi Valley, a person may grow two plants. The latter standard appears to be based on an Information Bulletin, issued on February 24, 1997, by former Attorney General Dan Lungren, observing "that more than two plants would be cultivation of more than necessary for personal medical use." In truth, however, neither my department nor anyone else has any scientific basis upon which to agree or disagree with this observation. Because the amounts required for personal medical usage cannot be known without the required medical research, and because the amounts which might be presumptive of abusive usage are not scientifically established, I have not issued a bulletin or guideline recommending the quantity or the amount of marijuana a person can possess for medicinal purposes, and have no current plan to do so.

Efforts to implement California's medicinal use law are, of course, further complicated by the position taken by the federal government. The federal government has not been receptive to accommodating the medicinal use initiatives enacted by voters in California and several other western states. In an effort to harmonize the policy enacted by our voters with federal regulations, I have called upon federal officials to consider rescheduling marijuana from its current classification as a Schedule One substance to Schedule Two of the Federal Controlled Substances Act, which would permit a prescription under medical supervision and accountability. As yet, federal officials have declined to reschedule marijuana and state their belief that further research on the medical efficacy of marijuana is needed before reclassification.

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I share your concern that all laws should be applied uniformly throughout our state. It is my hope that we can work with law enforcement and medical experts to come up with a uniform approach to the enforcement of marijuana laws. To work towards that end, I will solicit further advice from California's district attorneys, law enforcement and medical communities in our state on this specific issue and I will report to you the results of my efforts. We need to work together to find a way to implement Proposition 215 in the manner contemplated by the voters of our state, in order to permit compassionate use without compromising effective enforcement of the laws intended to protect Californians from illicit drugs.

Sincerely,

BILL LOCKYER
Attorney General

Enclosure

CALIFORNIA COMMUNITIES WITH LOCAL POLICIES ON POSSESSION FOR MEDICINAL PURPOSES
(As of September 15, 2000)

ARCATA
- ordinance regarding card ID system

BUTTE COUNTY
- Sheriff and DA jointly agree:
- 6 plants: 3 mature/3 immature; or
- 1 lb. dry material

COLUSA COUNTY
- No firm policy/case by case review; has permitted
- outdoors - 2 plants; or
- indoors - 4 plants; or
- 1.5 lbs. processed marijuana

EL DORADO COUNTY
- Sheriff & DA joint policy:
- 6 plants; or
- 1 lb. in residence; or
- 1 oz. in vehicle

HUMBOLDT COUNTY
- 10 plants; or
- 2 lbs. of processed marijuana
- subject to caveat that amount must be consistent with medical need

MARIN COUNTY
- 6 or less mature plants; or
- 12 immature plants;
- and/or ½ lb. dried marijuana

MENDOCINO COUNTY
- Sheriff and DA policy:
- 6 mature plants;
- 12 immature plants;
- and/or 2 lbs. "processed marijuana"

NEVADA COUNTY

- 10 plants (not to yield more than 2 lbs.)
- 2 lbs. processed marijuana

OAKLAND

- outdoors - 30 mature plants (60 if less than 30 are flowering)
- indoors - 48 mature plants (96 if less than 48 are flowering)
- and/or 1-1/2 lbs. or 6 lbs. (if patient grew)

SAN FRANCISCO

- card ID system for persons with valid recommendations

SHASTA COUNTY

- Sheriff, DA and local police chiefs agree:
- outdoors - 2 plants; or
- indoors - 6 plants; (3 in flowering stage/3 in vegetative stage);
- or 1.33 lbs. of processed marijuana

SIERRA COUNTY

- outdoors - 3 plants
- indoors - 6 plants
- quantity in possession assessed for medical need as recommended by physician

SONOMA COUNTY

- protocol with Sonoma Medical Association for review of Prop 215 claims
- no quantity policy

TEHAMA COUNTY

- Sheriff's Office Policy
- 18 immature plants; or
- 6 mature plants

  (note: DA did not sign on)

YUBA COUNTY

- Informal policy/individual case review
- 5 plants; or
- 1.5 lbs processed marijuana